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an Operating Division of **TRANSNET SOC LTD**

[Registration No. 1990/000900/30]

REQUEST FOR PROPOSAL [RFP] [SERVICES]

**FOR THE PROVISION OF SKILLED HOSPITALITY STAFF FOR THE BLUE TRAIN
FOR A PERIOD OF 24 MONTHS**

RFP NUMBER RT/2005/2015
ISSUE DATE: 31 August 2015
COMPULSORY BRIEFING SESSION 16 September 2015
CLOSING DATE: 29 September 2015
CLOSING TIME: 10:00
BID VALIDITY PERIOD: 90 days Business Days from Closing Date

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**RFP FOR THE PROVISION OF
SKILLED HOSPITALITY STAFF FOR THE BLUE TRAIN FOR A PERIOD OF 24 MONTHS**

Section 1 : NOTICE TO BIDDERS

1 INVITATION TO BID

Responses to this RFP [hereinafter referred to as a **Bid** or a **Proposal**] are requested from persons, companies, close corporations or enterprises [hereinafter referred to as an **entity, Respondent** or **Bidder**].

DESCRIPTION	SUPPLY SKILLED HOSPITALITY STAFF FOR THE BLUE TRAIN
BID FEE AND BANKING DETAILS	R200.00 [inclusive of VAT] per set. Payment is to be made as follows: Bank: Standard Bank Account Number: 20 3158 598 Branch: Braamfontein Branch code: 004805 Account Name: Transnet Freight Rail Reference: BT/2005/2015 NOTE – This amount is not refundable. A receipt for such payment made must be presented when collecting the RFP documents and submitted thereafter with your Proposal.
INSPECT / COLLECT DOCUMENTS FROM	The office of the Secretary, 6 TH Floor Transnet Park Robert Sobukwe road Bellville
ISSUE DATE AND COLLECTION DATE DEADLINE	Between 08:30 and 15:00 from 31 August 2015 until 15 September 2015 .Note: If a bid fee is applicable, payment must be effected prior to the deadline for collection. Pursuant to this requirement, should a third party [such as a courier] be instructed to collect RFP documents on behalf of a Respondent, please ensure that this person [the third party] has a "proof of payment" receipt for presentation to Transnet when collecting the RFP documents.
COMPULSORY BRIEFING SESSION	yes Refer to paragraph 2 for details.
CLOSING DATE	10:00 on Tuesday 29 September 2015 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.
VALIDITY PERIOD	90 Business Days from Closing Date Bidders are to note that they may be requested to extend the validity period of their bid, at the same terms and conditions, if the internal evaluation process has not been finalised within the validity period.

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

2 FORMAL BRIEFING

A compulsory RFP briefing will be conducted at the **Nzasm Building, 2nd Floor, suite 270, Corner of Paul Kruger and Minnaar street, Pretoria, Central on the 16 September 2015, at 10:00 - 12:00pm for a period of ± two hour**. [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 A Certificate of Attendance in the form set out in Section 8 hereto must be completed and submitted with your Proposal as proof of attendance is required for a **compulsory** RFP briefing.
- 2.2 Respondents failing to attend the compulsory RFP briefing will be disqualified.
- 2.3 Respondents without a valid RFP document in their possession will not be allowed to attend the RFP briefing.

3 PROPOSAL SUBMISSION

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

The Secretariat, Transnet Acquisition Council	
RFP No:	BT/2005/2015
Description	PROVISION OF SKILLED HOSPITALITY STAFF FOR THE BLUE TRAIN
Closing date and time:	29 September 2015, 10:00am
Closing address	[Refer to options in paragraph 4 below]

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

4 DELIVERY INSTRUCTIONS FOR RFP

4.1 Delivery by hand

If delivered by hand, the envelope is must be deposited in the Transnet tender box and must be addressed as follows:

THE SECRETARIAT
TRANSNET ACQUISITION COUNCIL
TRANSNET PARK BUILDING
ROBERT SOBUKWE ROAD
BELLVILLE

- a) The measurements of the "tender 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 Dispatch by courier

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

THE SECRETARIAT
ACQUISITION COUNCIL
TRANSNET PARK BUILDING
6 TH FLOOR
ROBERT SOBUKWE ROAD
BELLVILLE

- 4.3 If responses are not delivered as stipulated herein, such responses will not be considered.
- 4.4 No email or faxed responses will be considered, unless otherwise stated herein.
- 4.5 The responses to this RFP will be opened as soon as possible after the closing date and time. Transnet shall not, at the opening of responses, disclose to any other company any confidential details

pertaining to the Proposals / information received, i.e. pricing, delivery, etc. The names and locations of the Respondents will be divulged to other Respondents upon request.

