



1 JUNE 2016

TRANSNET FREIGHT RAIL

REQUEST FOR PROPOSALS: TENDER NUMBER CRAC-KGG-21543

**IN RESPECT OF A TWENTY YEAR CONCESSION FOR THE DESIGN, FINANCING,
CONSTRUCTION, OPERATION, MAINTENANCE AND EVENTUAL HANDOVER OF A
CONTAINER TERMINAL AT TAMBO SPRINGS**



TABLE OF CONTENTS

Clause number and description	Page
PART I - GENERAL REQUIREMENTS, RULES AND PROVISIONS	7
1. Disclaimer	7
2. Definitions and Interpretation	11
3. Introduction	32
4. Purpose of this RFP	47
5. Structure of this RFP	48
6. Structure of the Evaluation of Bid Responses.....	49
6.8. Best and Final Offer (BAFO)	51
6.9. Project Structure and Contracts.....	51
7. TFR's Rights	54
8. Appointment of a Reserve Bidder	54
9. Timetable for the Procurement Programme.....	55
10. Extension of RFP Bid Submission Date	55
11. Other Key Role Players in the South African Rail System	55
11.1. The Department of Public Enterprises	55
11.2. The Department of Transport	56
11.3. The Department of Trade and Industry	56
11.4. The Rail Safety Regulator	56
12. Governing Law, Competition and other Statutory Requirements	56
12.1. Governing law	56
12.2. Competition Act.....	57
12.3. Other Statutory Requirements	57
13. The Supplier Development Objectives	58
13.1. B-BBEE Contributor Status Level.....	58
13.2. Black Ownership Minimum Commitments	61



13.3.	Supplier Development	62
14.	Compliance with the TFR Policies	64
15.	Eligibility Considerations	64
16.	Acknowledgement of the Law	65
17.	Consents	66
18.	Legal Personality of Bidder and Changes	67
19.	Authorisation of TFR	69
20.	Confidentiality	70
20.1.	Confidentiality by the Bidders	70
20.2.	Confidentiality by TFR	70
21.	Bid Documentation Fee and Preferred Bidder Guarantee	71
21.1.	Bid Document Fee	71
21.2.	Preferred Bidder Guarantee	71
21.3.	Release of Guarantees	73
21.4.	Forfeiture of Guarantees	73
22.	Corrupt Gifts and Payments	73
23.	No Contract	74
24.	No Collusion	74
25.	Contact Policy	75
26.	Requests and Clarifications	76
27.	Compulsory RFP Briefing Session and Project Site Visit	77
28.	Status of Response	78
29.	Submission of Bid Response	78
30.	Copies of Bid Response	79
31.	Format of the Bid Response	80
31.1.	Contents of the Bid Response	80
31.2.	Language of the Bid	81
31.3.	Currency of the Bid	81
31.4.	Identification and Sealing of this RFP Bid Response	81
31.5.	Correction of Errors	82



31.6.	Signing of Bid	82
31.7.	Further Information	82
32.	Late Bid Responses	83
33.	Bid Response Validity	83
34.	Extension of Bid Submission Validity Period	83
35.	Declaration of Bidder	83
36.	Briefing Notes and Changes to Bid Process	83
36.1.	Issue of Briefing Notes	84
36.2.	Influence of Briefing Notes	84
37.	Cost of Bidding	84
38.	Inconsistencies	85
39.	Incorrect or Misleading Information	85
40.	Opening of Bid Response	85
41.	RFP Bid Response Rejection	85
42.	Disputes Relating to Bid Process	85
43.	Selection of Preferred and Reserve Bidder	86
44.	Information Verification	86
PART II - QUALIFICATION CRITERIA		87
45.	Overview of the Evaluation of the Bid Responses	87
46.	Overview of the Qualification Criteria and Evaluation Criteria	90
47.	Administrative Responsiveness and Substantive Responsiveness	98
PART III - EVALUATION CRITERIA		106
48.	Overview of the Evaluation Criteria	106
49.	The Evaluation Criteria and Methodology	106
50.	Evaluation Method of the Evaluation Criteria	107
51.	Evaluation Criteria 1: Financial Evaluation Criteria	108
52.	Evaluation Criteria 2: Supplier Development Evaluation Criteria	109
53.	Evaluation Criteria 3 – Technical Evaluation Criteria	114



Annex A - Bid Notice	115
Annex B - Project Site Layout	116
Annex C - Scope of Services	118
Annex E – TFR Policies, Manuals and Operating Conditions	137
Annex F – Bid Response Form	138
Annex G - TFR Declaration of Bidder	148
Annex H - Non-Disclosure Agreement	151
Annex I - Resolution of Board of Directors	157
Annex J - Resolution of each Member	159
Annex K - Certificate of Acquaintance with RFP Documents	161
Annex L - Form of Preferred Bidder Guarantee	164
Annex M - Declaration of Interest	170
Annex N - Project Plan	176
Annex O - Tax Clearance Requirements	177
Annex P - Certificate of Acquaintance with the Requirements of this RFP	178
Annex Q - Certificate of Acquaintance with conditions of contract with TFR	179
Annex R - Breach of Law Form	180
Annex S - Certificate of Attendance of RFP Briefing	181
Annex T - Supplier Integrity Pact	182
Annex U - Supplier Development Plan Guidelines	184
Annex V - B-BBEE Improvement Plan Guidelines	189
Annex W - Confirmation of Black Ownership Commitments	201
Annex X – Draft Terminal Operator Agreement	202
Annex Y - Member’s Equity Support Letter	203
Annex Z - Financial Model Template	207
Annex AA - Letter of Support From Lender	208
Annex BB – Business Plan Guidelines	211
Annex CC – Scoring Model	219
Annex EE - Property development and Supporting Infrastructure	220
Annex FF – Existing Environmental Authorisation and EIA Information	221



Annex II – Market Information 222

Annex LL – Corporate Finance Support Letter 223

Annex MM – Concession Period Extension Guidelines 226



PART I - GENERAL REQUIREMENTS, RULES AND PROVISIONS

1. Disclaimer

- 1.1. This Request for Proposals (“RFP”) (which request shall include all other information, written or oral, electronic or otherwise that is made available during the procurement process) is being made available by the Transnet Freight Rail, an operating division of Transnet SOC Ltd, with registration number 1990/000900/30 (“TFR”) to select a Preferred Bidder with whom TFR may conclude the Terminal Operator Agreement.
- 1.2. This RFP is provided for the purposes set out in clause 4 of Part I (*General Requirements, Rules and Provisions*) and is not intended to form any part or basis of any investment decision by the Bidders. The recipient should not consider this RFP as an investment recommendation by TFR or any of its Transaction Advisors. Each person to whom this RFP (and other later or related documents) is made available must make his, hers, or its own independent assessment of the Project after making such investigation and taking such professional advice as he, she or it deems necessary. Neither the receipt of this RFP by any Person, nor any information contained in the documents distributed with it nor previously or subsequently communicated to any Bidder or its Advisor, is to be taken as constituting the giving of investment advice by TFR or its Transaction Advisors.
- 1.3. While all reasonable care has been taken in preparing this RFP and other related documents, the information contained in them does not purport to be comprehensive or to have been verified by TFR, any of its officers, employees, servants, agents, Transaction Advisors or any other person. Bidders have the onus of, should they choose to do so, verifying the information contained in this RFP by conducting their own due diligence. Accordingly, neither TFR nor any of its Transaction Advisors will accept any liability or responsibility for the adequacy, accuracy or completeness of any of the information or opinions stated herein.
- 1.4. Save where expressly stipulated otherwise, no representation or warranty (whether express or implied) is or will be given by TFR or any of its officers, employees, servants, agents, Transaction Advisors or any other person with respect to the information or opinions contained in this RFP, or in relation to any Briefing Notes issued in relation to this RFP or with respect to the information or opinions contained in any document, or on which any document is based.



- 1.5. TFR has developed a fair, equitable, transparent, competitive and cost effective procurement process for this Project. Bid Responses will be evaluated against the quantitative and qualitative Evaluation Criteria contained in this RFP.
- 1.6. TFR reserves the right to amend, modify or withdraw this RFP or any part of it, or to terminate or amend any of the procedures, procurement processes or requirements detailed in this RFP at any time and from time to time after the issue thereof, without prior notice and without liability to compensate or reimburse any Person pursuant to such amendment, modification, withdrawal or termination.
- 1.7. The terms and conditions set out in this RFP regarding the content of a Bid Response, are stipulated to give effect to TFR's legal obligation to undertake a procurement process that is fair, transparent, equitable, cost effective and competitive as contemplated by section 51 of the Public Finance Management Act.
- 1.8. Bidders are hereby advised that TFR is not committed to any course of action as a result of its issuance of this RFP and or its receipt of Bid Responses. In particular, please note that TFR reserves the right to:
 - 1.8.1. modify the Project and request Bidders to re-bid on any such changes;
 - 1.8.2. reject any Bid Response which does not conform to instructions, requirements and specifications which are detailed herein;
 - 1.8.3. disqualify Bid Responses submitted after 10h00 (Central African Time) on the Bid Submission Date;
 - 1.8.4. select or not to select any Bidder as the Preferred Bidder;
 - 1.8.5. select one or more than one Bidder as the Reserve Bidder in terms of this RFP to undertake the Project;
 - 1.8.6. not necessarily accept the highest priced Bid Response;
 - 1.8.7. reject all Bid Responses, if it so decides;
 - 1.8.8. withdraw this RFP;
 - 1.8.9. award the Concession at any time after the Bid Submission Date;
 - 1.8.10. award the Concession for only a portion of the proposed Project as reflected in the scope of this RFP;



- 1.8.11. split the award of the Concession between more than one Bidder, should it at TFR's discretion be more advantageous in terms of, amongst others, cost or developmental considerations;
- 1.8.12. make no award of the Concession;
- 1.8.13. should the Concession be awarded on the strength of information furnished by the Bidder, which after conclusion of the Terminal Operator Agreement, is proved to have been incorrect, TFR reserves the right to cancel the Terminal Operator Agreement;
- 1.8.14. cancel or suspend the process for the appointment of the Terminal Operator in respect of the Procurement Programme;
- 1.8.15. cancel, suspend or change the Procurement Programme contained in this RFP at any stage;
- 1.8.16. request a Best And Final Offer or not;
- 1.8.17. amend this RFP;
- 1.8.18. supplement the information provided as part of this RFP prior to the Bid Submission Date, as and when additional information becomes available; and/or
- 1.8.19. reduce the minimum threshold/requirements in respect of the Technical and Financial Qualification Criteria should no Bidder or sufficient bidders such minimum threshold/requirements,

and TFR shall not be liable to the Bidders, the Preferred Bidder or the Terminal Operator, as the case may be, for any consequences, claims or costs arising from any of these actions.

- 1.9. If any Bidder or its constituent members, employees, Advisors or agents makes or offers to make any gratuity to any public official or employee of TFR or consultant to TFR either directly or through an intermediary as an inducement or reward for appointing any Bidder as the Preferred Bidder, or for showing or omitting to show favour or disfavour to any Bidder, its Members, the Contractors, or their Lenders in relation to the Project, then such Bidder, its Member, the Contractors, or their Lenders may be disqualified forthwith from participating in the Procurement Programme and/or Project.



- 1.10. Any difference in information between documents made available by TFR to the Bidders during the procurement process with any earlier document shall, unless expressed to the contrary be deemed to be a variation or modification of the earlier documents.

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2. Definitions and Interpretation

- 2.1. In this RFP, except as otherwise defined herein, and except where the context requires otherwise, the following terms shall bear the following meanings:
- 2.1.1. **“Administrative Responsiveness”** - has meaning ascribed to it in clause 47.1 (*Qualification Criteria 1: Administrative Responsiveness*) of Part II (*Qualification Criteria*) of this RFP;
 - 2.1.2. **“Advisors”** - any advisors to any Bidder, Member or Contractor;
 - 2.1.3. **“Annex” or “Annexes”** - any annex or annexes attached to this RFP;
 - 2.1.4. **“Applicable Laws”** - means all local, provincial or national statutes, ordinances, regulations, by-laws, and all rules, directives, decrees, decisions, determinations, rulings, rules, judgments orders of any competent court or the Government and other instruments which have the force of law in the Republic of South Africa as well as the South African common law;
 - 2.1.5. **“Approved Services”** - the services described as “Approved Services” in Annex C (*Scope of Services*);
 - 2.1.6. **“BAFO”** - best and final offer;
 - 2.1.7. **“Bidder”** - any Company or a Consortium of Members that submits a Bid Response;
 - 2.1.8. **“Bid Notice”** - the notice published by TFR inviting potential Bidders to acquire this RFP and submit Bid Responses under the Procurement Programme, which notice



is included in this RFP as Annex A (*Bid Notice*);

- 2.1.9. **“Bid Response”** - a bid response submitted by a Bidder in response to the invitation contained in this RFP;
- 2.1.10. **“Bid Submission Date”** - the date for the submission of the Bid Responses to TFR, which date is set out in clause 9 (*Timetable for the Procurement Programme*) of Part I (*General Requirements, Rules and Provisions*) of this RFP or such later date as may be determined by TFR in its discretion and communicated to bidders by way of a Briefing Note;
- 2.1.11. **“Bid Submission Schedules”** - the annexes contained in the Annexes of this RFP, that are to be completed by the Bidder, its Members and/or the Contractors, as required, and submitted as part of the Bid Response;
- 2.1.12. **“Black People” or “Blacks”** - is a generic term defined in the B-BBEE Act to mean natural persons who are Africans, Coloureds and Indians—
- 2.1.13. - who are citizens of the Republic of South Africa by birth or descent; or
- 2.1.13.1. - who became citizens of the Republic of South Africa by naturalisation -
- 2.1.13.2. - before 27 April 1994; or
- 2.1.13.3. - on or after and who would have been entitled to acquire citizenship by naturalisation prior to that date;



- 2.1.13.4. **“Black Ownership”** - the effective ownership of shares by Black People, which shall be determined with reference to the B-BBEE Codes and evidenced by way of a B-BBEE verification certificate;
- 2.1.14. **“Break Bulk Cargo”** - any loose or packaged general cargo that is Containerised and that is not excluded in in Annex C (*Scope of Services*);
- 2.1.15. **“Briefing Note”** - any document issued in writing by TFR that amends or supplements this RFP in any way. Such notes shall be consecutively numbered in the order in which they are issued;
- 2.1.16. **“Business Day”** - any day other than a Saturday, Sunday or gazetted National public holiday in the Republic of South Africa;
- 2.1.17. **“Business Plan”** - the business plan to be developed in accordance with the Business Plan Guidelines and submitted with each Bid Response as required in terms of clause 51.1 (*Financial Model and Business Plan*) of Part III (*Evaluation Criteria*) of this RFP;
- 2.1.18. **“Business Plan Guidelines”** - the guidelines in accordance with which each Bidder must develop its business plan, which is annexed hereto as Annex BB (*Business Plan Guidelines*);
- 2.1.19. **“B-BBEE”** - Broad-Based Black Economic Empowerment;
- 2.1.20. **“B-BBEE Act”** - Broad-Based Black Empowerment Act No 53 of 2003;



- 2.1.21. **“B-BBEE Codes”** - the amended B-BBEE Codes of Good Practice, published under Government Gazette No. 36928, on 10 October 2013, in terms of section 9(1) of the B-BBEE Act;
- 2.1.22. **“B-BBEE Improvement Plan”** - the plan to be developed by the Bidders in accordance with the B-BBEE Improvement Plan Guidelines and submitted with each Bid Response as required in terms of clause 47.3.1 of Part II (*Qualification Criteria*) and Part III (*Evaluation Criteria*) of this RFP;
- 2.1.23. **“B-BBEE Improvement Plan Guidelines”** - the guidelines annexed to this RFP as Annex V (*B-BBEE Improvement Plan Guidelines*);
- 2.1.24. **“Cargo”** - means Break Bulk Cargo, Dry Bulk Cargo and Liquid Bulk Cargo;
- 2.1.25. **“Certifications”** - the certifications set out in clause 47.4.2 of Part II (*Qualification Criteria*) of this RFP;
- 2.1.26. **“Change in Control”** - any change whatsoever in Control (as defined in the Terminal Operator Agreement), whether effected directly or indirectly;
- 2.1.27. **“Companies Act”** - the Companies Act No, 71 of 2008;
- 2.1.28. **“Company”** - has the meaning ascribed to this term in the Companies Act;
- 2.1.29. **“Competition Act”** - the Competition Act No. 89 of 1998;
- 2.1.30. **“Completion Certificate”** - has the meaning ascribed to this term in the Terminal Operator Agreement;



- 2.1.31. **“Concession”** - the concession granted by TFR to undertake the Project in terms of section;
- 2.1.32. **“Concession Offer”** **Fee** - the Concession Fee that is offered by the Bidder in response to clause 51.2 (*Concession Fee Offer*) of Part III (*Evaluation Criteria*) of this RFP;
- 2.1.33. **“Concession Offer Worksheet”** **Fee** - the worksheet titled “Template 2 - Concession Fee Offer” of the Scoring Model, which worksheet is to be completed by the Bidders and submitted with the Bid Responses in accordance with clause 51.2.1 of Part III (*Evaluation Criteria*) as well as printed and signed by the authorised representative. In case of inconsistency the printed and signed copy of the Concession Fee Offer Worksheet will prevail;
- 2.1.34. **“Concession Period”** - the 20 (twenty) Contract Year period comprising the Construction Period and the Operations Period, during which the Terminal Operator is granted the right to undertake the Project in terms of the Terminal Operator Agreement;
- 2.1.35. **“Concession Period Extension Guidelines”** - the concession period guidelines annexed to this RFP as Annex MM (*Concession Period Extension Guidelines*);
- 2.1.36. **“Consents”** - all consents, permits, clearances, authorisations, approvals, rulings, exemptions, registrations, filings, decisions, licences, required to be issued by or made with any Responsible Authority in terms of the Applicable Laws in connection with the Terminal Operator



- undertaking the Project including the Environmental Consents and the Safety Consents;
- 2.1.37. **“Consortium”** a consortium of Members constituted in accordance with a consortium agreement for the purpose of undertaking the Project;
- 2.1.39. **“Constitution”** - the Constitution of the Republic of South Africa Act No. 108 of 1996;
- 2.1.40. **“Constitutional Documents”** - the founding documents of a Company and all additional documents which set out the authority of such Company to act including the certificate of incorporation and the memorandum of incorporation;
- 2.1.41. **“Construction Works” or “Construct”** - all work to be performed by the Terminal Operator in terms of the Terminal Operator Agreement to establish the Terminal, which works entail the detailed design, construction, installation, testing and commissioning of the Terminal Infrastructure and the procurement and installation of the Terminal Equipment required to provide the Terminal Services and obtaining the Completion Certificate issued by the Independent Certifier in terms of the Draft Terminal Operator Agreement;
- 2.1.42. **“Construction Works Programme”** - the programme in respect of the Constructions Works as proposed by the Bidders and included as an annex to the Business Plan;



- 2.1.43. **“Construction Period”** - shall have the meaning ascribed to this term in the Draft Terminal Operator Agreement;
- 2.1.44. **“Container”** - a 6, 12 and 13.7 metre container conforming to ISO standards as prescribed by the International Organisation for Standardisation ISO standards. Any reference in this Agreement to “cargoes” includes containers, excluding IMDG cargoes which may not be handled by the Terminal, save for those which have been granted prior written authorisation by TFR;
- 2.1.45. **“Containerised”** - any Cargo that is contained in a Container;
- 2.1.46. **“Contractors”** - all subcontractors appointed or to be appointed by the Terminal Operator, for purposes of undertaking a portion of the Project,;
- 2.1.47. **“Contract Years”** - has the meaning ascribed to this term in the Draft Terminal Operator Agreement;
- 2.1.48. **“Contributor Status Level”** - the B-BBEE contributor status level of the Bidder as determined by their compliance with the applicable B-BBEE scorecard in terms of the B-BBEE Codes;
- 2.1.49. **“Corporate Financing”** - corporate guaranteed or secured full recourse bank debt or parent company loans provided directly to the Project Company with recourse to either the Bidder, its Members or Guarantor, as appropriate, which may be raised



against the Bidder's balance sheet or the balance sheet of its Members or Guarantor and made available to the Bidder for the financing of the Project as set out in the Corporate Financing Support Letter (for the avoidance of doubt, Members' loans are treated as Equity Finance);

- 2.1.50. **"Debt"**
- at any date, all amounts due and payable by the Terminal Operator that are outstanding under the Financing Agreements at that date (whether subordinated debt, Corporate Financing or External Debt), excluding all cancellation or prepayment penalties or fees thereon, or interest thereon and all default interest;
- 2.1.51. **"DOT"**
- the Department of Transport of the Government of the Republic of South Africa or any successor Department designated by the Government of the Republic of South Africa from time to time;
- 2.1.52. **"DPE"**
- the Department of Public Enterprises of the Government of the Republic of South Africa or any successor Department designated by the Government of the Republic of South Africa from time to time;
- 2.1.53. **"Draft Terminal Operator Agreement"**
- the Draft Terminal Operator Agreement that is issued with this RFP, and annexed hereto as Annex X (*Draft Terminal Operator Agreement*);



- 2.1.54. **“Dry Bulk Cargo”** - free-flowing homogenous cargoes in granular, powder or crystal form that is Containerised;
- 2.1.55. **“DTI”** - the Department of Trade and Industry of the Government of the Republic of South Africa or any successor Department designated by the Government of the Republic of South Africa from time to time;
- 2.1.56. **“D&C Specifications”** the design and construction specifications which are to be developed by each Bidder and which is to be annexed to the Business Plan;
- 2.1.57. **“Effective Date”** - has the meaning ascribed to this term in the Draft Terminal Operator Agreement;
- 2.1.58. **“Environmental Consents”** - any consents, licences, authorisations, permissions or approvals required from a Responsible Authority required in terms of any environmental law, heritage law or any Applicable Law for the purposes of this Project;
- 2.1.59. **“Equity”** - the entire issued share capital of, and Shareholder Loans to, the Terminal Operator;
- 2.1.60. **“Equity Finance”** - funding to be provided to the Terminal Operator by its Shareholders either by way of share capital or shareholder loans;
- 2.1.61. **“Evaluation Criteria”** - criteria set out in Part III (*Evaluation Criteria*) of this RFP;



- 2.1.62. **“Existing Buildings”** - the existing buildings located within the Project Site as depicted in Annex B (*Project Site Layout*);
- 2.1.63. **“Experience Worksheet”** - the worksheet titled “ Template 1 - Technical Experience” of the Scoring Model, which worksheet is to be completed by the Bidders and submitted with the Bid Responses in accordance with clause 47.4.1 of Part II (*Qualification Criteria*) as well as printed and signed by the authorised representative. In case of inconsistency between the printed version and the electronic copy, the printed and signed copy of the Experience Worksheet will prevail;
- 2.1.64. **“External Debt”** - a Debt Terminal provided directly to the Bidder by a bank or other financial institution. For the avoidance of doubt, external Debt excludes Corporate Finance or any form of shareholder loan or intercompany loan;
- 2.1.65. **“Terminal”** - the Terminal to be established on the Project Site comprising the Terminal Infrastructure and the Terminal Equipment, from which the Terminal Operator will undertake the cargo handling services, ;
- 2.1.66. **“Terminal Equipment”** the movable assets, including equipment and machinery (whether affixed to the Project Site or not) that are required in order to provide the Services, all of which shall be procured in accordance with Annex C (*Scope of Services*);



- 2.1.67. **“Terminal Infrastructure”** the structures, including storage facilities, loading facilities, buildings, sheds, surfacing, and all other fixed and movable improvements to the Project Site or adjacent to the Project Site, that are required in order to provide the Services as well as the internal network for the provision of water, lights, power, sewerage and similar services within the Project Site boundaries all of which shall be designed and Constructed in accordance with Annex C (*Scope of Services*);
- 2.1.68. **“Terminal Operator”** - the Preferred Bidder that enters into the Terminal Operator Agreement with TFR and is thereby granted the Concession;
- 2.1.69. **“Terminal Operator Agreement”** - the finalised version of the Draft Terminal Operator Agreement which shall be issued by TFR pursuant to clause 6.9.5 of Part I (*General Requirements, Rules and Provisions*) of this RFP and which agreement shall be entered into between TFR and the Preferred Bidder;
- 2.1.70. **“Financial Advisors”** - the firm or firms advising a Bidder on the raising of Debt and Equity Finance in respect of its Bid Response and the Project;
- 2.1.71. **“Financier Direct Agreement”** - the financier direct agreement which may be entered into between TFR, the Lenders and the Terminal Operator, in terms of the Terminal Operator Agreement;



- 2.1.72. **“Guarantor”** - an entity that unconditionally guarantees the obligations of the Operator with regards to the External Debt or the Corporate Financing;
- 2.1.73. **“Government”** - the Government of the Republic of South Africa, and any of its departments, agencies or any other state-owned companies or entities that it manages, owns or controls;
- 2.1.74. **“Independent Certifier”** - has the meaning ascribed to this term in the Terminal Operator Agreement;
- 2.1.75. **“IRBA”** - the Independent Regulatory Board for Auditors;
- 2.1.76. **“Lead Member”** - the Member of a Consortium that (i) is authorised to represent the Consortium and submits a Bid Response on behalf of the Consortium , (ii) will become the majority Shareholder in the Project Company once the Project Company is established and (iii) will be a Key Contractor;
- 2.1.77. **“Legal Advisors”** - the firm or firms advising a Bidder in respect of its Bid Response, and if that Bidder becomes a Preferred Bidder in respect of the negotiation of the Bidder’s contractual arrangements with, *inter alia*, its Members, Contractors, equipment suppliers and Lenders (if any);
- 2.1.78. **“Lenders”** - the financiers to a Bidder in respect of the Project;



- 2.1.79. **“Liquid Bulk Cargo”** - any liquid bulk cargo that is Containerised and that is not excluded in in Annex C (*Scope of Services*);
- 2.1.80. **“Long Stop Date”** - shall have the meaning ascribed to this term on the Terminal Operator Agreement;
- 2.1.81. **“Mandatory Returnable Documents”** - the bid returnable documents set out in clause 47.1.2 of Part II (*Qualification Criteria*) and clause 12.1 (*Governing law*) of Annex F (*Bid Response Form*) of this RFP;
- 2.1.82. **“Member”** - any legal entity and or natural person that is a member of a Consortium and that will become Shareholders of the Project Company once it is incorporated;
- 2.1.83. **“Minimum Revenue Level”** - the minimum revenue level of the Concession Fee as set out in the Concession Fee Offer Worksheet;
- 2.1.84. **“National Treasury”** - has the meaning ascribed to the term in the Public Finance Management Act;
- 2.1.85. **“NEMA”** - the National Environmental Management Act No. 107 of 1998;
- 2.1.86. **“Net Asset Value”** total assets minus intangible assets minus total liabilities;
- 2.1.1. **“NGP”** - New Growth Path issued by the Government in 2010, aimed at, *inter alia*, addressing unemployment, inequality and poverty in a strategy that is principally reliant on creating a significant increase in the number of new



jobs in the economy, mainly in the private sector;

- 2.1.2. **“Operational Plan”** - the operational plan to be developed by the Bidders which sets out the operating philosophy of the Terminal and the Terminal Operator, and which is to be annexed to the Business Plan;
- 2.1.3. **“Operation and Maintenance”** - the activities and obligations of the Terminal Operator to operate and maintain the Terminal as set out in the Terminal Operator Agreement and the terms **“Operate”** and **“Maintain”** shall have the corresponding meanings;
- 2.1.4. **“Operations Period”** - shall have the meaning ascribed to this term in the Terminal Operator Agreement;
- 2.1.5. **“Rail Infrastructure”** - Shall have the meaning of “Railway” as defined in the National Railway Safety Regulator Act, Act 16 of 2002;
- 2.1.6. **“Rail Safety Regulator”** - the independent rail safety regulatory body established under Rail Safety Regulator Act 2002 (Act 16 of 2002);
- 2.1.7. **“Rail Users”** - any Person (other than the Terminal Operator) using the Terminal and any Contractor and or any third parties authorised to conduct business on behalf of any rail user;
- 2.1.8. **“Preferred Bidder”** - the Bidder that has been selected through the Procurement Programme as the Bidder with whom TFR intends to conclude the Terminal Operator Agreement subject to the successful



- completion of the contract conclusion process;
- 2.1.9. **“Preferred Bidder Guarantee”** - the guarantee to be provided by the Preferred Bidder to TFR in terms of clause 21.2 (*Preferred Bid Guarantee*) of Part I (*General Requirements, Rules and Provisions*) of this RFP, in the form and content attached as Annex L (*Form of Preferred Bidder Guarantee*) to this RFP;
- 2.1.10. **“Procurement Programme”** - the procurement programme being conducted by TFR in terms of this RFP in respect of the Project;
- 2.1.11. **“Project”** - the Concession granted in respect of the design, finance, Construction, Operation and Maintenance of the Terminal, to respond to the market demand through the provision of inland container capacity and the eventual handover of the Terminal in accordance with the terms of the Terminal Operator Agreement;
- 2.1.12. **“Project Company”** - the special purpose Company that a Bidder may use as the vehicle to undertake the Project, that is the subject matter of a Bid Response, and that may be the Terminal Operator in terms of the Terminal Operator Agreement;
- 2.1.13. **“Project Officer”** - the person appointed by TFR as the project officer in respect of the Project;
- 2.1.14. **“Project Site”** - the portion of land set out in Annex B (*Project Site Layout*), comprising the undeveloped area,



- 2.1.15. **“Services”** - means the services that a Bidder is to provide at the Terminal as set out in its Bid Response and as approved by TFR;
- 2.1.16. **“Public Finance Management Act”** - Public Finance Management Act No. 1 of 1999;
- 2.1.17. **“Qualification Criteria”** - the qualification criteria set out in Part II (*Qualification Criteria*) of this RFP;
- 2.1.18. **“R”, “Rand” or “ZAR”** - South African Rand, the lawful currency of the Republic of South Africa;
- 2.1.19. **“Related” or “Relation”** - a relationship formed on the basis of any one or more of:
- 2.1.20.
- 2.1.20.1. - family (including spouses and in-laws);
 - 2.1.20.2. - friendship;
 - 2.1.20.3. - business acquaintance;
 - 2.1.20.4. - professional engagement; or
 - 2.1.20.5. - employment;
- 2.1.20.5. **“Reserve Bidder”** - any Bidder that has not been designated as the Preferred Bidder but has been selected by TFR as an entity with which TFR may conclude the Terminal Operator Agreement, if any of the circumstances in respect of the Preferred Bidder specified in clause 21.2 (*Preferred Bidder Guarantee*) of this RFP occur;
- 2.1.21. **“Responsible Authority”** - any ministry, any minister, agency, authority, organ of state, any official in the public administration or any other governmental or regulatory department,



commission, entity, service provider of a utility, board, agency, instrumentality or public authority (in each case whether national, provincial or municipal) or any court, each having jurisdiction over the matter in question;

- 2.1.22. **“RFP”**
- this request for proposals document and all Annexes, schedules, other appendices to it and any Briefing Notes issued in respect of it, from time to time, by TFR to solicit Bid Responses from the Bidders;
- 2.1.23. **“Safety Consents”**
- any consents, licences, authorisations, permissions or approvals required to be obtained by the Terminal Operator from any Responsible Authority required in terms of any health and safety law for the Project;
- 2.1.24. **“Scoring Model”**
- the excel file annexed to the RFP as Annex CC (*Scoring Model*) which sets out the scoring methodology of the Qualification Criteria and the Evaluation Criteria and includes the Experience Worksheet, Concession Fee Offer Worksheet and Supplier Development Value Summary Worksheet;
- 2.1.25. **“Shareholders”**
- the Members of the Consortium that will become the holders of Equity in the Project Company once selected as the Preferred Bidder;
- 2.1.26. **“Sector Code”**
- a sector code for the transport & service sector published in terms of section 9 of the BEE Act;



- 2.1.27. **“Services”** - the handling of containerised cargoes to be provided to rail users by the Terminal Operator at the Terminal, as described further in Annex C (*Scope of Services*);
- 2.1.28. **“Signature Date”** - the date on which the Terminal Operator Agreement is signed by the last party to it, being either TFR or the Terminal Operator provided that both parties sign the Terminal Operator Agreement, and if signed on different dates the last of such dates;
- 2.1.29. **“Substantive Responsiveness”** - has meaning ascribed to it in clause 47.2 (*Substantive Responsiveness Qualification Criteria*) of Part II (*Qualification Criteria*) of this RFP;
- 2.1.30. **“Supplier Development”** - has meaning ascribed to it in clause 13.3 (*Supplier Development*) of Part I (*General Requirements, Rules and Provisions*) of this RFP;
- 2.1.31. **“Supplier Development Plan”** the supplier development plan to be prepared by the Bidders in accordance with Annex U (*Supplier Development Plan Guidelines*);
- 2.1.32. **“Supplier Development Plan Guidelines”** the supplier development plan guidelines annexed to this RFP as Annex U (*Supplier Development Plan Guidelines*);
- 2.1.33. **“Supplier Development Value Summary Worksheet”** - the worksheet titled “Template 3 – SD Targets” of the Scoring Model, which worksheet is to be completed by the Bidders and submitted with the Bid Responses in accordance with clause 52.3 of Part III (*Evaluation Criteria*) as well as printed and signed by the



authorised representative. In case of inconsistency between the printed version and the electronic copy, the printed and signed copy of the Experience Worksheet will prevail;

- 2.1.34. **“TFR”** - Transnet Freight Rail, an operating division of Transnet;
- 2.1.35. **“TFR Policies”** - the TFR policies, operating manuals and rules as annexed to this RFP as Annex E (*TFR Policies, Manuals and Operating Conditions*)
- 2.1.36. **“Transnet”** - Transnet SOC Ltd, with registration number 1990/000900/30, a state owned company, duly incorporated in accordance with the company laws of the Republic of South Africa;
- 2.1.37. **“VAT”** - the value-added tax levied in terms of the Value-added Tax Act No. 89 of 1991;



2.2. In this RFP:

- 2.2.1. references to a statutory provision include any subordinate legislation made from time to time under that provision and include that provision as modified or re-enacted from time to time;
- 2.2.2. words importing the masculine gender include the feminine and neutral genders and *vice versa*;
- 2.2.3. the singular includes the plural and *vice versa*;
- 2.2.4. natural persons include artificial persons and vice versa;
- 2.2.5. references to a “**person**” include a natural person, company or any other juristic person or other corporate entity, a charity, trust, partnership, joint venture, syndicate, or any other association of persons;
- 2.2.6. references to a “**subsidiary**” or a “**holding company**” shall be references to a subsidiary or holding company as defined in the Companies Act;
- 2.2.7. if a definition imposes substantive rights and obligations on a person, such rights and obligations shall be given effect to and shall be enforceable, notwithstanding that they are contained in a definition;
- 2.2.8. any definition, wherever it appears in this RFP, shall bear the same meaning and apply throughout this RFP document unless otherwise stated;
- 2.2.9. if there is any conflict between any definitions in this RFP then, for purposes of interpreting any clause of this RFP or paragraph of any Part or schedule, the definition appearing in that clause or paragraph shall prevail over any other conflicting definition appearing elsewhere in this RFP document;
- 2.2.10. the use of any expression covering a process available under South African law (such as but not limited to a judicial management, business rescue or winding-up) shall, if any of the Parties is subject to the law of



- any other jurisdiction, be interpreted in relation to that Party as including any equivalent or analogous proceeding under the law of such other jurisdiction;
- 2.2.11. references to any amount shall mean that amount exclusive of VAT, unless the amount expressly includes VAT;
- 2.2.12. the rule of construction that if general words or terms are used in association with specific words or terms which are a species of a particular genus or class, the meaning of the general words or terms shall be restricted to that same class (i.e. the *eiusdem generis* rule) shall not apply, and whenever the word “**including**” is used followed by specific examples, such examples shall not be interpreted so as to limit the meaning of any word or term to the same genus or class as the examples given;
- 2.2.13. the rule of construction that this RFP shall be interpreted against or to the disadvantage of the party responsible for the drafting or preparation of this RFP (namely the *contra proferentem* rule) shall not apply; and
- 2.2.14. unless otherwise specified, all references to any time shall be to the time of day in Johannesburg, South Africa.
- 2.3. The expiration or termination of this RFP shall not affect such of the provisions of this RFP which are expressly provided to operate after any such expiration or termination, or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the relevant provisions themselves do not provide for this.



