

**TFR SOC LTD**

[Registration No. 1990/000900/30]

REQUEST FOR INFORMATION [RFI]**Information is required** to enable TFR (through its operating division TFR Freight Rail "TFR") to

- identify those parties interested in participating in a competitive bidding process for the integrated licencing(non-statutory), improvement / development, promotion, funding, maintenance and operation of TFR owned rail terminals / facilities in collaboration with TFR to achieve its Road to Rail strategic objectives;
- obtain information from the market to validate the viability and attractiveness of the various rail terminals / facilities to be put through the bidding process;
- obtain information from the market as to the proposed business, financial, operating and rail haulage models that would meet TFR's strategic objectives.

THEREAFTER**THROUGH A CLOSED "REQUEST FOR PROPOSAL" [RFP] PROCESS**

- to appoint the Terminal Operator/s to improve/develop, promote, fund, operate and maintain various TFR Freight Rail Terminals /Facilities in support of the TFR Freight Rail Road to Rail Strategy (for a period of [5] five years)

RFI NUMBER: HOAC-HO-22464**ISSUE DATE: 06 October 2016****CLOSING DATE: 15 November 2016****CLOSING TIME: 10h00****A COMPULSORY BRIEFING SESSION: (Refer to Section 1, clause 2):**

PLEASE BRING YOUR VALID TENDER DOCUMENT ON THE DAY OF THE BRIEFING OTHERWISE YOU WILL NOT BE ALLOWED TO ENTER THE BOARDROOM

**Venue: Transnet Freight Rail, 1 Houer Road, Terminal Building, 3rd Floor Boardroom,
City Deep****Date: 19 October 2016****Time: 10:00****SITE VISIT:****PLEASE BRING YOUR SAFETY SHOES, REFLECTIVE VEST AND A VALID TENDER DOCUMENT ON THE DAY OTHERWISE YOU WILL NOT BE ALLOWED TO GO TO SITE****ON CLOSING DATE PLEASE SUBMIT TWO (2) DOCUMENTS ORIGINAL & COPY IN ONE ENVELOPE IT MUST BE INSCRIBED ON THE OUTSIDE WITH THE TENDER NUMBER AND THE CLOSING DATE.**

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RFI FOR APPOINTMENT OF TERMINAL OPERATOR(S) TO MANAGE AND OPERATE VARIOUS TFR FREIGHT RAIL TERMINALS/ FACILITIES.

Section 1: NOTICE TO RESPONDENTS

1 INFORMATION REQUEST

Information is requested from interested persons, companies, close corporations or enterprises [hereinafter referred to as the **Respondent(s)**] to supply the aforementioned information to TFR.

DESCRIPTION	Appointment of Terminal Operator(s) to Manage and Operate Various TFR Freight Rail Terminals/ Facilities
BID FEE AND BANKING DETAILS	This RFI is issued free of charge.
INSPECT / COLLECT DOCUMENT FROM	The office of the Secretariat, TFR Freight Rail Acquisition Council Ground Floor Mail Box Inanda House 1 21 Wellington Road Parktown
ISSUE DATE AND COLLECTION DATE DEADLINE	Between 09:00 and 15:00 from Thursday, 06 October 2016 until Tuesday, 18 October 2016.
COMPULSORY BRIEFING SESSION	Yes Refer to paragraph 2 for details.
CLOSING DATE	On Tuesday 15 November 2016 at 10:00 Bidders must ensure that bids are delivered timeously to the correct address. As a general rule, if a bid is late or delivered to the incorrect address, it will not be accepted for consideration.

Any additional information or clarification will be emailed to all Respondents, if necessary.

2 FORMAL BRIEFING

A compulsory briefing session will be conducted at City Deep Terminal Building, 3rd floor Boardroom, 1 Houer Road, City Deep on the **19th October 2016**, at **10:00** for a period of about two hours. [Respondents to provide own transportation and accommodation]. The briefing session will start punctually and information will not be repeated for the benefit of Respondents arriving late.

2.1 Despite the briefing session being non-compulsory, TFR nevertheless encourages all Respondents to attend. TFR will not be held responsible if any Respondent who did not attend the non-compulsory session subsequently feel disadvantaged as a result thereof.

3 RESPONSE SUBMISSION

Proposals must be submitted in a sealed envelope addressed as follows:

The Secretariat
TFR Freight Rail Acquisition Council
Ground Floor
Bid Box
Inyanda House 1
21 Wellington Road
Parktown

RFI No: HOAC-HO-22464

Description: Appointment of Terminal operator to improve/develop, promote, fund, operate and maintain various TFR Freight Rail Terminals /Facilities in support of the TFR Freight Rail Road to Rail Strategy

Various TFR Freight Rail Terminals/Facilities.

Closing date and time: 15 November 2016, at 10:00

Closing address *[Refer to options below]*

All envelopes must reflect the return address of the Respondent on the reverse side.

4 DELIVERY INSTRUCTIONS FOR RFI/EOI

Delivery by hand

If delivered by hand, the envelope must be deposited in the TFR bid box which is located at Inyanda No 1, Ground Floor, 21 Wellington Road, Parktown and must be addressed as follows:

THE SECRETARIAT
TFR FREIGHT RAIL ACQUISITION COUNCIL
GROUND FLOOR
BID BOX
INYANDA HOUSE 1
21 WELLINGTON ROAD
PARKTOWN

- 4.1 The measurements of the "bid slot" are 400mm wide x 100mm high, and Respondents must please ensure that response documents or files are no larger than the above dimensions. 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 3 above.
- 4.2 It should also be noted that the above bid box is accessible to the public 24 hours a day, 7 days a week.

Dispatch by courier

If dispatched by courier, the envelope must be addressed as follows and delivered to the Office of The Secretariat, TFR Freight Rail Acquisition Council and a signature obtained from that Office:

THE SECRETARIAT
TFR FREIGHT RAIL ACQUISITION COUNCIL
INYANDA NO 1
GROUND FLOOR
21 WELLINGTON ROAD
PARKTOWN

If responses are not delivered as stipulated herein, such responses will not be considered.

No email or faxed responses will be considered, unless otherwise stated herein.

The responses to this RFI/EOI will be opened as soon as possible after the closing date and time.

TFR shall not, at the opening of responses, disclose to any other company any confidential details pertaining to the Proposals / information received, i.e. company information, etc. The names and locations of the Respondents will be divulged to other respondents upon request.

Envelopes must not contain documents relating to any RFI/EOI/RFP other than that shown on the envelope.

5 BROAD-BASED BLACK ECONOMIC EMPOWERMENT AND SOCIO-ECONOMIC OBLIGATIONS

5.1 As will be described in more detail in the BBBEE Claim Form and as prescribed in terms of the Preferential Procurement Policy Framework Act (PPFA), Act 5 of 2000 and its Regulations, Respondents are to note that during the subsequent RFP stage TFR will allow a "preference" to companies who provide a valid B-BBEE Verification Certificate.