3. Introduction

The Project, which is described further in clause 3.8 (*Project's Scope and Description*) of Part I (*General Requirements, Rules and Provisions*) of this RFP, is in respect of the design, finance, Construction, Operation and Maintenance of the Terminal for the purpose of providing the Services to Rail Users and following the Concession Period, the handover of the Terminal to TFR.

Background

3.1. Tambo Springs Logistics Gateway is proposed to be located on a 1,030 hectare site, which is currently privately held. The land is currently in an advanced stage of being prepared for industrial use to support the development of the Terminal and logistics park. The proposed Terminal site is located close to the midpoint between Alberton and Heidelberg, immediately adjacent to the N3 motorway and Gauteng Freight Railway Ring which links with the NatCor railway line towards Durban as well as the railway lines leading to Port Elizabeth, East London, Cape Town, Maputo and further North..

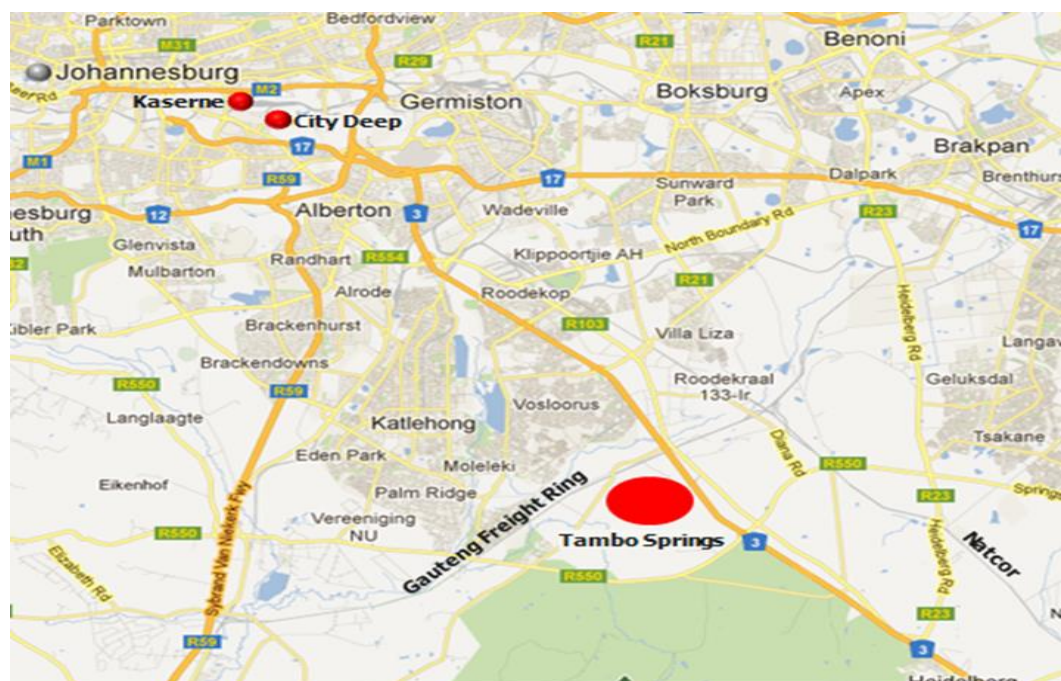


Figure 1 Tambo Springs Intermodal Terminal Location

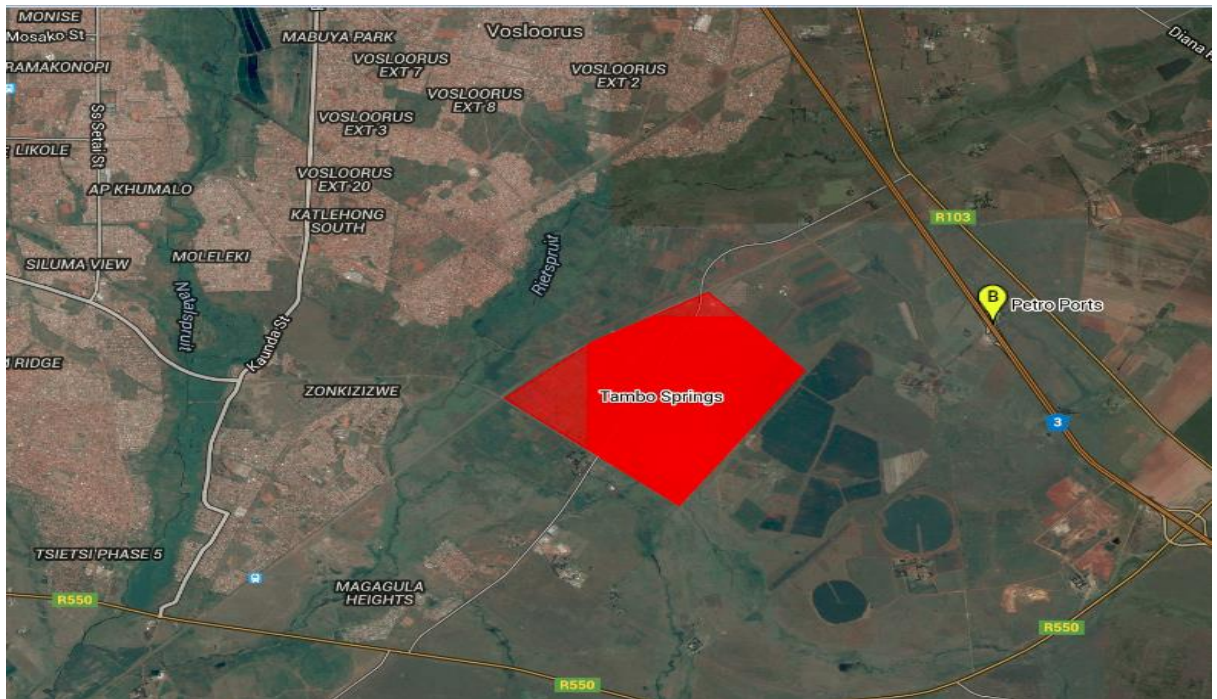


Figure 2 Tambo Springs Intermodal Terminal Site Location

- 3.2. The project forms part of a wider, Transnet Market Demand Strategy-driven, investment strategy both to expand capacity on the corridor as well as to increase utilization of existing rail infrastructure. The Project unlocks opportunities for infrastructure investment and construction, Terminal operations, Property development as well as value added logistics services.
- 3.3. Tambo Springs' capacity and phasing is driven by two key elements: demand and natural investment breakpoints. The Terminal will be designed and capped at 255 000 TEU with foundation to be provided for a possible increase to 560 000 TEU to support Terminal growth beyond the demand forecasting period or to accommodate demand exceeding current forecast. The 35ha site identified would accommodate the 560 000 TEU terminal at the lowest overall capital cost to the Private Party as well as Transnet.
- 3.4. The first phase capacity is largely driven by the requirement to handle a 50-wagon train. This results in the Terminal having an initial capacity of 143 000 TEU per annum. It is envisaged that the second phase of the terminal is developed by adding another row of container stacking behind the existing row, as well as providing the required number of reach stackers to service the area. This results



in a capacity of 194 000 TEU, which also provides a logical mid-point between the initial phase and the capacity limit of 255,000 TEU.

- 3.5. In the final phase the length of trains handled will increase to 75 wagons, in line with Transnet's strategy. Therefore, the terminal stacking area is extended accordingly, resulting in the 255 000 TEU capacity.
- 3.6. The design and construction period of three years was derived from engineering best practice and is in line with Transnet's Project Lifecycle Process.
- 3.7. The construction of the arrivals and departures yard will occur within the existing rail servitude and remain Transnet's responsibility.

3.8. **Project Scope and Description**

- 3.8.1. Bidders are invited to submit Bid Responses to be granted the right to undertake the Project.
- 3.8.2. Bidders are invited to consider all information and documentation provided and annexed to this RFP to inform the preparation of their Bid Responses.
- 3.8.3. The Bidder that is appointed as the Preferred Bidder will undertake the following:

3.8.3.1. **Compilation of Detailed Designs and Specifications**

- 3.8.3.1.1. The Terminal Operator will be required to submit detailed designs and specifications for the Terminal within 4 (four) months of the Signature Date.
- 3.8.3.1.2. The detailed designs and specifications for the Terminal must not deviate from the preliminary designs submitted by the Bidder with its Bid Response and must take into account and comply with, *inter*



alia, Annex C (Scope of Services).

- 3.8.3.1.3. The scope of the RFP relates to the PSP opportunity for the design, construction, funding, operations and maintenance of the container handling terminal facility, rail interface with train operations.
- 3.8.3.1.4. It is envisaged that the volumes by rail will be ramped up over a 2 to 3 year period from a minimum 143 000 TEU's to a maximum of 255 000 TEU's, with foundation to be provided for a possible increase to 560 000 TEU. Transnet require the Bidders to propose optimal capital phasing with related timing, tariffs and operating models for each phased capacity solution. The key deliverables are as follows;
- 3.8.3.1.5. TFR has undertaken preliminary work on the design, layout and proposed operations methodology. Bidders are required to propose an efficient and optimal terminal design as well as interim phasing solutions that will meet the demand for inland container capacity. Although Transnet will not be prescriptive as to the type of terminal solution, design solution could include solutions for a (i) Rail Mounted Gantry, (ii) Fixed Gantry and (iii) Reach Stacker solution. It is incumbent of the Bidders to consider any further alternative solutions and then propose a final terminal design(s) that will provide best value for money and provide a cost effective logistics solution.



3.8.3.1.6. **Construction**

(i) Railway infrastructure

Construction of the railway infrastructure within the terminal precinct will be to TFR standards as contained in Annexure E

The capacity of the exchange yard is determined by the number of rail lines that can accommodate a train. This capacity requirement is derived from the total demand into trains handled per day.

The required number of lines is calculated in the table below and is based on 340 working days per annum, with 85% efficiency. It is assumed that each wagon will carry 2 TEUs. Transnet's train design criteria are also incorporated with train length increasing from 50 wagon, to 75 wagon and then finally 150 wagons trains to be operated as radio Distributed Trains, consisting of 2 times 75 wagon trains.

3.8.3.1.7. The operating models and respective cycle times are set out in Annexure E

3.8.3.1.8. The construction of the Arrivals and Departures Yard remains Transnet's responsibility.

3.8.3.1.9. **Terminal infrastructure**

The operational design is Transnet's opinion of the preferred operating model, with both container stacks as well as separate direct access into the associated logistics zone, to remove double handling and improve efficiency.



The dimensions of the terminal are driven by the train length, with phases expanding in accordance to Transnet's train operation strategy, moving from 50 to 75 wagon trains. The stacking area is designed to be similar length to rail unloading zone, with separate import and export stacks.

In terms of the rail operations, a run-around-line is accommodated in the Terminal for locomotive handling. Transnet requires that all operations between the exchange yard and the terminal will be on a basis of the locomotives being at the movement end of the trains with no propelling movements allowed on Transnet owned and operated infrastructure.

The following schematic describes the operational design.

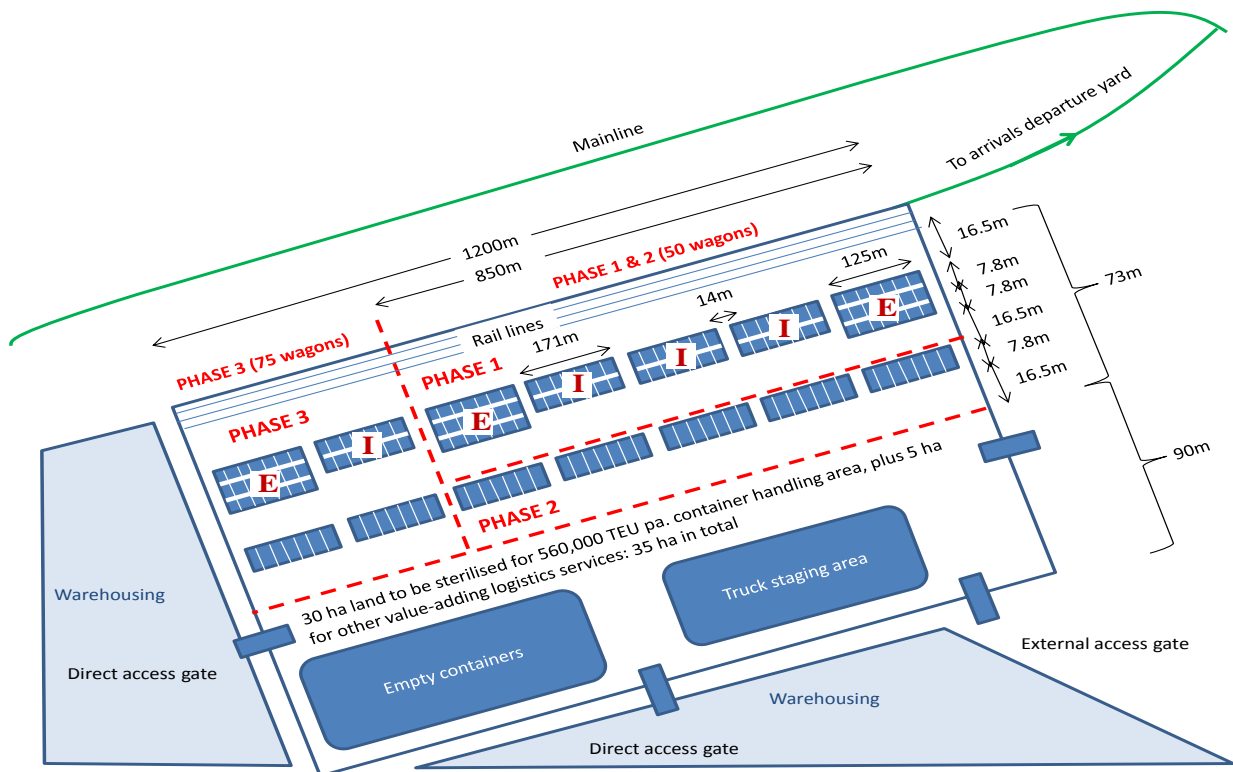


Figure 3: Operational design schematic

'E' = Export stack

'I' = Import stack



The schematic describes a minimum end-state stacking area requirement of 20 ha. Added to this, the rail lines as well as space for staff facilities and weighbridges, gives a total core terminal area of 30ha. It is also assumed that an additional 5ha will be required for terminal warehousing, customs inspection, and other value-adding activities.



3.8.3.1.10. **Funding**

Transnet expects all TSIH capital proposals to be fully underwritten. All solutions proposed by the bidder must include full proof on the financing solution for each phase.

3.8.3.1.11. **Terminal Operations**

Terminal operations will initially involve the receipt and dispatching of containers, loaded on trains consisting of fifty (50) flatbed wagons. The ramp up to 75 flatbed wagons should be considered by bidders and clear shown in the response to this RFP. The rail interface will be supported by a Transnet Service Level Agreement to ensure seamless planning, management of operations, deviation management and adherence to all safety standards.

3.8.3.1.12. **Maintain**

Maintenance schedules and regimes should be included for all asset classes deployed under each proposed operating model.

This should include operating areas, grounds, routine building maintenance, fence maintenance, fuel bowsers and all designated track or rail formation infrastructure under the direct control of TSIH. Rail infrastructure maintenance will be done according to TFR standards as contained in Annexure E.



3.8.3.2. Duration of Terminal Operator Agreement

3.8.3.2.1. The Terminal Operator shall be granted the Concession for the Concession Period as detailed further in the Draft Terminal Operator Agreement.

3.8.3.2.2. Bidders should note that whilst this RFP and the Draft Terminal Operator Agreement envisage a 20 (twenty) Contract Year Concession Period, Bidders may suggest a longer Concession Period and in such instance must provide reasons for proposing a longer concession period and shall submit in addition to its Bid Response, a separate business plan and financial model and shall indicate any associated revisions to the Concession Fee Offer Worksheet and Supplier Development Summary Worksheet. In this regard, TFR suggests that the Concession Period Extension Guidelines be considered as a mechanism to inform the basis of determining the appropriate concession period.

3.8.3.2.3. For the avoidance of doubt, notwithstanding the proposal



of a longer Concession period, the Bidders Bid Responses must in all material respects (including but not limited to, the Mandatory Returnable Documents, in particular the Concession Fee Offer Worksheet, the Supplier Development Value Summary Worksheet, the Supplier Development Plan, the Financial Model, and other aspects of the Business Plan) be prepared in respect of a 20 (twenty) Contract Year Concession Period. Any proposal by the Bidders for a longer Concession period as well as the supplementary information provided shall not form part of the Evaluation Criteria, the Bidders shall not be evaluated in respect of such supplementary documents and TFR reserves the right to accept or reject such proposal, in accordance with TFR's prevailing governance processes and requirements.

3.8.3.2.4. In addition to the aforementioned, the Terminal Operator and TFR may agree to the extension of the Operations Period by a period of 10 (ten) Contract Years in accordance with the terms of



the Draft Terminal Operator Agreement.

3.8.3.3. Construction Works, Finance and Construction of the Terminal Infrastructure and Terminal Equipment

3.8.3.3.1. The Terminal Operator will be required to undertake the Construction and establish the Terminal on the Project Site.

3.8.3.3.2. The Terminal Operator will be required to raise the capital required to undertake and complete the Construction of the Terminal Infrastructure and the procurement and installation of the Terminal Equipment in accordance with the Constructions Works Programme.

3.8.3.3.3. TFR will not prescribe to the Bidder, the extent of the Construction Works to be undertaken at the Site. The Bidder will be required to determine the extent of Construction Works, the Terminal Infrastructure and Terminal Equipment required for the Terminal as well as propose a Constructions Works Programme and shall ensure that the Construction Works is complete and the Terminal is operational by no later than the commencement of the Operations Period,



which shall occur by no later than the Long Stop Date.

3.8.3.3.4. The Bidder is required to provide a proposed technical design for the Terminal Infrastructure and Terminal Equipment in the Business Plan as detailed further in the Business Plan Guidelines.

3.8.3.3.5. The Terminal Operator will be required to complete the Construction Works in respect of the Terminal Infrastructure and procure and install the Terminal Equipment required to provide the services in order to ensure that the Terminal is operational from the commencement of the Operations Period.

3.8.3.3.6. Ownership of the Terminal Infrastructure shall vest in TFR from the date on which the Completion Certificate is issued and ownership of the Terminal Equipment shall vest in the Terminal Operator.

3.8.3.4. Operation and Maintenance

3.8.3.4.1. The Terminal Operator will acquire the right to Operate and Maintain the Terminal for the duration of the Operations Period. The Terminal Operator will be required to maintain the



Terminal in accordance with the terms of the Terminal Operator Agreement to ensure the continuous optimal Operation of the Terminal.

- 3.8.3.4.2. The Terminal Operator will be required to maintain the surface of the Terminal at the Project Site and keep it in good working order and condition, in accordance with International Best Practice and the international standards for a Terminal comparable to the Terminal, including undertaking any repair and cleaning of the surface of the Terminal at the Project Site.

3.8.3.5. **Handover of the Terminal and Terminal Equipment**

- 3.8.3.5.1. Prior to the end of the Operations Period, TFR may in accordance with the terms of the Terminal Operator Agreement, elect to:

- 3.8.3.5.1.1. either retain all or some of the Terminal Infrastructure Project Site or may on written notice to the Terminal Operator, instruct the Terminal Operator to demolish and remove all or some of the Terminal Infrastructure; and the Terminal Equipment.



- 3.8.3.5.2. The Terminal Operator shall hand over, free from encumbrances, the Terminal Equipment together with, *inter alia*, all associated manuals and documents.
- 3.8.3.5.3. Should TFR notify the Terminal Operator to demolish and remove all or some of the Terminal Infrastructure, the Terminal Operator shall decommission, demolish and remove all or the selected Terminal Infrastructure as notified by TFR.
- 3.8.3.5.4. At the end of the Concession Period, the Terminal Operator will be required to:
 - 3.8.3.5.4.1. give free and vacant possession of the Terminal and the Project Site;
 - 3.8.3.5.4.2. hand over all associated manuals, certificates and documents in respect of the Terminal Infrastructure and the Terminal Equipment;
 - 3.8.3.5.4.3. leave the Project Site in a safe, clean and orderly condition in accordance with the terms and conditions contained in the Draft Terminal Operator Agreement.



3.8.3.6. Services at the Terminal

3.8.3.6.1. The Terminal Operator will be granted the exclusive Concession to Construct, Operate and Maintain the Terminal, including the operation of the terminal at the Project Site, and to provide the Services in accordance with terms and conditions set out in the Terminal Operator Agreement.

3.8.3.6.2. The Terminal Operator shall provide or procure the provision of the following Services as more fully described in Annex C (*Scope of Services*) in accordance with market demand and consideration must be given to Part I (*General Requirements, Rules and Provisions*) and Annex C (*Scope of Services*) when considering these other Services.

3.8.3.6.2.1. Container handling services are services that the Terminal Operator is obliged to provide from the commencement of the Operations Period and such services shall continue for the duration of the Operations Period



3.8.3.7. Concession Fee

3.8.3.7.1. As consideration for the grant of the Concession, the Terminal Operator shall be required to pay TFR the Concession Fee on a quarterly and annual basis as described in clause 51.2 (*Concession Fee Offer*) of Part III (*Evaluation Criteria*) of this RFP.

3.8.3.7.2. Bidders will be required to propose the Concession Fee payable to TFR in response to clause 51.2 (*Concession Fee Offer*) of Part III (*Evaluation Criteria*) of this RFP.

4. Purpose of this RFP

4.1. The purpose of this RFP is to:

- 4.1.1. invite Bidders to submit their Bid Responses to this RFP;
- 4.1.2. provide information to Bidders in respect of the Procurement Programme and TFR's broader vision for the Project;
- 4.1.3. set out key information to Bidders in respect of the preparation of their Bid Responses;
- 4.1.4. set out the rules of participation in the procurement process referred to in this RFP. Particular attention is drawn to the provisions of this RFP relating to contact with TFR, confidentiality, canvassing, non-collusion and Bidder changes. Failure to comply with any one or more of these provisions may result in exclusion from participation in this Procurement Programme in TFR's discretion;



- 4.1.5. set out the key assumptions and constraints that need to be considered and understood by the Bidders in preparing competitive and comparable Bid Responses for the Project;
- 4.1.6. set out the framework and information requirements within which Bid Responses to this RFP should be made;
- 4.1.7. request detailed, comprehensively priced, competitive, binding, underwritten Bid Responses to undertake the Project, which Bid Responses comply with the requirements set out in this RFP; and
- 4.1.8. set out the Qualification Criteria and the Evaluation Criteria which TFR will apply to the Bid Responses received to enable TFR to evaluate the Bid Responses and select the Preferred Bidder and a Reserve Bidder, as the case may be.

5. Structure of this RFP

5.1. The Structure of this RFP is as follows:

- 5.1.1. Part I (*General Requirements, Rules and Provisions*) of this RFP, provides the general information to the Bidders and includes, *inter alia*, the glossary of terms detailing the defined terms used within this RFP, explanation of and background to the Procurement Programme and the Project, the scope of the Project, the structure and purpose of this RFP and the terms and conditions in terms of which each Bidder submits its Bid Response, including details regarding the format of each Bid Response.
- 5.1.2. The Qualification Criteria, Part II (*Qualification Criteria*) of this RFP, sets out the Qualification Criteria that must be satisfied by the Bidders. Bid Responses submitted in respect of this Procurement Programme will first be assessed on the basis of compliance with the Qualification Criteria, and only if a Bid Response complies with the Qualification Criteria will it be evaluated in terms of Part III (*Evaluation Criteria*) of this RFP.
- 5.1.3. The Evaluation Criteria, Part III (*Evaluation Criteria*) of this RFP, sets out the evaluation procedure and the Evaluation Criteria to be used by TFR, in evaluating those Bid Responses that have fulfilled the



Qualification Criteria and have progressed to the Evaluation Criteria. The purpose of the Evaluation Criteria is to determine the relative rankings of those pre-qualified Bid Responses and select the Preferred Bidder.

6. Structure of the Evaluation of Bid Responses

- 6.1. Each Bid Response will be assessed for compliance with the Qualification Criteria on a two-step approach. Each Bid Response will first be assessed for compliance with the Qualification Criteria 1 - Administrative Responsiveness and, if successful, will be assessed for compliance with -Substantive Responsiveness. If a Bid Response does not fulfill all the requirements of the Qualification Criteria 1 - Administrative Responsiveness to the satisfaction of TFR, TFR will disregard that Bid Response and disqualify the Bidder that submitted that Bid Response from participating further in the Procurement Programme. Only Bid Responses that comply with the Qualification Criteria 1 - Administrative Responsiveness will be assessed in respect of compliance with the - Substantive Responsiveness Qualification Criteria. If a Bid Response does not fulfill all the requirements of the Substantive Responsiveness Qualification Criteria, TFR will disregard that Bid Response and disqualify the Bidder that submitted that Bid Response from participating further in the Procurement Programme.
- 6.2. Qualification Criteria 1: Administrative Responsiveness detailed in clause 47.1 (*Qualification Criteria 1: Administrative Responsiveness*) of Part II (*Qualification Criteria*) of this RFP, will be assessed by TFR before the evaluation process commences. The requirements for this criteria are set out in clause 47.1 (*Qualification Criteria 1: Administrative Responsiveness*) of Part II (*Qualification Criteria*) of this RFP. Non-submission of the Mandatory Returnable Documents required for Administrative Responsiveness will result in the Bidder not being a compliant Bidder and the Bidder's Bid Response will not be evaluated further against Qualification Criteria 2: Substantive Responsiveness Supplier Development Criteria, Qualification Criteria 3: Substantive Responsiveness Technical Criteria and Qualification Criteria 4: Substantive Responsiveness Financial Criteria.
- 6.3. Qualification Criteria 2: Substantive Responsiveness (*Supplier Development Criteria*), detailed in clause 47.3 (*Qualification Criteria 2; Substantive Responsiveness – Supplier Development Criteria*) of Part II (*Qualification Criteria*) of this RFP, will be assessed by TFR before the evaluation of the remaining



Qualification Criteria is undertaken. The requirements for this criteria are set out in clause 47.3 (*Qualification Criteria 2; Substantive Responsiveness – Supplier Development Criteria*) of Part II (*Qualification Criteria*) of this RFP. Non-compliance with the Supplier Development Criteria may result in the Bidder not being a compliant Bidder and the Bidder's Bid Response may not be evaluated further against Qualification Criteria 3: Substantive Responsiveness -Technical Criteria and the Qualification Criteria 4: Substantive Responsiveness - Financial Criteria.

- 6.4. If a Bidder's Bid Response complies with the Qualification Criteria 3: Substantive Responsiveness -Technical Criteria set out in clause 47.4 (*Qualification Criteria 3: Substantive Responsiveness – Technical Criteria*) of Part II (*Qualification Criteria*) of this RFP and the Qualification Criteria 4:Substantive Responsiveness- Financial Criteria set out in clause 47.5 (*Qualification Criteria 4: Substantive Responsiveness – Financial Criteria Assessment*) of Part II (*Qualification Criteria*) of this RFP, it will proceed to be evaluated under Part III (*Evaluation Criteria*) of this RFP.
- 6.5. The Evaluation Criteria includes Financial Evaluation Criteria (Concession Fee Offer), Supplier Development Evaluation Criteria and Technical Evaluation Criteria. The Concession Fee Offer, the Supplier Development Evaluation Criteria, and the Technical Evaluation Criteria will be scored separately and allocated points on a scale of 20 points based on a relative scoring mechanism, with a respective weighting of 40%, 20% and 40%. For more information on the scoring methodology, please see Part III (*Evaluation Criteria*) of this RFP as well as the Scoring Model which presents an illustration of scoring and allocation of points.
- 6.6. The decision to appoint a particular Bidder as the Preferred Bidder will have regard to all objective considerations relating to the response to Part II (*Qualification Criteria*) and Part III (*Evaluation Criteria*) submitted by that Bidder and the requirements of TFR as contained in this RFP, together with the overall scoring achieved by that Bidder.
- 6.7. A diagrammatic overview of the procurement strategy and evaluation methodology is set out below:



	Criteria	RFP Main deliverables	RFP Qualification Pass/ Fail	RFP Evaluation / Scoring	Points / Weighting	Reporting	Monitoring
Socio-economic	SD	<ul style="list-style-type: none"> Level 4 Verification certificates BEE Improvement Plan Supplier Development Plan Supplier Development Value Summary Worksheet duly completed, printed and signed Confirmation of Black Ownership Commitments 	<ul style="list-style-type: none"> Based on minimum requirements (e.g. Minimum Level 4) Deliverables: e.g. SD, BEEE Improvement Plans 	<ul style="list-style-type: none"> NPV of SD targets (Scoring Model) As confirmed by review of SD Plan (Evaluation Team) Ramp-up of targets over 10 year period 	<ul style="list-style-type: none"> Points generated out of 20 relative to maximum score Total weight = 20% 	<ul style="list-style-type: none"> Annual Report: SD Targets and planning ahead 	<ul style="list-style-type: none"> SD targets are binding under Terminal Operator Agreement Penalty regime
		<p><i>Affordable entry level with commitment to improve over 10-year ramp-up Scored on NPV to incentive early targets at the best level</i></p>					<p><i>Keep bidders accountable for delivering their SD over time</i></p>
Attract skills Technical Commercial Added-value services	Technical	<ul style="list-style-type: none"> Compliance: Certifications, Licenses or copies of Licences, as applicable, and / or licensing requirements as applicable Business Plan Experience Worksheet duly completed, printed and signed 	<ul style="list-style-type: none"> Experience Score from Experience Worksheet Scoring Model at or exceed Minimum Experience Score level. Certifications Valid Licences or compliance with licensing requirements are met 	<ul style="list-style-type: none"> Experience Score on the basis of input provided by the on the Experience Worksheet (Scoring Model) Qualitative Assessment of the Business Plan 	<ul style="list-style-type: none"> Points generated out of 20 relative to maximum Score Total weight = 40% Experience points = 70% of total Qualitative points = 30% of total 	<ul style="list-style-type: none"> Annual Report: operations and planning for year ahead 	<ul style="list-style-type: none"> Certification remain in place Performance Criteria Compliance with general TFR requirement, rules, regulations Penalty regime
		<p><i>Qualification on specialist skills to attract best profile flexibility on mix and inclusive of contractors Qualitative assessment of overall technical solution</i></p>					<p><i>Leave commercial flexibility but ensure best standards are applied</i></p>
Financial sustainable	Financial	<ul style="list-style-type: none"> Business Plan (including amongst others: Financial Model, Financial Model Audit Letter, proof of sufficient funding) Concession Fee Offer Worksheet duly completed, printed and signed 	<ul style="list-style-type: none"> Financial Model and Model Audit Letter Proof of sufficient funding 3-years financial statements audited – Net Asset Value = respective equity contribution 	<ul style="list-style-type: none"> NPV of Asset Value and Concession Fee Offer generated by the Scoring Model using input in Template 2 Concession Fee Offer Worksheet as validated by the Evaluation Team Separate scoring for Variable Fee 	<ul style="list-style-type: none"> Points generated out of 20 relative to maximum Score Total Weight = 40% NPV of Concession Fee = 90% of total points – Variable Concession Fee = 10% of total 	<ul style="list-style-type: none"> Annual Report: financial results and planning ahead, Concession Fee Certificate 	<ul style="list-style-type: none"> Due Payment of Concession Fee Circa 1-year of fixed portion of Concession Fee as a Performance Guarantee to backup payments
		<p><i>Benefit: allow ramp-up over a 10-year period to support affordability in line with market with an NPV approach to incentivise higher level /early benefits. Variable Concession Fee is scored separately to incentive revenues sharing</i></p>					<p><i>Leave commercial flexibility but ensure financial value is delivered</i></p>

6.8. Best and Final Offer (BAFO)

6.8.1. If after the evaluation of the Bid Responses, there is, in TFR’s view, no clear Preferred Bidder, TFR reserves the right, but is not obliged, to invite any number of Bidders to make their best and final offers, if required, provided that there is a variance of less than 10% (ten percent) between the scoring of their Bid Responses.

6.8.2. Notwithstanding the possibility that TFR may give Bidders the opportunity to submit a BAFO, Bidders should be aware that TFR will, in conducting its evaluation of Bid Responses, rely on all information (including all representations) contained in such Bid Responses. Bidders are, therefore, encouraged to submit their best proposals in their Bid Responses in response to this RFP.

6.9. Project Structure and Contracts

6.9.1. The Preferred Bidder will be invited to enter into the Terminal Operator Agreement and if required, the Financier Direct Agreement. The rights



and obligations of the Terminal Operator for the term of the Project will be set out in the Terminal Operator Agreement which will be on substantially the same terms and conditions as the Draft Terminal Operator Agreement. The Terminal Operator Agreement will be required to be finalised and entered into with TFR within 4 (four) months of a Bidder being appointed as Preferred Bidder. If the Preferred Bidder is a Consortium, the Preferred Bidder will be required to incorporate the Project Company in order for the Project Company to enter into the Terminal Operator Agreement with TFR within the said 4 (four) month period. If the Preferred Bidder fails to conclude the Terminal Operator Agreement within the 4 (four) month period, then TFR may, in its discretion, disqualify the Preferred Bidder or revoke its status as Preferred Bidder and may appoint the Reserve Bidder as the Preferred Bidder.