Further to this, and in order to serve as a catalyst for transformation in the freight logistics sector, it is TFR's intention to set a minimum BBBEE rating at level 2, subject to information received in the RFI as prequalification criteria. Respondents who fail to meet this minimum prequalification requirement, either through proof of the bidders empowerment status, or as an unequivocal commitment to an empowerment plan to achieve such target level following the award of business under the RFP process will be deemed non-responsive and their bid proposals will not be further evaluated.

To the extent that the BBBEE minimum criteria is based on a commitment as indicated above, such commitment may not be more than 6 months and will be embedded in the contractual terms and conditions of the TOA. Failure to meet such BBBEE commitment will constitute a breach of the agreement conditions.

5.2 B-BBEE Joint Ventures or Consortiums

Bidders may choose during the subsequent RFP process to enter into a Joint Venture with B-BBEE companies. RFP Bidders will also be required to submit a signed JV agreement between the parties clearly stating the percentage [%] split of business and the associated responsibilities of each party. Alternatively, if such a JV or consortium agreement is unavailable, the partners must submit confirmation in writing of their intention to enter into a JV or consortium agreement should they be awarded the bid by TFR through the RFP process. This written confirmation must clearly indicate the percentage [%] split of JV business

ownership and the responsibilities of each party. In such cases, award of the bid will only take place once a signed copy of a JV or consortium agreement is submitted to TFR.

Please indicate below whether your entity has an existing JV, and if so, provide details, including details of the percentage split of business, or whether your entity intends to create a JV relationship for RFP purposes:

5.3 Subcontracting

TFR fully endorses Government's transformation and empowerment objectives and when contemplating subcontracting during the subsequent RFP process, Respondents are requested to give preference to companies which are Black Owned, Black Women Owned, Black Youth Owned, owned by Black People with Disabilities, EMEs and QSEs (need to write out these abbreviations being used for the first time in this document including any companies designated as B-BBEE Facilitators.

If contemplating subcontracting, please note that a Respondent will not be awarded points for B-BBEE if it is indicated in its RFP Proposal that such Respondent intends subcontracting more than 25% [twenty-five percent] of the value of the contract to an entity/entities that do not qualify for at least the same points that the Respondent qualifies for, unless the intended subcontractor is an EME with the capability to execute the contract.

A person awarded a contract may not subcontract more than 25% [twenty-five percent] of the value of the contract to any other enterprise that does not have an equal or higher B-BBEE status level than the person concerned, unless the contract is subcontracted to an EME that has the capability and ability to execute the subcontract.

Please indicate below whether your entity has an existing subcontractor(s), and if so, provide details, including details of the percentage of the contract that will be sub-contracted as well as the B-BBEE status of the sub-contractor/s, or whether your entity intends to create a subcontracting relationship for RFP purposes:

5.4 B-BBEE Improvement Plan

TFR encourages its Suppliers / Business Partners to constantly strive to improve their B-BBEE rating. As such, TFR requests that Respondents to the subsequent RFP submit a B-BBEE improvement plan. Respondents will be requested to indicate the extent to which they will maintain or improve their B-BBEE status over the contract period.

6 COMMUNICATION

6.1 For specific queries relating to this RFI, an RFI Clarification Request Form should be submitted to [zingisa.dala@transnet.net] before **12:00 on 8th November 2016**, substantially in the form set

out in Section 12 hereto. In the interest of fairness and transparency, TFR's response to such a query will then be made available to the other Respondents who have collected RFP documents. For this purpose TFR will communicate with Respondents using the contact details provided to the Secretariat on issue of the bid documentation to the Respondent. Kindly ensure that you provide the Secretariat with the **correct** contact details, as TFR will not accept responsibility for being unable to contact a bidder who provided incorrect contact details.

7 CONFIDENTIALITY

- 7.1 All information related to this RFI is to be treated with strict confidence. In this regard Respondents are required to certify that they have acquainted themselves with the Non-Disclosure Agreement. All information related to a subsequent contract, 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 Goods, which is either directly or indirectly related to TFR's business, written approval to divulge such information must be obtained from TFR.

8 INSTRUCTIONS FOR COMPLETION OF RFI

- 8.1 RFI proposals must be submitted in duplicate hard copies [1 original and 1 copy] and must be bound (include a soft copy in a CD/ USB)
- 8.2 All returnable documents listed in the expression of interest [section 4] in this RFI must be returned with your submission.
- 8.3 The person or persons signing the submission must be legally authorised by the respondent to do so.

9 STATUS OF THIS RFI AND SUBSEQUENT PROCESS

- 9.1 It is envisaged that the Terminal Operator/s will be appointed, through a separate RFP process, to manage and operate various TFR Freight Rail Terminals and facilities.
- 9.2 This RFI is not an offer to purchase and TFR is under no obligation to accept any proposals in this process and/or the subsequent RFP which may be issued hereafter.
- 9.3 As this is a Request for Information only, no business will be awarded through this process.

10 DISCLAIMERS

- 10.1 Respondents are hereby advised that TFR is not committed to any course of action as a result of its issuance of this RFI and/or its receipt of submissions in response to it. In particular, please note that TFR reserves the right and at its sole and full discretion to:
- a) utilise any information provided to it in response to this RFI to draft the scope of requirements for inclusion in an RFP;
 - b) take no further action whatsoever, if it so decides
 - c) withdraw from this process and the provisions of this project at any time;
 - d) select the RFI and RFP participants based on TFR's criteria;
 - e) change the dates of adjudication and submission;
 - f) not invite RFI respondents for further participation in the RFP process;
 - g) not bind itself to accept any or all of the RFIs; or
 - h) Increase or decrease the quantities/scope as indicated in the RFI.

- 10.2 TFR's decisions will be final and no correspondence will be entered into after the selection process. You will be formally notified of your result.
- 10.3 Kindly note that TFR will **not** reimburse any Respondent for any preparatory costs or other work performed in connection with this submission, (For example transport and accommodation costs).

Preview copy



RFI FOR APPOINTMENT OF TERMINAL OPERATOR(S) TO MANAGE AND OPERATE VARIOUS TFR FREIGHT RAIL TERMINALS/ FACILITIES.