- 6.9.2. The Bidder appointed as the Preferred Bidder shall be afforded a period of time which shall be set out in the Terminal Operator Agreement to negotiate and finalise its contractual arrangements with, *inter alia*, Contractors, equipment suppliers and Lenders and to apply for the Consents required to be held by the Terminal Operator.
- 6.9.3. Bidders should note that the Draft Terminal Operator Agreement has been prepared on the assumption that:
 - 6.9.3.1. key terms and conditions are to be in line with the Bid Response, notably the information and term sheets pertaining to the envisaged shareholding structure, the contracting structure (terms and conditions), the financing (terms, conditions), the Construction Works Programme and procurement strategy, key operating and commercial plans;
 - 6.9.3.2. in the event that the Bidder is a Company it may enter into the Terminal Operator Agreement itself or it may incorporate the Project Company;
 - 6.9.3.3. in the event that the Bidder is a Consortium, the Project Company shall enter into the Terminal Operator Agreement;



- 6.9.3.4. the Terminal Operator will raise finance for purposes of undertaking the Project;
- 6.9.3.5. the Terminal Operator will complete the Construction during the Construction Period and commence Operation of the Terminal in respect of the Anchor Services at the commencement of the Operations Period, which shall occur by no later than the Long Stop Date.
- 6.9.4. The Draft Terminal Operator Agreement is issued with this RFP and is attached to this RFP as Annex X (*Draft Terminal Operator Agreement*). The Bidders may submit written comments and/or propose mark-ups in respect of the Draft Terminal Operator Agreement by no later than the date set out in clause 0 (*Timetable for the Procurement Programme*).
- 6.9.5. TFR will consider all written comments received from Bidders and may issue a revised version of the Terminal Operator Agreement prior to the Bid Submission Date. For the avoidance of doubt, TFR notes that it is not obliged to accept any comment, mark-up or revision that is proposed by a Bidder and may revise the Draft Terminal Operator Agreement in its sole discretion.
- 6.9.6. The revised Draft Terminal Operator Agreement that will be issued by TFR shall be regarded as the “**Terminal Operator Agreement**”. The Terminal Operator Agreement will be non-negotiable, provided however that the Terminal Operator Agreement shall be revised to take account of the solution proposed by the Preferred Bidder as well as the details of the Preferred Bidder that is required to prepare the Terminal Operator Agreement for signature. For the avoidance of doubt, the revisions referred to above shall not relate to the principal terms and conditions contained in the Terminal Operator Agreement.
- 6.9.7. The Preferred Bidder:
 - 6.9.7.1. will be required to enter into the Terminal Operator Agreement with TFR, pursuant to which the Preferred Bidder will be granted the Concession on the terms and conditions contained in the Terminal Operator Agreement; and



6.9.7.2. which enters into the Terminal Operator Agreement, may enter into a Financier Direct Agreement with its Lenders and TFR in respect of the Terminal Operator Agreement.

7. TFR's Rights

- 7.1. TFR reserves the right to undertake all of the activities explicitly envisaged in clause 1.8 within the Disclaimer of this Part I (*General Requirements, Rules and Provisions*) of this RFP.
- 7.2. TFR reserves the right to award the Concession to the highest scoring Bidder unless objective criteria justify the award to another Bidder.

8. Appointment of a Reserve Bidder

- 8.1. TFR reserves the right to appoint a Reserve Bidder simultaneously with, or at any time subsequent to, the announcement of the Preferred Bidder in accordance with clause 43 (*Selection of Preferred and Reserve Bidder*) of Part I (*General Requirements, Rules and Provisions*) of this RFP.
- 8.2. A Reserve Bidder, which has been selected to continue to participate in the Procurement Programme, may only be invited to become a Preferred Bidder by TFR if:
- 8.2.1. the Terminal Operator Agreement is not and is unlikely to, for whatsoever reason, be concluded with the Preferred Bidder in respect of the Project;
- 8.2.2. the Preferred Bidder is disqualified for any reason; and or
- 8.2.3. the status of the Preferred Bidder is revoked for any reason whatsoever; and
- 8.2.4. accordingly, the relevant Reserve Bidder will, if requested by TFR, be afforded a reasonable period of time to negotiate and finalise its contractual arrangements with, *inter alia*, its Members, Contractors, equipment suppliers and Lenders in order to conclude the Terminal Operator Agreement and the Financier Direct Agreement, if applicable.



9. Timetable for the Procurement Programme

Activity	Indicative Deadline
Issue of this RFP	01/06/2016
Last day to purchase this RFP	01/07/2016
Compulsory briefing session and Project Site visit	06/07/2016
Deadline for submission of comment/markups of the Draft Terminal Operator Agreement	29/07/2016
Deadline for all questions and requests for clarification	29/07/2016
TFR response to questions and requests for clarification	31/08/2016
TFR to issue the final Terminal Operator Agreement	31/08/2016
Bid Submission Date	30/09/2016
Commencement of Bid Evaluation Phase	03/10/2016
Completion of Bid Evaluation Phase and announcement of Preferred Bidder	Within Q4 2016
Signature of Terminal Operator Agreement	Within 4 months after the announcement of the Preferred Bidder

10. Extension of RFP Bid Submission Date

TFR may, in its discretion, extend the Bid Submission Date by issuing a Briefing Note in accordance with clause 36 (*Briefing Notes and Changes to Bid Process*), in which case, all rights and obligations of TFR and the Bidder that were previously subject to the original Bid Submission Date shall be subject to the extended Bid Submission Date.

11. Other Key Role Players in the South African Rail System

11.1. The Department of Public Enterprises

The Department of Public Enterprises (DPE) is the custodian of the state-owned enterprises in the Republic of South Africa. The Minister of Public Enterprises, with the assistance of the DPE, exercises the Government's rights as the sole shareholder of Transnet. The DPE manages the Government's interest in Transnet in line with prevailing Government policy and legislation, including the Public Finance Management Act.



11.2. **The Department of Transport**

The Department of Transport (DOT) is responsible for the regulation of transportation in South Africa including, *inter alia*, the development of rail transport policies and for legislation in respect of rail regulations and policy. Transnet is a state-owned transport company that is an integral part of South Africa's logistics network. The DOT, as the custodian of the regulation of transport will have oversight in respect of the Procurement Programme, but will not be involved in any of the processes comprising or included in the Procurement Programme.

11.3. **The Department of Trade and Industry**

The Department of Trade and Industry (DTI) is responsible for the facilitation of transformation of the economy and for the promotion of industrial development, employment creation, and building of mutually beneficial global relations to advance South Africa's trade. It is also responsible for industrial policy and it facilitates broad-based economic participation. The DTI has established a fair regulatory environment that enables investment, trade and industry, and enterprise development in an equitable and socially responsible manner. The DTI, as the custodian of regulation of trade, has oversight in respect of the B-BBEE and plays a significant role in the social development aspects of all economic activity in South Africa.

11.4. **The Rail Safety Regulator**

The Rail Safety Regulator is primarily responsible for the safety regulation of the rail system. The Rail Safety Regulator monitors the activities of TFR to ensure that it performs its functions in accordance with the Rail Safety Regulator Act but will not be involved in any of the processes comprising or included in the Procurement Programme.

12. **Governing Law, Competition and other Statutory Requirements**

12.1. **Governing law**

12.1.1. The primary enabling legislation for the Project is the Public Finance Management Act. This enabling legislation regulates and creates the competency of TFR to procure and implement the Project and



determines the manner in which TFR may conduct the Procurement Programme.

12.1.2. The procurement of the Project, this RFP, the Bid Responses, any subsequent documents, the Draft Terminal Operator Agreement, the Terminal Operator Agreement and the Financier Direct Agreement are and shall be governed by and construed according to the laws of the Republic of South Africa.

12.1.3. The procurement of the Project will be carried out in accordance with the Applicable Laws, which includes (but is not limited to), the Constitution, the Public Finance Management Act and the B-BBEE Act each to the extent applicable and subject to any lawful exemptions from any provision thereof.

12.2. **Competition Act**

Each Bidder must satisfy itself that any aspect of its Bid Submission in respect of the Project is not a notifiable transaction as contemplated under the Competition Act, and to the extent that it is a notifiable transaction, that all necessary requirements to comply with the provisions of the Competition Act have been complied with or will be complied with by it prior to the signature of the Terminal Operator Agreement and the Financier Direct Agreement, if applicable. Bidders will be required to submit Annex R (*Breach of Law Form*) in terms of which they certify whether they have not been found guilty during the preceding 5 (five) years of a serious breach of law, including but not limited to a breach of the Competition Act by a court of law, tribunal or other administrative body.

12.3. **Other Statutory Requirements**

The Bidder (including its Contractors (if any) and its Members), its Lenders (if any) and its Legal Advisors are required to satisfy themselves as to the compliance with all other statutory and legal requirements in relation to the Project or any aspect thereof.



13. The Supplier Development Objectives

13.1. B-BBEE Contributor Status Level

- 13.1.1. This clause 13 (*The Supplier Development Objectives*) provides an overview to Bidders of what will be required of the Bidders in terms of the B-BBEE criteria and what steps can be taken to meet such requirements.
- 13.1.2. TFR fully endorses and supports the Government's B-BBEE requirements and it is strongly of the opinion that all South African business enterprises have an equal obligation to redress the imbalances of the past.
- 13.1.3. In terms of the B-BBEE evaluation framework for the Project, prospective Bidders, will be expected to have a minimum level 4 (four) Contributor Status Level or an equivalent rating in terms of the Sector Code, if any, at the time of the submission of the Bid Response and if appointed, will be required to achieve a level 2 (two) Contributor Status Level or an equivalent rating in terms of the Sector Code, if any, by the 10th (tenth) anniversary of the Effective Date. This requirement supports the Government's objective and therefore any Bidder who does not hold a minimum level 4 (four) Contributor Status Level or an equivalent rating in terms of the Sector Code, if any, will not qualify for any further evaluation on any other criteria in this RFP. For the purposes of responding to this RFP, Bidders are required to achieve the Contributor Status Levels stated in this RFP as measured in accordance with the B-BBEE Codes, being the Codes of Good Practice, published under Government Gazette No. 36928, on 11 October 2013.
- 13.1.4. Black Economic Empowerment ("BEE") is a process driven by the Government through legislation and policy which aims at remedying the historical imbalances and achieving economic transformation, by increasing the number of Black People who participate in the mainstream South African economy.



- 13.1.5. BEE is fundamental to economic activities in South Africa and aims, through a mix of economic persuasion and incentive, to encourage the opening up of the economy to those disadvantaged by the past system.
- 13.1.6. The B-BBEE Act is intended as an enabling legislative framework which allows the Government to develop and issue the B-BBEE Codes. The B-BBEE Codes are intended to provide a standard framework for the measurement of B-BBEE across all sectors of the economy. The intention of the B-BBEE Codes is therefore to level the playing field for all entities operating within the South African economy by providing clear and comprehensive criteria for measurement of B-BBEE.
- 13.1.7. The Codes of Good Practice that were issued on 9 February 2007 were amended by the revised B-BBEE Codes that were issued on 11 October 2013 (Government Gazette No. 36928). The B-BBEE Codes provide for a one year transitional period commencing on 11 October 2013 which period was extended on 18 March 2014 to 30 April 2015. Therefore B-BBEE compliance will be measured in terms of the B-BBEE Codes without any discretion. Companies which are governed by Sector-specific Codes will be measured in terms of those Sector Codes.
- 13.1.8. Bidders are to take note that failure to submit a valid and original B-BBEE verification certificate or a certified copy thereof at Bid Submission will result in a Bidder's automatic disqualification.
- 13.1.9. TFR would therefore, prefer to do business with local and or international business enterprises which share the same values and which are prepared to contribute to meaningful B-BBEE initiatives (this includes, but is not limited to, operations subcontracting and joint ventures) as part of their Bid Responses.
- 13.1.10. Entities wishing to obtain B-BBEE recognition must be accredited by a recognised verification agency. The role of the B-BBEE verification agencies is to assess, verify and validate disclosed and undisclosed B-BBEE related information on measured entities.
- 13.1.11. The DTI appointed the South African National Accreditation System ("**SANAS**") to conduct the accreditation of verification agencies. Accreditation as a verification agency enables an enterprise to issue a



BEE verification certificate. This method is aimed at instilling confidence in B-BBEE verification. A list of accredited B-BBEE verification agencies can be obtained on this website: http://home.sanas.co.za/?page_id=1021 or IRBA.

- 13.1.12. Once a full verification of the documentation presented by an entity has been conducted, an entity will be awarded levels of BEE recognition, which are dependent on the contributions an entity has made towards Black People in its business.
- 13.1.13. For information purposes, a typical B-BBEE verification certificate would contain the following information:
- 13.1.13.1. company name and registration number;
 - 13.1.13.2. type of certificate (group, entity or division);
 - 13.1.13.3. BEE category (Qualifying Small Enterprises or generic);
 - 13.1.13.4. BEE level (1 (one) to 8 (eight));
 - 13.1.13.5. information relating to the following 5 elements:
 - 13.1.13.5.1. Ownership;
 - 13.1.13.5.1.1. black ownership percentage (%);
 - 13.1.13.5.1.2. black women ownership percentage (%);
 - 13.1.13.5.2. Management Control;
 - 13.1.13.5.3. Skills Development;
 - 13.1.13.5.4. Enterprise and Supplier Development; and
 - 13.1.13.5.5. Socio-economic Development.
 - 13.1.13.6. the certificate issue date; and



13.1.13.7. the certificate expiry date.

- 13.1.14. As a result of the minimum level 4 (four) Contributor Status Level or an equivalent rating in terms of the Sector Code, if applicable, requirement in clause 47.3.1.3 of Part II (*Qualification Criteria*) of this RFP, the legal structure a Bidder adopts is crucial because if a Bidder is an international Company with no South African membership, that Bidder will not have a B-BBEE Contributor Status Level and will therefore be disqualified. International business enterprises will need to partner with local entities in order to achieve a minimum level 4 (four) Contributor Status Level or an equivalent rating in terms of the Sector Code, if any, and 25% (twenty five percent) Black Ownership to have their Bid Responses considered in terms of this RFP.
- 13.1.15. The Bidder, if a Consortium or joint venture will qualify for points for their B-BBEE Contributor Status Level as an unincorporated entity, provided that the entity submits their consolidated B-BBEE verification certificate as if they were a group structure.
- 13.1.16. In the event that there is any worsening in the Bidder's Contributor Status Level after the Bid Submission Date, the Bidder is required to immediately notify TFR of this change. Should a Bidder envisage that its verification certificate ("**Initial Certificate**") will expire during the Procurement Process, the Bidder shall be required to provide a new verification certificate prior to the expiry of the Initial Certificate which reflects at a minimum, the Contributor Status Level reflected on the Initial Certificate.

13.2. **Black Ownership Minimum Commitments**

- 13.2.1. Bidders are required to have a minimum of 25% (twenty five percent) Black Ownership on the Bid Submission Date and on the conclusion of the Terminal Operator Agreement, in order to proceed to be evaluated in terms of the remaining Qualification Criteria. Where the Bidder is a Company, the minimum requirement of 25% (twenty five percent) Black Ownership must be reflected in the Company's valid B-BBEE verification certificate. Where the Bidder is a Consortium, the Bidder must demonstrate that upon incorporation of the Project Company it will have a minimum of 25% (twenty five percent) Black Ownership as



evidenced by a signed Consortium agreement, shareholders agreement or term sheet.

13.2.2. In addition, Bidders agree and undertake in terms of Annex W (*Confirmation of Black Ownership Commitments*) of this RFP, that if they are appointed as the Preferred Bidder, the percentage of Black Ownership in the Terminal Operator will increase over the Concession Period in accordance with the levels set out in Annex W (*Confirmation of Black Ownership Commitments*) namely:

13.2.2.1. Contract Year 1- 25% (twenty five percent) Black Ownership;

13.2.2.2. Contract Year 5 - 55% (fifty five percent) Black Ownership;

13.2.3. The Black Ownership commitments as set out in Annex W (*Confirmation of Black Ownership Commitments*) will be included in the Terminal Operator Agreement as commitments and non-compliance with these commitments will be subject to penalties as set out in the Terminal Operator Agreement and could result in termination of the Terminal Operator Agreement.

13.3. **Supplier Development**

13.3.1. **Aims and Objectives**

13.3.1.1. Historically in South Africa, there has been a lack of investment in infrastructure, skills and capability development and an inequality in the income distribution and wealth of a significant portion of the population. There have been a number of Government initiatives developed to address these challenges. In particular, the NGP developed in 2010 aligns and builds on previous policies to ensure the achievement of the Government's development objectives for South Africa. TFR fully endorses and supports NGP.

13.3.1.2. The key focuses of the NGP include:

13.3.1.2.1. increasing employment intensity of the economy;



- 13.3.1.2.2. addressing competitiveness;
 - 13.3.1.2.3. balancing spatial development of rural areas and poorer provinces;
 - 13.3.1.2.4. reducing the carbon intensity of the economy;
 - 13.3.1.2.5. creating opportunities in improving regional and global cooperation; and
 - 13.3.1.2.6. enabling transformation that benefits a wider range of social actors in society e.g. workers, rural communities, youth and women.
- 13.3.1.3. TFR, as a State Owned Company (“**SOC**”), plays an important role to ensure these objectives are achieved. Therefore, commercial agreements concluded with Government need to be aligned to the Government’s objectives for developing and transforming the local supply base. TFR’s mission is to transform its supplier base by engaging in targeted supplier development initiatives to support localisation and industrialisation whilst providing meaningful opportunities for Black People with a particular emphasis on:
- 13.3.1.3.1. youth;
 - 13.3.1.3.2. Black women;
 - 13.3.1.3.3. people with disabilities;
 - 13.3.1.3.4. small businesses; and
 - 13.3.1.3.5. rural integration.



13.3.1.4. In terms of the Terminal Operator Agreement, failure by the Terminal Operator to achieve the targeted Supplier Development initiatives proposed in the Supplier Development Plan will result in penalties being incurred under the Terminal Operator Agreement.

14. **Compliance with the TFR Policies**

14.1. The Project must be undertaken in accordance with the applicable Laws and the Terminal Operator will be required to comply with all relevant TFR Policies for the duration of the Terminal Operator Agreement including, but not limited to:

14.1.1. the safety, health, environmental, quality policy of TFR;

14.1.2. the security policy of TFR;

14.1.3. the Rail Safety Rules;

14.1.4. TFR Operations Manual;

15. **Eligibility Considerations**

15.1. This RFP is open to the world wide public and is not restricted to Bidders comprised only of South African nationals and entities, subject to the B-BBEE requirements and Black Ownership requirements set out in clause 13 (*The Supplier Development Objectives*) of Part I (*General Requirements, Rules and Provisions*) of this RFP.

15.2. Any firm, group, organisation or any Member of a Bidder which is not domiciled within the Republic of South Africa, or does not have an existing, formal association with a South African firm or organisation, shall indicate this fact clearly in its Bid Response.

15.3. Bidders are required to declare if any of their Members or any individual who is a director, officer, employee or Shareholder of any Member is Related to any employee of TFR or Transnet by completing and submitting Annex M (*Declaration of Interest*) of this RFP.

15.4. If any Bid Response includes the involvement of any person:

15.4.1. blacklisted by the office of the National Treasury; or



- 15.4.2. blacklisted by such person's professional body (if applicable) either in South Africa or elsewhere in the world; or
- 15.4.3. related to any Government official or person directly involved in the Project, who may be involved with the evaluation of the Bid Responses and, any person with the ability to influence the decision of TFR with respect to the appointment of the Preferred Bidder, and which Relation was not disclosed; or
- 15.4.4. who has been found guilty in any court of law of fraud or corruption related crimes either in South Africa or elsewhere in the world; or
- 15.4.5. upon whom an administrative penalty or fine has been imposed for a serious breach of law, including but not limited to breaches of the Competition Act,

such Bid Response may, in the discretion of TFR, be rejected by TFR.

- 15.5. The participation of Not-for-Profit entities in a Bid Response is in the discretion of a Bidder and shall be at its sole risk.
- 15.6. A Person or Member, Shareholder, Contractor or other participant in a Bid Response may not participate in or be involved (either directly or indirectly) with more than one Bidder at any stage during the Procurement Programme. Failure to comply with this requirement may result in the disqualification of all the entities of the Bidder, or any other organisation involved. The Bidders shall ensure that no anti-competitive or collusive behaviour is displayed or engaged in by any person, Member, Lender or advisor participating or involved with more than one Bidder. TFR shall, in its discretion, be entitled to disqualify any Bidders whose Bid Response displays any anti-competitive or collusive behaviour. In this regard Bidders will be required to complete and submit Annex T (*Supplier Integrity Pact*) of this RFP.

16. **Acknowledgement of the Law**

- 16.1. The Bidder and each of its Members registered in South Africa are required to submit with their Bid Response a declaration stating, *inter alia*, that TFR has supplied and we have received appropriate responses to any or all questions, as applicable, which were submitted by ourselves for this RFP clarification purposes, and that the processes and procedures adopted by TFR in issuing this RFP and



the requirements requested from Bidders in responding to this RFP have been conducted in a fair and transparent manner. The declaration required in respect of the Bidder is included in Annex G (*TFR Declaration of Bidder*).

- 16.2. The Bidder is required to provide a declaration stating, *inter alia*, that it is aware that Bid Responses that are suspicious will be reported to the Competition Commission for investigation and possible imposition of administrative penalties in terms of section 59 of the Competition Act and or may be reported to the National Prosecuting Authority (“**NPA**”) for criminal investigation and/or may be restricted from conducting business with the public sector for a period not exceeding 10 (ten) years in terms of the Prevention and Combating of Corrupt Activities Act No. 12 of 2004 or any other applicable legislation. The declaration required in respect of the Bidder is included in Annex K (*Certificate of Acquaintance with RFP Documents*).
- 16.3. Each Project Company and each Bidder will be solely responsible for complying with all the legal and regulatory requirements for the Project on a continuing basis (not only for bid) and as to the legal requirements applicable to the Project and the Project Company as specified in this RFP, and shall have no claim against TFR or its Transaction Advisors for any loss or damage it may suffer or incur by reason of any flaw, or oversight or omission in relation thereto.

17. **Consents**

- 17.1. The Terminal Operator will be required to obtain all Environmental Consents, Safety Consents and other Consents that are required in terms of the Applicable Laws. TFR encourages the Preferred Bidder to commence procuring such Consents following its appointment as Preferred Bidder. The Terminal Operator will be solely responsible for complying with all the legal requirements for the issue of any relevant Consent by the Responsible Authority in terms of the Applicable Laws. Failure to do so will be at the entire risk of the Company or the Project Company, as the case may be, and no relief will be given for errors, oversights, or omissions of the Project Company, a Bidder or its Members or of TFR.
- 17.2. TFR shall use its reasonable endeavours to assist the Terminal Operator to obtain such Environmental Consents and other Consents as may be required to enable the Terminal Operator to execute the Project, provided that it is the Terminal Operator’s responsibility to obtain such Consents and TFR shall bear no liability or responsibility for any failure of the Terminal Operator to obtain such Consents.



- 17.1. TFR has obtained the necessary environmental authorisation required in terms of NEMA to undertake the Construction of the Terminal at the Project Site. In this regard, TFR has undertaken an environmental impact assessment and developed an environmental management plan in terms of NEMA which documents are annexed to this RFP as Annex FF (*Existing Environmental Authorisation and Environmental Management Plan*). The existing environmental authorisation and environmental management plans are available to the Bidders for information purposes. Bidders are encouraged to review and evaluate such authorisation with a view to determining whether it is adequate for purposes of the Construction, Operation and Maintenance of the Terminal as well as the provision of the Services.
- 17.2. The responsibility remains with the Terminal Operator to obtain all necessary Environmental Consents required for the Construction of the Terminal Infrastructure, the Operation and Maintenance of the Terminal and the provision of the Services. TFR shall bear no liability or responsibility for any failure of the Terminal Operator to obtain any Environmental Consents. The existing environmental authorisation obtained by TFR, does not in any way detract from the Terminal Operator's responsibility to comply with the provisions of NEMA including undertaking an environmental impact assessment in respect of the Project and obtaining an environmental authorisation, if applicable. However, the Terminal Operator will be required to take account of the operating conditions set out in the current environmental management plan and restrictions in the existing Environmental Consents.

18. **Legal Personality of Bidder and Changes**

- 18.1. The Bidder may take the form of either a Company or a Consortium.
- 18.2. If the Preferred Bidder is a Consortium, it will be required to establish the Project Company with the sole purpose of undertaking the Project and entering into the Terminal Operator Agreement. All Shareholders of that Project Company are required to be Members of the Bidder that is appointed as Preferred Bidder and the shareholding structure of the Project Company shall be in line with that presented as part of the Bid Response.
- 18.3. No change is permitted to the membership or organisational structure of any Bidder (including its Members) after submission of its Bid Response and during the evaluation process without the prior written consent of TFR.



- 18.4. If a change in any Bidder's membership or structure will include a change to the percentage of membership in the Bidder by each Member or the intended percentage of shareholding in the Project Company by each Shareholder (including but not limited to a Change in Control) or a change in the identity of the Members or Contractors, the Bidder is required to immediately notify TFR of the fact in writing.
- 18.5. Any Bidder and its Members wishing to change its membership and/or structure (including but not limited to a Change in Control), other than in respect of a listed public company, must immediately notify TFR of this fact, in writing and request TFR's written consent, and provide:
- 18.5.1. full details of the reason for the change;
 - 18.5.2. full details of the parties involved;
 - 18.5.3. full details of the overall impact on the Bidder, the Project Company, the Bid Response, the Scope of Services and the Project;
 - 18.5.4. in respect of a change in Members, detailed information and all returnable schedules and or documents in respect of such new Member as was required to be submitted in respect of the Bidder and or its Members at the time of submission of the Bid Response;
 - 18.5.5. in respect of any change related to a sale of Equity in the Company or the Project Company, as the case may be, full details in respect of the transaction, including full disclosure of any premium that will be paid in relation to the sale of Equity; and
 - 18.5.6. full details on how the Bidder proposes to share any improvement or benefit that results from a change to a Bidder's Bid Response or Project with TFR.
- 18.6. If a Bidder or any of its Members notifies TFR that it intends undergoing a change in its membership and or structure (including but not limited to a Change in Control), TFR reserves the right to require the Bidder to supply such further information as TFR may, in its discretion, request with regard to such change so as to enable TFR to consider fully the impact of such change in order to determine compliance with the Qualification Criteria as set out in Part II (*Qualification Criteria*) of this RFP.



- 18.7. If a Bidder or any of its Members notifies TFR that it intends undergoing a change in its membership and or structure (including but not limited to a Change in Control), the Bidder shall be required to re-qualify in accordance with the terms of this RFP, which re-qualification shall be in TFR's discretion but in respect of which TFR shall apply the same Qualification and Evaluation Criteria. If satisfactory, TFR will advise the Bidder in writing.
- 18.8. If an event contemplated in clauses 18.6 or 18.7 of this Part I (*General Requirements, Rules and Provisions*), occurs, and TFR, in its discretion, has not approved the relevant change, TFR shall be entitled to advise the Bidder or any of its Members, as the case may be, in writing that its request was not approved and may, in its discretion, provide a reasonable amount of time for the Bidder or any of its Members, as the case may be, to propose a restructuring of the Bidder or any of its Members, as the case may be, that is to TFR's satisfaction, in its discretion. Failing this or if the proposed restructuring is not to TFR's satisfaction (in its discretion), TFR may, in its discretion, disqualify the Bidder from participating any further in the Procurement Programme, or to allow the Bidder to continue in the Procurement Programme, subject to such conditions as TFR (in its discretion) determines appropriate.
- 18.9. TFR shall not be obliged to consider any extension of time in relation to any stage of the Procurement Programme on account of any change to a Bid Response and or Project including a change in any Bidder or any of its Members as contemplated above.

19. **Authorisation of TFR**

- 19.1. The Bidder, its Members and its Advisors are required to satisfy themselves as to the authority of TFR to issue this RFP, undertake the Procurement Programme of which this RFP forms a part, and to undertake all other actions envisaged by this RFP including entering into the Terminal Operator Agreement and the Financier Direct Agreement.
- 19.2. TFR shall not procure a legal opinion from any Transaction Advisors in favour of any Bidder, the Preferred Bidder, Members, Project Company or Lenders in relation to such authority or any other aspect of this RFP or the Project envisaged by it. In this regard, copies of the relevant documents authorising TFR to enter into the agreements to which it is a party, will be made available to the Preferred Bidder upon written request by the Preferred Bidder.



20. Confidentiality

20.1. Confidentiality by the Bidders

20.1.1. This RFP contains confidential information regarding the Project and or TFR. By collecting this RFP, the Bidders agree that:

20.1.1.1. they will ensure that their Members, directors, officers, employees, agents, advisors, and representatives use this RFP only to assess the attractiveness of the Project and prepare a Bid Response and for no other purpose; and

20.1.1.2. subject to the above clause, they will not divulge or distribute any information in respect of this RFP or pass on any copies of this RFP without the prior written approval of TFR and will return this RFP together with all copies thereof to TFR promptly upon being requested to do so.

20.1.2. Each Bidder agrees to maintain the confidentiality of all information supplied to it in connection with the Project (whether in text, chart, picture, electronic or other form), and agrees to keep its own Bid Response confidential.

20.1.3. The Company (if the Bidder is an existing Company) or each Member (if the Bidder is a Consortium), shall submit at the briefing session a duly executed non-disclosure agreement in the form annexed hereto as Annex H (*Non-disclosure Agreement*) (the “**Non-Disclosure Agreement**”). Bidders must ensure that the signatory to the Non-disclosure Agreement is duly authorised to represent and bind the Company or each Member, as the case may be. Bidders should note that the submission of a duly executed Non-disclosure Agreement is a pre-requisite to attending the compulsory briefing session and site visit.

20.2. Confidentiality by TFR

20.2.1. TFR shall use its reasonable endeavours to keep all data and details submitted by Bidders strictly confidential, save to the extent that TFR is required to disclose such data and or details in terms of the Applicable Laws or order of a court of competent jurisdiction or a recognised stock exchange or a Government department or agency.



Should it be deemed necessary to discuss any matter relating to any submission of any Bidder with third parties (other than TFR's Transaction Advisors), the necessary permission will be obtained from the Bidder concerned.

- 20.2.2. TFR shall be entitled to disclose all data and details submitted by Bidders to its Transaction Advisors, if necessary, and the National Treasury and their officers, employees, agents, advisors and representatives who are involved in the Project and or the evaluation of the Bid Response.
- 20.2.3. TFR shall be entitled to disclose all data and details submitted by Bidders to the National Treasury, the DPE, the DTI, the DOT, Transnet and Parliament to the extent necessary.
- 20.2.4. TFR shall not be liable for any loss incurred or damage suffered as a result of any disclosure of any information (confidential or otherwise) of the Bidder. Accordingly, the Bidder, its Members and or its Advisors and or its Lenders (if any) shall not have, and hereby waive, any claim against TFR, its officers, employees, servants, agents or Transaction Advisors arising out of the disclosure of any information, confidential or otherwise.

21. **Bid Documentation Fee and Preferred Bidder Guarantee**

21.1. **Bid Document Fee**

- 21.1.1. In order for the Bidders to submit their Bid Responses under this Procurement Programme and obtain access to this RFP, each prospective Bidder will be required to pay a non-refundable fee of R4000 (Four Thousand Rand only).
- 21.1.2. TFR will only communicate and accept Bid Responses from Bidders that have paid the required bid document fee.

21.2. **Preferred Bidder Guarantee**

- 21.2.1. The Preferred Bidder will be required to submit an irrevocable, on-demand and unconditional guarantee (the "**Preferred Bidder Guarantee**") to TFR in an amount equal to R3 500 000 (three million and five hundred thousand Rand). A Bidder which has been



provisionally informed of its Preferred Bidder status will be considered to have been appointed by TFR as Preferred Bidder once the Preferred Bidder Guarantee has been submitted to TFR in accordance with this clause.

21.2.2. The Preferred Bidder Guarantee must be:

21.2.2.1. an unconditional, on demand and irrevocable bank guarantee in the form set out in Annex L (*Form of Preferred Bidder Guarantee*);

21.2.2.2. lodged with TFR within 15 (fifteen) Business Days of a Bidder being notified of its Preferred Bidder status;

21.2.2.3. issued by a bank which is licensed to conduct banking business in South Africa under the Banks Act No. 94 of 1990 and which has a South African rating of BBB or better by Standard & Poor's or equivalent; and

21.2.2.4. be valid and effective for the period from the date of issue of the Preferred Bidder Guarantee until 15 (fifteen) days after the Effective Date.

21.2.3. If an appointed Preferred Bidder fails to deliver the Preferred Bidder Guarantee within 15 (fifteen) Business Days of a Bidder being notified of its Preferred Bidder status, TFR shall be entitled to terminate the status of that Bidder as Preferred Bidder. TFR may require a Reserve Bidder nominated by it to substitute the Preferred Bidder as a new Preferred Bidder and to submit a Preferred Bidder Guarantee with TFR within 15 (fifteen) Business Days of being notified of its Preferred Bidder status, and the provisions of this clause 21.2 (*Preferred Bidder Guarantee*) shall apply *mutatis mutandis* to such new Preferred Bidder Guarantee in each such case.



21.3. Release of Guarantees

The Preferred Bidder Guarantee will be returned within 5 (five) Days of the expiry of the Preferred Bidder Guarantee in accordance with its terms.

21.4. Forfeiture of Guarantees

21.4.1. Without prejudice to any rights that a Bidder (including the Preferred Bidder and a Reserve Bidder) may have in law, TFR may call on the Preferred Bidder Guarantee more than once (provided that the aggregate amount payable thereunder shall not exceed the maximum amount of the Preferred Bidder Guarantee) without notice or legal process, if the Preferred Bidder:

21.4.1.1. is in breach of any law relating to the Procurement Programme or is disqualified from the Procurement Programme as a result of its actions or omissions;

21.4.1.2. fails to extend the term of guarantee after agreeing to TFR's request to extend the expiry date of the Preferred Bid Guarantee (in which case TFR will hold it as security in lieu of such extended or renewed Preferred Bidder Guarantee); and/or

21.4.1.3. fails to sign the Terminal Operator Agreement within the time period specified in clause 0 (*Timetable of the Procurement Programme*) of this General Requirements, Rules and Provisions, Part I (*General Requirements, Rules and Provisions*) of this RFP; and/or

21.4.1.4. revokes, repudiates or withdraws its Bid Response.

22. Corrupt Gifts and Payments

22.1. The attention of Bidders is drawn to the Prevention and Combating of Corrupt Activities Act.

22.2. None of the Bidders, its Members, the Lenders, any other participant in a Bid Response or any of their agents or Advisors shall, commit an offence in terms of the Prevention and Combating of Corrupt Activities Act, including directly or indirectly offering or giving any person in the employment of TFR or any other



Government official, who is directly involved in the Project, or any of the Transaction Advisors, any gratuity or consideration of any kind as an inducement or reward for appointing any Bidder as the Preferred Bidder, or for showing or omitting to show favour or disfavour to any Bidder, its Members, the Contractors, or their Lenders in relation to the Project.

- 22.3. If any offence in terms of the Prevention and Combating of Corrupt Activities Act is committed, TFR shall be entitled to terminate the relevant Bidder's status and or to prohibit such Bidder, its Members, its Contractors, Lenders or any other participant in the relevant Bid Response and their agents and advisors from participating in any further stage or part of the Project.