Section 2: RFI SCOPE OF REQUIREMENTS

1 INTRODUCTION

- 1.1 TFR is wholly owned by the Government of the Republic of South Africa and is the custodian of the country's freight railway, ports and pipelines. The company contributes to the competitiveness, growth and development of the South African economy through delivering reliable freight transport and handling services that satisfy customer demand. In 2012, TFR launched its Market Demand Strategy (MDS) which amongst others, commits capital investment to expand rail, port and pipeline capacity to meet market demand; seeks to realize productivity, efficiency improvements and also seek to facilitate sustainable job creation, skills development, local supplier development, regional integration and black economic empowerment.
- 1.2 A key recognition in the TFR MDS is the need to investigate opportunities to partner with the private sector. The inclusion of Private Sector Participation (PSP) in the broader delivery of MDS has been mandated by the Shareholder, through the Department of Public Enterprises. This has further been endorsed by the TFR EXCO and Board as part of the TFR corporate targets and objectives.
- 1.3 TFR has made a strategic decision to introduce private sector participation in the operations of rail terminals. This will create a competitive environment in the attraction of rail friendly cargo from road back to rail. TFR has accordingly identified a list of terminals and facilities to be offered to the private sector that will enhance the use of rail services within customer supply chains.
- 1.4 One of TFR's Ministerial strategic objectives is to lower the overall cost of logistics through greater utilization of rail for the transportation cargo. Rail is inherently a low cost mode of transporting cargo, based on higher economies of scale, lower environmental footprint and strong security. Its advantages include that of having greater indirect and direct socio-economic benefits.
- 1.5 TFR aims to entrench its business within current and new customer supply chains, by providing solutions that will ensure collaboration and optimised usage of both rail and road. This will create greater Rail-Road synergy, transparency and a competitive platform amongst cargo nodes and terminals as the entry and exit points for rail.
- 1.6 TFR owns extensive Terminals / Facilities across the country, including rail terminals, warehouses and rail sidings of which some have been identified as possible private sector participation opportunities. One of the expected outcomes of this RFI is for the market to express an interest in and an opinion on the potential of these facilities.
- 1.7 It is not the intention to offer these Terminals / Facilities for sale or lease. TFR also reserves the right to remove any of the Terminals / Facilities mentioned from the RFP process without notification.

Respondent's Signature

Date and Company Stamp



2 BACKGROUND

2.1 TFR has inventoried all of the terminal opportunities nationally, where a terminal could be a combination of rail siding, slab or open platforms, Warehouses and fixed structures. Some of these terminals will remain under direct TFR operations and control, where they are deemed to be linked to long term planning initiatives and or are strategic to TFR's existing business continuity. The remaining terminals will however be offered to the open market based on a **Terminal Operator Agreement (TOA)** issued by TFR.

2.2 Through this RFI process, TFR's intention is to:

- Establish those parties interested in continued participation in this two staged procurement process, i.e.
 - Stage 1 – Request for Information
 - Stage 2 – Closed Request for Proposals
- Qualify those parties who will be invited for any potential Request for Proposals on the Terminal / Facilities that TFR will offer the market to bid on through a competitive bidding process. This RFI process therefore forms the first stage of the two stage market engagement process, with this stage also serving as a qualification stage.
- Establish how these Terminals / Facilities will fit into the broader supply chain and logistics with a specific focus on additional volume on rail.
- Establish the market attractiveness of the various Terminals / Facilities in order to prioritise which Terminals / Facilities to offer to the market.
- Improve detailed understanding of property and commodity associated Origin-Destination pairs.
- Use the market information to develop a comprehensive RFP bid and evaluation criteria.
- Issue a closed Bid to respondents who participated in this RFI.
- Evaluate the bids against the updated bid evaluation criteria.
- Award long term Terminal / Facilities Operator Agreements to the successful bidding entities.
- Utilize this process to secure additional volumes from road, and should not be targeting volumes that are currently moving on rail

3 GENERAL RESPONDENT OBLIGATIONS

3.1 The Respondent(s) shall be fully responsible to TFR for the acts and omissions of persons directly or indirectly employed by them.

3.2 The Respondent (s) must comply with the requirements stated in this RFI.

4 CONFIDENTIALITY AND COMPLIANCE

4.1 This RFI and information contained herein or provided for purposes thereof, remain the property of TFR and may not be reproduced, sold or otherwise disposed of. All recipients of this document (whether a RFI is submitted or not) shall treat the details of this document as strictly private and confidential.

4.2 Information disclosed in this RFI is given in good faith and only for the purposes of providing sufficient information to the Respondent to enable submission of a well-informed and realistic RFI.

Respondent's Signature

Date and Company Stamp



5 UNDERTAKINGS BY RESPONDENT

- 5.1 It will be accepted that the Respondent, on submitting the RFI response, has read, understood and accepted all the terms and conditions of the document. The submission of an RFI by any Respondent shall presume complete acceptance of the terms and conditions of the document. All qualifications and or exceptions should be noted in the RFI Response document.

6 COSTS TO RESPOND TO THE RFI

- 6.1 All Respondents wishing to submit a RFI response must be in possession of this document, the RFI. TFR will not be responsible for or pay any expense or losses which may be incurred by any Respondent in the preparation and submission of the RFI and the costs of the RFI at all stages of the RFI process. Costs, if any, will be for each Respondent's own account.
- 6.2 TFR reserves the right to invite Respondents to present or otherwise demonstrate their proposed solution as per their RFI, at the Respondent's own cost.

7 AUTHORITY OF SIGNATORY

- 7.1 If the RFI Respondent is a company, a certified copy of the resolution of the Board of Directors (i.e. personally signed by the Chairman or Secretary of the Board) authorising the person who signs this RFI to do so and any other documents and correspondence in connection with this RFI and/or agreement on behalf of the company, must be submitted with their RFI.
- 7.2 If the RFI Respondent is a partnership, a certified copy of the resolution of the partners (personally signed by all the partners) authorising the person who signs this RFI to do so and any other documents and correspondence in connection with this RFI and/or agreement on behalf of the partnership, must be submitted with this RFI.
- 7.3 If the RFI Respondent constitutes a "one-man business", certified proof must be submitted that the person signing this RFI and any other documents and correspondence in connection with this RFI and/or agreement is the sole owner of the one-man business.
- 7.4 Failure to comply with this clause may result in rejection of the RFI response.

8 OFFERING OF COMMISSION OR GRATUITY.

- 8.1 If a Respondent, or any person employed by him, is found to have either directly or indirectly offered, promised or given to any person in the employ of TFR, any commission, gratuity, gift or other consideration, TFR shall have the right and without prejudice to any other legal remedy which it may have in regard to any loss or additional cost or expenses, to disqualify the RFI Respondent from further participation in this process and any other subsequent processes in this regard. The RFI Respondent will be responsible for all and any loss that TFR may suffer as a result thereof. In addition, TFR reserves the right to exclude such a Respondent from future business with TFR.

Respondent's Signature

Date and Company Stamp



9 UNDERTAKING BY TFR

- 9.1 In responding to this RFI, TFR encourages all RFI Respondents to put their best effort into the construction and development of the proposal.
- 9.2 The RFI process will include due governance and all respondents will be notified of the outcome of their bid.

10 RFI SELECTION CRITERIA

10.1 STEP ONE: Test for Administrative Responsiveness

The test for administrative responsiveness will include the following:

Administrative responsiveness check	RFP Reference
<ul style="list-style-type: none"> • Whether the Bid has been lodged on time 	
<ul style="list-style-type: none"> • Whether all Returnable Documents and/or schedules [where applicable] were completed and returned by the closing date and time 	
<ul style="list-style-type: none"> • Verify the validity of all returnable documents 	

The test for administrative responsiveness [Step One] must be passed for a Respondent's Proposal to progress to Step Two for further pre-qualification

10.2 STEP TWO: Technical Criteria

The following selection criteria will be used as a guide for adjudicating Respondents.

Specific detailed items that are important for the Respondent to consider in the response preparation process include:

The test for the Technical and Functional threshold will include the following:

Technical Criteria
- Quality of presentation, reply to the RFI and attention to required detail during the selection process.
- Compliance with the terms and conditions of the RFI documents.
- Responses to the questions in Section 3 paragraph 2.2.
- Compliance to specification: (Compliance sheet)

Respondent's Signature

Date and Company Stamp

RFI FOR APPOINTMENT OF TERMINAL OPERATOR(S) TO MANAGE AND OPERATE VARIOUS TFR FREIGHT RAIL TERMINALS/ FACILITIES.

Section 3: TFR'S RFI INFORMATION

1 IDENTIFIED TERMINALS / FACILITIES

The following Terminals / Facilities are included in the RFI and any potential RFP and are therefore offered and should be considered in response to this RFI.

(Kindly add suggestions of terminals/ facilities that have not been identified in the above mentioned list.)

	Terminal/ Facilities	GPS Coordinates	Type of Terminal/Facility
Gauteng			
1.	Vaal Container Terminal (Vaalcon)	26° 43' 58.11" S 27° 55' 19.23" E	Terminal
2.	Kaalfontein Car Terminal	26° 02' 07.51" S 28° 15' 16.80" E	Terminal
3.	Rosslyn (Roscon)	25° 38' 14.24" S 28° 05' 42.76" E	Terminal
4.	Westonaria	26° 48' 46.21" S 27° 39' 05.98" E	Siding
5.	Suurbekom	26° 18' 24.79" S 27° 41' 11.08" E	Siding
6.	Eloff	26° 10' 25.70" S 28° 35' 57.15" E	Siding
7.	Robertsons		Siding
Eastern Cape			
8.	Cambridge	32° 58' 18.75" S 27° 53' 23.02" E	Terminal and Warehouse
Western Cape			
9.	Dalcon	33° 37' 59.85" S 19° 27' 58.38" E	Warehouse
10.	Worcester	33° 37' 54.68" S 19° 28' 00.90" E	Terminal and Warehouse
11.	Ashton	33° 50' 03.13" S 20° 03' 54.64" E	Terminal
12.	Riversdal	34° 05' 38.70" S 21° 15' 23.10" E	Siding/ warehouse
KwaZulu Natal			
13.	Pietermaritzburg	29° 38' 04.13" S 30° 21' 05.56" E	Terminal
14.	Isipingo	29° 59' 41.64" S 30° 55' 34.79" E	Terminal
15.	Ladysmith	28° 32' 46.83" S 29° 48' 09.64" E	Terminal and Warehouse
16.	Newcastle	27° 45' 39.50" S 29° 58' 04.60" E	Terminal and Warehouse
17.	Clairwood Race Course	29° 54' 44.00" S 30° 58' 30.10" E	Siding

Respondent's Signature

Date and Company Stamp

18.	Deagersdrift	28° 01' 05.80" S 30° 24' 22.70" E	Warehouse
29.	Empangeni	28° 46' 15.47" S 31° 54' 23.57" E	Terminal
20.	Glenco	28 10' 23.30" S 30 09' 21.30" E	Shunting area
North West			
21.	Klerksdorp	26° 52' 06.01" S 26° 40' 22.01" E	Siding
22.	Potchefstroom	26° 42' 39.21" S 27° 04' 56.24" E	Terminal
23.	Mahikeng	25° 51' 44.22" S 25° 38' 15.38" E	Siding
24.	Lichtenburg	26° 08' 37.44" S 26° 10' 26.17" E	Terminal
Northern Cape			
25.	Upington	28° 27' 07.99" S 21° 14' 25.01" E	Terminal
26.	Kimberley	28° 44' 10.76" S 24° 46' 14.36" E	Terminal
27.	Da Aar	30° 39' 03.86" S 24° 00' 58.24" E	Terminal
28.	Prieska	29° 40' 45.20" S 22° 44' 54.70" E	Siding
29.	Postmansburg	28° 18' 25.00" S 23° 03' 01.60" E	Siding
Free State			
30.	Phalaborwa	27° 58' 38.95" S 3° 07' 11.78" E	Terminal
31.	Polokwane	23° 53' 09.11" S 29° 27' 17.73" E	Terminal and Warehouse
32.	Tzaneen	23° 50' 54.63" S 30° 10' 40.90" E	Terminal and Warehouse
33.	Makhado	23° 03' 08.90" S 29° 54' 24.10" E	Siding
Mpumalanga			
34.	Nelspruit	25° 27' 55.99" S 30° 58' 27.73" E	Terminal
Free State			
35.	Bloemfontein	29° 06' 47.60" S 26° 14' 00.77" E	Warehouse
36.	Kroonstad	27° 41' 15.81" S 27° 13' 28.87" E	Terminal
37.	Bethlehem	28° 13' 39.22" S 28° 18' 04.52" S	Terminal

Respondent's Signature

Date and Company Stamp



2. EXCLUDED TERMINALS/FACILITIES

The following Terminals/ Facilities are excluded from the RFI and any potential RFP and are therefore not offered for consideration in the RFI and RFP.

- 1.2.1 City Deep Container Terminal
- 1.2.2 Kazerne Container Terminal (Kascon)
- 1.2.3 Pretoria Container Terminal (Pretcon)
- 1.2.4 Bayhead Container Terminal
- 1.2.5 Bloemfontein Container Terminal (Bloemcon)
- 1.2.6 Isando Container Terminal
- 1.2.7 Deal Party
- 1.2.8 Lohatla

2.1 Respondents must complete the table within the provided section in Annexure A, using the list of the pre-identified terminals/facilities. A minimum of three (3) and any odd number (5, 7, 9...) thereafter as completed in the example. All listed Terminal/ Facilities must be ranked and completion of Annexure A is imperative as it is a pre-qualifier for the RFP.