23. No Contract

This RFP does not constitute an offer to enter into a contractual relationship with any Bidder, but is merely a solicitation of Bid Responses to enable TFR to select the Preferred Bidder, in order to conclude the Terminal Operator Agreement and the Financier Direct Agreement with the Terminal Operator by the date specified in the table under clause 0 (*Timetable for the Procurement Programme*) of this Part I (*General Requirements, Rules and Provisions section of this RFP*).

24. No Collusion

- 24.1. The attention of each of the Bidders, its Members, the Contractors as well as their Advisors and agents is drawn to section 4(1)(b)(iii) of the Competition Act, which prohibits collusive bidding.
- 24.2. In submitting a Bid Response, each of the Bidders, its Members, the Contractors, Lenders, and all other participants in any Bid Response certifies that:
- 24.2.1. its Bid Response has been prepared without consultation, communication or agreement for restricting competition with any other Bidder, Member of another Bidder or participant in another Bid Response, or any other competitor or potential competitor;
- 24.2.2. its Bid Response has not been disclosed, nor will it be disclosed to any other Bidder, Member of another Bidder or participant in another Bid Response, or any competitor or potential competitor;



- 24.2.3. no attempt has been made or will be made by it to induce any other person not to submit or participate in a Bid Response for the purpose of restricting competition; and
 - 24.2.4. no attempt has been made or will be made by it to induce any other person to alter the form or contents of its participation in any Bid Response for the purpose of restricting competition.
- 24.3. If TFR becomes aware of or is of the opinion that any of the activities detailed in clause 24.2 have been undertaken by any Bidder or any of its Members, Contractors or participant in another Bid Response or any of their Advisors, TFR shall be entitled to disqualify such Bidder, its Members, Contractors or participant in such Bid Response and their Advisors and to bar any or all of them from participating further in the Procurement Programme in respect of the Project.

25. **Contact Policy**

- 25.1. All correspondence from a Bidder to TFR shall be addressed to the Project Officer at the e-mail address set out in clause 26 (*Requests and Clarifications*), shall be signed by the authorised representative of a Bidder, and shall be legally binding on the relevant Bidder. All such correspondence must clearly indicate the name of the signatory, his or her position and the name of the Bidder. The Bidders may not contact or correspond with any person at TFR or Transnet, other than the Project Officer, in relation to the Project and or the Procurement Programme. The Bidder shall not be entitled to rely on any statements, information or correspondence in respect of this RFP or the Project that is not made, given or issued by the Project Officer and that is not contained in a Briefing Note.
- 25.2. Each Bidder shall give the Project Officer the name and contact details, in writing, of the person whom it appoints to undertake all contact with the Project Officer. It is each Bidder's sole responsibility to ensure that all contact details provided to the Project Officer are correct in every respect, including details of email addresses and telephone numbers etc. TFR will not be held liable for the incorrectness of any contact details provided by Bidders. Any change to any details of that contact person shall be notified to the Project Officer in writing. The Bidder may only communicate with TFR through such person and TFR shall be entitled, at its discretion, to disregard any communication from the Bidder that does not come from such contact person.



- 25.3. No information or clarification may be requested by the Bidder, its Members, the Contractors nor any of its agents or advisors or any person participating in the relevant Bid Response from any member of the Transaction Advisors (save for requests to the Project Officer), Transnet, the employees of TFR or any other Government official who may be associated with the Project (other than the Project Officer or National Treasury), without the prior written consent of the Project Officer, in relation to the Project and or the Procurement Programme.
- 25.4. If a Bidder, its Members, the Contractors or any of its agents, Lenders, other person participating in the relevant Bid Response or advisors make any such prohibited contact, TFR reserves the right, in its discretion, to disqualify the Bidder, its Members, Contractors, other person or advisors from participating in that Bid Response on the grounds of being in breach of this clause 25.4, from any further participation in the Project.
- 25.5. None of the Bidders, their Members, the Contractors or any of their advisors, Lenders or agents may rely on any information provided to any of them outside of the scope of clause 25.2 above.

26. Requests and Clarifications

- 26.1. All queries and requests for clarification in respect of this RFP shall be requested in writing via e-mail and shall be addressed to the Project Officer. Oral requests and queries will not be entertained and will not receive a response. The contact details of the Project Officer are the following:

TFR Project Officer	Contact Details
Khathutshelo Tshamano on	(Tel) 011 584 0625, (Email) khathutshelo.tshamano@transnet.net

- 26.2. The Bidder may request clarification on any item contained within this RFP by no later than the date specified in clause 0 (*Timetable for the Procurement Programme*) of Part I (*General Requirements, Rules and Provisions section of this RFP*) of this RFP, after which date TFR will not be obliged to enter into further correspondence with the Bidders regarding questions or clarifications relating to the Project.
- 26.3. TFR will respond to written requests and queries by way of written Briefing Notes.



26.4. Bidders must take note that all requests for clarification, questions, queries and answers during the clarification process will be dealt with in an open and transparent manner so as not to give any particular Bidder an unfair advantage over others. Bidders must therefore, take care not to include confidential information in their queries or requests for clarification. The queries or requests for clarification should be limited to items contained in this RFP.

27. **Compulsory RFP Briefing Session and Project Site Visit**

- 27.1. A formal compulsory briefing to Bidders will be held in respect of the Project during which time TFR's approach to the Project will be outlined and where key issues of concern or matters requiring clarification are to be raised by Bidders. The compulsory briefing session and site visits will be held on the 6th of July 2016 at a venue that will be notified to the Bidders through a Briefing Note.
- 27.2. Potential Bidders that have purchased this RFP from TFR will be contacted either through a Briefing Note or directly should the date of the briefing session change.
- 27.3. TFR reserves the right, in its discretion, to require Bidders to attend any additional briefing session.
- 27.4. Bidders will be required to bring appropriate safety shoes for walking in the Project Site other personal protective equipment such as safety jackets, hard hats and reflective vests.
- 27.5. Bidders will be required to have a TFR representative sign Annex S (*Certificate of Attendance of RFP Briefing*) at the briefing session and Bidders are required to submit Annex S (*Certificate of Attendance of RFP Briefing*) as part of their Bid Response to evidence their attendance of the briefing session.
- 27.6. The Company (if the Bidder is an existing Company) or each Member (if the Bidder is a Consortium), shall submit at the briefing session a duly executed non-disclosure agreement in the form annexed hereto as Annex H (*Non-disclosure Agreement*) (the "**Non-Disclosure Agreement**"). Bidders must ensure that the signatory to the Non-disclosure Agreement is duly authorised to represent and bind the Company or each Member, as the case may be. Bidders should note that the submission of a duly executed Non-disclosure Agreement is a pre-requisite to attending the compulsory briefing session and site visit.



28. **Status of Response**

TFR will endeavor in good faith to respond to all reasonable written queries and requests for clarification raised by the Bidders. No response given to a question or request for clarification will have any status or impact on this RFP, save to the extent that such response is subsequently reflected in Briefing Notes to this RFP.

29. **Submission of Bid Response**

29.1. Bid Responses are to be submitted by no later than 10h00 (CAT) on the Bid Submission Date and at the Bid Submission Venue set out in clause 29.2.

29.2. All Bid Responses shall be delivered by courier or by hand into the tender box at the following address:

29.2.1. The Secretary

Transnet Freight Rail Acquisition Council

Tender Box, Office Block Foyer

Inyanda House 1

21 Wellington Road

Parktown, Johannesburg, South Africa

or by courier to the following address:

The Secretary

Transnet Freight Rail Acquisition Council

Tender Office, Ground Floor, Inyanda House 1

21 Wellington Road

Parktown, Johannesburg, South Africa

For the attention of: Khathutshelo Tshamano



(being the “**Bid Submission Venue**”)

- 29.3. Each Bid Response is to be delivered to the Bid Submission Venue on or before the Bid Submission Date and time. The tender box is available 24 (twenty-four) hours a day, 7 (seven) days a week and the Bid Submission Venue for couriered Bid Responses is available during business days between 8h00 to 17h00.
- 29.4. The measurements of the “tender slot” are 400mm wide x 100mm high, and Bidders must please ensure that Bid Response documents or files are no larger than the above dimensions. Bid Responses which are too bulky (i.e. more than 100mm thick) must be split into two or more files, and placed in separate envelopes, each such envelope to be addressed as required in paragraph 29.2.

30. **Copies of Bid Response**

- 30.1. Each Bid Response is required to be delivered by way of:
- 30.1.1. a hard copy consisting of 1 (one) master Bid Response and 1 (one) copy thereof; and
 - 30.1.2. a soft copy consisting of one master disc and 1 (one) additional disc, and the documents, contained therein to be in Microsoft Word format, version 98 or later, save that where the document cannot be accessed by Microsoft Word, in which event the document must be provided in an Adobe Acrobat PDF format;
- each marked as either “master” or “copy”, as the case may be.
- 30.2. TFR shall be entitled to consider any copy of the Bid Response as the master version of the Bid Response and TFR will not be obliged to check the hard or soft copies of the Bid Response against each other in order to review or find unclear, missing or incomplete information or documents. In addition, if a document contained in the soft copy of the Bid Response is illegible or cannot be opened, TFR will be entitled to deem that the relevant document was not submitted and treat that Bid Response as incomplete. As such, any inconsistencies across the copies of the Bid Response will be at a Bidder’s risk.
- 30.3. The sections of the Bid Response that respond to each of the Qualification Criteria and Evaluation Criteria of this RFP must be separate documents and must be separately bound.



31. Format of the Bid Response

TFR shall be entitled, in its discretion, to disqualify any Bid Response that fails in any way to fulfil the requirements of this clause 31 (*Format of the Bid Response*), and to prohibit the relevant Bidder from participating further.

31.1. Contents of the Bid Response

- 31.1.1. The Bid Response must be complete, contain all the information required by this RFP and deal with each and every issue raised in this RFP, in consequential order and numbered in accordance with the numbering set out in this RFP. The Bid Response must contain each document, fully completed with the specific details of the Bidder and or its Members, as provided for in all of the annexes to this RFP.
- 31.1.2. All pages of each part of the Bid Response must be numbered consecutively from beginning to end and a detailed index to the entire Bid Response, including all pages of each section or part, must be included in the Bid Response.
- 31.1.3. The Bid Response must adhere to the order set out below, to aid the evaluation process:
 - 31.1.3.1. Index to Bid Response;
 - 31.1.3.2. Bid Submission Schedules;
 - 31.1.3.3. response to Qualification Criteria 2: Substantive Responsiveness – Supplier Development Criteria;
 - 31.1.3.4. response to Qualification Criteria 3: Substantive Responsiveness – Technical Criteria;
 - 31.1.3.5. response to Qualification Criteria 4: Substantive Responsiveness – Financial Criteria; and
 - 31.1.3.6. the response to the Evaluation Criteria.



31.1.4. The sections of the Bid Response that correspond to each of the Qualification Criteria and the Evaluation Criteria must be separate documents and separately bound. For example, all documents that comprise the response to the Technical Qualification Criteria must be bound together or compiled in a separate file and the cover of the file or bound document must clearly set out the heading of the Part and clause of this RFP to which the document relates.

31.2. **Language of the Bid**

The Bid Response and all documents forming part of the Bid Response shall be in English. Any document submitted by a foreign Member may be in another language so long as it is accompanied by an English translation of the entire document. For the purpose of interpretation of the Bid Response, the English translation provided shall govern. All correspondence and any other documentation and oral communication exchanged between the parties shall be in English.

31.3. **Currency of the Bid**

All monetary amounts referred to in a Bid Response shall be in South African Rand (ZAR), save to the extent specifically permitted for in this RFP.

31.4. **Identification and Sealing of this RFP Bid Response**

31.4.1. The Bidder shall write on the top right hand corner of each document forming part of the Bid Response submitted by the Bidder, the following information:

31.4.1.1. Tender Reference Number;

31.4.1.2. Name and Address of Bidder;

31.4.1.3. Master or Copy;

31.4.1.4. Category of Document (namely, the heading of the Part and clause of this RFP to which the document relates).

31.4.2. The Bidder shall mark the cover of the Bid Response with the following details:



31.4.2.1. The title of the Procurement Programme as detailed on the cover page of this RFP;

31.4.2.2. Tender Reference Number;

31.4.2.3. Name and Address of Bidder.

31.5. **Correction of Errors**

The complete Bid Response shall be without alterations, deletions or omissions, except those to accord with instructions issued by TFR, or as necessary to correct errors made by the Bidder in which case, such corrections shall be made in clearly legible handwriting and initialled in black ink by the person or persons signing the Bid Response. No corrections to the Bid Response shall be made with any kind of correction fluid.

31.6. **Signing of Bid**

31.6.1. The Bid Response is to be signed by the duly authorised representative of a Bidder authorised in terms of the resolutions of the Bidder and the Members attached to this RFP as Annex I (*Resolution of Board of Directors*) and Annex J (*Resolution of each Member*) issued for the purpose of responding to this RFP.

31.6.2. The duly authorised representative of a Bidder shall be the only person authorised to make statements on behalf of and receive instructions for and on behalf of the Bidder.

31.7. **Further Information**

TFR may seek clarification from any Bidder on any aspect of a Bidder's Bid Response. TFR may require the Bidder to make oral and or written presentations for clarification purposes, in respect of its Bid Response if so required by TFR. The Bidder is required to respond in the manner requested by TFR within the time period stipulated by TFR in the request for further information. In the event that such a request, for additional information, is made by TFR to any Bidder, such a request should not be misconstrued by a Bidder as being an opportunity to supplement, amend, vary or modify any part of its Bid Response. TFR reserves the right to hold one or more briefing or information sessions in respect of any or all of the Bid Response. The Bidder may be required to do a presentation of the



salient features of its Bid Response to TFR. If required by TFR, the Project Officer will arrange a suitable date and venue with each Bidder.

32. **Late Bid Responses**

Bid Responses reaching TFR later than the original or extended Bid Submission Date as envisaged in clause 29.1 of this Part I (*General Requirements, Rules and Provisions*) of this RFP (as the case may be) will be rejected without further consideration as contemplated in the Administrative Responsiveness Criteria.

33. **Bid Response Validity**

All Bid Responses constitute an irrevocable binding offer by the Bidder to TFR. Bid Responses must remain valid and binding for 360 (three hundred and sixty) calendar days from the Bid Submission Date ("**Bid Submission Validity Period**").

34. **Extension of Bid Submission Validity Period**

If TFR requests the Bidder to extend the Bid Submission Validity Period of its Bid Response for any reason, the Bidder must issue its response to TFR in writing within 10 (ten) Business Days of the date on which TFR made the relevant request. Should the extension be agreed to by the Bidder, the Bid Response may not be varied but an extension of the Preferred Bidder Guarantee contemplated in clause 21 (*Bid Documentation Fee and Preferred Bidder Guarantee*), to match any such extension, may be required.

35. **Declaration of Bidder**

The authorised representative of the Bidder as evidenced by the resolutions of the Bidder and the Members attached to this RFP as Annex I (*Resolution of Board of Directors*) and Annex J (*Resolution of each Member*) is required to sign the declaration in the form provided in Annex G (*TFR Declaration of Bidder*).

36. **Briefing Notes and Changes to Bid Process**

Up to 15 (fifteen) Business Days prior to the Bid Submission Date, TFR may, for any reason, whether at its own initiative, or in response to a clarification requested by a Bidder, modify any part or aspect of this RFP by the issue of Briefing Notes.



36.1. Issue of Briefing Notes

- 36.1.1. TFR may issue additional information regarding this RFP on an *ad hoc* basis, which information shall be provided in the form of Briefing Notes.
- 36.1.2. Briefing Notes will be sequentially numbered and will indicate whether they supplement, vary or amend any portion of this RFP. All Briefing Notes shall be posted to the data room and the Bidders will be notified of each Briefing Note by way of e-mail to the address provided by each Bidder.
- 36.1.3. The Bidders shall be obliged to accept any amendments specified in Briefing Notes and shall promptly acknowledge receipt thereof by email to the email address of the Project Officer stated in clause 25 (*Contact Policy*). All Briefing Notes shall be deemed to be part of this RFP.

36.2. Influence of Briefing Notes

- 36.2.1. In order to afford Bidders reasonable time in which to take a Briefing Note into account in preparing their Bid Responses, TFR may, at its own discretion, extend the Bid Submission Date in accordance with clause 10 (*Extension of RFP Bid Submission Date*).
- 36.2.2. The Bidder shall ensure that its Bid Response is prepared, taking into account all Briefing Notes issued by TFR.

37. Cost of Bidding

- 37.1. The Bidder shall bear all of its costs (of whatsoever nature) associated with the preparation of its Bid Response.
- 37.2. No Bidder (including the Preferred Bidder or any Reserve Bidder) shall have any claim against TFR (including any claim for the costs of bidding) as a result of:
 - 37.2.1. not being selected as the Preferred Bidder and or a Reserve Bidder; and or
 - 37.2.2. TFR altering or abandoning any part or the entire Project, including limiting the Project to the Bid Submission Date only.



38. **Inconsistencies**

38.1. If a Bidder identifies any errors or inconsistencies between the various portions of this RFP, the Bidder shall notify the Project Officer in writing prior to the date referred to in clauses 26 (*Requests and Clarifications*), and TFR will provide clarification as to the intended position to all Bidders by way of a Briefing Note.

38.2. To the extent that any inconsistency exists or shall exist between the terms of the Terminal Operator Agreement, the Financier Direct Agreement and the provisions of this RFP, the terms of the Terminal Operator and the Financier Direct Agreement shall prevail.

39. **Incorrect or Misleading Information**

TFR may disqualify any Bidder and or revoke any decision in respect of the selection of the Preferred Bidder or a Reserve Bidder if such decision was based on any incorrect information which the Bidder or its Members, Contractors or advisors or any other participant in the relevant Bid Response and or agents provided in response to this RFP.

40. **Opening of Bid Response**

TFR will open the Bid Responses after the Bid Submission Date following receipt of the Bid Responses. Bidders may, upon written request made to TFR, be permitted to be present at the opening of the Bid Responses. TFR however, will not disclose prices that the Bidders have bid in their Bid Responses. Shortly after the Bid Submission Date, TFR will announce the list of Bidders who have submitted RFP Bid Submissions.

41. **RFP Bid Response Rejection**

TFR shall be entitled to accept or reject any Bid Response or to annul the Procurement Programme at any time.

42. **Disputes Relating to Bid Process**

Each Bidder and each Member and Contractors or other person participating in a Bid Response or otherwise in the Procurement Programme, waives the right to bring proceedings in any forum outside of the Republic of South Africa in relation to this Project. The Project and the Procurement Programme in respect of the Project shall be governed by the laws of South Africa and the Bidder and each of its Members, Lenders and Contractors and such other participants' consents and submits to the High Court of South



Africa, Gauteng Local Division, Johannesburg having exclusive jurisdiction in relation to it.

43. Selection of Preferred and Reserve Bidder

43.1. TFR will send letters, by means of registered mail and/or electronic mail, to the Preferred Bidder and the Reserve Bidder, notifying them provisionally of their status and requesting the Preferred Bidder to submit the Preferred Bidder Guarantee pursuant to clause 21.2 (*Preferred Bidder Guarantee*) and to enter into negotiations with, *inter alia*, its Members, Contractors, Lenders and equipment suppliers to finalise its contractual arrangements in order to conclude the Terminal Operator Agreement and the Financier Direct Agreement with the relevant counterparties.

43.2. If TFR nominates the Preferred Bidder, the nominated Preferred Bidder will be invited to conclude the Terminal Operator Agreement. Once a Bidder is appointed Preferred Bidder, the Preferred Bidder shall conduct itself in good faith to achieve the conclusion of the Terminal Operator Agreement within a period not exceeding 4 (four) months. If the Preferred Bidder fails to conclude the Terminal Operator Agreement within this 4 (four) month period, then that Preferred Bidder may be disqualified from its status as Preferred Bidder.

43.3. If the Preferred Bidder is disqualified in accordance with provisions of this RFP, the Bidder nominated as the Reserve Bidder may be invited to conclude the Terminal Operator Agreement with TFR in substitution of the Preferred Bidder who will be eliminated from the Procurement Programme.

44. Information Verification

Each Bidder (including its Members, Contractors, Advisors and other participants), in submitting a Bid Response, is deemed to consent to and agree that TFR is entitled to:

44.1. perform a credit check in respect of such a Bidder, its Members, Contractors and participants by accessing any credit bureau's database and use any information and data obtained from a credit bureau in respect of the evaluation of the Bidder's Bid Response;

44.2. seek references from any relevant third parties; and

44.3. verify any information provided by a Bidder (including technical and financial information) with third parties (including banks).



PART II - QUALIFICATION CRITERIA

45. Overview of the Evaluation of the Bid Responses

45.1. Establishment of an Evaluation Panel

- 45.1.1. TFR shall establish a panel of experts to assist it with the evaluation of all Bid Responses. The primary responsibility of this panel shall be to evaluate all Bid Responses against the criteria set out in this Part II (*Qualification Criteria*) and to make appropriate recommendations to TFR in respect of which Bidders meet such Qualification Criteria in order to qualify for the evaluation of their Bid Response under the Evaluation Criteria.
- 45.1.2. The panel established by TFR shall constitute a working committee comprising of both employees of TFR and representatives of the Transaction Advisors and this panel will evaluate each aspect of the Qualification Criteria independently of each other against an agreed qualification evaluation matrix which will be prepared for each discipline and utilised by each evaluator to ensure consistency in the process.
- 45.1.3. On completion of the evaluation of Bid Responses against the Qualification Criteria by the various committees, the chairperson of the panel shall convene such further meetings as are necessary to complete the qualification evaluation for purposes of formulating recommendations to TFR.
- 45.1.4. In this regard it should be noted that TFR has not and will not delegate any decision making authority to the panel. The panel as such has no authority to make decisions on behalf of Transnet, and in particular, TFR, regarding the appointment of a Preferred Bidder.

45.2. The Structure of the Qualification Criteria

- 45.2.1. The Qualification Criteria that a Bid Response is required to satisfy is detailed below in this Part II (*Qualification Criteria*). The Qualification Criteria are divided into the following four categories:

- 45.2.1.1. Qualification Criteria 1: Administrative Responsiveness;



- 45.2.1.2. Qualification Criteria 2: Substantive Responsiveness – Supplier Development Criteria;
- 45.2.1.3. Qualification Criteria 3: Substantive Responsiveness – Technical Criteria; and
- 45.2.1.4. Qualification Criteria 4: Substantive Responsiveness – Financial Criteria.
- 45.2.2. The requirements and parameters in respect of each of the Qualification Criteria are set out in this Part II (*Qualification Criteria*). The Bidder must respond to each and every Qualification Criteria in this Part II (*Qualification Criteria*) and provide comprehensive responses and information in respect of each such criteria.
- 45.2.3. Qualification Criteria 1: Administrative Responsiveness is set out in further detail at clause 47.1 (*Qualification Criteria 1: Administrative Responsiveness*) of this Part II (*Qualification Criteria*) and will be assessed by TFR before the Substantive Responsiveness of a Bid Response is assessed. Non-submission of the Mandatory Returnable Documents required for achievement of Administrative Responsiveness will result in the Bidder not being a compliant Bidder and the Bidder's Bid Response will not be evaluated further against the Substantive Responsiveness Criteria. Only Bidders who comply with the requirements of Qualification Criteria 1: Administrative Responsiveness will have their Bid Responses evaluated against the Substantive Responsiveness Criteria.
- 45.2.4. The Bid Responses that comply with the requirements of Qualification Criteria 1: Administrative Responsiveness will be evaluated against the Substantive Responsiveness Qualification Criteria as set out in further detail at clause 47.2 (*Substantive Responsiveness Qualification Criteria*) of this Part II (*Qualification Criteria*) on a pass/fail mechanism and if a Bid Response fails a particular Qualification Criteria set out below, such Bid Response will be disqualified and will not be evaluated at the next Qualification Criteria or proceed to be evaluated under Part III (*Evaluation Criteria*) of this RFP, as the case may be.
- 45.2.5. If a Bidder's Bid Response complies with the requirements and conditions set out in:



- 45.2.5.1. Clause 47.3 (Qualification Criteria 2: Substantive Responsiveness - Supplier Development Criteria) of Part II (*Qualification Criteria*) of this RFP;
- 45.2.5.2. Clause 47.4 (Qualification Criteria 3: Substantive Responsiveness - Technical Criteria) of Part II (*Qualification Criteria*) of this RFP; and
- 45.2.5.3. Clause 47.5 (Qualification Criteria 4: Substantive Responsiveness - Financial Criteria) of Part II (*Qualification Criteria*) of this RFP,

it will proceed to be evaluated against the Evaluation Criteria set out under Part III (*Evaluation Criteria*) of this RFP.



46. Overview of the Qualification Criteria and Evaluation Criteria

TFR will utilise the following methodology in respect of the Qualification Criteria evaluation of Bid Responses:

Step 1	Step 2	Step 3			
Qualification Criteria - Administrative Responsiveness	Qualification Criteria - Substantive Responsiveness	Evaluation - scoring	Ranking of scores Allocation of points	Total points	
<ul style="list-style-type: none"> Mandatory Returnable Documents: <i>Including (not limited to):</i> B-BBEE certificate Annex U (B-BBEE Improvement Plan) Consortium agreement, term sheet or shareholders agreement (as applicable) Confirmation of Black Ownership Commitments Completed Bid Submission Schedules Scoring Model with duly completed "Technical Experience Worksheet", "SD Targets Worksheet", "Concession Fee Offer Worksheet"; as well as print-outs signed. Supplier Development Plan community Development Plan Business Plan (Maintenance, Hand back) Tax clearance certifications or of the members of the JV/SPV Terminal design documentation Operating model documentation 	Supplier Development <ul style="list-style-type: none"> Minimum Level 4 BBBEE Contributor Status Level Minimum 26% Black Ownership B-BBEE Improvement Plan showing Level 2 BBBEE Contributor Status Level is reached by year the 5th anniversary of the Commercial Operation Date (Confirmation of Black Ownership Commitments) 	Development Plan Score <ul style="list-style-type: none"> SLD Score resulting from bidding targets % revenues spent on training % SA staff, % local supply chain % staff being trained / year As confirmed by the Evaluation Team review of the SD Development Plan and B-BBEE Improvement Plan 	Supplier Development Points <ul style="list-style-type: none"> Bidders ranked by Score generated by Scoring Model Differential based on differential in NPV /out of a maximum scale of 20 	Points out of 20 x 20%	
	Technical <ul style="list-style-type: none"> Design – Compliance with TFR design criteria, Signed off by PR Eng Operating model – Alignment with Transnet’s proposed Operating model (Unit trains) 	Technical assessment <ul style="list-style-type: none"> Alignment with capacity requirements? Alignments with Transnet operating model? Would TFR be able to provide additional rail capacity? Technical Experience Score Design considerations 	Technical points <ul style="list-style-type: none"> Bidders ranked by Score generated by Scoring Model Points based on differential of a maximum scale of 20 		Points out of 20 x 40%
	Financial <ul style="list-style-type: none"> Financial Model and Financial Statements showing the due payment of the Concession Fee Offer over the Concession Period Financial Model Audit Letter Equity or Lenders Support Letter (including Term Sheet) 	Financial assessment <ul style="list-style-type: none"> Volume commitments min 255k with ramp up being scored. Concession Fee Offer Score resulting from Concession Fee Offer to be in line with Financial Model / Business Plan 	Financial score /ranking <ul style="list-style-type: none"> Bidders ranked by Score generated by Scoring Model Points based on differential of a maximum scale of 20 Financial points = 90% NPV Concession Fee and Asset value at hand back+ 10% Variable Concession Fee 		Points out of 20 X 40%
		Scoring	Final ranking of Bidders – Preferred Bidder		

46.1.1. STEP ONE: Qualification Criteria 1 - Administrative Responsiveness

The following is a summary of the Qualification Criteria (*Administrative Responsiveness*) envisaged in further detail in clause 47.1 (*Qualification Criteria 1: Administrative Responsiveness*) of Part II (*Qualification Criteria*) of this RFP below:



QUALIFICATION CRITERIA	RFP REFERENCE
the Bid Response has been lodged on/before 10h00 on the Bid Submission Date and at the Bid Submission Venue.	Clause 47.1.1.1 of Part II (<i>Qualification Criteria</i>) of this RFP
the Bid Response has been duly signed by the Bidder and sealed as appropriate.	Clause 47.1.1.2 of Part II (<i>Qualification Criteria</i>) of this RFP
all Mandatory Returnable Documents as listed below and in Annex F (<i>Bid Response Form</i>) are valid, were completed and have been included in the Bid Response, which are as follows:	Clause 47.1.1.3 of Part II (<i>Qualification Criteria</i>) of this RFP
<ul style="list-style-type: none"> • a valid B-BBEE verification certificate which is not older than 6 (six) months confirming that the Bidder has at least a Level 4 (four) Contributor Status Level or an equivalent rating in terms of the Sector Code, if any, and at least 25% Black Ownership; 	Clause 47.3.1 of Part II (<i>Qualification Criteria</i>) of this RFP
<ul style="list-style-type: none"> • a B-BBEE Improvement Plan; 	Clause 47.3.1 of Part II (<i>Qualification Criteria</i>) of this RFP
<ul style="list-style-type: none"> • the Supplier Development Value Summary Worksheet which has been completed in Excel, has been printed and duly signed by the Bidder; 	Clause 52.3 of Part III (<i>Evaluation Criteria</i>) this RFP.
<ul style="list-style-type: none"> • in the case of a Consortium, the Bidder's Consortium agreement or term sheet or the Project 	Clause 47.3.2 of Part II (<i>Qualification Criteria</i>) of this RFP



QUALIFICATION CRITERIA	RFP REFERENCE
Company shareholders agreement;	
<ul style="list-style-type: none"> Annex W (<i>Confirmation of Black Ownership Commitments</i>); 	Clause 47.3.2 of Part II (<i>Qualification Criteria</i>) of this RFP
<ul style="list-style-type: none"> the Supplier Development Plan; 	Clause 47.3.2 of Part II (<i>Qualification Criteria</i>) of this RFP
<ul style="list-style-type: none"> the Bid Submission Schedules have been duly completed and signed by the Bidder; 	Clause 47.1.2 read with clause 46.1.1 of Part II (<i>Qualification Criteria</i>) of this RFP.
<ul style="list-style-type: none"> the Experience Worksheet, which has been completed in Excel, printed and duly signed by the Bidder; 	Clause 47.4.1 of Part II (<i>Qualification Criteria</i>) of this RFP
<ul style="list-style-type: none"> proof of the Certifications or such other equivalent certifications; 	Clause 47.4.2 of Part II (<i>Qualification Criteria</i>) of this RFP
<ul style="list-style-type: none"> duly completed Licence Applications including all supplementary documents requested in terms of the Licence Applications; or copies of the valid Licences, as applicable; 	Clause Error! Reference source not found. f Part II (<i>Qualification Criteria</i>) of this RFP
<ul style="list-style-type: none"> the Concession Fee Offer Worksheet which has been completed in Excel, printed and duly signed by the Bidder; 	Clause 47.5.1 of Part II (<i>Qualification Criteria</i>) of this RFP.
<ul style="list-style-type: none"> Financial Model Audit Letter (contained in the Business Plan); 	Clause 47.5.1 of Part II(<i>Qualification Criteria</i>) of this RFP



QUALIFICATION CRITERIA	RFP REFERENCE
<ul style="list-style-type: none"> Financial Model (contained in the Business Plan); 	Clause 47.5.1 of Part II (<i>Qualification Criteria</i>) of this RFP
<ul style="list-style-type: none"> funding term sheets that have been concluded with a financial institution with at least level 1 credit approval 	Clause 47.5.2 of Part II (<i>Qualification Criteria</i>) of this RFP
<ul style="list-style-type: none"> in the event of External Debt finance, the Annex AA (<i>Letter of Support from Lender</i>) and signed terms sheets; 	Clause 47.5.2 of Part II (<i>Qualification Criteria</i>) of this RFP
<ul style="list-style-type: none"> in the event of Corporate Financing, Annex LL (<i>Corporate Finance Support Letter</i>) 	Clause 47.5.2 of Part II (<i>Qualification Criteria</i>) of this RFP
<ul style="list-style-type: none"> in the event of Equity Finance, Annex Y(<i>Shareholders/Member's Equity Support Letters</i>) 	Clause 47.5.2 of Part II (<i>Qualification Criteria</i>) of this RFP
<ul style="list-style-type: none"> the Business Plan including all other information, documentation and annexures to be included in the Business Plan as per the Business Plan Guidelines 	Clause 51.1 (<i>Financial Model and Business Plan</i>) of Part III (<i>Evaluation Criteria</i>) of this RFP

46.1.1.1. The test for Administrative Responsiveness (*Step One*) must be passed for a Bid Response to progress to Step Two for evaluation against Qualification Criteria 2.

46.1.2. **STEP TWO: Qualification Criteria 2: Substantive Responsiveness - Supplier Development Criteria**

46.1.2.1. The following is a summary of the Qualification Criteria 2 (*Substantive Responsiveness - Supplier Development Criteria*) which is set out in further detail in clause 47.3



(Qualification Criteria 2: Substantive Responsiveness – Supplier Development Criteria) of Part II (Qualification Criteria) of this RFP below:

QUALIFICATION CRITERIA	RFP REFERENCE	DELIVERABLE
<p>the Bidder has submitted a valid B-BBEE verification certificate and has obtained a minimum Level 4 (four) Contributor Status Level or an equivalent rating in terms of the Sector Code, if applicable.</p>	<p>Clause 47.3.1 of Part II (Qualification Criteria) of this RFP</p>	<ul style="list-style-type: none"> • B-BBEE verification certificate
<p>the Bidder has submitted a B-BBEE Improvement Plan to ensure that the Company or the Project Company, as the case may be, has committed to reaching a Level 2 (two) B-BBEE Contributor Status Level or an equivalent rating in terms of the Sector Code, if applicable, by the 10th (tenth) anniversary of the Effective Date.</p>	<p>Clause 47.3.1 of Part II (Qualification Criteria) of this RFP</p>	<ul style="list-style-type: none"> • Annex V (B-BBEE Improvement Plan Guidelines)
<p>In the event that the Bidder is an existing Company, the Company has a minimum percentage of 25% (twenty five percent) Black Ownership at the time of submitting the Bid Response.</p> <p>In the event that the Bidder is a Consortium, the Project Company upon incorporation, will have a minimum percentage</p>	<p>Clause 47.3.2 of Part II (Qualification Criteria) of this RFP</p>	<ul style="list-style-type: none"> • B-BBEE verification certificate • The Bidder's Consortium agreement or term sheet or the Project Company



of 25% (twenty five percent) Black Ownership.		shareholders agreement
The Bidder has committed to increase Black Ownership in the Company or the Project Company, as the case may be, over the Concession Period in accordance with the Black Ownership targets set out in Annex W (<i>Confirmation of Black Ownership Commitments</i>).	Clause 47.3.2 of Part II (<i>Qualification Criteria</i>) of this RFP	<ul style="list-style-type: none"> Annex W (<i>Confirmation of Black Ownership Commitments</i>)

46.1.2.2. The test for Step Two: Qualification Criteria 2: Substantive Responsiveness - Supplier Development Criteria must be passed for a Bid Response to progress to Step Three for evaluation against Qualification Criteria 3.