(Note: Omit the above mentioned excluded terminals/ facilities in [section] 2.2 when completing Annexure A)

Terminals/ Facilities	Geographic al Location	Rank	Potential Rating	Comments	Commodity	Volume Projections p.a (tons)		OD pairs	
			5 – High Potential 4 – Above Average 3 – Average 2 – Below Average 1 – Poor 0 – No potential			Road	Rail	Origin	Destination
Vaal Container terminal	Gauteng	2	0		Steel	50 000	100 000	Vaal	Newcastle
Ladysmith	KwaZulu Natal	3	5		Cement, FMCG	12 000	82 000	Germiston	Ladysmith
Cambridge	Eastern Cape	1	5		Grain	500 000	1 000 000	East London	Bloemfontein

Respondent's Signature

Date and Company Stamp



Notes:

Terminal/Facility:	State identified TFR terminal / facility
Geographical Location	State the province that the terminal / facility is situated in
Rank	Rank the identified terminal / facility from 1-5 (1 being the highest and 5 the lowest)
Potential rating	Rate the terminals / facilities according to the potential importance
Comments	Give substantial reason as to the position of the terminal within your ranking
Commodity	List the type of commodity you intend moving through the terminal / facility and what % is new business Surely it will all be new business for Respondents?
Volume	Indicate the volume split between road and rail
OD pairs	Indicate the route from origin to intended destination

2.2 Final submissions must contain responses to the following questions:

- a) What is the average number of expected trains per week for the Terminal/ Facility?
- b) What is the average train length (number of wagons) that will be handled in the facility and between the OD pairs?

The type of cargo that will be moved, state the volumes of new business and existing business. (*New business: any commodity not moved by rail, Existing business: any commodity currently being moved by rail*).

- c) In the event of a Terminal / Facility accommodating various commodities, state a handling and / or movement strategy in order to prevent contamination.
- d) Indicate the anticipated economic benefit for the surrounding area of the identified (Terminal / Facility).
- e) Focus on areas and indicate how your activities will affect the overall economic stimulation of the immediate community.
- f) Specify the Terminal / Facilities of interest and elaborate on the operational activities that will be taking place.
- g) Specify the required size (square meters) the operation will require with specifications of the environment.
Specify the equipment that will be essential for the overall operations of the Terminal / Facility.(and indicate how much of the required equipment may be sourced locally)
- h) Indicate a maintenance strategy that will be established for the Terminal / Facility. (How much maintenance equipment / requirements may be sourced locally)

Respondent's Signature

Date and Company Stamp



i) Comment on whether a Terminal/ Facility could accommodate / may require more than one Operator:
Indicate a management strategy on how the operation will be handled.

j) Indicate a costing/pricing model or formula and include a cost breakdown of the following:

- Haulage rate
- Terminal handling rate
- Operating expenses
- Rate per unit (TEU/ton/ other)

k) Indicate the sources of funding and roll out should the following investments be required:

- 100 000 – 5 000 000
- 5 000 001- 10 000 000
- 10 000 001- 30 000 000
- 30 000 001- 50 000 000
- 50 000 001- 100 000 000
- >100 000 001

l) In [Section 2.2] OD pairs where selected:

- State the potential opportunities that exist within the chosen OD pairs.
- Elaborate on how the Operator supply chain incorporates the OD pair.
- State the logistics strategy for the identified OD pair.

3. TECHNICAL REQUIREMENTS

3.1. The RFI response submission should include at a minimum the following information;

3.1.1 Identification of the lead bidding entity by providing a brief company profile;

3.1.2 the core business activity (ies) of the lead bidding entity (Respondent);

3.1.3 Current commodities and volumes being transported by the lead bidding entity, if any;

3.1.4 the current transport mode(s) being used by the lead bidding entity indicating the mode percentage split;

3.1.5 The TFR Terminals / Facilities that the Respondent is interested in, ranking these in order of preference;

3.1.6 the proposed high level business plan and operating model that the Respondent envisages for a Terminal Operator Agreement detailing;

3.1.6.1 the commodities that would be moved through the terminal / facility;



- 3.1.6.2 the annualised volumes per commodity that would be moved through the facility over an initial 5 year agreement period;
- 3.1.6.3 the origin and destination of the annualised volume per commodities to be moved;
- 3.1.6.4 the rail origin and destination pairs on the annualised volume commodity flow (i.e. from rail siding to rail siding);
- 3.1.6.5 the proposed rail transportation rate per commodity flow indicated in Rand per Ton;
- 3.1.6.6 a breakdown of the fixed and variable components of the proposed Rand per Ton rate.
- 3.1.6.7 an opinion on the financial investments that may be required in the facilities, noting that TFR will be offering the Terminals / Facilities/ facilities "as is" and will not be making investments in property upgrades / refurbishments.
- 3.1.6.8 a view on how terminal / facility infrastructure maintenance will be undertaken, noting that TFR has available skills and capacity to undertake terminal infrastructure maintenance work.
- 3.1.6.9 an indication of the Respondent's ownership / shareholding structure.
- 3.1.6.10 an indication by the Respondent of any limitation that would hinder it from achieving the proposed RFP prequalification requirement for a BBBEE Level____ and Black Ownership shareholding on____%.
- 3.2 From the RFI response and/or submissions thereto, TFR will compile a specification and RFP document which will include an indication of the Terminals / Facilities that will be made available, the RFP prequalification and evaluation criteria to be utilised, the period of the proposed Terminal Operator Agreement, and the draft terms and conditions of the Terminal Operator Agreement.
- 3.3 The intention is to give all Respondents to this RFI an opportunity to submit proposals and innovative solutions that could have a positive impact on the TFR Market Demand Strategy through improved facilities and rail infrastructure utilisation.

Respondent's Signature

Date and Company Stamp



Compliance Sheet - (Terminals and Facilities for Operator Agreement)

- CF - Comply Fully
- PC - Partially Comply
- DC - Don't Comply
- NA - Not Applicable
- Noted

	Compliance	Comments and Reference
2.2.	Final submissions must contain responses to the following questions:	
a)		
b)		
c)		
d)		
e)		
f)		
g)		
h)		
i)		
j)		
k)		

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Respondent's Signature

Date and Company Stamp



I)	
TECHNICAL REQUIREMENTS	
3	
3.1	
3.1.1	
3.1.2	
3.1.3	
3.1.4	
3.1.5	
3.1.6	
3.1.6.1	
3.1.6.2	
3.1.6.3	
3.1.6.4	
3.1.6.5	
3.1.6.6	
3.1.6.7	
3.1.6.8	
3.1.6.9	
3.1.6.1	

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Respondent's Signature

Date and Company Stamp



**RFI FOR APPOINTMENT OF TERMINAL OPERATOR(S) TO MANAGE AND OPERATE VARIOUS TFR
FREIGHT RAIL TERMINALS/ FACILITIES.**

Section 4: EXPRESSION OF INTEREST

I/We _____

[Name of company, close corporation or partnership]

of [full address] _____

carrying on business under style or title of [trading as]

represented by _____

in my capacity as _____

being duly authorised, hereby lodge an **Expression of Interest** in participating in a subsequent Request for Proposals for the **Appointment Of Terminal Operator (S) To Manage And Operate Various TFR Freight Rail Terminals / Facilities** , as follows:

ADDRESS FOR NOTICES

Respondent to indicate its *domicilium citandi et executandi* hereunder:

Name of entity: _____

Facsimile: _____

Address: _____

NAME(s) AND ADDRESS / ADDRESSES OF DIRECTOR(S) OR MEMBER(S)

The Respondent must disclose hereunder the full name(s) and address(s) of the director(s) or members of the company or close corporation [C.C.] on whose behalf the RFI is submitted.

(i) Registration number of company / C.C.

(ii) Registered name of company / C.C.

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(iii) Full name(s) of director/member(s): Address/Addresses: ID Number/s:

.....

.....

.....

.....

.....

CONFIDENTIALITY

All information related to a subsequent contract, both during and after completion, is to be treated with strict confidentiality. 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.

RETURNABLE DOCUMENTS

a) Respondents must submit with their responses to this RFI, **as a minimum requirement**, all the returnable documents indicated below with a [✓]. All Sections must be signed and dated by the Respondent.

Minimum Requirements - Returnable Documents	Submitted [✓]	Submission Response (Yes / No)
SECTION 2 : Acknowledgement of RFI Scope of Requirements	✓	
SECTION 4 : Expression of Interest	✓	
SECTION 6 : Signed Non-Disclosure Agreement	✓	
Annexure A: Expression of Interest Summary Sheet	✓	

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b) In addition to the requirements of section (a) above, Respondents are further requested to submit with their responses the following **Additional Returnable Documents** as detailed below.

Additional Returnable Documents	Submitted [√]	Submission Response (Yes / No)
SECTION 1 : Notice to Respondents	√	
- Valid B-BBEE Verification Certificate [RSA Large Enterprises & QSEs]	√	
SECTION 3 : TFR's Statistical Information and RFI Particulars	√	
- Certified copies of IDs of shareholder/directors/members [as applicable]	√	
- Certified copy of Certificate of Incorporation [CM29/CM9 name change]	√	
- Entity's letterhead	√	
- Certified copy of valid Company Registration Certificate [if applicable]	√	

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By signing these RFI documents, the Respondent is deemed to acknowledge that he/she has made himself/herself thoroughly familiar with all the conditions governing this RFI, including those contained in any printed form stated to form part hereof and TFR SOC Ltd will recognise no claim for relief based on an allegation that the Respondent overlooked any such condition.

SIGNED at _____ on this ____ day of _____ 2015.

SIGNATURE OF WITNESSES

ADDRESS OF WITNESSES

1 _____

Name _____

2 _____

Name _____

SIGNATURE OF RESPONDENT'S AUTHORISED REPRESENTATIVE:

NAME: _____

DESIGNATION: _____

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Respondent's contact details:

Name.....

Designation.....

Address.....

Telephone.....

Cell Phone.....

Facsimile.....

Email.....

Website.....



**RFI FOR APPOINTMENT OF TERMINAL OPERATOR(S) TO MANAGE AND OPERATE VARIOUS TFR FREIGHT
RAIL TERMINALS/ FACILITIES.**

Section 6: NON-DISCLOSURE AGREEMENT [NDA]

NON DISCLOSURE AGREEMENT – RFI / EOI

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THIS AGREEMENT is made between

Transnet SOC Ltd [Transnet] [Registration No. 1990/000900/30]

whose registered office is at 49th Floor, Carlton Centre, 150 Commissioner Street, Johannesburg 2001,

and _____

the Company as indicated in the RFI/EOI bid response hereto

WHEREAS

Transnet and the Company wish to exchange Information [as defined below] and it is envisaged that each party may from time to time receive Information relating to the other in respect thereof. In consideration of each party making available to the other such Information, the parties jointly agree that any dealings between them shall be subject to the terms and conditions of this Agreement which themselves will be subject to the parameters of the Bid Document.

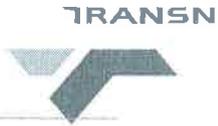
IT IS HEREBY AGREED

1. INTERPRETATION

In this Agreement:

- 1.1 **Agents** mean directors, officers, employees, agents, professional advisers, contractors or sub-contractors, or any Group member;
- 1.2 **Bid or Bid Document** means Transnet's Request for Information [RFI] Request for Proposal [RFP] or Request for Quotation [RFQ], as the case may be;
- 1.3 **Confidential Information** means any information or other data relating to one party [the Disclosing Party] and/or the business carried on or proposed or intended to be carried on by that party and which is made available for the purposes of the Bid to the other party [the Receiving Party] or its Agents by the Disclosing Party or its Agents or recorded in agreed minutes following oral disclosure and any other information otherwise made available by the Disclosing Party or its Agents to the Receiving Party or its Agents, whether before, on or after the date of this Agreement, and whether in writing or otherwise, including any information, analysis or specifications derived from, containing or reflecting such information but excluding information which:

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- a) is publicly available at the time of its disclosure or becomes publicly available [other than as a result of disclosure by the Receiving Party or any of its Agents contrary to the terms of this Agreement]; or
- b) was lawfully in the possession of the Receiving Party or its Agents [as can be demonstrated by its written records or other reasonable evidence] free of any restriction as to its use or disclosure prior to its being so disclosed; or
- c) following such disclosure, becomes available to the Receiving Party or its Agents [as can be demonstrated by its written records or other reasonable evidence] from a source other than the Disclosing Party or its Agents, which source is not bound by any duty of confidentiality owed, directly or indirectly, to the Disclosing Party in relation to such information;

1.4 **Group** means any subsidiary, any holding company and any subsidiary of any holding company of either party; and

1.5 **Information** means all information in whatever form including, without limitation, any information relating to systems, operations, plans, intentions, market opportunities, know-how, trade secrets and business affairs whether in writing, conveyed orally or by machine-readable medium.

2. CONFIDENTIAL INFORMATION

2.1 All Confidential Information given by one party to this Agreement [the Disclosing Party] to the other party [the Receiving Party] will be treated by the Receiving Party as secret and confidential and will not, without the Disclosing Party's written consent, directly or indirectly communicate or disclose [whether in writing or orally or in any other manner] Confidential Information to any other person other than in accordance with the terms of this Agreement.

2.2 The Receiving Party will only use the Confidential Information for the sole purpose of technical and commercial discussions between the parties in relation to the Bid or for the subsequent performance of any contract between the parties in relation to the Bid.

2.3 Notwithstanding clause 2.1 above, the Receiving Party may disclose Confidential Information:

- a) to those of its Agents who strictly need to know the Confidential Information for the sole purpose set out in clause 2.2 above, provided that the Receiving Party shall ensure that such Agents are made aware prior to the disclosure of any part of the Confidential Information that the same is confidential and that they owe a duty of confidence to the Disclosing Party. The Receiving Party shall at all times remain liable for any actions of such Agents that would constitute a breach of this Agreement; or
- b) to the extent required by law or the rules of any applicable regulatory authority, subject to clause 2.4 below.