46.1.3. **STEP THREE: Qualification Criteria 3: Substantive Responsiveness - Technical Criteria**

46.1.3.1. The following is a summary of the Qualification Criteria 3 (*Substantive Responsiveness - Technical Criteria*) which is set out in further detail in clause 47.4 (*Qualification Criteria 3: Substantive Responsiveness - Technical Criteria*) of Part II (*Qualification Criteria*) of this RFP below:

QUALIFICATION CRITERIA	RFP Reference	DELIVERABLE
The experience score generated by the Scoring Model on the basis of the input provided in the Experience Worksheet and validated by the evaluation team is at least equal to the “Minimum Experience Score” as	Clause 47.4.1 of Part II (<i>Qualification Criteria</i>) of this RFP	Experience Worksheet



<p>shown in 3.1.1.5 of the Worksheet 3.1. of the Scoring Model as supported by the information provided in the Business Plan.</p>		
<p>the Company or Lead Member, if the Bidder is a Consortium have the required Certifications or such other equivalent certification.</p>	<p>Clause 47.4.2 of Part II (<i>Qualification Criteria</i>) of this RFP</p>	<p>Proof of Certifications</p>
<p>the Company or the relevant Key Contractor that will provide bunkering services has satisfied the requirements to be issued with a Bunkering Licence or is the holder of a valid Bunkering Licence.</p> <p>If Stevedoring Services and/or Waste Disposal Services are to be provided by a Key Contractor, on behalf of the Bidder, the Contractor/s must be the holder of a valid Stevedoring Licence and Waste Disposal Licence or the relevant Key Contractor/s have satisfied the requirements to be issued with a Stevedoring Licence and Waste Disposal Licence.</p>	<p>Clause Error! reference source not found. of Part II (<i>Qualification Criteria</i>) of this RFP</p>	<ul style="list-style-type: none"> • Completed Licence Applications and supporting documents; or • Copies of valid Licences

46.1.3.2. The test for Step Three: Qualification Criteria 3: Substantive Responsiveness - Technical Criteria must be passed for a Bid Response to progress to Step Four for evaluation against Qualification Criteria 4.

46.1.4. **STEP FOUR: Qualification Criteria 4: Substantive Responsiveness - Financial Criteria**

46.1.4.1. The following is a summary of the Qualification Criteria 4 (*Substantive Responsiveness - Financial Criteria*) that is set



out in further detail in clause 47.5 (*Qualification Criteria 4: Substantive Responsiveness - Financial Criteria*) of Part II (*Qualification Criteria*) of this RFP below:

QUALIFICATION CRITERIA	RFP REFERENCE	DELIVERABLE
A Financial Model has been prepared and the Financial Model reflects the minimum revenue level and the payment of the Concession Fee for the duration of the Concession Period as set out in the Concession Fee Offer Worksheet.	Clause 47.5.1 of Part II (<i>Qualification Criteria</i>) of this RFP	<ul style="list-style-type: none"> • Concession Fee Offer <i>Worksheet</i>
The Bidder has provided a Financial Model Audit Letter.	Clause 47.5.1 of Part II (<i>Qualification Criteria</i>) of this RFP	<ul style="list-style-type: none"> • Financial Model Audit Letter
The Bidder has sufficient funds to implement the Project in accordance with the financing plan set out in the Business Plan.	Clause 47.5.2 of Part II (<i>Qualification Criteria</i>) of this RFP	<ul style="list-style-type: none"> • Funding term sheets; • Annex AA (<i>Letter of Support from Lender</i>) • Annex Y (<i>Member's Equity Support Letters</i>) • Annex LL (<i>Corporate Financing Support Letter</i>) • Business Plan
The average Net Asset Value determined over the past 3 (three) years of the Company, or of each Member, of the Bidder if the Bidder is a Consortium or of its Guarantor, if applicable, is at least equal	Clause 47.5.2 of Part II (<i>Qualification Criteria</i>) of this RFP	<ul style="list-style-type: none"> • audited financial statements of the Company for the last 3 (three) years, its Members and



to its respective equity contribution in respect of the financing of the Terminal.		Guarantor (if applicable)
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46.1.4.2. The test for Step Four: Qualification Criteria 4: Substantive Responsiveness - Financial Criteria must be passed for a Bid Response to progress to evaluation against the Evaluation Criteria set out in Part III (*Evaluation Criteria*) of this RFP.

47. **Administrative Responsiveness and Substantive Responsiveness**

47.1. **Qualification Criteria 1: Administrative Responsiveness**

47.1.1. In order to determine whether a Bid Response has met the criteria for Administrative Responsiveness, TFR will consider the following:

47.1.1.1. whether the Bid Response has been submitted on or prior to 10h00 on the Bid Submission Date and at the Bid Submission Venue;

47.1.1.2. whether the Bid Response has been duly signed by the Bidder and sealed as appropriate; and

47.1.1.3. whether all Mandatory Returnable Documents, as defined in clause 47.1.2 below, are valid, were completed and have been included in the Bid Response.

47.1.2. Mandatory Returnable Documents

Failure by a Bidder to provide all Mandatory Returnable Documents with its Bid Response on or before the Bid Submission Date will result in a Bidder's disqualification. Bidders are therefore urged to ensure that the following Mandatory Returnable Documents are submitted with



their Bid Responses. The list of Mandatory Returnable Documents are set out in clause 46.1.1 of this Part II (*Qualification Criteria*) above.

47.2. **Substantive Responsiveness Qualification Criteria**

In order to determine whether a Bid Response has met the criteria for Substantive Responsiveness, TFR will consider whether the Bidder has complied with the following:

- 47.2.1. Qualification Criteria 2: Substantive Responsiveness – Supplier Development Criteria as set out in clause 47.3;
- 47.2.2. Qualification Criteria 3: Substantive Responsiveness – Technical Criteria as set out in clause 47.4; and
- 47.2.3. Qualification Criteria 4: Substantive Responsiveness – Financial Criteria as set out in 47.5.

47.3. **Qualification Criteria 2: Substantive Responsiveness - Supplier Development Criteria**

47.3.1. **B-BBEE Contributor Status Level**

- 47.3.1.1. The following Qualification Criteria must be complied with by a Bidder in order for that Bidder to proceed to be evaluated in terms of the remaining Qualification Criteria.
- 47.3.1.2. Each Bidder will be required to provide, in its Bid Response, a valid B-BBEE verification certificate issued by a verification agency accredited by the SANAS or a registered auditor approved by IRBA. The B-BBEE verification certificate shall contain the information listed in clause 13.1.13 of Part I (*General Requirements, Rules and Provisions*) of this RFP.
- 47.3.1.3. Bidders will be required to have a minimum Level 4 (four) B-BBEE rating or Contributor Status Level, or above, in accordance with the B-BBEE Codes, as applicable or an equivalent rating in terms of the Sector Code, if applicable.



- 47.3.1.4. Where the Bidder is a Consortium or joint venture, a consolidated B-BBEE rating of the Consortium is required and the Project Company once established will be required to obtain a minimum Level 4 (four) B-BBEE rating or Contributor Status Level or an equivalent rating in terms of the Sector Code, if applicable.
- 47.3.1.5. Further, the Bidder is required to improve its B-BBEE Contributor Status Level from at least a Level 4 Contributor Status Level or an equivalent rating in terms of the Sector Code, if any, to a Level 2 Contributor Status Level or an equivalent rating in terms of the Sector Code, if any, by the 5th (fifth) anniversary of the Effective Date and is required to indicate how it will achieve a Level 2 Contributor Status Level or an equivalent rating in terms of the Sector Code, if applicable, by the 5th (fifth) anniversary of the Effective Date, in its B-BBEE Improvement Plan.

47.3.2. **Black Ownership**

- 47.3.2.1. Bidders are required to have a minimum of 25% Black Ownership on the Bid Submission Date in order to proceed to be evaluated in terms of the remaining Qualification Criteria. The minimum percentage of 25% Black Ownership must be reflected in the Bidder's valid B-BBEE verification certificate.
- 47.3.2.2. Where the Bidder is a Consortium, the Bidder must demonstrate that upon incorporation of the Project Company, it will have a minimum of 25% Black Ownership. In this regard the Bidder is required to submit either:
- 47.3.2.2.1. a signed Consortium agreement between the Members clearly stating the envisaged percentage Equity split in the Project Company and the associated



responsibilities of each Member; or

47.3.2.2.2. a signed shareholders agreement or term sheet concluded between the Members of the Project Company, the effectiveness of which is conditional upon the Bidder being awarded Preferred Bidder status.

47.3.2.3. In addition, Bidders are required to agree and undertake in terms of Annex W (*Confirmation of Black Ownership Commitments*) of this RFP that if appointed Preferred Bidder, the percentage Black Ownership in the Company or Project Company, as the case may be, will increase over the Concession Period in accordance with the Black Ownership targets set out in Annex W (*Confirmation of Black Ownership Commitments*).

47.3.2.4. The Contributor Status Level and Black Ownership commitments set out above will be included in the Terminal Operator Agreement as obligations that will be subject to penalties and possible termination of the Terminal Operator Agreement in the event of non-compliance by the Terminal Operator.

47.4. **Qualification Criteria 3: Substantive Responsiveness - Technical Criteria**

47.4.1. **Experience**

47.4.1.1. One of the main objectives of the Project is to Construct, Maintain and Operate an efficient Terminal at the Project Site.. Therefore, TFR is seeking an experienced Terminal Operator with proven experience and a good track record in respect of the services (or substantially similar operations) facilities development, maintenance, efficiency, optimal use of Terminal infrastructure, environmental management, safety and health management.



- 47.4.1.2. In order to demonstrate the experience and the efficiency of the Bidder must demonstrate its track record with regard to container handling facilities. In this regard, the Bidder is required to complete the Experience Worksheet in relation to itself.
- 47.4.1.3. The Bidder will be scored in accordance with the Scoring Model based on the input provided by the Bidder in the Experience Worksheet, as validated by the evaluation team based on the information provided in the Bidder's Business Plan ("**Experience Score**"). The Bidders are required to achieve a minimum Experience Score in respect of the Technical Qualification Criteria as set out in item 3.1.1.5 of the Experience Worksheet.
- 47.4.1.4. The Experience Score achieved by each Bidder at Qualification Criteria 3 will be carried through to the final technical points in respect of the Technical Evaluation Criteria and will contribute by 70% (seventy percent) to the final technical points as set out in further detail in clause 53 (*Evaluation Criteria 3: Technical Evaluation Criteria*) below.



47.4.2. **Certifications**

47.4.2.1. The Company or Lead Member, if the Bidder is a Consortium, are required to be certified and shall maintain the following qualifications and Certifications, or such other equivalent certification during the Concession Period:

47.4.2.1.1. ISO [REDACTED];

47.4.2.2. The Bidder required to provide proof of the Certifications required in terms of clause 47.4.2.1 above in its Bid Response.

47.5. **Qualification Criteria 4: Substantive Responsiveness - Financial Criteria Assessment**

In the interest of operational efficiency, Bidders will be required to show that they have the financial strength to raise the necessary capital to commence Construction immediately after the Effective Date and to pay the Concession Fee for the duration of the Concession Period as required in terms of this RFP and the Draft Terminal Operator Agreement.

47.5.1. **Payment of Concession Fee over the Concession Period**

47.5.1.1. The Bidder is required to prepare an audited Financial Model which reflects the payment of the Concession Fee in accordance with the Concession Fee Offer over the duration of the Concession Period and which is aligned with the assumptions and specifications determined by TFR as set out in Annex Z (*Financial Model Template*) and to be satisfactorily audited as demonstrated by a financial model audit letter from an independent financial model auditor which audit letter confirms the consistency and accuracy of calculations, logic, accounting, and compliance with key terms indicated in the Business Plan, including notably the financial terms as contained in the Lenders Support Letters and Financial Support Letters (the “**Financial Model Audit Letter**”).



47.5.1.2. For purposes of this Qualification Criteria, the Bidder is required to complete the Concession Fee Offer Worksheet and submit the Financial Model Audit Letter.

47.5.2. **Proof of Funding**

47.5.2.1. The Bidder is required to confirm that it has sufficient funds and/or has secured sufficient funding to undertake the Project and commence implementation upon the conclusion of the Terminal Operator Agreement.

47.5.2.2. The Bidder is required to submit:

47.5.2.2.1. in respect of External Debt funding or Corporate Finance:

47.5.2.2.1.1. funding term sheets that have been concluded with a financial institution with at least level 1 credit approval;

47.5.2.2.1.2. the completed lenders support letter substantially in the form annexed to this RFP as Annex AA (*Letter of Support From Lender*) or the completed corporate finance support letter substantially in the form annexed hereto as Annex LL (*Corporate Finance Support Letter*), as applicable;



- 47.5.2.2.2. in respect of Equity funding, support letters from each Member evidencing each Member's portion of Equity funding substantially in the form attached hereto as Annex Y (*Member's Equity Support Letter*).
- 47.5.2.3. The Company or each of the Members of the Bidder in the case of a Consortium is required to provide latest 3 years audited financial accounts proving that the Average Net Asset Value of the Company or of each Member in the case of a Consortium, or of its Guarantor over the past 3 years is at least equal to its respective Equity contribution for financing of the Terminal.



PART III - EVALUATION CRITERIA

48. Overview of the Evaluation Criteria

- 48.1. TFR shall establish a panel of experts to assist it with the evaluation of the Bid Responses. The primary responsibility of this panel shall be to evaluate all Bid Responses against the criteria set out in this Part III (*Evaluation Criteria*) of this RFP and to make appropriate recommendations to TFR in respect of which Bidders meet the Evaluation Criteria in this Part III (*Evaluation Criteria*).
- 48.2. Each expert on the panel shall constitute a working committee comprising of TFR employees (technical, financial and legal) to evaluate each aspect of the Evaluation Criteria independently of each other against an agreed evaluation matrix which will be prepared for each discipline and utilised by each evaluator to ensure consistency in the process.
- 48.3. On completion of the evaluation by the various committees the chairperson of the panel shall convene such further meetings as are to complete the evaluation for the purposes of formulating recommendations to TFR.
- 48.4. In this regard it should be noted that TFR has not and will not delegate any decision making authority to the panel. Furthermore, the panel has no authority to make any decisions on behalf of TFR in respect of the appointment of the Preferred Bidder.

49. The Evaluation Criteria and Methodology

- 49.1. This Part III (*Evaluation Criteria*) of this RFP contains the requirements for the detailed Bid Response and the evaluation methods, criteria and weighting in respect of those parts of the Bid Response that are subject to evaluation in terms of this Evaluation Criteria. Those parts are:
 - 49.1.1. Evaluation Criteria 1 : Financial Criteria;
 - 49.1.2. Evaluation Criteria 2 : Supplier Development Criteria; and
 - 49.1.3. Evaluation Criteria 3 : Technical Criteria.
- 49.2. TFR will only consider a Bidder's Bid Response in terms of this Evaluation Criteria if that Bidder fulfils and passes all of the Qualification Criteria of this RFP.



- 49.3. The Bidder must respond to each and every criteria in this Part III (*Evaluation Criteria*) and provide comprehensive responses and information in respect of each criteria. Failure of a Bidder to respond adequately to any of the requirements of this Evaluation Criteria and the appendices referred to in this Evaluation Criteria, shall have an adverse impact on the evaluation of its Bid Response and shall entitle TFR, in its discretion, to disregard that Bidder's Bid Response and to disqualify that Bidder from participating further in the Procurement Programme.
- 49.4. The Financial Evaluation Criteria, Supplier Development Evaluation Criteria and Technical Evaluation Criteria will each be scored out of 20 (twenty) points. The score obtained by a Bidder in the Technical Qualification Criteria will contribute towards by a percentage of 70% (seventy percent) to the Bidder's Technical Evaluation Criteria score.
- 49.5. Thereafter, the scores obtained for each of the categories will be applied to the 40/40/20 weighting where the points for the Financial Evaluation Criteria will be weighted as 40% (forty percent) of the overall scorecard, the points for the Technical Evaluation Criteria will be weighted as 40% (thirty percent) of the overall scorecard and the points for the Supplier Development Evaluation Criteria will be weighted as 30% (thirty percent) of the overall scorecard.
- 49.6. The decision to appoint a particular Bidder as Preferred Bidder will have regard to all objective considerations relating to the response to Part II (*Qualification Criteria*) and Part III (*Evaluation Criteria*) submitted by that Bidder and the requirements of TFR as contained in this RFP, together with the overall scoring achieved by that Bidder.
- 49.7. The Bidders will be ranked in accordance with their final scores. If there is a variance of less than 10% (ten percent) in between the scoring of 2 (two) or more of the highest ranking Bidders, these Bidders may be given an opportunity to make their best and final offers, at the discretion of TFR.

50. **Evaluation Method of the Evaluation Criteria**

TFR will utilise the following methodology in respect of the evaluation of the Evaluation Criteria of this RFP.



51. Evaluation Criteria 1: Financial Evaluation Criteria

51.1. Financial Model and Business Plan

51.1.1. Bidders are required to submit a Financial Model with its Bid Response, which Financial Model reflects and is aligned with the Concession Fee Offer, the Business Plan and the assumptions and specifications set out in Annex Z (*Financial Model Template*) and includes, *inter alia*:

51.1.1.1. key assumptions (including volumes, tariffs costs and revenue projection per Service) in accordance with the Business Plan and the Concession Fee Offer at the Minimum Revenue Level;

51.1.1.2. the Concession Fee payment formula contained in clause 51.2.2;

51.1.1.3. the value of the Terminal Equipment assets that will be transferred at the end of the concession;

51.1.1.4. debt terms, drawdown and amortisation as per the Member's Equity support letters and the Lender's Support Letter including funding terms sheets;

51.1.1.5. dividend payments, including any inter-company or Shareholder or intercompany loan payments (interest and principal) and equity return;

51.1.1.6. the Financial Model should demonstrate the Minimum Revenue Level consistent with the Concession Fee Offer.

51.2. Concession Fee Offer

51.2.1. Bidders are required to propose Concession Fee tariff parameters, in real terms at the time of the submission of the Bid Response by completing the Concession Fee Offer Worksheet which Concession Fee comprises the following components:

51.2.1.1. a fixed concession fee

51.2.1.2. a variable concession fee percentage;



51.2.1.3. the value of the Terminal Equipment to be transferred at the end of the concession

51.2.2. This will form the basis of the Concession Fee that will be contractually payable to TFR in respect of each payment period over the period of the concession.

51.3. Evaluation of the Concession Fee Offer

51.3.1. The evaluation of the Concession Fee Offer will be undertaken in accordance with Annex CC (*Scoring Model*).

51.3.2. The evaluation of the Concession Fee Offer is based on the item 3.2.1.7 “NPV Score” and item 3.2.2 “Variable Concession Fee” as generated by Annex CC (*Scoring Model*).

51.3.3. The Concession Fee Offer will be reviewed by the Evaluation Team in view of the Business Plan to confirm the items 3.2.1.7 “NPV Score” and items 3.2.2 “Variable Concession Fee”.

51.3.4. The Bidders may refer to Annex CC (*Scoring Model*) which illustrates TFR’s base case and includes examples of the scoring and point allocation in respect of the Concession Fee Offers.

51.3.5. The Bidder with the highest Concession Fee Offer (the “**Highest Concession Fee Offer**”) will obtain the maximum points allocated for the Concession Fee Offer being 20 (twenty) points. The other Bidders with lower Concession Fee Offers will be allocated points pro-rata to the Highest Concession Fee Offer on a scale of 20 (twenty).

52. Evaluation Criteria 2: Supplier Development Evaluation Criteria

52.1. TFR requests that each Bidder completes the Supplier Development Value Summary Worksheet and submits a Supplier Development Plan in respect of the Company or the Project Company, as the case may be, demonstrating their commitment and support of the NGP and how an appointment in terms of this RFP would assist in achieving the NGP objectives. In addition, each Bidder’s B-BBEE



Contributor Status level and rating will be evaluated as part of the Supplier Development Evaluation Criteria, and will be evaluated through the B-BBEE Improvement Plan.

- 52.2. Set out below are the SD categories in terms of Qualification Criteria 3: Supplier Development Criteria:

Category	Description
Capacity and Capability Building in South Africa (Localisation)	Plant and equipment is procured from South Africa, with a minimum requirement of 20% (twenty percent) achieved by the tenth anniversary of the Effective Date.
Local Employment created in South Africa	<p>The number of staff that are South African, with a focus on Zonkizwe and Ekurhuleni persons, where appropriate. There is a minimum requirement of 20% (twenty percent) to be achieved by the Effective Date.</p> <p>Focus should be placed on employing local persons from the region (i.e. Zonkizwe and Ekurhuleni).</p>
South African Employees receiving training	<p>Percentage of the South African workforce that is receiving training in a particular year. Minimum threshold of 20% (twenty percent) is required to be achieved at the end of the tenth anniversary of the Effective Date.</p> <p>The focus will be on ensuring that South African employees are being trained and are up-skilled and there are consequently career progression opportunities. In addition, the number of unemployed people participating in training programmes such as learnerships, apprenticeships and</p>



	internships with the view to providing employment at the end of such training initiatives.
Revenues allocated to training	<p>Minimum threshold of 2% (two percent) of revenue (per annum).</p> <p>Bidders may also demonstrate how they will invest in bursary schemes and training of students in the Zonkizwe and Ekurhuleni area.</p>
B-BBEE Improvement Plan	Minimum Level 2 Contributor Status Level or an equivalent rating in terms of the Sector Code, if any, to be achieved by the 5 th (fifth) anniversary of the Effective Date.

- 52.3. The Supplier Development Plan is to be submitted in addition to the Supplier Development Value Summary Worksheet, but must be developed by Bidders in line with the criteria set out in the Supplier Development Value Summary Worksheet and in accordance with Annex U (*Supplier Development Plan Guidelines*). The Supplier Development Plan is a detailed narrative document explaining the Bidder's bid value as summarised in the Supplier Development Value Summary Worksheet. The Supplier Development Plan should outline the type of activities that the Company or Project Company, as applicable, intend to embark upon should the Bidder be selected as the Preferred Bidder. This Supplier Development Plan should also provide an overview of the SD commitments that the Company or the Project Company, as applicable, intend to achieve, when it intends to achieve its SD commitments, and the mechanisms to be utilised by the Company or the Project Company, as applicable, and its Contractors to achieve those SD commitments should the Bidder be selected as the Preferred Bidder.
- 52.4. The Supplier Development Value Summary Worksheet must also be completed by the Bidder in relation to the Company or the Project Company, as the case may be, indicating by cross-reference, the detailed areas which have been addressed in the Bidder's Supplier Development Plan for each of the evaluation criteria listed in the table above, together with the value Indicators thereof.



52.5. **Supplier Development Value Summary: Guidelines for Completion**

- 52.5.1. Bidders are required to complete the Supplier Development Value Summary Worksheet which will represent a binding financial commitment on the part of the Terminal Operator.
- 52.5.2. Bidders are required to complete the SD Value Indicators section based on the Company or the Project Company's, as the case may be, SD commitments for each of the identified SD categories.
- 52.5.3. Points will be allocated based on percentages and quantum provided under the SD Value Indicator section.
- 52.5.4. Where applicable, Bidders must calculate in respect of the Company or the Project Company, as the case may be, SD commitments as a percentage of the estimated total value of the contract phase over the applicable contract period and indicate their percentage commitment in the appropriately headed column.
- 52.5.5. Where applicable, Bidders must provide the number and Rand value of the Company's or the Project Company's SD commitments in the appropriately headed columns.
- 52.5.6. For convenience and ease of use, the areas which do not need to be completed have been greyed out, leaving only the white areas for completion.
- 52.5.7. To the extent possible, Bidders must ensure that there is no double-counting of percentages and numbers.
- 52.5.8. Bidders are required to develop a detailed Supplier Development Plan as well as a B-BBEE Improvement Plan as part of their deliverables. For ease of reference, each line item completed in the Supplier Development Value Summary Worksheet must correspond to a portion of the Bidder's Supplier Development Plan with a cross-reference listed in the Supplier Development Value Summary under the column heading "SD Bid Document Cross-Reference". The Bidder's Supplier Development Plan must include the SD commitments.



- 52.5.9. The Bidders will be evaluated and scored based on the Supplier Development Plan, its B-BBEE Improvement Plan and Supplier Development Value Summary Worksheet submitted.
- 52.5.10. In terms of the Terminal Operator Agreement, failure to achieve the commitments set out in the Supplier Development Plan, B-BBEE Improvement Plan and the Supplier Development Value Summary Worksheet will result in breach of the Terminal Operator Agreement and provide TFR with cause to terminate or cancel the Terminal Operator Agreement.
- 52.5.11. In addition, the Terminal Operator may be charged with a penalty as set out in the Draft Terminal Operator Agreement, if the reports submitted by the Terminal Operator in respect of Supplier Development reflect that there has been non-compliance with the Supplier Development Plan targets. Penalties incurred for non-compliance with Supplier Development targets will be due and payable on demand.

52.6. **Evaluation of the Supplier Development Evaluation Criteria**

- 52.6.1. The Bidders will be evaluated and scored based on the targets indicated in the Supplier Development Value Summary Worksheet as confirmed by the Evaluation team based on the content of the Supplier Development Plan and B-BBEE Improvement Plan.
- 52.6.2. The Evaluation of the Supplier Development Evaluation Criteria is based on the item 3.2.2.8 “SD Score” as generated by Annex CC (*Scoring Model*), which is a combined NPV of the SD targets over the Concession Period.
- 52.6.3. The Supplier Development Plan and B-BBEE Improvement Plan are to be submitted in addition to the Supplier Development Value Summary Worksheet in order for the Evaluation Team to confirm the item 3.2.2.8 “SD Score” in the Annex CC (*Scoring Model*).
- 52.6.4. The Bidders may refer to worksheets 3.3, 4.3, 4.4 and Template 3 of Annex CC (*Scoring Model*) which includes examples of the scoring and point allocation in respect of the SD commitments.



52.6.5. Supplier Development will be assessed and scored out of 20 (twenty) points. The Bidder with the highest Supplier Development commitments will obtain the maximum points allocated for the Supplier Development commitments being 20 (twenty) points. The other Bidders with lower Supplier Development commitments will be allocated points pro-rata to the highest Supplier Development commitment score on a scale of 20 (twenty).

53. **Evaluation Criteria 3 – Technical Evaluation Criteria**

53.1. The evaluation of the Technical Evaluation Criteria will be based on a review of the Business Plan in respect of the following areas:

- 53.1.1. operating procedures demonstrating compliance with the TFR Policies as a minimum;
- 53.1.2. marketing strategy;
- 53.1.3. sustainability;
- 53.1.4. labour and training; and
- 53.1.5. an assessment of key terms and conditions of the subcontracts or term sheets concluded by the Bidder with the Contractors.

53.2. **Evaluation of the Technical Criteria**

- 53.2.1. The technical evaluation criteria will be assessed and scored out of 20 (twenty) points and points will be allocated to relative scoring out of 20 (twenty) points.
- 53.2.2. The score obtained by a Bidder in respect of the Technical Qualification Criteria assessment will contribute by 70% (seventy percent) of the technical Evaluation Criteria score.
- 53.2.3. The Bidders may refer to Annex CC (*Scoring Model*) which includes examples of the scoring and point allocation in respect of the technical evaluation.

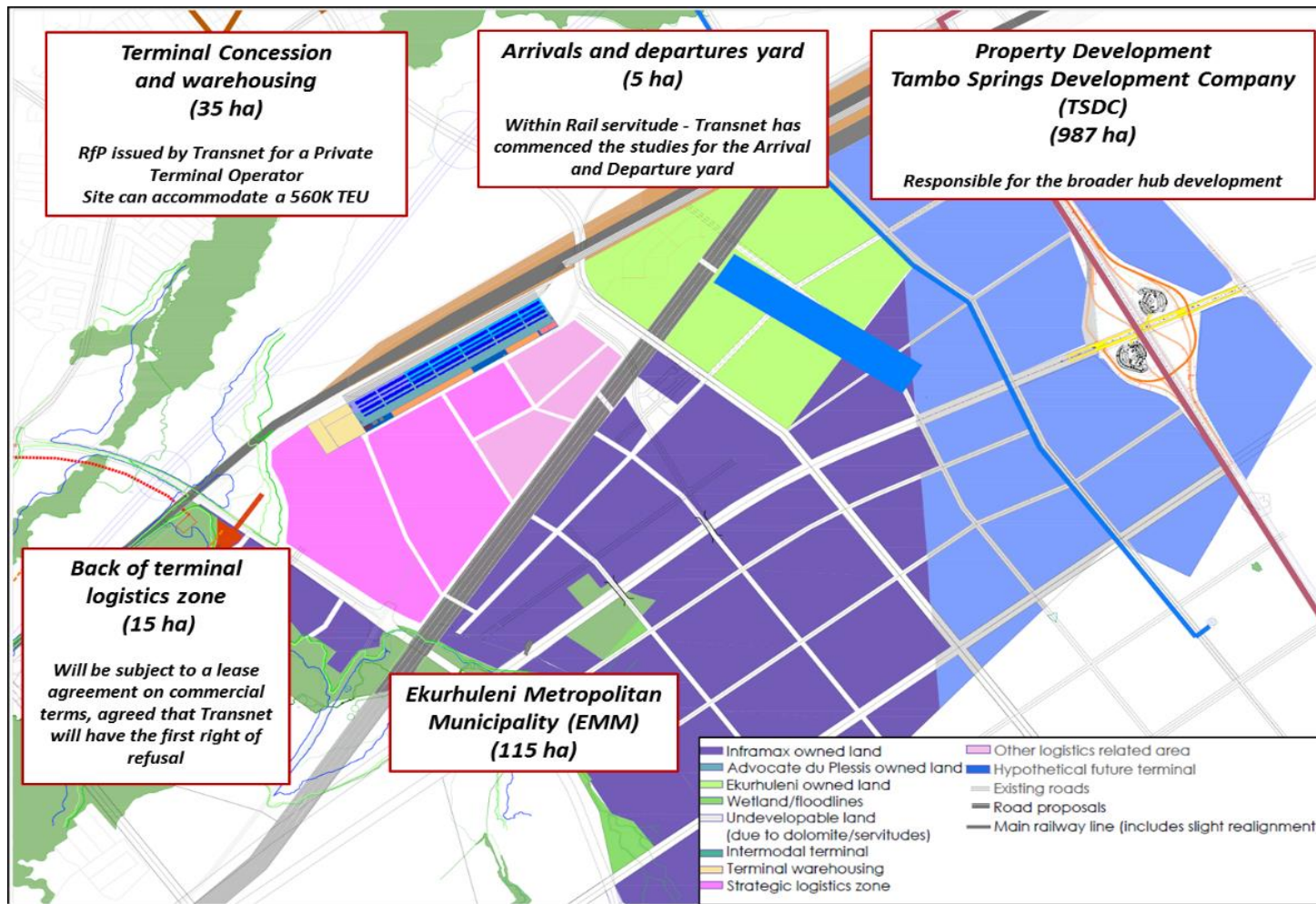


Annex A - Bid Notice

[Note to Bidders: Please refer to the corresponding folder in the RFP data room.]

Annex B - Project Site Layout







Annex C - Scope of Services

1. Definitions

- 1.1. For purposes of this Annex C (*Scope of Services*) the following terms shall bear the meanings assigned to them below and all other terms shall bear the meanings assigned to them in the RFP:
- 1.1.1. **“Anchor Services”** means the services that are described as such in this Annex C;
 - 1.1.2. **“Authorised Services”** means the services that are described as such in this Annex C;
 - 1.1.3. **“Break Bulk Cargo”** means any loose or packaged general cargo that is Containerised and that is not excluded in paragraph 6 below;
 - 1.1.4. **“Cargo”** means Break Bulk Cargo, Dry Bulk Cargo and Liquid Bulk Cargo;
 - 1.1.5. **“Containers”** means 6, 12 and 13.7 metre containers conforming to ISO standards as prescribed by the International Organisation for Standardisation ISO standards. Any reference in this Agreement to “cargoes” includes containers, excluding IMDG cargoes which may not be handled by the Terminal, save for those which have been granted prior written authorisation by TFR;
 - 1.1.6. **“Containerised”** means any Cargo that is contained in a Container;
 - 1.1.7. **“Dry Bulk Cargo”** free-flowing homogenous cargoes in granular, powder or crystal form that is Containerised and that is not excluded in paragraph 6 below;
 - 1.1.8. **“Liquid Bulk Cargo”** means any liquid bulk cargo that is Containerised and that is not excluded in paragraph 6 below;
 - 1.1.9. **“Services”** means such Authorised Services as are selected and proposed by the Bidder in its Bid Response;

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2. Nature of Services

The following comprise the Services that the Terminal Operator is required and permitted to provide in accordance with the terms of the Terminal Operator Agreement:

- 2.1. **Anchor Services** – These services, which are described more fully in paragraph 4 are compulsory and must be provided from the commencement of the Operations Period;
- 2.2. **Authorised Services** – These services, which are described more fully in paragraph 5, comprise Approved Services and, if applicable, Proposed Services and are optional services that may be provided at the Terminal. The Terminal Operator may thus select one or more of these Services. If selected these Services shall be provided at the Terminal, on a permanent or temporary basis, if and when a commercial opportunity arises.

3. General Obligations and Requirements

- 3.1. The Terminal shall be used solely for the purpose of providing Services and for purposes that are reasonably incidental to the provision of those Services, and for the exercise of the rights and the fulfilment of the obligations set out in the Terminal Operator Agreement, and for no other purpose whatsoever unless the prior written consent of TFR has been obtained which consent may be withheld in TFR's sole and absolute discretion.
- 3.2. The Terminal Operator shall not lease, sell, dispose of or otherwise encumber the whole or any portion of the Project Site or the Terminal.
- 3.3. The Terminal Operator may make, or cause to be made in the Terminal or in respect of the Terminal Infrastructure, such improvements, alterations and extensions as may be necessary or appropriate for the carrying on of the Concession and the provision of the Services; provided that no material improvements, alterations or extensions shall be undertaken in the Terminal without the Terminal Operator first having submitted the plans and specifications thereof to TFR and obtaining the written approval of TFR.