2.4 In the event that the Receiving Party is required to disclose any Confidential Information in accordance with clause 2.3 b) above, it shall promptly notify the Disclosing Party and cooperate with the Disclosing Party regarding the form, nature, content and purpose of such disclosure or any action which the Disclosing Party may reasonably take to challenge the validity of such requirement.



- 2.5 In the event that any Confidential Information shall be copied, disclosed or used otherwise than as permitted under this Agreement then, upon becoming aware of the same, without prejudice to any rights or remedies of the Disclosing Party, the Receiving Party shall as soon as practicable notify the Disclosing Party of such event and if requested take such steps [including the institution of legal proceedings] as shall be necessary to remedy [if capable of remedy] the default and/or to prevent further unauthorised copying, disclosure or use.
- 2.6 All Confidential Information shall remain the property of the Disclosing Party and its disclosure shall not confer on the Receiving Party any rights, including intellectual property rights over the Confidential Information whatsoever, beyond those contained in this Agreement.

3. RECORDS AND RETURN OF INFORMATION

- 3.1 The Receiving Party agrees to ensure proper and secure storage of all Information and any copies thereof.
- 3.2 The Receiving Party shall keep a written record, to be supplied to the Disclosing Party upon request, of the Confidential Information provided and any copies made thereof and, so far as is reasonably practicable, of the location of such Confidential Information and any copies thereof.
- 3.3 The Company shall, within 7 [seven] days of receipt of a written demand from Transnet:
- a) return all written Confidential Information [including all copies]; and
 - b) Expunge or destroy any Confidential Information from any computer, word processor or other device whatsoever into which it was copied, read or programmed by the Company or on its behalf.
- 3.4 The Company shall on request supply a certificate signed by a director as to its full compliance with the requirements of clause 3.3 b) above.

4. ANNOUNCEMENTS

- 4.1 Neither party will make or permit to be made any announcement or disclosure of its prospective interest in the Bid without the prior written consent of the other party.
- 4.2 Neither party shall make use of the other party's name or any information acquired through its dealings with the other party for publicity or marketing purposes without the prior written consent of the other party.

5. DURATION

The obligations of each party and its Agents under this Agreement shall survive the termination of any discussions or negotiations between the parties regarding the Bid and continue thereafter for a period of 5 [five] years.

6. PRINCIPAL

Each party confirms that it is acting as principal and not as nominee, agent or broker for any other person and that it will be responsible for any costs incurred by it or its advisers in considering or pursuing the Bid and in complying with the terms of this Agreement.



7. ADEQUACY OF DAMAGES

Nothing contained in this Agreement shall be construed as prohibiting the Disclosing Party from pursuing any other remedies available to it, either at law or in equity, for any such threatened or actual breach of this Agreement, including specific performance, recovery of damages or otherwise.

8. PRIVACY AND DATA PROTECTION

- 8.1 The Receiving Party undertakes to comply with South Africa's general privacy protection in terms Section 14 of the Bill of Rights in connection with this Bid and shall procure that its personnel shall observe the provisions of such Act [as applicable] or any amendments and re-enactments thereof and any regulations made pursuant thereto.
- 8.2 The Receiving Party warrants that it and its Agents have the appropriate technical and organisational measures in place against unauthorised or unlawful processing of data relating to the Bid and against accidental loss or destruction of, or damage to such data held or processed by them.

9. GENERAL

- 9.1 Neither party may assign the benefit of this Agreement, or any interest hereunder, except with the prior written consent of the other, save that Transnet may assign this Agreement at any time to any member of the Transnet Group.
- 9.2 No failure or delay in exercising any right, power or privilege under this Agreement will operate as a waiver of it, nor will any single or partial exercise of it preclude any further exercise or the exercise of any right, power or privilege under this Agreement or otherwise.
- 9.3 The provisions of this Agreement shall be severable in the event that any of its provisions are held by a court of competent jurisdiction or other applicable authority to be invalid, void or otherwise unenforceable, and the remaining provisions shall remain enforceable to the fullest extent permitted by law.
- 9.4 This Agreement may only be modified by a written agreement duly signed by persons authorised on behalf of each party.
- 9.5 Nothing in this Agreement shall constitute the creation of a partnership, joint venture or agency between the parties.
- 9.6 This Agreement will be governed by and construed in accordance with South African law and the parties irrevocably submit to the exclusive jurisdiction of the South African courts.



**TFR urges its clients, suppliers and the general public
to report any fraud or corruption on the part of TFR employees to
TIP-OFFS ANONYMOUS: 0800 003 056**

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RFI FOR APPOINTMENT OF TERMINAL OPERATOR(S) TO MANAGE AND OPERATE VARIOUS TFR FREIGHT RAIL TERMINALS/ FACILITIES.

Section 7: RFI CLARIFICATION REQUEST FORM

RFI No: HOAC-HO-22464

Deadline for RFI clarification submissions: Before **12:00 on 8th November 2016**

TO: TFR SOC Ltd
ATTENTION: The Bid Administrator
EMAIL: Zingisa.dala@transnet.net
DATE:
FROM:

RFI Clarification No [to be inserted by TFR] **HOAC-HO-22464**

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REQUEST FOR RFI CLARIFICATION:

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



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Annexure A: Expression of interest summary

Fill in as per example in [Section 2.3]

	Terminals/ Facilities	Geographical Location	Rank	Potential Rating 5 – High Potential 4 – Above Average 3 – Average 2 – Below Average 1 – Poor 0 – No potential	Comments	Commodity	Volume Projections p.a (tons)		OD pairs	
							Road	Rail	Origin	Destination
1.	Vaal Container Terminal (Vaalcon)									
2.	Kaalfontein Car Terminal									
3.	Roslyn (Roscon)									
4.	Westonaria									
5.	Suurbekom									
6.	Eloff									
7.	Robertsons									
8.	Cambridge									
9.	Belcon									

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Mutual Non-Disclosure Agreement

Note to bidders: This Non-Disclosure Agreement is to be completed and signed by an authorised signatory:

THIS AGREEMENT is made effective as of day of 20..... by and between:

TFR SOC Ltd (Registration No. 1990/000900/30), a company incorporated and existing under the laws of South Africa, having its principal place of business at Carlton Centre, 150 Commissioner Street, Johannesburg, 2001, South Africa,

and

..... (Registration No.) a private company incorporated and existing under the laws of South Africa having its principal place of business at

1. Purpose

The parties to this Agreement have a business relationship under which each party may disclose its Confidential Information to the other for the purpose of planning, developing and/or constructing a new [.....] ("the Purpose"). Each party ("the receiving party") shall treat as confidential all information and know-how which it may receive from the other party ("the disclosing party") in terms of this Agreement (hereinafter referred to as "confidential information"), and shall not divulge to any other party in any circumstances any such confidential information, and, in particular, any such confidential information as is covered by the National Key Points Act (Act No. 102 of 1980), whether during the currency of this Agreement or at any time thereafter, without the prior written consent of the disclosing party.