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- 3.4. Unless otherwise agreed in writing, improvements or alterations or extensions to the Terminal or the Terminal Infrastructure, shall have no effect on the payments made by the Terminal Operator to TFR.
- 3.5. Without limiting the other obligations of the Terminal Operator as specified in the RFP and the Terminal Operator Agreement or imposed by Law, the Terminal Operator shall be obliged to:
- 3.5.1. provide reliable, secure and efficient Services and a reliable, secure and efficient Terminal to Rail Users;
 - 3.5.2. obtain, maintain and renew all documents, permits or other Consents necessary to operate the Terminal and render the Services;
 - 3.5.3. ensure that if any Contractors, agents and service providers used by it require a licence in terms of the Act, such Persons are duly licensed;
 - 3.5.4. provide, Operate and Maintain all Terminal Equipment operating and other equipment necessary for the efficient Operation of the Terminal;
 - 3.5.5. procure, install, Operate and Maintain communication, control and administrative systems necessary for the efficient Operation of the Terminal;
 - 3.5.6. promote customer relations and actively market and promote the Terminal to potential customers and Rail Users;
 - 3.5.7. be responsible for the disposal of garbage and waste at the Terminal;
 - 3.5.8. keep the Terminal in a clean, orderly and sanitary condition;
 - 3.5.9. comply with all applicable provisions of any Act, Rules, the regulations and any directives issued in terms of the Act;

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- 3.5.10. comply with the requirements of the Rail Safety Regulator (the "**RSR**"), including any applicable legislation and codes relating to safe working practices;
- 3.5.11. comply with the ISPS Code and the IMDG Code in relation to security and dangerous goods, respectively; and
- 3.5.12. comply with all other applicable legislation and generally conduct its activities and operations in accordance with the Law.
- 3.5.13. The Terminal Operator shall not:
 - 3.5.13.1. use the Terminal for residential purposes or as sleeping quarters, save that the TFR may in writing authorise a portion of the Terminal to be used as sleeping quarters for operational or security purposes;
 - 3.5.13.2. permit the growth upon the Terminal of noxious weeds;
 - 3.5.13.3. do or cause anything to be done that may cause a nuisance to the TFR or to any other Rail User or the occupants of adjoining properties;
 - 3.5.13.4. do anything that materially detracts from the appearance or safe Operation of the Terminal; or
 - 3.5.13.5. load vehicles ("such as a car or truck, or tracked or wheeled equipment") outside the area of the Terminal, unless with the TFR's prior written consent.
- 3.6. The Terminal Operator shall, at its own cost, Construct or Maintain in good order and condition such roadways and surfaces as may be required within the Terminal for the provision of the Services and the performance of the activities contemplated in the Terminal Operator Agreement. The roadways shall be Constructed and Maintained at a standard complying with the permissible axle loads for the type and volume of traffic which will use the roads, and otherwise at such standard as is stipulated by TFR and communicated to the Terminal Operator in writing.

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- 3.7. The Terminal Operator shall ensure that all vehicles entering and exiting the Terminal shall be organised to minimise traffic congestion, the parking of vehicles and any queuing outside the Terminal. To the extent that the weighing of vehicles entering or exiting a Terminal in order to load or unload Cargo is required by any Law, the Terminal Operator must check the weight of vehicles entering and exiting the Terminal.
- 3.8. TFR's duly authorised agents, employees and Contractors shall have the right of access to the Terminal for purposes of performing TFR's functions, provided that TFR will ensure that its agents, employees and Contractors comply with all reasonable safety and security stipulations and environmental and Project Site rules of the Terminal Operator whilst in the Terminal.
- 3.9. All other persons, vehicles and equipment shall have access to the Terminal and may use the roadways and the surfaces in the Terminal in the manner reasonably determined by the Terminal Operator in order to conduct normal legal business related to the Operation of the Terminal, provided that in the use of such roadways such persons, vehicles and equipment shall not unnecessarily interfere with or impede the activities of the Terminal Operator and shall comply with all the safety and security stipulations and environmental and site rules of the Terminal Operator.
- 3.10. The Terminal Operator may not impose any fee for admission to the Terminal.
- 3.11. The Terminal Operator shall take all reasonable steps to prevent the spilling or dropping of Cargo and or any other matter. The Terminal Operator shall:
- 3.11.1. immediately notify the TFR if any Cargo and or any other matter is spilled or dropped as a result of its Operation of the Terminal or the conduct of its employees, agents, service providers, Contractors or persons calling at the Terminal; and
- 3.11.2. immediately take steps to recover such Cargo or any other matter.
- 3.12. If the Terminal Operator fails to recover any spilled Cargo or any other matter as envisaged above, TFR may take whatever steps necessary to recover the Cargo or any other matter and to claim the reasonable costs of taking such steps from the Terminal Operator.

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- 3.13. The Terminal Operator shall comply with all relevant provisions of labour Law.
- 3.14. The Terminal Operator shall at all times employ or engage sufficient and suitably qualified and competent personnel to enable it to efficiently provide the Services and Operate and Maintain the Terminal, all envisaged in the Terminal Operator Agreement.
- 3.15. The Terminal Operator shall implement all measures as are required by Law and/or as may be reasonably necessary to ensure the safety of its employees or Contractors, and shall provide them or ensure they are provided, free of charge, with any necessary personal protective clothing and equipment.
- 3.16. The Terminal Operator must ensure that the perimeter of the Terminal is fenced with security fencing of a standard reasonably acceptable to TFR and which is in compliance with the ISPS Code and that such fencing is maintained at that standard (and repaired as necessary) during the term of this Agreement.
- 3.17. The Terminal Operator shall comply in all material respects with the provisions of the ISPS Code and the Terminal Operator shall be responsible for the security of the Terminal and for all persons and movables therein, including cargoes, and for the implementation of and adherence to the ISPS Code. The Terminal Operator shall submit to TFR, within 1 (one) Month of the Effective Date, a Terminal security plan for security levels 1, 2 and 3, corresponding with normal, medium and high threat situations. The plan shall indicate the operational and physical security measures the Terminal Operator will take to ensure that it normally operates at security level 1. The plan shall also indicate the additional, or intensified, security measures the Terminal Operator will take when instructed to do so by TFR, to move to and operate at security level 2, and to operate at security level 3. The Terminal Operator will nominate a Terminal Security Officer, organise regular security drills and at all times provide the necessary security equipment on the Terminal.
- 3.18. As part of the Terminal security plan the Terminal Operator shall monitor and control all cargo, vehicles and people entering and leaving the Terminal and ensure that security communications are always readily available.

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- 3.19. The Terminal Operator accepts full responsibility for the training of staff and shall ensure that all its employees and Contractors are properly trained for the work they are undertaking, and are familiar with safety and security requirements that apply to the Terminal.
- 3.20. TFR may require the Terminal Operator to remove any employee or sub-contractor of the Terminal Operator from the Terminal or to prevent such employee from entering the Terminal, if such an employee or sub-contractor engages in any conduct which might threaten public health, or the safety or security of terminals.
- 3.21. The following Minimum Standards shall apply to the provision of the Services:
- 3.21.1. The Terminal Operator shall provide the Services which it has proposed in its Bid Response including any additional services which it has proposed and which TFR has accepted as envisaged above, at the Terminal, 365 days a year on a 24/7 basis.
- 3.21.2. The Terminal Operator shall provide the Services which it has proposed in its Bid Response including any additional services which it has proposed and which TFR has accepted as envisaged above, at the Terminal in accordance with the terms of the Terminal Operator Agreement.
- 3.21.3. The Terminal Operator shall be obliged to undertake the Construction Works (including the design, procurement, construction, installation, commissioning and testing of the Terminal Infrastructure and the Terminal Equipment) as required to enable it to provide the Anchor Services and any Authorised Services that are proposed by the Bidder in its Bid Response, and any additional services that are proposed by the Bidder in its Bid Response and which are accepted by TFR as envisaged above.
- 3.21.4. The following requirements and limitation shall apply to any activities undertaken at the Terminal including to the provision of the Services at the Terminal:

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- 3.21.4.1. The activities undertaken at the Terminal including the provision of any Services as envisaged above, shall not hinder or otherwise interfere with any other activities or Services undertaken or conducted at the Terminal by TFR, any other Rail User or any other third party.
- 3.21.4.2. The Terminal Operator shall bear full responsibility to apply for and obtain the required environmental authorisation and all other authorisations, licences, permits, approvals and Consents which may be required to enable it to undertake the Construction Works (including the design, finance, procurement, construction, installation, commissioning and testing of the Terminal Infrastructure and the Terminal Equipment), the Operation and Maintenance of the Terminal, and the provision of the Services (as envisaged above).

4. **Anchor Services**

- 4.1. It shall be mandatory for the Terminal Operator to provide all Anchor Services for the duration of the Operations Period. The suite of Anchor Services has been defined below in order to create an efficient Terminal from the Operation Commencement Date and in order to enable the Terminal Operator to provide a specific service offering that meets the needs of Cargo owners at one location. The following services are regarded as 'Anchor Services':

- 4.1.1. material loading and offloading facilities for the loading and off-loading of Cargo provided that it is Containerised;
- 4.1.2. storage facilities

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5. **Authorised Services**

5.1. The Authorised Services comprise both Approved Services and Proposed Services and are services that are not compulsory but that are regarded as potentially attractive for the Terminal Operator to optimise its commercial offer and its revenue base during the Concession Period. The offering of these services are at the discretion of the Terminal Operator on the condition that such services do not negatively impact the provision of the Anchor Services that the Terminal Operator shall give priority to the provision of the Anchor Services.

5.2. **Approved Services:**

5.2.1. The following services shall constitute 'Approved Services':

5.2.1.1. customs and clearing services;

5.2.1.2. handling of break bulk, dry bulk and liquid bulk cargoes

5.2.1.3. container repair services

5.2.1.4. any other value added logistics services

5.3. **Proposed Services**

5.3.1. In addition to the Approved Services the Bidder may propose the provision of services that are in addition to the Approved Services, provided that such additional services are not expressly prohibited in paragraph 6. Such proposed additional services shall constitute "Proposed Services" and in this regard the Bidder is encouraged to propose additional services / activities that it wishes to provide at the Terminal. It shall be at the sole discretion of the TFR to assess whether any or all of the Proposed Services, may be conducted or provided at the Terminal. Any Proposed Services that are proposed by the Bidder as part of its Bid Response shall not be evaluated as part of the evaluation of the Bidder's Bid Response.

Bidder's Signature

Date & Company Stamp



6. Anchor Services - Material Loading and Offloading Facilities

6.1. Description of Services

The Terminal Operator is required to Operate material loading and off-loading facilities in order to provide efficient train-to-terminal handling services in respect of Containerised Cargo. The following cargo restrictions shall apply to the Operation of material loading and offloading facilities at and as part of the Terminal and any associated provision of loading and offloading services:

6.1.1. the Terminal shall not handle livestock;

6.2. General Obligations of the Terminal Operator

6.2.1. Although the obligations of the Terminal Operator are set out in the Terminal Operator Agreement the Bidder should note that the Terminal Operator shall be required to raise the capital necessary to Construct, Operate and Maintain at least the following Terminal Infrastructure and the Terminal Equipment that is necessary to provide the following material loading and offloading services:

6.2.1.1. cargo handling equipment including equipment required to provide material loading and offloading services;

6.2.1.2. buildings, workshops and other facilities required to provide material loading and offloading services.

6.2.2. In addition, and if deemed necessary by the Terminal Operator, it shall procure and undertake all necessary capital investment that may be required to fund any further improvements and/or upgrades to the Terminal Infrastructure which are necessary for high and heavy cargo landing.

6.2.3. The Terminal Operator is required to obtain and maintain all Consents required for the Construction and Operation of the Terminal and the provision of the Services as proposed in its Bid Response including any Consents that are required to provide the

Bidder's Signature

Date & Company Stamp



material loading and offloading facilities as well as all authorisations required in order to provide material loading and offloading services in respect of the Cargo that is handled, loaded and offloaded at the Terminal.

Bidder's Signature

Date & Company Stamp



6.3. General Obligations of TFR

6.3.1. TFR's obligations during the Contract Period are set out in the Terminal Operator Agreement and shall include:

6.3.1.1. making available the Terminal which is located within the Project Site and maintaining the rail infrastructure of such Terminal;

6.3.1.2. making available the Project Site and granting the Terminal Operator the right during the Concession Period to occupy and use the Project Site as depicted in Annex B (*Project Site Layout*);

7. Anchor Services - Storage Facilities

7.1. Description of Services

7.1.1. The Terminal Operator is required to provide well-equipped and efficient storage services. The storage services at the Terminal should be focused on temporary storage, in order to support the material loading and offloading services to be provided. Notwithstanding this, there are no restrictions on the maximum duration of storage. The following cargo restrictions apply to the provision of material storage facilities and services:

7.1.1.1. the Terminal shall not store or handle livestock;

Bidder's Signature

Date & Company Stamp



7.2. General Obligations of the Terminal Operator

- 7.2.1. Although the obligations of the Terminal Operator are set out in the Terminal Operator Agreement the Bidder should note that the Terminal Operator shall be required to raise the capital necessary to Construct, Operate and Maintain at least the following the Terminal Infrastructure and Terminal Equipment required to provide storage services:
- 7.2.1.1. cargo handling equipment including cranes, trucks, trailers and other equipment required for the storage services;
 - 7.2.1.2. open & covered storage facilities and other facilities required for providing storage services; and
 - 7.2.1.3. reefer points for reefer containers.
- 7.2.2. In addition and if deemed necessary by the Terminal Operator, it shall procure and undertake all necessary capital investment to fund any further improvements and/or upgrades of the Terminal Infrastructure which may be necessary for high and heavy cargo storage.
- 7.2.3. The Terminal Operator is required to obtain and maintain all Consents required for the Construction and Operation of the Terminal and the provision of the Services as proposed in its Bid Response including any Consents that are required to provide the storage facilities envisaged above as well as all Consents required in order to provide storage services in respect of the type of Cargo to be stored at the Terminal.
- 7.2.4. The Terminal Operator shall ensure that the storage activities which are conducted will not negatively impact other Services that are provided at the Terminal.

Bidder's Signature

Date & Company Stamp



7.2.5. The Terminal Operator shall use its best endeavours to minimise truck waiting times at the gate of the Terminal.

7.3. **General Obligations of TFR**

7.3.1. TFR's obligations during the Contract Period are set out in the Terminal Operator Agreement and shall include:

7.3.1.1. making available the Terminal which is located within the Project Site and maintaining the rail infrastructure of such Terminal; and

7.3.1.2. making available the Project Site and granting the Terminal Operator the right during the Concession Period to occupy and use the Project Site as depicted in Annex B (*Project Site Layout*);

Bidder's Signature

Date & Company Stamp



8. **Authorised Services - Customs Clearing Agent**

8.1. **Description of Services**

8.1.1. The customs clearing services which are envisaged to be provided by the Terminal Operator at the Project Site shall include all services relating to the “clearing” of goods with the South African Revenue Services.

8.2. **General Obligations of the Terminal Operator**

8.2.1. Although the obligations of the Terminal Operator are set out in the Terminal Operator Agreement the Bidder should note that should the Terminal Operator elect to provide customs clearing services at the Terminal, it shall be required to raise the capital necessary to Construct, Operate and Maintain the Terminal Infrastructure and Terminal Equipment required to provide such services, including offices.

8.2.2. The Terminal Operator is required to obtain and maintain all Consents required for the Construction and Operation of the Terminal and for the provision of customs clearance services, if proposed in its Bid Response, as well as all Consents which are required for the Construction and Operation of the Terminal Infrastructure that is required to provide the customs clearing services and to act as a customs clearing agent.

8.2.3. Whilst the customs clearing services is optional and the Terminal Operator may elect to provide such services at the Terminal, for the avoidance of doubt, this does not detract from any responsibility on the Terminal Operator to comply with customs legislation relating to the Terminal qualifying as a customs controlled area.

Bidder's Signature

Date & Company Stamp



8.3. General Obligations of TFR

8.3.1. TFR's obligations during the Contract Period are set out in the Terminal Operator Agreement and shall include:

8.3.1.1. making available the Terminal which is located within the Project Site and maintaining the rail infrastructure of such Terminal;

8.3.1.2. making available the Project Site and granting the Terminal Operator the right during the Concession Period to occupy and use the Project Site as depicted in Annex B (*Project Site Layout*) and Annex EE (*Property development and Supporting Infrastructure*);

9. Authorised Services – Handling of break bulk, dry bulk and liquid bulk cargoes

9.1. Description of Services

9.1.1. The provision of handling services for other formats of cargo i.e. break bulk, dry bulk and liquid bulk, at the terminal that is located within the Project Site.

9.2. General Obligations of the Terminal Operator

9.2.1. Although the obligations of the Terminal Operator are set out in the Terminal Operator Agreement the Bidder should note that if the

9.2.2. The Terminal Operator is required to obtain and maintain all Consents required for the Construction and Operation of the Terminal and for the handling of break bulk, dry bulk and liquid bulk cargoes, if proposed in its Bid Response, as well as all Consents which are required for the Construction and Operation of the Terminal Infrastructure that is required for handling of break bulk, dry bulk and liquid bulk cargoes.

9.3. General Obligations of TFR

Bidder's Signature

Date & Company Stamp



9.3.1. TFR's obligations during the Contract Period are set out in the Terminal Operator Agreement and shall include:

9.3.1.1. making available the Terminal which is located within the Project Site and maintaining the rail infrastructure of such Terminal;

9.3.1.2. making available the Project Site and granting the Terminal Operator the right during the Concession Period to occupy and use the Project Site as depicted in Annex B (*Project Site Layout*) and Annex EE (*Property development and Supporting Infrastructure*);

10. **Authorised Services – Container repair services**

10.1. **Description of Services**

10.2. The Terminal Operator may provide or procure the provision of Container repair services include the include Inspection, chemical, steam, and water washing, and container refurbishment, CSC inspections, and plate renewals.

10.3. **General Obligations of the Terminal Operator**

10.3.1. Although the obligations of the Terminal Operator are set out in the Terminal Operator Agreement the Bidder is advised to note that if the Terminal Operator elects to provide container repair services at the Terminal it shall be required to raise the capital necessary to Construct, Operate and Maintain the Terminal Infrastructure and Terminal Equipment required to provide such services

10.3.2. The Terminal Operator is required to obtain and maintain all Consents required for the Construction and Operation of the Terminal and the provision of the Services as proposed in its Bid Response including any Consents that are required to provide the boat building/ship building services.

Bidder's Signature

Date & Company Stamp



10.4. **General Obligations of TFR**

10.4.1. TFR's obligations during the Contract Period are set out in the Terminal Operator Agreement and shall include:

10.4.1.1. making available the Terminal which is located within the Project Site and maintaining the rail infrastructure of such Terminal;

10.4.1.2. making available the Project Site and granting the Terminal Operator the right during the Concession Period to occupy and use the Project Site as depicted in Annex B (*Project Site Layout*) and Annex EE (*Property development and Supporting Infrastructure*);

11. **Authorised Services – Other value added logistics services**

11.1. **Description of Services**

11.2. The Terminal Operator may provide or procure the provision of other value added logistics services which may include inventory planning and management, repacking, light assembly, technical services, distribution and reverse logistics.

11.3. **General Obligations of the Terminal Operator**

11.3.1. Although the obligations of the Terminal Operator are set out in the Terminal Operator Agreement the Bidder is advised to note that if the Terminal Operator elects to provide other value added logistics services at the Terminal it shall be required to raise the capital necessary to Construct, Operate and Maintain the Terminal Infrastructure and Terminal Equipment required to provide such services

11.3.2. The Terminal Operator is required to obtain and maintain all Consents required for the Construction and Operation of the Terminal and the provision of the Services as proposed in its Bid

Bidder's Signature

Date & Company Stamp



Response including any Consents that are required to provide the boat building/ship building services.

11.4. General Obligations of TFR

11.4.1. TFR's obligations during the Contract Period are set out in the Terminal Operator Agreement and shall include:

11.4.1.1. making available the Terminal which is located within the Project Site and maintaining the rail infrastructure of such Terminal;

Bidder's Signature

Date & Company Stamp



Annex E – TFR Policies, Manuals and Operating Conditions

[Note to Bidders: Please refer to the corresponding folder on the RFP disc]

Bidder's Signature

Date & Company Stamp



Annex F – Bid Response Form

We _____

[name of entity, company, Consortium, close corporation or partnership]

of [full address]

carrying on business trading/operating as

represented

by _____

in my capacity as

being duly authorised thereto by a Resolution of the Board of Directors or Members or Certificate of Partners, as per Annex I (*Resolution of Board of Directors*) of this RFP (a certified copy of which is annexed hereto) hereby offer to undertake the Project at the prices determined in terms of Part III (*Evaluation Criteria*) of this RFP).

1. We agree to be bound by those conditions in TFR's:
 - 1.1. terms of this RFP; and
 - 1.2. any other standard or special conditions mentioned and or embodied in this RFP or the Terminal Operator Agreement.
2. We accept that unless TFR should otherwise decide and so inform us in the letter of appointment, our Bid Response (and, if any, its covering letter and any subsequent exchange of correspondence), together with TFR's acceptance thereof shall constitute a binding contract between TFR and us.

 Bidder's Signature

 Date & Company Stamp



3. Should we be appointed as the Preferred Bidder, this Bid Response (and, if any, its covering letter and any subsequent exchange of correspondence) shall remain binding on us and we acknowledge that we will be conditionally appointed subject to the signing of the Terminal Operator Agreement.
4. We further agree that if, after we have been notified of the acceptance of Bid Response, we fail to enter into the Terminal Operator Agreement, or fail to commence the provision of services in accordance with the Terminal Operator Agreement, TFR may, without prejudice to any other legal remedy which it may have, recover from us any expense to which it may have incurred calling for Bid Responses afresh and or having to accept any less favourable Bid Response.
5. We accept that the Terminal Operator Agreement resulting from this offer will be for a Concession Period of 20 (twenty) Contract Years, which may be extended in accordance with the terms of the Terminal Operator Agreement. Furthermore, we agree to the penalty clauses contained in the Terminal Operator Agreement, which will allow TFR to invoke a penalty against us for non-compliance with material terms of this RFP including the delayed delivery of the Services due to non-performance by ourselves, failure to meet Supplier Development and/or B-BBEE Improvement Plan commitments. In addition, we agree that non-compliance with any of the material terms of this RFP, including those mentioned above, will constitute a material breach of the Terminal Operator Agreement and provide TFR with cause for cancellation.
6. **ADDRESS FOR NOTICES**
 - 6.1. The law of the Republic of South Africa shall govern any contract created by the acceptance of this RFP. The *domicilium citandi et executandi* shall be a place in the Republic of South Africa to be specified by the Bidder hereunder, at which all legal documents may be served on the Bidder who shall agree to submit to the jurisdiction of the courts of the Republic of South Africa. Foreign Bidders shall, therefore, state hereunder the name of their authorised representative in the Republic of South Africa who has the power of attorney to sign the Terminal Operator Agreement which may have to be entered into in the event of their Bid Response being accepted and to act on their behalf in all matters relating to such Terminal Operator Agreement.

Bidder's Signature

Date & Company Stamp



6.2. Bidder to indicate the details of its *domicilium citandi et executandi* hereunder:

Name of Entity:

Facsimile:

Address:

7. NOTIFICATION OF AWARD OF THE CONCESSION

As soon as possible after approval of the appointment of the Preferred Bidder, the Preferred Bidder will be informed of TFR's acceptance of its Bid Response. Unsuccessful Bidders will be advised in writing of the name of the Preferred Bidder and the reason as to why their Bid Responses have been unsuccessful, for example, in the category of administrative responsiveness, technical criteria, B-BBEE status or for any other reason.

8. VALIDITY PERIOD

TFR requires that the Bid Responses remain valid for a period of 360 (three hundred and sixty) days from the Bid Submission Date against this RFP.

Bidder's Signature

Date & Company Stamp



9. **NAME(S) AND ADDRESS / ADDRESSES OF DIRECTOR(S) OR MEMBER(S)**

9.1. The Bidder must disclose hereunder the full name(s) and address(s) of the director(s) or members of the Consortium, Company or close corporation [C.C.] on whose behalf this RFP is submitted.

9.2. Registration number of Company or CC

9.3. Registered name of Company or CC

9.4. Full name(s) of director/member(s)	Address/Addresses	ID
Number(s)		

10. **CONFIDENTIALITY**

All information related to this RFP is to be treated with strict confidence. In this regard Bidders are required to complete and return a signed copy of Annex K (*Certificate of Acquaintance with RFP Documents*) with its Bid Response and Annex H (*Non-Disclosure Agreement*) at the briefing session. All information related to the Terminal Operator Agreement, both during and after completion thereof, will be treated with strict confidence. Should the need however arise to divulge any information gleaned from provision of the services, which is either directly or indirectly related to TFR's business, written approval to divulge such information must be obtained from TFR.

Bidder's Signature

Date & Company Stamp



11. DISCLOSURE OF THE CONCESSION FEE TENDERED

Bidders must indicate below whether TFR may disclose their tendered Concession Fee and conditions to other Bidders:

YES		NO	
------------	--	-----------	--

12. RETURNABLE DOCUMENTS

All sections, must be signed, stamped and dated by the Bidder.

12.1. Mandatory Returnable Documents

12.1.1. Failure to provide all Mandatory Returnable Documents at the closing date and time of this tender will result in a Bidder's disqualification. Bidders are therefore urged to ensure that all these documents are returned with their Bid Responses.

12.1.2. Please confirm submission of the Mandatory Returnable Documents detailed below by so indicating [Yes or No] in the table below:

MANDATORY RETURNABLE DOCUMENTS	RFP REFERENCE	SUBMITTED YES/NO
a valid B-BBEE verification certificate which is not older than 6 (six) months confirming that the Bidder has at least a Level 4 (four) Contributor Status Level or an equivalent rating in terms of the Sector Code, if any, and at least 25% (twenty five percent) Black Ownership;	Clause 47.3.1 of Part II (<i>Qualification Criteria</i>) of this RFP	

Bidder's Signature

Date & Company Stamp



MANDATORY RETURNABLE DOCUMENTS	RFP REFERENCE	SUBMITTED YES/NO
a B-BBEE Improvement Plan;	Clause 47.3.1 of Part II (<i>Qualification Criteria</i>) of this RFP	
the Supplier Development Value Summary Worksheet which has been completed in Excel, has been printed and duly signed by the Bidder;	Clause 52.3 of Part III (<i>Evaluation Criteria</i>) this RFP.	
in the case of a Consortium, the Bidder's Consortium agreement or term sheet or the Project Company shareholders agreement;	Clause 47.3.2 of Part II (<i>Qualification Criteria</i>) of this RFP	
Annex W (<i>Confirmation of Black Ownership Commitments</i>);	Clause 47.3.2 of Part II (<i>Qualification Criteria</i>) of this RFP	
the Supplier Development Plan;	Clause 47.3.2 of Part II (<i>Qualification Criteria</i>) of this RFP	
the Experience Worksheet, which has been completed in Excel, printed and duly signed by the Bidder;	Clause 47.4.1 of Part II (<i>Qualification Criteria</i>) of this RFP	
proof of the Certifications or such other equivalent certifications;	Clause 47.4.2 of Part II (<i>Qualification Criteria</i>) of this RFP	

 Bidder's Signature

 Date & Company Stamp



MANDATORY RETURNABLE DOCUMENTS	RFP REFERENCE	SUBMITTED YES/NO
the Concession Fee Offer Worksheet which has been completed in Excel, printed and duly signed by the Bidder;	Clause 47.5.1 of Part II (<i>Qualification Criteria</i>) of this RFP.	
Financial Model Audit Letter (contained in the Business Plan);	Clause 47.5.1 of Part II (<i>Qualification Criteria</i>) of this RFP	
Financial Model (contained in the Business Plan);	Clause 47.5.1 of Part II (<i>Qualification Criteria</i>) of this RFP	
in the event of External Debt finance, the Annex AA (<i>Letter of Support from Lender</i>) and signed terms sheets;	Clause 47.5.2 of Part II (<i>Qualification Criteria</i>) of this RFP	
in the event of Corporate Financing, Annex LL (<i>Corporate Finance Support Letter</i>)	Clause 47.5.2 of Part II (<i>Qualification Criteria</i>) of this RFP	
in the event of Equity Finance, Annex Y (<i>Shareholders/Member's Equity Support Letters</i>)	Clause 47.5.2 of Part II (<i>Qualification Criteria</i>) of this RFP	
the Business Plan including all other information, documentation and annexures to be included in the Business Plan as per the Business Plan Guidelines	Clause 51.1 of Part III (<i>Evaluation Criteria</i>) of this RFP	

 Bidder's Signature

 Date & Company Stamp



MANDATORY RETURNABLE DOCUMENTS	RFP REFERENCE	SUBMITTED YES/NO
the following Bid Submission Schedules have been duly completed and signed by the Bidder;	Clause 47.1.2 read with clause 46.1.1 of Part II (<i>Qualification Criteria</i>) of this RFP.	
<ul style="list-style-type: none"> Annex F (<i>Bid Response Form</i>) 		
<ul style="list-style-type: none"> Annex G (<i>TFR Declaration of Bidder</i>) 		
<ul style="list-style-type: none"> Annex I (<i>Resolution of Board of Directors</i>) 		
<ul style="list-style-type: none"> Annex J (<i>Resolution of each Member</i>) 		
<ul style="list-style-type: none"> Annex K (<i>Certificate of Acquaintance with RFP Documents</i>) 		
<ul style="list-style-type: none"> Annex M (<i>Declaration of Interest</i>) 		
<ul style="list-style-type: none"> Annex P (<i>Certificate of Acquaintance with the Requirements of this RFP</i>) 		
<ul style="list-style-type: none"> Annex Q (<i>Certificate of Acquaintance with conditions of contract with TFR</i>) 		

 Bidder's Signature

 Date & Company Stamp



MANDATORY RETURNABLE DOCUMENTS	RFP REFERENCE	SUBMITTED YES/NO
<ul style="list-style-type: none"> Annex R (<i>Breach of Law Form</i>) 		
<ul style="list-style-type: none"> Annex S (<i>Certificate of Attendance of RFP Briefing</i>) 		
<ul style="list-style-type: none"> Annex T (<i>Supplier Integrity Pact</i>) 		

13. Continued Validity of Returnable Documents

The Preferred Bidder will be required to ensure the validity of all returnable documents, including but not limited to its Tax Clearance Certificate and valid B-BBEE verification certificate, for the duration of any contract emanating from this RFP as well as for the duration of the Procurement Programme. Should the Preferred Bidder enter into the Terminal Operator Agreement and fail to present TFR with such renewals as and when they become due, TFR shall be entitled, in addition to any other rights and remedies that it may have in terms of the Terminal Operator Agreement, to terminate such Terminal Operator Agreement forthwith without any liability and without prejudice to any claims which TFR may have for damages against the Bidder.

Bidder's Signature

Date & Company Stamp



By signing these RFP documents, the Bidder is deemed to acknowledge that it has made itself thoroughly familiar with all the conditions governing this RFP, including those contained in any printed form stated to form part hereof, and TFR will recognise no claim for relief based on an allegation that the Bidder overlooked any such condition or failed properly to take it into account for the purpose of calculating tendered Concession Fee or otherwise.

SIGNED at _____ on this ____ day of _____
20____

SIGNATURE OF WITNESSES

ADDRESS OF WITNESSES

1. _____

Name

2. _____

Name

SIGNATURE OF RESPONDENT'S AUTHORISED REPRESENTATIVE:

NAME: _____

DESIGNATION: _____

Bidder's Signature

Date & Company Stamp



Annex G - TFR Declaration of Bidder

NAME OF ENTITY: _____

[insert name of Bidder] ("the Bidder")

We _____ do hereby
certify that:

In this declaration, words and expressions which are defined in the Request for Proposals in respect of a 20 (twenty) year concession for the design, financing, Construction, Operation, Maintenance and eventual handover of a Container handling Terminal at Tambo Springs, TENDER NUMBER **CRAC-KGG-21543**.

1. Terms defined in the RFP shall bear the same meaning when used in this letter, unless the context requires otherwise.
2. The Bidder further certifies that:
 - 2.1. TFR has supplied and we have received appropriate responses to any or all questions, as applicable, which were submitted by ourselves for this RFP clarification purposes;
 - 2.2. we have received all information we deemed necessary for the completion of this RFP;
 - 2.3. at no stage have we received additional information relating to the subject matter of this RFP from TFR sources, other than information formally received from the designated TFR contact(s) as nominated in this RFP documents;
 - 2.4. we are satisfied, insofar as our entity is concerned, that the processes and procedures adopted by TFR in issuing this RFP and the requirements requested from Bidders in responding to this RFP have been conducted in a fair and transparent manner; and
 - 2.5. furthermore, we declare that a relationship formed on the basis of any one or more of family (including spouses and in-laws), friendship, business acquaintance,

Bidder's Signature

Date & Company Stamp



professional engagement, or employment **exists or does not exist** ***[delete as applicable]*** between an owner or member or director or partner or shareholder of our entity and an employee or board member of TFR including any person who may be involved in the evaluation and or adjudication of this Bid.

3. In addition, we declare that an owner or member or director or partner or shareholder of our entity **is or is not** ***[delete as applicable]*** an employee or board member of TFR.
4. If such a relationship as indicated in paragraph 2.5 and or 3 exists, the Bidder is to complete the following section:

FULL NAME OF OWNER/MEMBER/DIRECTOR/PARTNER/SHAREHOLDER:

ADDRESS:

Indicate nature of relationship with TFR:

DATE:

SIGNATURE:

[Failure to furnish complete and accurate information in this regard will lead to the disqualification of a response and may preclude a Bidder from doing future business with TFR]

5. We declare, to the extent that we are aware or become aware of any relationship between ourselves and TFR (other than any existing and appropriate business relationship with TFR) which could unfairly advantage our entity in the forthcoming adjudication process, we shall notify TFR immediately in writing of such circumstances.

Bidder's Signature

Date & Company Stamp



6. We accept that any dispute pertaining to this Bid Response will be resolved through the Ombudsman process and will be subject to the Terms of Reference of the Ombudsman. The Ombudsman process must first be exhausted before judicial review of a decision is sought.

7. We further accept that TFR reserves the right to reverse an award of business or decision based on the recommendations of the Ombudsman without having to follow a formal court process to have such award or decision set aside.

SIGNED at _____ on this ____ day of _____ 20__

For and on behalf of

AS WITNESS:

duly authorised hereto

Name: _____

Name: _____

Position: _____

Position: _____

Signature: _____

Signature: _____

Date: _____

Place: _____

Bidder's Signature

Date & Company Stamp



Annex H - Non-Disclosure Agreement

NON-DISCLOSURE AGREEMENT

BETWEEN



(Reg No.)

AND

TRANSNET SOC Ltd,
acting through its operating division

TRANSNET FREIGHT RAIL

(Reg No. 1990/000900/30)

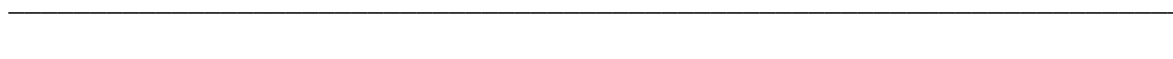
This agreement entered into between

_____ located at and

Transnet SOC Ltd, acting through its operating division, Transnet Freight Rail ("TFR"),

(hereinafter referred to respectively as 'a Party' or 'the Parties'),

concerns the safeguarding of proprietary and company confidential information to be provided by each Party to the other in connection with discussions regarding



WITNESSED THAT: It is agreed between the Parties as follows:

1. For purposes of this Agreement, company confidential and/or proprietary information, hereinafter called "proprietary Information", shall be construed to mean any information disclosed by a Party to the other Party, including without limitation

Bidder's Signature

Date & Company Stamp



all computer software, which is identified as such by an appropriate stamp or legend or any other notice in writing, or when disclosed orally, has been identified as proprietary at the time of disclosure and has been promptly (30 (thirty) days at the latest) confirmed and designated in writing as Proprietary Information of the disclosing party, hereinafter called the 'Disclosing Party', in either hard copy or electronic media and which each Party considers to be material to its business operations, including, without limitation, wage and salary information, technical information, commercial information, financial information and personnel records.