2. Definition

"Confidential Information" means any information, technical data, or know-how, including, but not limited to, that which relates to research, product plans, products, services, customers, markets, software, developments, inventions, processes, designs, drawings, engineering, hardware configuration information, marketing or finances.

3. Exclusions

Confidential Information does not include information, technical data or know-how which:

- 3.1. is in the possession of the receiving party at the time of disclosure as shown by the receiving party's files and records immediately prior to the time of disclosure;
- 3.2. prior or after the time of disclosure becomes part of the public knowledge or literature, not as a result of any inaction or action of the receiving party;
- 3.3. is developed by the receiving party through its independent resources without reference to the disclosing party's Confidential Information;
- 3.4. is disclosed to the receiving party by a third party without restriction and, to the knowledge of the receiving party, without violation of any obligation of confidentiality; or
- 3.5. is approved for release by the disclosing party in writing.

4. Non-Disclosure of Confidential Information

4.1. The parties to this Agreement agree not to use the Confidential Information disclosed to it by the other party for its own use or for any purpose except to carry out the Purpose as contained in this Agreement. Neither party will disclose any Confidential Information of the other party to third parties except those directors, officers, employees, consultants and agents who are required to have the information in order to carry out the discussions of the contemplated Purpose. Each party will notify those directors, officers, employees, consultants and agents to whom Confidential Information of the other party is disclosed or who have access to Confidential Information of the other party that they are bound by the obligations of the Non-Disclosure Agreement.

4.2. Each party agrees that it will take all reasonable measures to protect the secrecy of and avoid disclosure or use of Confidential Information of the other party in order to prevent it from falling into the public domain or the possession of persons other than those persons authorised hereunder to have any such information, which measures shall include the highest degree of care that either party utilises to protect its own Confidential Information of a similar nature. Each party agrees to notify the other party in writing of any misuse or misappropriation of such Confidential Information of the other party which may come to its attention.

5. Promotion of Access to Information Act, No.2 of 2000

5.1. All information relating to the disclosing party and which the disclosing party has indicated to the receiving party in writing to be confidential information, shall be deemed to be confidential information.

- 5.2. No provision of this Agreement shall be construed in such a way that the disclosing party is deemed to have granted its consent to the receiving party to disclose the whole or any part of the confidential information in the event that the receiving party receives a request for the whole or any part of the confidential information in terms of the provisions of the Promotion of Access to Information Act, No.2 of 2000, as may be amended from time to time ("the Act").
- 5.3. Subject to the provisions of sub-clause 5.3 below, the disclosure of confidential information by the receiving party otherwise than in accordance with the provisions of this Agreement will entitle the disclosing party to institute action for breach of confidence against the receiving party, as envisaged by Section 65 of Act No.2 of 2000.
- 5.4. The receiving party acknowledges that the provisions of sub-clause 5.2 above shall not be construed in such a manner as to exclude the applicability of any other grounds of refusal contained in Act No.2 of 2000 which may be applicable in the event that the receiving party receives a request for the whole or any part of the confidential information in terms of Act No.2 of 2000.

6. Non-Solicitation

During the two-year period following the execution of this Agreement, neither party will solicit for employment, on its own behalf or that of any other person, any officer, director or employee of the other party at the level of director, vice-president or higher with whom the soliciting party became acquainted during the course of the discussions contemplated by this Agreement; provided, that the foregoing shall not be deemed to prohibit either party or a subsidiary of such party from making a general, public solicitation of employment in the ordinary course of such party or subsidiary's business, provided that such solicitation is not directed specifically to employees of the other party.

7. Mandatory Disclosure

In the event that either party or their respective directors, officers, employees, consultants or agents are requested or required by legal process to disclose any of the Confidential Information of the other party, the party required to make such disclosure shall give prompt notice so that the other party may seek a protective order or other appropriate relief. In the event that such protective order is not obtained, the party required to make such disclosure shall disclose only that portion of the Confidential Information, which its counsel advises that it is legally required to disclose.

8. Variation, Addition or Cancellation

No variation of, addition to, cancellation or novation of this Agreement in its entirety or of any term or condition thereof shall be of any force or effect unless such amendment or cancellation is reduced to writing and signed by both parties.

9. No License Granted

Nothing in this Agreement is intended to grant any rights to either party under any patent, copyright, trade secret or other intellectual property right nor shall this Agreement grant either party any rights in or to the other party's Confidential Information, except the limited right to review such Confidential Information solely for the purposes of the contemplated business relationship between the parties.

10. No Representations

No party makes any representation or warranty as to the accurateness or completeness of any Confidential Information provided hereunder. Neither party shall have any liability to the other arising from, or related to, the other party's use of Confidential Information provided hereunder.

11. Term

The foregoing commitments of either party in this Agreement shall survive any termination of the business relationship under the contemplated Purpose between the parties, and shall continue relative to any Confidential Information disclosed hereunder for a period of 10 (ten) years following the disclosure of such Confidential Information.

12. Miscellaneous

This Agreement shall be binding upon and for the benefit of the undersigned parties, their successors and assigns, provided that Confidential Information of either party may not be assigned without the prior written consent of the disclosing party. Failure to enforce any provision of this Agreement shall not constitute a waiver of any term hereof.

13. Governing Law and Jurisdiction

This Agreement shall be governed by and construed and enforced in accordance with the laws of the Republic of South Africa, and shall be binding upon the parties hereto in South Africa and worldwide.

14. Disputes

Any dispute or difference arising out of or relating to this Confidentiality Agreement shall be referred to arbitration and settled by arbitration according to the rules then in effect of the Arbitration Foundation of Southern Africa. Such arbitration shall be held in Johannesburg, and conducted in the English language before 1 (one) arbitrator



appointed in accordance with the said rules. The arbitrator shall apply the law chosen by the parties elsewhere in this Agreement to the merits of the dispute. This Agreement to arbitrate shall be enforceable in, and judgement upon any award may be entered in any court of any country having appropriate jurisdiction.

15. Remedies

Each party agrees that its obligations hereunder are necessary and reasonable in order to protect the other party and the other party's business, and expressly agrees that monetary damages may be inadequate to compensate the other party for any breach by either party of any covenants and agreements set forth herein. Accordingly, each party agrees and acknowledges that any such violation or threatened violation may cause irreparable injury to the other party and that, in addition to any other remedies that may be available, in law, in equity or otherwise, the other party shall be entitled to obtain injunctive relief against the threatened breach of this Agreement or the continuation of any such breach, without the necessity of proving actual damages.

Name of Bidder/ Representative: _____

Designation: _____

Signed: _____

Date: _____

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END....
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