2. The receiving party, hereinafter called the 'Receiving Party' of any Proprietary Information covenants that, for a period of 7 (seven years) from the signature date, being the date on which the last Party to this Agreement signs this Agreement, provided that both Parties sign this Agreement (the "**Signature Date**"), the Proprietary Information received from the Disclosing Party:
 - 2.1. shall not be used, duplicated, in whole or in part, for any purpose other than the purpose here above stated, without the prior written consent of the Disclosing Party,
 - 2.2. shall be protected and kept in confidence said Proprietary Information by using the same degree of care and safeguard as it uses to protect its own Proprietary Information of like importance,
 - 2.3. shall only be disclosed to persons within the Receiving Party's organisation who have a need to know and solely for the purpose mentioned in the preamble.

Bidder's Signature

Date & Company Stamp



3. Nothing contained in the Agreement shall be construed as granting or conferring, expressly or impliedly, any rights in or title to the proprietary information disclosed hereunder. It is agreed that no license under any patents of either Party is granted by this Agreement or by any disclosure or use of such Proprietary Information which:
 - 3.1. Was at the time of receipt otherwise known to the Receiving Party
 - 3.2. Has been published or is otherwise within the public knowledge or is generally known to the public at the time of its disclosure to the Receiving Party
 - 3.3. Subsequently is developed independently in good faith by employees of the Receiving Party who did not have access to the Proprietary Information
 - 3.4. Becomes legally known or available to the Receiving Party from a source other than the Disclosing Party, and without breach of the Agreement by the recipient
 - 3.5. Becomes part of the public domain without breach of the Agreement by the recipient
 - 3.6. Is so disclosed or used with the written approval of the Disclosing Party
4. Unless extended in writing by mutual agreement and unless earlier terminated as hereafter, this Agreement shall terminate upon the expiration of 7 (seven) years from the Signature Date . This Agreement including all rights and obligations of the Parties hereto, except the obligations specified in paragraph 2 hereof, may be earlier terminated by either Party by operation of law and without demand at any time upon 30 (thirty) days written notice. The end of termination of the Agreement shall not relieve either Party from complying with the obligations of paragraph 2 with respect to the use and protection of the Proprietary Information received prior to the date of termination or the end of this Agreement. Such obligations shall continue for the period applicable as set forth in said paragraph.

Bidder's Signature

Date & Company Stamp



5. Each Party shall bear its own costs incurred under or in connection with the Agreement. Nothing in the Agreement shall be construed as an obligation by either Party to enter into a contract, subcontract or any other business relationship with the other Party or to disclose any Proprietary Information to the other Party.
6. It is understood that this Agreement constitutes a Non-Disclosure Agreement only. Nothing in this Agreement shall grant either Party the right to make any commitments of any kind for, or on behalf of, the other Party without the prior written consent of the other Party.
7. This Agreement and the rights and obligations hereunder may not be transferred or assigned by a Party without the proper written approval of the other Party hereto.
8. This Agreement shall be governed by and interpreted in accordance with the laws of the Republic of South Africa.
9. Any dispute arising from or in connection with this Agreement, which cannot be settled amicably by the Parties, shall be finally resolved in accordance of the Arbitration Foundation of Southern Africa (AFSA) by an arbitrator or arbitrators appointed by the Foundation. The arbitration will be held in Sandton, Johannesburg, in accordance with the formalities of AFSA rules and procedure settled by the arbitrator and may be held in informal and summary manner, on the basis that it will not be necessary to observe or carry out the usual formalities or procedures, pleadings or the strict rules if the evidence.
10. Any Proprietary Information (and copies thereof) disclosed by a Party to the other Party shall remain the property of the Disclosing Party and shall be returned by the Receiving Party immediately upon request.
11. Any Proprietary Information disclosed by the Parties under this Agreement, shall be identified by the Disclosing Party as Proprietary Information at the time of disclosure, and the disclosure, protection, use and handling of such information shall be in accordance with the security procedures prescribed by the South African government.
12. In the event of one Party visiting any of the facilities of the other Party, the visiting party undertakes that any further Proprietary Information relating to the Party being visited which may come to the visiting Party's knowledge as a result of any such

Bidder's Signature

Date & Company Stamp



visit, including without limitation, any information relating to plant and equipment which may be seen at such facilities, the methods of operation thereof and the various applications thereof shall be kept strictly confidential and be subject to the same protection as is provided for in clause 2 above.

13. The execution, existence and performance of the Agreement shall be kept confidential by the Parties and shall not be disclosed by a Party without the prior consents of the other Party.
14. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes and cancels all prior representations, negotiations, commitments, undertakings, communications whether oral or written, acceptances, understanding and agreements between the Parties with respect to or in connection with any of the matters or things to which such Agreement applies or refers.
15. The Parties hereby represent that the disclosure of Proprietary Information by and between themselves is not contrary to the laws and regulations of the Republic of South Africa.

Bidder's Signature

Date & Company Stamp



16. The Parties agree that this Agreement shall be drafted in the English language.

FOR:

Signature: _____
who warrants that he / she is duly authorised thereto

Name: _____

Date: _____

Place: _____

Witness: _____

Witness: _____

FOR:

Signature: _____
who warrants that he / she is duly authorised thereto

Name: _____

Date: _____

Place: _____

Witness: _____

Witness: _____

Bidder's Signature

Date & Company Stamp



Annex I - Resolution of Board of Directors

(TO BE COMPLETED BY LEAD MEMBER OF A BIDDER CONSORTIUM, OR BY THE PROJECT COMPANY IF ESTABLISHED AT BID SUBMISSION DATE)

[Name of Entity] (Registration Number: [insert])

(the "Company")

RESOLUTION OF THE BOARD OF DIRECTORS OF THE COMPANY PASSED AT A MEETING HELD ON [•],

RESOLVED THAT:

1. the Company participates as the Bidder [***OR, in the case of a Bidder Consortium***], in the [insert name of Bidder] Consortium ("Bidder") in responding to this RFP issued by TFR on or about [insert date] under TENDER NUMBER TFR **CRAC-KGG-21543** in respect of a 20 (twenty) year concession for the design, financing, Construction, Operation, Maintenance and eventual handover of a Container handling Terminal at Tambo Springs.
2. [***Note: This paragraph is for Bidders that are consortia***]the Company, by agreement with the other Members, be the Lead Member of the Bidder Consortium (the "**Lead Member**"); and

Bidder's Signature

Date & Company Stamp



3. ***[Note: This paragraph is for all Bidders][insert name of authorised individual in the Company]*** be and is hereby authorised to enter into, sign, execute and complete any documents relating to this Bid Response and any subsequent agreement for the provision of services.

Signed by the Directors

Name: _____

Date: _____

Name: _____

Date: _____

Name: _____

Date: _____

Bidder's Signature

Date & Company Stamp



Annex J - Resolution of each Member

(OTHER THAN THE LEAD MEMBER) OF A BIDDER CONSORTIUM OR EACH
SHAREHOLDER OF A BIDDER PROJECT COMPANY

[Name of Entity] (Registration number: **[insert]**)

(the “**Company**”)

RESOLUTION OF THE BOARD OF DIRECTORS OF THE COMPANY PASSED AT A MEETING HELD ON **[INSERT DATE]**

RESOLVED THAT:

1. the Company participates as the Bidder **[OR, in the case of a Bidder Consortium, in the *[insert name of Bidder]* Consortium (“Bidder”)]** in responding to this RFP issued by TFR on or about **[insert date]** under TENDER NUMBER TFR **CRAC-KGG-21543** in respect of a 20 (twenty) year concession for the design, financing, Construction, Operation, Maintenance and eventual handover of a Container handling Terminal at Tambo Springs.
2. **[Note: This paragraph is for Bidders that are consortia]** the Company, by agreement with the other Members, be the Lead Member of the Bidder Consortium (the “Lead Member”); and

Bidder’s Signature

Date & Company Stamp



3. ***[Note: This paragraph is for all Bidders]*****[insert name of authorised individual(s) in the Company]** be and is hereby authorised to enter into, sign, execute and complete any documents relating to this Bid Response and any subsequent agreement for the provision of services.

Signed by the Directors

Name: _____

Date: _____

Name: _____

Date: _____

Name: _____

Date: _____

Bidder's Signature

Date & Company Stamp



Annex K - Certificate of Acquaintance with RFP Documents

NAME OF ENTITY:

1. We _____ do hereby certify that we acquainted ourselves with all the documentation comprising this RFP and all conditions contained therein, as laid down by TFR for the carrying out of the Project for which we submitted our Bid Response.
2. We agree that TFR shall not recognise any claim from us for relief based on an allegation that we overlooked any RFP or contract condition or failed to take it into account for the purpose of calculating our Concession Fee Offer or otherwise.
3. We accept that an obligation rests on us to clarify any uncertainties regarding this bid which we may have, before submitting the Bid Response. We agree that we will have no claim against Transnet SOC Ltd or TFR based on an allegation that any aspect of this RFP was unclear but in respect of which we failed to obtain clarity.
4. We understand that the accompanying Bid Response will be disqualified if this Certificate is found not to be true and complete in every respect.
5. For the purposes of this Certificate and the accompanying Bid Response, we understand that the word "competitor" shall include any individual or organisation, other than the Bidder, whether or not affiliated with the Bidder, who:
 - 5.1. has been requested to submit a Bid Response in respect of this RFP;
 - 5.2. could potentially submit a Bid Response in response to RFP, based on their qualifications, abilities or experience; and
 - 5.3. provides the same services as the Bidder and/or is in the same line of business as the Bidder.

Bidder's Signature

Date & Company Stamp



6. The Bidder has arrived at the accompanying Bid Response independently from, and without consultation, communication, agreement or arrangement with any competitor. However communication between partners in a joint venture or consortium will not be construed as collusive bidding.
7. In particular, without limiting the generality of paragraph 0 above, there has been no consultation, communication, agreement or arrangement with any competitor regarding:
 - 7.1. prices;
 - 7.2. geographical area where Services will be rendered (market allocation);
 - 7.3. methods, factors or formulas used to calculate rental;
 - 7.4. the intention or decision to submit or not to submit, a Bid Response;
 - 7.5. the submission of a Bid Response which does not meet the specifications and conditions of this RFP; or
 - 7.6. bidding with the intention not being awarded Preferred Bidder status.
8. In addition, there have been no consultations, communications, agreements or arrangements with any competitor regarding the quality, quantity, specifications and conditions or delivery particulars of the services to which this RFP relates.
9. The terms of the accompanying Bid Response have not been, and will not be, disclosed by the Bidder, directly or indirectly, to any competitor, prior to the date and time of the official bid opening or of the awarding of the Concession.

Bidder's Signature

Date & Company Stamp



10. We are aware that, in addition and without prejudice to any other remedy provided to combat any restrictive practices related to bids and contracts, Bid Responses that are suspicious will be reported to the Competition Commission for investigation and possible imposition of administrative penalties in terms of section 59 of the Competition Act No. 89 of 1998 and or may be reported to the National Prosecuting Authority (“NPA”) for criminal investigation and/or may be restricted from conducting business with the public sector for a period not exceeding 10 (ten) years in terms of the Prevention and Combating of Corrupt Activities Act No. 12 of 2004 or any other applicable legislation.

SIGNED at _____ on this _____ day of
_____ 20__.

SIGNATURE OF WITNESS

SIGNATURE OF BIDDER

Bidder's Signature

Date & Company Stamp



Annex L - Form of Preferred Bidder Guarantee

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

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

In favour of: Transnet Freight Rail

1. Terms with initial capital letters, unless otherwise defined herein, have the meanings given to them in this RFP.
2. WHEREAS Transnet Freight Rail (“**TFR**”), a division of Transnet SOC Ltd has issued a Request for Proposals (“**RFP**”) in respect of the design, financing, Construction, Operation, Maintenance and eventual handover of a Terminal at **Tambo Springs providing Container handling services (the “Terminal”)** for the purpose of entering into, *inter alia*, the Terminal Operator Agreement with TFR;
3. AND WHEREAS pursuant to this RFP, TFR has selected ***[insert the names of each Member of the Preferred Bidder Consortium, or the name of the Preferred Bidder]*** (“**Preferred Bidder**”) as a Preferred Bidder in the Procurement Programme for which it submitted a Bid Response;
4. AND WHEREAS TFR requires the Bidder to provide an on demand, irrevocable and unconditional guarantee in favour of TFR in the amount of R3 500 000 (three million five hundred thousand Rand) (“**Guarantee Amount**”) to secure certain undertakings or obligations of the Bidder as the Preferred Bidder under the RFP;
5. AND WHEREAS we, **[insert name of guarantor institution]** (“**Bank / [Insurer (substitute throughout if applicable)]**”) have agreed to issue this guarantee to secure such undertakings and obligations of the Preferred Bidder (“**Preferred Bidder Guarantee**”).

Bidder's Signature

Date & Company Stamp



6. Guarantee

6.1. The Bank irrevocably and unconditionally agrees and undertakes as a principal obligation in favour of TFR, to pay TFR without objection or argument amounts not exceeding in aggregate the Guarantee Amount, such payment(s) to be made by the Bank upon first written demand by TFR being received at the Bank, declaring that the Preferred Bidder has:

6.1.1. breached any law or rules relating to the Procurement Programme or is disqualified from the Procurement Programme as a result of its actions or omissions;

6.1.2. failed to extend the term of guarantee after agreeing to TFR's request to extend the expiry date of the Preferred Bidder Guarantee:

6.1.3. failed to sign the Terminal Operator Agreement within the time period specified in RFP; and/or

6.1.4. revoked, repudiated or withdrawn its Bid Response.

7. More than one demand may be made under this Preferred Bidder Guarantee, provided that the aggregate amount payable shall not exceed the Guarantee Amount.

8. The Bank irrevocably and unconditionally agrees and undertakes within 2 (two) business days from receipt of a Demand, to pay the amount so demanded will be made without set-off or deduction to the following account, or such other account as TFR may notify the Bank in writing:

Account Name Transnet Freight Rail

Bank: Standard Bank

Account number: 203158598

Branch code: 004805

Bidder's Signature

Date & Company Stamp



9. This Preferred Bidder Guarantee shall be valid and effective from the date of its issue until the later of (a) the expiry of the Bid Validity Period (as it may be extended in terms of this RFP); and (b) thirty (30) days after the commencement of the Concession Period.
10. Notwithstanding the above provisions, this Preferred Bidder Guarantee shall terminate and be returned to the Bank within fifteen (15) Business Days of payment of an amount or amounts which, in aggregate, equal the Guarantee Amount, or of expiry of Preferred Bidder Guarantee as set out above.
11. Payment under the Preferred Bidder Guarantee
- 11.1. Sums payable under this Preferred Bidder Guarantee shall be paid to TFR in full, free of any present or future taxes, levies, duties, charges, fees or withholdings and without any deduction, restriction, conditions, withholding, set-off or counterclaim whatsoever. If the Bank is compelled by law to make any deduction or withholding, the Bank will gross up the payment so that the net sum received by TFR will be equal to the full amount which TFR would have received had no such deduction or withholding been made.
- 11.2. Any demand made shall constitute proof that the sum stated in such demand is properly due and payable to TFR under this Preferred Bidder Guarantee. The Bank shall have no right and shall not be under any duty or responsibility to enquire into the reason or circumstances of any Demand, the respective rights and/or obligations and/or liabilities of any party, the authenticity of any demand or the authority of the persons signing any demand.
12. Costs and Expenses
- All charges of the Bank related to the issuance or performance of this Performance Bank Guarantee (including, but not limited to, the negotiation, payment, extension or transfer hereof) shall be borne by the Preferred Bidder and under no circumstances shall such costs be charged to TFR.

Bidder's Signature

Date & Company Stamp



13. Notices

Any demand, notice or communication hereunder shall be in writing and shall be made to the Bank at the address set out below (or such other address as may from time to time be notified in writing by the Bank to TFR, such notification to be delivered by courier), for all purposes of and in connection with this Preferred Bidder Guarantee:

Electronic address : [•] [insert **SWIFT address for purposes of electronic presentation**]

Physical address : [•]

Attention : [•]

13.1. The demand or notice shall be delivered by hand, by courier or electronically via SWIFT and shall be deemed to be received upon actual receipt by the Bank.

14. Miscellaneous

14.1. A demand shall constitute *prima facie* proof of the Bank's indebtedness hereunder for the purposes of any proceedings including but not limited to provisional sentence proceedings, summary judgment or other equivalent proceedings under South African law. The Bank hereby expressly acknowledges and agrees that this Preferred Bidder Guarantee gives rise to and constitutes a valid and binding guarantee by the Bank and not a deed of suretyship and that as such the Bank shall not be entitled to assert or rely upon the benefits of the exceptions of excussion, division and/or cession of actions (the full force and effect of which are fully known to and understood by the Bank) in relation to the validity or enforceability of this Preferred Bidder Guarantee.

14.2. The Bank's liability hereunder shall not be limited to the principal sum of any indebtedness of the Preferred Bidder to TFR, but shall also cover all other amounts making up the indebtedness, including in particular all interest, if applicable, commissions, stamps, legal costs and collection fees.

Bidder's Signature

Date & Company Stamp



- 14.3. The obligations of the Bank are principal obligations and are independent of and shall be unaffected by any aspect of the relationship between the Preferred Bidder and TFR, including any dispute between the Preferred Bidder and TFR, any allowance of time or other indulgence whatsoever by TFR to the Preferred Bidder.
- 14.4. The Bank shall have no right of recourse or claim of whatsoever nature against TFR arising out of its obligation to pay or arising out of actual payment under this Preferred Bidder Guarantee to TFR.
- 14.5. The Bank's obligations herein shall not to be discharged, released, reduced or affected in any way by reason of any of the following:
- 14.5.1. any time, waiver or consent granted to, or composition with, the Preferred Bidder, the Bank or any other person;
 - 14.5.2. any failure to enforce strict or substantial compliance by TFR or the Preferred Bidder, as applicable, with their respective obligations in terms of the Procurement Programme nor any act, conduct or omission by TFR or the Preferred Bidder which is prejudicial to the Bank;
 - 14.5.3. the release of the Preferred Bidder or any other person under the terms of any composition or arrangement with any creditor;
 - 14.5.4. any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of the Preferred Bidder, the Bank or any other person;
 - 14.5.5. the Bidder's insolvency, winding-up, liquidation, business rescue, dissolution or deregistration, whether provisionally or finally.
- 14.6. This Preferred Bidder Guarantee shall be governed by the laws of the Republic of South Africa, and the parties hereto consent and submit for the benefit of TFR to the non-exclusive jurisdiction of the High Court of South Africa, Gauteng Division, Pretoria.

Bidder's Signature

Date & Company Stamp



14.7. The Bank shall not be entitled to withdraw from, cancel or vary this Preferred Bidder Guarantee during the period of its validity.

For: *[insert name of bank]*

For: *[insert name of bank]*

Signature:
e:

Signature:
:

who warrants that he / she is duly authorised thereto

who warrants that he / she is duly authorised thereto

Name:

Name:

Date:

Date:

Place:

Place:

Bidder's Signature

Date & Company Stamp



Annex M - Declaration of Interest

1. General

- 1.1. This Declaration of Interest Form is to be duly completed and signed by each Bidder which is a Project Company or a Company, each Shareholder thereof, and where the Bidder is a Consortium, by each Member of the Bidder (for purposes of this Declaration, the “**Member**”).
- 1.2. Failure to complete this form may lead to disqualification.
- 1.3. ‘Related’ in this form means a relationship formed on the basis of any one or more of (i) family (including spouses and in-laws), (ii) friendship, (iii) business acquaintance, (iv) professional engagement, or (v) employment).

2. Disclosure of Interest

- 2.1. Please state if the Bidder or any Member or any individual who is a director, officer, employee or shareholder of any Member is Related, in any manner, to any employee of TFR or Transnet and or to any other Government official or person directly involved in the Procurement Programme, who may be involved with the evaluation of Bid Responses.

Yes / No [Please *circle the applicable response*]

If so, state particulars:

.....

.....

.....

Bidder’s Signature

Date & Company Stamp



2.2. Please state if the Bidder or any Member or any individual who is a director, officer, employee or shareholder of the Bidder or any Member is Related, in any manner, to any employee of TFR or Transnet and or any other Government official or person with the ability to influence the decision of TFR with respect to the appointment of the Preferred Bidder and or the Reserve Bidder.

Yes / No [*Please circle the applicable response*]

If yes, state particulars:

.....
.....
.....

2.3. Is any national public entity, or provincial public entity (both as defined in the Public Finance Management Act No. 1 of 1999), or a person employed by a national public entity or a provincial public entity, a Contractor of or participating as a Member, or a shareholder (direct or indirect) of any Member or the Bidder?

Yes / No [*Please circle the applicable response*]

If yes, state particulars:

.....
.....
.....

Bidder's Signature

Date & Company Stamp



3. **Declaration in respect of Litigation**

3.1. Please describe the extent of any material pending or threatened litigation or legal proceedings (civil or criminal, and including any investigations or complaint proceedings conducted against the Company or a Member in terms of the Competition Act, 89 of 1998 or in terms of any other legislation providing for investigations or complaint proceedings) in which the Bidder or a Member is involved as at the Bid Submission Date, or has been involved during the last 5 (five) years, instituted by any South African organ of state against the Bidder or a Member. If the Bidder or Member has something to declare, please provide all details in the space provided below. If the Bidder or Member has nothing to declare, please insert “*nothing to declare*” in the space provided below. **[Add extra pages to be appended to this Declaration if necessary.]**

.....

.....

.....

.....

.....

.....

.....

3.2. Please describe in detail:

- 3.2.1. all occurrences of a failure by the Bidder or a Member to timeously complete any contracts (a) with any South African organ of state; or (b) relating to any Government project or procurement programme;
- 3.2.2. any incidences of damages deducted or recovered within the last 5 (five) years by any South African organ of state in relation to a contract with the Bidder or a Member, or by any person in relation to any Government project or procurement programme; and
- 3.2.3. any contract between the Bidder or a Member and any South African organ of state which was terminated during the past 5 (five) years on

Bidder’s Signature

Date & Company Stamp



account of failure by the Bidder or a Member to perform on or to comply with the contract. If the Bidder or Member has something to declare, please provide all details in the space provided below. If the Bidder or Member has nothing to declare, please insert “*nothing to declare*” in the space provided below. **[Add extra pages to be appended to this Declaration if necessary.]**

.....
.....
.....
.....
.....
.....

4. Declaration of Past Supply Chain Practices

4.1. Is the Bidder or any Member or any of its directors listed on the National Treasury database as companies or persons prohibited from doing business with the State / public sector?

Yes / No [*Please circle the applicable response*]

If yes, state particulars:

.....
.....
.....

4.2. Is the Bidder or any Member or any of its directors listed on the Register for Tender Defaulters in terms of section 29 of the Prevention and Combating of Corrupt Activities Act No. 12 of 2004

Yes / No [*Please circle the applicable response*]

Bidder’s Signature

Date & Company Stamp



If yes, state particulars:

.....
.....
.....

4.3. Was the Bidder or any Member or any of its directors convicted by a court of law (including a court outside of the Republic of South Africa) for fraud or corruption during the past 5 (five) years?

Yes / No [*Please circle the applicable response*]

If yes, state particulars:

.....
.....
.....

DECLARATION

I, the undersigned (Name of authorised individual representing the Bidder or the Member)

CERTIFY THAT THE INFORMATION FURNISHED IN THIS DECLARATION IS COMPLETE, TRUE AND CORRECT. I ACCEPT THAT TFR MAY DISQUALIFY MY BID RESPONSE IN THE EVENT THAT THE INFORMATION FURNISHED ABOVE IS IN ANY RESPECT UNTRUE, INCORRECT OR INCOMPLETE.

Signature_____

Date_____

Position_____

Name of Member_____

Bidder's Signature

Date & Company Stamp



Name _____ of _____
Bidder _____

Who warrants his / her authority hereto

Bidder's Signature

Date & Company Stamp



Annex N - Project Plan

Overall Project Plan

	2014	2015	2016	2017	2018	2019	2020	2021	2022
Property Development									
• Provision of Bulk Services		■	■	■	■				
• Realignment of PWV13 and release of servitude		■	■	■	■	■			
Transaction Development									
• Legal (master, lease, sale of property, sale of share, shareholders agreement)	■	■							
• Business Case		■		↓					
• Preparation and issue of RFP			■	■					
Terminal Construction and Operation									
• Procurement, Engineering Studies and Design				■	■				
• Construction					■	■	■	■	
• Commissioning of Terminal							■		
Rail Development									
• Arrival and Departure yard Engineering studies				■	■	■			
• Construction					■	■	■	■	

Bidder's Signature

Date & Company Stamp



Annex O - Tax Clearance Requirements

1. It is a condition of bidding in response to this RFP that:
 - 1.1. the taxes of a Bidder and its Members must be in order, or that satisfactory arrangements have been made with the South African Revenue Services (“SARS”) or other local revenue authority for the relevant Bidder to meet its tax obligations;
 - 1.2. the form “Application for Tax Clearance Certificate TCC 001”, available on the official SARS web Project Site or at any SARS office, must be completed in all respects and submitted to SARS where the Bidder is registered for tax purposes. SARS will then furnish the Bidder with a Tax Clearance Certificate that will be valid for a period of 6 (six) months from the date of issue.
2. Each Bidder and its Members established or incorporated in South Africa more than 365 (three hundred and sixty five) days prior to the Bid Submission Date must submit an original and valid Tax Clearance Certificate with the Bidder’s Bid Response.
3. Each Bidder and its Members established or incorporated in South Africa within the last 365 (three hundred and sixty five) days of the Bid Submission Date must submit proof that an application for a Tax Clearance Certificate has been submitted and received by SARS, with the Bidder’s Bid Response.
4. A Bidder and its Members which are not established or incorporated in South Africa must produce a tax clearance certificate or equivalent certificate translated into English, if applicable, from the local revenue authority where they are established or incorporated to demonstrate that they are in good standing with that authority.

Bidder’s Signature

Date & Company Stamp



Annex P - Certificate of Acquaintance with the Requirements of this RFP

NAME OF ENTITY:

1. We _____ **[insert name of Bidder]** _____ do hereby certify that we acquainted ourselves with all the documentation comprising the requirements of this RFP as received on _____ **[insert date]** from TFR in respect of the Project for which we submitted our Bid Response.
2. We furthermore agree that TFR shall not recognise any claim from us for relief based on an allegation that we overlooked any terms and conditions of this RFP or failed to take it into account for the purpose of calculating our Concession Fee Offer or otherwise.

SIGNED at _____ on this _____ day of
 _____ 20____.

SIGNATURE OF WITNESS

SIGNATURE OF BIDDER

Bidder's Signature

Date & Company Stamp



Annex Q - Certificate of Acquaintance with conditions of contract with TFR

NAME OF ENTITY: _____ [insert name of Bidder] _____

We

do hereby certify that we have acquainted ourselves with all the documentation comprising the Terminal Operator Agreement and the provisions of clause 6.9.4 of Part I (*General Requirements, Rules and Provisions*) of this RFP in respect of the Project for which we submitted our Bid Response.

1. We furthermore agree that TFR shall not recognise any claim from us for relief based on an allegation that we overlooked any requirement of the Terminal Operator Agreement or failed to take it into account for the purpose of calculating our Concession Fee Offer or otherwise.
2. We also note the obligations as set out in the Terminal Operator Agreement and agree to be bound by the terms thereof, if elected as the Preferred Bidder.

SIGNED at _____ on this _____ day of _____ 20____

SIGNATURE OF WITNESS

SIGNATURE OF BIDDER

Bidder's Signature

Date & Company Stamp



Annex R - Breach of Law Form

NAME OF ENTITY:

We _____

do hereby certify that we **have/have not** been [**delete as applicable**] found guilty during the preceding 5 (five) years of a serious breach of law, including but not limited to a breach of the Competition Act, 89 of 1998, by a court of law, tribunal or other administrative body. The type of breach that the Bidder is required to disclose excludes relatively minor offences or misdemeanours, e.g. traffic offences.

Where found guilty of such a serious breach, please disclose:

NATURE OF BREACH:

DATE OF BREACH:

Furthermore, we acknowledge that TFR reserves the right to exclude any Bidder from the bidding process, should that person or entity have been found guilty of a serious breach of law, tribunal or regulatory obligation.

SIGNED at _____ on this _____ day of _____
20__.

SIGNATURE OF WITNESS

SIGNATURE OF BIDDER

Bidder's Signature

Date & Company Stamp



Annex S - Certificate of Attendance of RFP Briefing

It is hereby certified that –

1. _____
2. _____

Representative(s) of _____ **[name of entity]**

attended this RFP briefing in respect of the Project and Services to be rendered in terms of this RFP on _____ 20____

TRANSNET'S REPRESENTATIVE

RESPONDENT'S REPRESENTATIVE

DATE _____

DATE _____

EMAIL _____

Bidder's Signature

Date & Company Stamp



Annex T - Supplier Integrity Pact

1. TFR's Integrity Pact requires a commitment from Bidders to TFR that they will not engage in any:
 - 1.1. corrupt and fraudulent practices;
 - 1.2. anti-competitive practices; and
 - 1.3. act in bad faith towards each other.
2. The Integrity Pact also serves to communicate TFR's Gift Policy as well as the remedies available to TFR where a Bidder contravenes any provision of the Integrity Pact.
3. Bidders are required to familiarise themselves with the contents of the Integrity Pact which is available on the Transnet Internet Site [www.transnet.net/Tenders/Pages/default.aspx] or on request.

NAME OF ENTITY:

We

_____ do hereby certify that we have acquainted ourselves with all the documentation comprising the TFR Integrity Pact. We agree to fully comply with all the terms and conditions stipulated in TFR Supplier Integrity Pact.

4. We furthermore agree that TFR shall recognise no claim from us for relief based on an allegation that we overlooked any terms and conditions of the Integrity Pact or failed to take it into account for the purpose of submitting our offer.

Bidder's Signature

Date & Company Stamp



5. We confirm having been advised that a signed copy of this Schedule can be submitted in lieu of the entire TFR Integrity Pact as confirmation in terms of the Returnable Schedule.

SIGNED at _____ on this _____ day of
_____ 20 ____.

SIGNATURE OF WITNESS

SIGNATURE OF BIDDER

Bidder's Signature

Date & Company Stamp

Annex U - Supplier Development Plan Guidelines

1. The Supplier Development Plan is to be submitted and developed in line with the criteria set out in the Supplier Development Value Summary Worksheet.
2. The Supplier Development Plan encapsulates the same principles as the B-BBEE Improvement Plan, but specifically focuses on two drivers which are described as key outcomes of this programme; the development of skills in the Saldanha Bay district, and the use expansion of local value chains that occur as a result of the investment and continual operations by the Terminal Operator.
3. These principles will be used in the Supplier Development component of the Evaluation criteria. Bidders are obliged to develop an overall B-BBEE implementation plan that demonstrates the progress from a level 4 (four) B-BBEE Contributor Status Level or an equivalent rating in terms of the Sector Code, if any, to a level 2 (two) B-BBEE Contributor Status Level or an equivalent rating in terms of the Sector Code, if any, within a period of 10 (ten) years from the Effective Date. In addition, Bidders will be awarded points for focussing efforts on skills development and local supplier development as part of this B-BBEE implementation plan.
4. As both supplier and skills development do form part of the overall B-BBEE improvement plan, the Supplier development plan is expected to form a part of the B-BBEE improvement plan. However, allowable spend for the Supplier Development Plan incorporates all spend on skills development and sourcing of supplies from South African companies, as outlined in the Supplier Development Value Summary Worksheet.
5. This is a detailed narrative document explaining the Bidders' Supplier Development proposal as it relates to the Bidders' B-BBEE Improvement Plan and the Supplier Development Value Summary Worksheet. There is no prescribed format for this document, however a guideline is provided below.
6. Bidders must compile the Supplier Development Plan, with an understanding of Supplier Development that has been detailed and described in both Annex T (*Supplier Integrity Pact*) and Annex U (*Supplier Development Plan Guidelines*) and further guided by the specific requirements mentioned below.

7. **Important Notes for completion of Supplier Development Plan:**

- 7.1. Bidders are urged to pay careful attention to the compilation of the Supplier Development Plan since it represents the binding commitment on the part of the Preferred Bidder in terms the Supplier Development Plan and will form an essential component during the tender negotiations should the Bidder be awarded the Concession.
- 7.2. Bidders are required to address each of the categories under the detailed Supplier Development Description as a minimum for submission. This is however not an exhaustive list, and Bidders are not limited to these choices when compiling each section.
- 7.3. Bidders must ensure that the Supplier Development Value Summary Worksheet and the Supplier Development Plan submission are accurately cross-referenced with each other.
- 7.4. Bidders are requested to address each of the Supplier Development aspects in **no more than two (2) pages per category**, to avoid lengthy submissions.
- 7.5. Bidders are required to provide an electronic copy [CD] of the completed Supplier Development Plan and Supplier Development Value Summary Worksheet) as part of the Supplier Development Plan submission.

8. **Minimum Supplier Development Plan requirements**

- 8.1. The Supplier Development Plan should outline the type of activities you intend to embark upon should you be awarded the Concession. This Supplier Development Plan should also provide an overview of what you intend to achieve, by when, and the mechanisms to be used to achieve those objectives.

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8.2. The TFR Enterprise Development Hub is expected to play a critical role in unlocking local investment in value chains, and bidders are encouraged to engage with the TFR Enterprise Development Hub on areas where the use of local inputs can be increased over the concession term. These details are to be explained in the Supplier Development Plan.

Supplier Development category	Minimum requirements
Capacity and Capability Building in South Africa (Localisation)	<p>Bidders must list and describe the parts or components and or any material that will be sourced locally. Also give a percentage for each part and or component listed and the supplier.</p> <p>Please note that these parts or components or materials listed must make up the % referred to in the Supplier Development Value Summary Worksheet. A minimum of 20 percent is required by the tenth anniversary of the Effective date (and thereafter), but additional points are awarded to bidders that use a higher level of local content.</p>
Skills Development (Per cent of staff being trained)	<p>Bidders must describe the training programmes and higher education courses that the beneficiaries will attend, if awarded the Concession, including the institution and the benefits and or outcomes of the skills development. Bidders must demonstrate the benefit of the training and or higher education to the development of the engineering, operations and maintenance industry. This must be described as a percent of the total staff employed by the Terminal on an annual basis.</p> <p>Please note that these are the skills referred to in the Supplier Development Value Summary Worksheet. A minimum of 20 percent is required by the tenth anniversary of the Effective date (and thereafter), but additional points are awarded to bidders that actively train a higher proportion of the staff employed.</p>

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Skills development (Per cent of revenue spent on training)	<p>Bidders must specify the percent of total annual revenues allocated to training of employees.</p> <p>Note: A minimum of 2 percent of total revenue spent on training is required by the tenth anniversary of the Effective Date (and thereafter), but additional points are awarded to bidders that dedicate a higher per cent of total revenue to training annually</p>
Job Creation / (In South Africa)	<p>Bidders must indicate the total number of jobs that will be created for South African citizens (as a percent of total Terminal jobs) and how these positions contribute to operations and maintenance of the Terminal . Please indicate the number of Black employees to be employed, the number of Black females to be employed and the number Black employees with disabilities to be employed as defined in the Regulator of Employment Equity Act and Commission on Employment Equity Report.</p> <p><i>Please note that this section is directly linked to Capacity and Capability Building in South Africa (Localisation) above. These are the jobs that will be created in South Africa. A minimum of 20 percent is required by tenth anniversary of the Effective date operations (and thereafter), but additional points are awarded to bidders that use a higher level of local staff.</i></p>
Overall B-BBEE improvement plan	<p>Bidders will be scored on the overall B-BBEE improvement plan. Scoring will be based on points allocated on an annual basis in line with the B-BBEE framework (i.e. 60 to 80 per cent for a level four B-BBEE compliant bidder).</p> <p>Please note that this is directly linked to the B-BBEE targets as described in Annex V, and a threshold applies to bidders as above. A target of a level four B-BBEE Complaint Consortium at the beginning of operations and improving over the course of the Concession to a level two B-BBEE compliant Consortium by the tenth anniversary of the Effective date.</p> <p>The level reached by the end of the 10th anniversary of the effective date must be maintained and improved over the remaining period of the Concession.</p>

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SUPPLIER DEVELOPMENT PLAN

9. Supplier Development Executive Summary
 - 9.1. South African Supply Chain (Localisation)
 - 9.2. Local Employment created in South Africa
 - 9.3. South African Employees receiving training
 - 9.4. Revenues allocated to training
 - 9.5. B-BBEE Improvement Plan
10. Conclusion

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Annex V - B-BBEE Improvement Plan Guidelines

TFR encourages its suppliers or service providers to constantly strive to improve their B-BBEE Contributor Status Level. Whereas Bidders will be allocated points in terms of the Supplier Development Value Summary Worksheet, based on its B-BBEE scorecard, in addition to such scoring, TFR also requests that Bidders submit a B-BBEE Improvement Plan. Bidders are therefore requested to indicate the extent to which items such as ownership, management control (management control and employment equity) and enterprise development (preferential procurement, supplier development and enterprise development), where appropriate, will be maintained or improved over the contract period.

Bidders are requested to submit their B-BBEE Improvement Plan as an additional document included in their Bid Responses. The Bidders B-BBEE score will be monitored on an annual basis. Guidelines for the completion of the B-BBEE Improvement Plan are found in the table below, which serve to focus on key areas of the B-BBEE framework. As per the Supplier Development Plan, Bidders are expected to require a ramp up period in order to improve its B-BBEE status through the use and development of local supplier chains, management control, and ownership.

Bidders are to insert their current status (%) and future targets (%) for the B-BBEE Improvement Plan at the anniversary of the tenth year from the Effective Date and at the end of the concession period [i.e. not the % change but the state quantum expressed as a percentage at the anniversary of the tenth year from the Effective Date] in the table below. This will indicate how you intend to sustain or improve your B-BBEE rating over the contract period. This will represent a binding commitment to the Preferred Bidder. The B-BBEE improvement plan should provide expected targets, where appropriate as set out in the table below.

These targets will form part of the Bidders overall B-BBEE rating, as reflected in the Scoring Model in the Supplier Development Value Summary Worksheet, and will be measured on an annual basis.

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TFR reserves the right to request supporting evidence to substantiate the commitments made in the B-BBEE Improvement Plan.

OWNERSHIP INDICATOR	Required Responses	Current Status (%)	Future Target (%) at the end of year 10	Future target (%) at the end of the Concession Period
1. The percentage of the business owned by Black ¹ persons.	<i>Provide a commitment based on the extent to which ownership in the hands of Black persons as a percentage of total ownership of the organisation would be sustained or increased over the contract period.</i>			
2. The percentage of your business owned by Black women.	<i>Provide a commitment based on the extent to which ownership in the hands of Black women as a percentage of total ownership of the organisation would be sustained or increased over the contract period.</i>			

¹ "Black" means South African Blacks, Coloureds and Indians, as defined in the B-BBEE Act, 53 of 2003.

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3. The percentage of the business owned by Black youth ²	<i>Provide a commitment based on the extent to which ownership in the hands of Black youth as a percentage of total ownership of the organisation would be sustained or increased over the contract period.</i>			
4. The percentage of the business owned by Black persons living with disabilities	<i>Provide a commitment based on the extent to which ownership in the hands of Black disabled persons as a percentage of total ownership of the organisation would be sustained or increased over the contract period.</i>			
MANAGEMENT CONTROL INDICATOR	Required Responses	Current Status (%)	Future Target (%) at the end of year 10	Future target (%) at the end of the Concession Period
5. Black Executive Management as a percentage of all executive directors	<i>Provide a commitment based on the extent to which the number of Black executive Managers as a percentage of all Executive Directors would be sustained</i>			

² "Black youth" means Black persons from the age of 16 to 35.

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	<i>or increased over the contract period.</i>			
6. Black Female Executive Management as a percentage of all executive directors	<i>Provide a commitment based on the extent to which the number of Black female executive Managers as a percentage of all Executive Directors would be sustained or increased over the contract period.</i>			
Senior Management	Required Response	Current Status (%)	Future Target (%) at the end of year 10	Future target (%) at the end of the Concession Period
7. Black employees in Senior Management as a percentage of all senior management	<i>Provide the percentage of Blacks that would be appointed or retained by the Board and would be operationally involved in the day to day senior management of the business, with individual responsibility for overall and/or financial management of the business and actively involved in the development and implementation of overall</i>			

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	<i>strategy, over the contract period.</i>			
8. Black female employees in Senior Management as a percentage of all senior management	<i>Provide the percentage of Black females that would be appointed or retained by the Board and would be operationally involved in the day to day senior management of the business, with individual responsibility for overall and/or financial management of the business and actively involved in the development and implementation of overall strategy, over the contract period.</i>			
Middle Management	Required Response	Current Status (%)	Future Target (%) at the end of year 10	Future target (%) at the end of the Concession Period
9. Black employees in Middle Management as a percentage of all middle management	<i>Provide the percentage of Blacks that would be retained or appointed by the organisation in the middle management cadre and would be operationally involved in the day to day management of the</i>			

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	<i>business, with individual responsibility for a particular area within the business and actively involved in the day to day management of the organisation, over the contract period.</i>			
10. Black female employees in Middle Management as a percentage of all middle management	<i>Provide the percentage of Blacks females that would be retained or appointed by the organisation in the middle management cadre and would be operationally involved in the day to day management of the business, with individual responsibility for a particular area within the business and actively involved in the day to day management of the organisation, over the contract period.</i>			
Employees with disabilities	Required Response	Current Status (%)	Future Target (%) at the end of year 10	Future target (%) at the end of the Concession Period
11. Black employees with disabilities as a percentage of all employees	<i>Provide a commitment based on the extent to which the percentage of Black disabled employees, in relation to the total of all</i>			

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	<i>employees in the organisation, would be sustained or increased over the contract period.</i>			
PREFERENTIAL PROCUREMENT INDICATOR	Required Responses	Current Status (%)	Future Targets (%) at the end of year 10	Future target (%) at the end of the Concession Period
12. B-BBEE procurement spend from all Empowering Suppliers ³ based on the B-BBEE procurement recognition level as a percentage of total measured procurement spend	<i>Provide a commitment based on the extent to which B-BBEE spend from all Empowering Suppliers would be sustained or increased over the contract period.</i>			
13. B-BBEE procurement spend from all Empowering	<i>Provide a commitment based on the extent to which B-BBEE spend from</i>			

³ **"Empowering Suppliers"** means a B-BBEE compliant entity, which should meet at least three of the following criteria if it is a Large Enterprise or one if it is a QSE:

(a) At least 25% of cost of sales excluding labour cost and depreciation must be procured from local producers or local supplier in SA, for service industry labour cost are included but capped to 15%.

(b) Job creation - 50% of jobs created are for Black people provided that the number of Black employees since the immediate prior verified B-BBEE Measurement is maintained.

(c) At least 25% transformation of raw material/beneficiation which include local manufacturing, production and/or assembly, and/or packaging.

(d) Skills transfer - at least spend 12 days per annum of productivity deployed in assisting Black EMEs and QSEs beneficiaries to increase their operation or financial capacity.

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<p>Suppliers, Qualifying Small Enterprises (QSEs) based on the applicable B-BBEE Procurement Recognition Levels as a percentage of Total Measured Procurement Spend</p>	<p><i>Empowering Supplier QSEs would be sustained or increased over the contract period.</i></p>			
<p>14. B-BBEE procurement spend from Exempted Micro-Enterprise based on the applicable B-BBEE procurement recognition Levels as a percentage of Total Measured Procurement Spend</p>	<p><i>Provide a commitment based on the extent to which B-BBEE spend from EMEs would be sustained or increased over the contract period.</i></p>			
<p>15. B-BBEE procurement spend from Empowering Suppliers that are at least 51% black owned based on the applicable B-BBEE</p>	<p><i>Provide a commitment based on the extent to which spend from Empowering Suppliers who are more than 51% Black-owned would be maintained or increased over the contract period.</i></p>			

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Procurement Recognition Levels as a percentage of Total Measured Procurement Spend				
16. B-BBEE procurement spend from Empowering Suppliers that are at least 30% (thirty percent) black women owned based on the applicable B-BBEE Procurement Recognition Levels as a percentage of Total Measured Procurement Spend	<i>Provide a commitment based on the extent to which spend from Empowering Suppliers who are more than 30% (thirty percent) Black women-owned would be maintained or increased over the contract period.</i>			
17. B-BBEE Procurement Spent from Designated Group ⁴ Suppliers	<i>Provide a commitment based on the extent to which spend from suppliers from Designated Group Suppliers</i>			

⁴ **"Designated Groups"** means:

- a) *unemployed black people not attending and required by law to attend an educational institution and not awaiting admission to an educational institution;*
- b) *black people who are youth as defined in the National Youth Commission Act of 1996;*
- c) *black people who are persons with disabilities as defined in the Codes of Good Practice on employment of people with disabilities issued under the Employment Equity Act;*
- d) *black people living in rural and under developed areas; and*
- e) *black military veterans who qualifies to be called a military veteran in terms of the Military Veterans Act 18 of 2011.*

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that are at least 51% Black owned	<i>that are at least 51% Black owned would be maintained or increased over the contract period.</i>			
18. SKILLS DEVELOPMENT INDICATOR	Required response	Current Status (%)	Future Target (%) at the end of year 10	Future target (%) at the end of the Concession Period
Skills Development Expenditure on any programme specified in the Learning Programme Matrix for black people as a % of Leivable Amount.				
19. Skills development expenditure on learning programmes specified in the learning programme matrix for black people as a percentage of the Leivable amount	<i>Provide a commitment based on the extent to which spend towards black people would be maintained or increased over the contract period.</i>			
Learnership, Apprenticeships, and Internships				
20. Number of black people participating in learnerships, apprenticeships and internships as a percentage	<i>the number of black people "absorbed" at the end of learnership programmes.</i>			

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of total employees.				
21. Number of black unemployed people participating in training specified in the learning programme matrix as a percentage of the number of employees.	<i>training unemployed black persons.</i>			
22. BONUS POINT: Number of black people absorbed by the measured and industry entity at the end of learnerships programme.	<i>100% (one hundred percent) compliance.</i>			
23. ENTERPRISE DEVELOPMENT INDICATOR	Required Response	Current Status (%)	Future Target (%) at the end of year 10	Future target (%) at the end of the Concession Period
24. The organisation's annual spend on monetary Enterprise	<i>Provide a commitment based on the retention or increase in your organisation's annual spend on monetary Enterprise Development initiatives, as a percentage of its Net Profit</i>			

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Development ⁵ as a percentage of Net Profit after Tax [NPAT]	<i>after Tax, over the contract period.</i>			
B-BBEE SUPPLIER DEVELOPMENT INDICATOR	Required Response	Current Status (%)	Future Target (%) at the end of year 10	Future target (%) at the end of the Concession Period
25. Annual value of all B-BBEE Supplier Development ⁶ Contributions made by the Measured entity as a percentage of the target	<i>Provide a commitment based on the percentage in your organisation's annual spend on Supplier Development initiatives, will be maintained or improved over the contract period.</i>			

⁵ "**Enterprise Development**" means monetary and non-monetary contributions carried out for the following beneficiaries, with the objective of contributing to the development, sustainability and financial and operational independence of those beneficiaries:

(a) Enterprise Development Contributions to Exempted Micro-Enterprises or Qualifying Small Enterprises which are at least 51% Black owned or at least 30% Black women owned.

⁶ "**B-BBEE Supplier Development**" means monetary or non-monetary contributions carried out for the benefit of value-adding suppliers to the Measured Entity, with the objective of contributing to the development, sustainability and financial and operational independence of those beneficiaries:

(a) Supplier Development Contributions to suppliers that are Exempted Micro-Enterprises or Qualifying Small Enterprises which are at least 51% black owned or at least 51% black women owned.

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Annex W - Confirmation of Black Ownership Commitments

NAME OF ENTITY: _____ **[insert name of Bidder]** _____

We

_____ do hereby certify that we acquainted ourselves with the Black Ownership commitments as detailed in clause 47.3.2.3 of Part II (*Qualification Criteria*) of this RFP.

1. We agree and undertake that if we are appointed Preferred Bidder the percentage of Black Ownership in the Terminal Operator will increase over the Project term as follows:
 - 1.1. Contract Year 1: 25% Black Ownership;
 - 1.2. Contract Year 5: 40% Black Ownership; and
 - 1.3. Contract Year 10: 55% Black Ownership.
2. We agree that these percentages will be included in the Terminal Operator Agreement as commitments that will be subject to penalties and/or termination of the Terminal Operator Agreement for non-compliance by the Terminal Operator.
3. We furthermore agree that TFR shall not recognise any claim from us for relief based on an allegation that we overlooked any requirement of this RFP or failed to take it into account the obligations detailed in the above clauses.
4. We also note the obligations as set out in the Terminal Operator Agreement.

SIGNATURE OF WITNESS

SIGNATURE OF BIDDER

Bidder's Signature

Date & Company Stamp



Annex X – Draft Terminal Operator Agreement

[Note to Bidders: Please refer to the corresponding folder in the RFP disc]

Bidder's Signature

Date & Company Stamp



Annex Y - Member's Equity Support Letter

[Bidders are required to provide track changes of this template in their Bid Response]

Dear Sirs,

Transnet Freight Rail – Tambo Springs – tender for a 20 year concession for a Terminal at Tambo Springs providing Container handling services (the “Terminal”).

1. We, [Equity Finance investor entity name] (“**abbreviated Equity Finance investor entity name**”), **abbreviated Equity Finance investor entity name** are delighted to provide this letter of support to [Bidder name] (“[abbreviated Bidder name]”) in our role as equity funds investor to [**name**] in respect of its Bid Response for the Tender TFR 2016/04/013/CM (“the RFP”).
2. We are committed to supporting [**abbreviated Bidder name**] in its pursuit of this Terminal. This letter details the work we have undertaken in our role as provider of Equity Finance to support [**abbreviated Bidder name**] in the Bid Response to the RFP.
3. The committed Equity Finance will be provided to the Bidder by [**Member entity name**].
4. For purposes of this letter, the capitalised terms shall have the meanings assigned in the RFP, unless the context requires otherwise.
5. In support of the Bid Response from [abbreviated Bidder name] we confirm that, except as specifically stated in this letter, we have completed sufficient due diligence to enable us to issue this letter of support and there are no material issues that may impact on the proposed Equity Finance or the achievement of financial close. Full details of any conditions to provision of the Equity Finance are set out below:

[insert any conditions]

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6. Specifically, we have received and reviewed the following information:
- 6.1. The RFP including its annexes;
 - 6.2. The Bidders Financial Model [insert file name] as per Annex Z (Financial Model Template) to be submitted with the Bid Response;
 - 6.3. A Financial Model Audit Letter for the Financial Model(s) submitted in the Bid Response dated [insert date], prepared by and signed off by [the Bidder's model auditor]. We confirm that any issues raised from the Financial Model Audit Letter have been discussed with the [Bidder name] and confirm that there are no material issues that may impact on the Terminal or achievement of financial Close; and
 - 6.4. The Business Plan including required supporting documents and annexes.
7. Timetable
- 7.1. We are confident that the proposed transaction is deliverable as currently structured and within the proposed timetable to financial close. We confirm a plan to financial close has been included in the Business Plan as part of the Bid Response. The Terminal continues to have the support of our board and has obtained the required board approvals for our equity investment in the Terminal. We confirm that the funds invested in the Terminal will not be used for any other corporate purpose and the assets of **[abbreviated Equity Finance investor entity name]** or any of its affiliates will not be subject to any negative pledge or charges which may affect the availability of the Equity Finance for the Terminal.
 - 7.2. Our analysis to date confirms that the Terminal is within our expected risk and return profile. Our board approval is subject to the following:

[insert conditions to the board approval and process to meet the conditions]

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7.3. Satisfaction of these conditions is not expected to impede the proposed timetable. For the avoidance of any doubt, it is expected that no further conditions to those stated in this letter will be required.

8. Legal

8.1. In providing this letter of support we confirm that we have reviewed the RFP including its annexes and all documents available in the data room.

8.2. Following this review we can confirm acceptance of the commercial terms and risk profile presented in the Terminal Operator Agreement.

9. Technical

We have reviewed the technical details of this Bid Response and confirm that there are no issues in relation to the technical and procurement aspects of the Bid Response that may impact on the achievement of financial close.

10. Financial

10.1. In providing this letter of support we confirm that, together with the Financial Advisors (if applicable), we have reviewed the Financial Model developed as per Annex Z (*Financial Model Template*) to be submitted with the Bid Response and have performed all required sensitivities. Following this review we are satisfied that the Concession Fee Offer included by the Bidder in their Bid Response will allow us to meet our return expectations. We confirm that there will be no changes in our Concession Fee Offer with the sole exception of an adjustment for Contract Year definitions in the Terminal Operator Agreement and that there will no upward movement in the resulting Concession Fee NPV as in item 2.7 "NPV Score" of the Concession Fee Offer Worksheet.

10.2. In the event that the Bid Response includes External Debt finance, we have reviewed the term sheet provided by the Lenders and including in the Bid

Bidder's Signature

Date & Company Stamp



Response and have satisfied ourselves of the terms and conditions included therein.

11. Other conditions

[Please identify other conditions or constraints, if any, with regards to the Terminal generally, as well as Bidder specific issues.]

12. Terms

12.1. We can confirm that we have reviewed the Financial Model and are in full acceptance of the terms and returns as set out in the Sponsor Case Financial Model.

12.2. The Rand value of Equity Finance committed is [X].

[Attach full and complete terms in agreed form]

Yours faithfully,

Bidder's Signature

Date & Company Stamp



Annex Z - Financial Model Template

[Note to Bidders: Please refer to the corresponding folder in the RFP disc.]

Bidder's Signature

Date & Company Stamp

Annex AA - Letter of Support From Lender

Dear Sirs,

Transnet Freight Rail – Tambo Springs – tender for a 20 year concession for a Terminal at Tambo Springs providing Container handling services (the Project).

1. We, **[Lender]** ("**abbreviated Tier 1 Lender name**"), are delighted to provide this letter of support to **[Bidder name]** ("**abbreviated Bidder name**") in our role as External Debt provider to **[name of project vehicle]** in respect of its Bid Response to the Request for Qualification and Proposals for [xxx] (Tender no:) (**this 'RFP'**).
2. This letter details the work we have undertaken in our role as External Lender to confirm our support to **[abbreviated Bidder name]** in the Bid Response to this RFP.
3. For purposes of this letter, the capitalised terms shall have the meanings assigned in this RFP, unless the context requires otherwise.
4. In support of the Bid Response from **[abbreviated Bidder name]** we confirm that, except as specifically stated in this letter, we have completed sufficient due diligence to enable us to issue this letter of support. We are not aware of any material issues that may impact on the proposed External Debt or the achievement of Financial Close other than those indicated below.

[insert material issues (if any)]

5. Specifically, we have received and reviewed the following information:
 - 5.1. This RFP and the Terminal Operator Agreement;
 - 5.2. The Base Case Financial Model(s) based on our offered terms and required sensitivities **[insert name of Financial Model]**;

Bidder's Signature

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5.3. A model audit review opinion for the Financial Model(s) submitted in the Bid Response dated **[insert date of model audit opinion letter]**, prepared by and signed off by **[the Bidder's model auditor]**. We confirm that any issues raised from the model audit opinion letter have been discussed with **[insert bidder name]** and confirm that, to our knowledge, there are no material issues that may impact on the Project or achievement of Financial Close and confirms in particular that the tariff formula is correctly reflected; and

5.4. The Business Plan.

6. Timetable

We are of the opinion that the proposed transaction is deliverable as currently structured and within the proposed timetable to Financial Close. The Project has preliminary credit committee approval. Obtaining final credit approval is not expected to impede the proposed timetable. Our analysis to date confirms that the Project lies within our expected risk and return profile.

7. Legal

7.1. In providing this letter of support we confirm that we have reviewed this RFP and the Terminal Operator Agreement.

7.2. Following this review we confirm acceptance of the commercial terms and risk profile presented in the Terminal Operator Agreement.

8. Technical

We have reviewed the technical and commercial details of this Bid Response and confirm that there are no material issues in relation to the technical and commercial aspects of the Bid Response that may impact on the achievement of Financial Close.

Bidder's Signature

Date & Company Stamp



9. Financial

9.1. In providing this letter of support we confirm that, we have reviewed the Financial Model to be submitted with the Bid Response and have performed all required sensitivities and are satisfied that Financial Close is achievable within the timeframes indicated by the Bidder in its Bid Response.

9.2. We confirm that the Banking Case Financial Model accurately reflects the relevant terms in the term sheet.

10. Terms

[Attach term sheet]

10.1. We confirm our commitment to keeping the terms attached in the term sheet, subject to material changes to the Bid Responses resulting from conducting further due diligence as identified in paragraph 4 above.

11. Other Conditions

[Please identify other conditions if any, with regards to the Project generally, as well as Bidder specific issues.]

Yours faithfully,

Bidder's Signature

Date & Company Stamp

Annex BB – Business Plan Guidelines

As part of their Bid Responses, Bidders are required to submit a detailed Business Plan which contains at least the following chapters and information set out below.

Failure to include the chapters and information below may result in a Bidder's disqualification at TFR's sole discretion. Bidders are therefore urged to ensure that all information requested below is included in the Business Plan.

1. Bidder Information for Bidding Process

- 1.1. the name of the Bidder and the form/status of the Bidder e.g. Company or Consortium;
- 1.2. the physical person dealing with this RFP and the Bid Response on behalf of the Bidder Member, and their contact details including physical address, postal address, e-mail address, telephone and telefax number.
- 1.3. the names of all those Persons that will be Lenders, Legal Advisors, Financial Advisors and technical consultants in respect of the Bid Response and the Project and their respective roles and responsibilities;
- 1.4. the Bidder's Legal and Financial Advisors must provide a written declaration of interest where they disclose any potential or existing conflicts of interest due to any affiliation or relation with TFR, Transnet, any other Government official or person with the ability to influence the decision of TFR and/or other Bidders. Failure by the relevant Advisors to disclose an interest may result in the Bidder being disqualified from the Procurement Programme;

Bidder's Signature

Date & Company Stamp

2. Bidders and Contractors Information

- 2.1. its registration number, date and country of registration if applicable (Company and Contractors);
- 2.2. the Constitutional Documents if applicable (Company and Contractors);
- 2.3. in the case of a Consortium, the Constitutional Documents of each Member and the term sheet or MOU forming the Consortium as applicable;
- 2.4. audited financial statements of the past 3 (three) years of the Company, Contractors or each Member of a Consortium;
- 2.5. a valid tax clearance certificate in respect of the Company, the Contractors or each Member that meet the requirements of Annex O (*Tax Clearance Requirements*);
- 2.6. the shareholding structure of the Company and the Contractors (providing at the minimum the name, registration number, country of registration if applicable of the majority shareholder and /or beneficial owner and any changes of the main shareholder over the past 5 (five) years) or in case of a Consortium the intended shareholding of each Member term sheet or MOU forming the Consortium;
- 2.7. the full names and addresses of each director of the Company;
- 2.8. the registered address and web Project Site address (if any);
- 2.9. the street address, postal address, telephone number and telefax numbers and e-mail address;

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Date & Company Stamp



- 2.10. a brief description of the Member, Company and Contractor as applicable (not more than 4 (four) pages) outlining:
- 2.10.1. type of activities, main products or services;
 - 2.10.2. Main customers and suppliers and highlighting any associations with or sales to any entities within the Government sector;
 - 2.10.3. per country of operations.

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3. Proposed Contracting Structure

- 3.1. The Bidder must set out its entire contracting structure in an organogram with explanatory notes in respect of the identity and role of each Member of the Bidder and the role of all Contractors.
- 3.2. The Bidder is also required to submit with its Bid Response agreements / or terms sheets and / or MOU as applicable concluded with its Contractors Subcontracted to perform part of the Scope of Services, containing key terms. In this regard, the agreements/terms sheets must include as a minimum the following information:
 - 3.2.1. duration of the agreement;
 - 3.2.2. applicable Tariffs for the Service;
 - 3.2.3. description of scope of services, confirming alignment with the description of such services and relevant output specifications as provided in Annex C (*Scope of Services*);
 - 3.2.4. a representation that the contractor will comply with all TFR rules, policies, procedural documents and manuals including, but not limited to, the TFR Safety Policy, the Safety Health and Environmental Policy and Rules as set out in Annex E (*TFR Policies, Manuals and Operating Conditions*);
 - 3.2.5. obligations regarding the SD commitments if applicable
 - 3.2.6. high level description of termination events. Note: it is expected in that termination provisions support continuity of service e.g. the Project Company could terminate in case of underperformance and/or in case the services performed are no longer relevant in the market, as well strong restriction on the Contractor's ability to terminate for convenience; and

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- 3.2.7. a requirement to obtain the Project Company's consent prior to the cession and assignment of the Contractor's rights and obligations in terms of the agreement.

4. **Technical Solution and Proposed Operations**

- 4.1. The Bidder is expected to provide the following information with regard its technical solution and proposed operations. Supporting information related to number of years of experience of experience in services used for Technical Qualification, as well as number of similar projects in line with input provided by the Bidder in Template 1 Technical Experience of the Scoring Model. This can be provided as a separate annex to the Business Plan.
- 4.2. a preliminary Terminal design and lay-out including envisaged usage of the Terminal for building, storage, etc. that complies with Annex C (*Scope of Services*);
- 4.3. the D&C Specifications which shall be based on the preliminary Terminal design and layout, which may be included as an annex to the Business Plan;
- 4.4. the Operational Plan, specifications and standards in accordance with which the Services are to be provided and general operations undertaken, including outline of the labour, management, training approach and sustainability, the Operation and Maintenance conducted and the Terminal is to be maintained and upgraded , which may be included as an annex to the Business Plan;
- 4.5. details in respect of the procurement strategy, lead time, costing and design for investment and construction in the Terminal Infrastructure required for providing the Services as set out in Annex C (*Scope of Services*);
- 4.6. a detailed Constructions Works Programme;
- 4.7. outline of the commercial strategy for the Anchor Services;

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- 4.8. any suggestions regarding the improvement to the Scope of Services envisaged in this RFP;
- 4.9. a detailed description of how the Bidder will deliver and or co-ordinate an experienced project management, Operation and Maintenance management, legal and finance team capable of delivering the Project on a fully integrated basis;
- 4.10. an environmental, health and safety plan which may be included as an annexure the Business Plan.

5. **Financial**

The Bidder is expected to provide the following information:

- 5.1. Financial plan and strategy to finance the Terminal Infrastructure and Terminal Equipment and any other Construction Costs;
- 5.2. Financial Model;
- 5.3. Financial Model Audit Letter;
- 5.4. Lender's Support Letter;
- 5.5. Corporate Finance Support Letter;
- 5.6. Member's Equity Support Letter.

6. **Legal Information relative to the Bidder**

- 6.1. The Bidder is required to state whether in respect of the Company, if the Bidder is a Company, or in respect of each Member, if the Bidder is a Consortium:
 - 6.1.1. any order of a court for that Company and or a Member's winding up has been granted. If so, please advise whether such order has been for the purposes of *bona fide* reconstruction or amalgamation or not;

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- 6.1.2. the Company or the Members have been or are currently subject to, liquidation, business rescue or insolvency proceedings or equivalent proceedings in a foreign jurisdiction, and if so, please provide details thereof, including the current status and the outcome of such proceedings;
- 6.1.3. the Company or the Members or any director thereof is currently being prosecuted for or has been convicted of a criminal offence, including fraud and corruption, related to the conduct of its business or profession in South Africa and worldwide and if so, details thereof as well as the outcome or current status thereof;
- 6.1.4. the Company or its Members is currently or has been engaged in any disputes in respect of the provision of services with any supplier and or client within the last 3 (three) years to the value above R5 million and if so, please furnish details of the nature of such dispute as well as the current status or outcome thereof;
- 6.1.5. the Company or its Members have suffered a deduction for liquidated or ascertained damages in respect of any government contract within the last 3 (three) years and if so, please furnish details of the reasons for such deductions; and
- 6.1.6. the Company or its Members has had any government contract cancelled or not renewed, for failure to perform in accordance with the terms thereof.
- 6.2. Save to the extent that disclosure is made pursuant to this clause, the Bidder warrants by virtue of it submitting a Bid Response that no such event has occurred in respect of each person forming part of its Bid Response, and in respect of any disclosure made, warrants the accuracy of the information supplied.

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- 6.3. TFR, reserves the right to reject, in its discretion, a Bid Response on the basis of any statement provided under clause 6.

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Annex CC – Scoring Model

[Note to Bidders: Please refer to the corresponding folder in the RFP disc]

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Annex EE - Property development and Supporting Infrastructure

[Note to Bidders: Please refer to the corresponding folder in the RFP disc.]

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Annex FF – Existing Environmental Authorisation and EIA Information

[Note to Bidders: Please refer to the corresponding folder in the RFP disc.]

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Annex II – Market Information

[Note to Bidders: Please refer to the corresponding folder in the RFP disc.]

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Annex LL – Corporate Finance Support Letter

[Bidders are required to provide track changes of this template in their Bid Response]

Dear Madam(s), dear Sir(s),

Transnet Freight Rail – Tambo Springs – tender for a 20 year concession for a Terminal at Tambo Springs providing Container handling services (the “Terminal”).

1. We, **[Lender name]** ("**abbreviated Lender name**"), are delighted to provide this letter of support to **[Bidder name]** ("**abbreviated Bidder name**") in our role as Corporate Finance provider to **[name of project vehicle]** in respect in respect of its Bid Response for the Tender TFR 2016/04/013/CM (“the RFP”).
2. This letter details the work we have undertaken in our role as Lender to confirm our support to **[abbreviated Bidder name]** in the Bid Response to the RFP.
3. For purposes of this letter, the capitalised terms shall have the meanings assigned in the RFP, unless the context requires otherwise.
4. In support of the Bid Response from **[abbreviated Bidder name]** we confirm that, except as specifically stated in this letter, we have completed sufficient due diligence to enable us to issue this letter of support. We are not aware of any issues that may impact on the proposed External Debt or the achievement of financial close other than those indicated below.

[insert material issues (if any)]

5. Specifically, we have received and reviewed the following information:

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- 5.1. The RFP including its annexes;
 - 5.2. The Bidders Financial Model [**insert file name**] as per Annex Z (**Financial Model Template**) to be submitted with the Bid Response;
 - 5.3. A Financial Model Audit Letter for the Financial Model(s) submitted in the Bid Response dated [**insert date**], prepared by and signed off by [**the Bidder's model auditor**]. We confirm that any issues raised from the Financial Model Audit Letter have been discussed with the [**Bidder name**] and confirm that there are no material issues that may impact on the Terminal or achievement of financial Close; and
 - 5.4. The Business Plan including required supporting documents and annexes.
6. Timetable
- We are of the opinion that the proposed transaction is deliverable as currently structured and within the proposed timetable to financial close. The project has preliminary internal credit committee approval. Obtaining internal final credit approval is not expected to impede the proposed timetable. Our analysis to date confirms that the project lies within our expected risk and return profile.
7. Legal
- 7.1. In providing this letter of support we confirm that we have reviewed the RFP including its annexes and all documents available in the data room.
 - 7.2. Following this review we can confirm acceptance of the commercial terms and risk profile presented in the Terminal Operator Agreement.
8. Technical

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We have reviewed the technical details of this Bid Response and confirm that there are no issues in relation to the technical and procurement aspects of the Bid Response that may impact on the achievement of financial close.

9. Financial

9.1. In providing this letter of support we confirm that, we have reviewed the Financial Model to be submitted with the Bid Response and have performed all required sensitivities and are satisfied that financial close is achievable within the timeframes indicated by the Bidder in its Bid Response.

9.2. We confirm that the Financial Model accurately reflects the relevant terms in the financial term sheet as contained in the Business Plan.

9.3. The Rand value of Corporate Finance committed is [X].

10. Terms

[Attach term sheet]

11. Other conditions

[Please identify other conditions if any, with regards to the project generally, as well as Bidder specific issues.]

Yours faithfully,

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Annex MM – Concession Period Extension Guidelines

1. The Bidders may propose a longer Concession Period. Such proposal will be considered at the discretion of TFR however Bidders may consider the guidelines below to inform such proposed period.
2. The duration of the concession period is to be generally considered in line with the amount of capital expenditure and investment in fixed infrastructure per square meter to be undertaken. TFR may determine the term (duration) of the concession based on the following criteria:
 - 2.1. a maximum concession period of 30 (thirty) years;
 - 2.2. investments are considered to be the investments in property (fixed infrastructure) or the costs that directly lead to investments in property or equipment directly linked to delivering the Services (the “**Investments**”);
 - 2.3. the following criteria may also be taken into account in addition to Investments: use of space, impact on the Supplier Development Plan, Supplier Development Value Summary Worksheet, the Concession Fee Offer Worksheet and any added value for the Terminal;
 - 2.4. The following table illustrates an indicative amount of total Investment in Rand terms per square meters against the duration of the concession period. Such approach should be considered by the Bidder when proposing a longer concession period that that envisaged in the RFP:

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Investment range	Concession Period
R2663,50 ≤ investment < R3424,50/m ² built-on area	30 years
R2283,00 ≤ investment < R2663,50/m ² built-on area	25 years
R1902,50 ≤ investment < R2283,00/m ² built-on area	20 years

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