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

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

As described in more detail in the attached BBEE Claim Form and as prescribed in terms of the Preferential Procurement Policy Framework Act (PPPFA), Act 5 of 2000 and its Regulations, Respondents are to note that Transnet will allow a "preference" to companies who provide a valid B-BBEE Verification Certificate.

The value of this bid is estimated to exceed R1 000 000 (all applicable taxes included); and therefore the **90/10** system shall be applicable. Respondents are required to complete Section 7 [the B-BBEE Preference Point Claim Form] and submit it together with proof of their B-BBEE Status as stipulated in the Claim Form in order to obtain preference points for their B-BBEE status.

Note: Failure to submit a valid and original B-BBEE certificate or a certified copy thereof at the Closing Date of this RFP will result in a score of zero being allocated for B-BBEE.

5.1 B-BBEE Joint Ventures or Consortiums

Respondents who would wish to respond to this RFP as a Joint Venture [JV] or consortium with B-BBEE entities, must state their intention to do so in their RFP submission. Such Respondents must also submit a signed JV or consortium agreement between the parties clearly stating the percentage [%] split of business and the associated responsibilities of each party. 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 business by Transnet through this RFP process. This written confirmation must clearly indicate the percentage [%] split of business and the responsibilities of each party. In such cases, award of business will only take place once a signed copy of a JV or consortium agreement is submitted to Transnet.

Respondents are to note the requirements for B-BBEE compliance of JVs or consortiums as required by Section 7 [the B-BBEE Preference Point Claim Form] and submit it together with proof of their B-BBEE Status as stipulated in the Claim Form in order to obtain preference points for their B-BBEE status.

Note: Failure to submit a valid and original B-BBEE certificate for the JV or a certified copy thereof at the Closing Date of this RFP will result in a score of zero being allocated for B-BBEE.

5.2 Subcontracting

Transnet fully endorses Government's transformation and empowerment objectives and when contemplating subcontracting 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 including any companies designated as B-BBEE Facilitators¹.

If contemplating subcontracting, please note that a Respondent will not be awarded points for B-BBEE if it is indicated in its 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

¹ The Minister of the Department of Trade and Industry has the power to designate certain Organs of State or Public Entities as B-BBEE Facilitators. For example, the South African National Military Veterans' Association (SANMVA) has been designated as a B-BBEE Facilitator. As such they will be treated as having rights of ownership held 100% by Black People, 40% by Black Women and 20% by Black designated groups.

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.

In terms of Section 7 of this RFP [the B-BBEE Preference Point Claim Form] Respondents are required to indicate the percentage of the contract that will be sub-contracted as well as the B-BBEE status of the sub-contractor/s.

5.3 B-BBEE Improvement Plan

Transnet encourages its Service Providers to constantly strive to improve their B-BBEE rating. Whereas Respondents will be allocated points in terms of a preference point system based on its B-BBEE scorecard to be assessed as detailed in paragraph 5.1 above, in addition to such scoring, Transnet also requests that Respondents submit a B-BBEE improvement plan. Respondents are therefore requested to indicate the extent to which they will maintain or improve their B-BBEE status over the contract period.

Respondents are requested to submit their B-BBEE Improvement Plan as an additional document with their Proposals by completion of **Annexure B** appended hereto. [Refer to Section 9 and Annexure B for further instructions]

6 COMMUNICATION

6.1 For specific queries relating to this RFP, an RFP Clarification Request Form should be submitted to [Tshegofatso Shaku] before **12.00 on 23 September 2015**, substantially in the form set out in Section 12 hereto. In the interest of fairness and transparency Transnet's response to such a query will then be made available to the other Respondents who have collected RFP documents. For this purpose Transnet 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 Transnet will not accept responsibility for being unable to contact a bidder who provided incorrect contact details.

6.2 After the closing date of the RFP, a Respondent may only communicate with the Secretariat of the Transnet Acquisition Council, at telephone number 021 940 3846, email Carol.Swan@transnet.net on any matter relating to its RFP Proposal.

6.3 Respondents are to note that changes to its submission will not be considered after the closing date. Respondents are warned that a Proposal will be liable to disqualification should any attempt be made by a Respondent either directly or indirectly to canvass any officer or employee of Transnet in respect of this RFP between the closing date and the date of the award of the business. Furthermore, Respondents found to be in collusion with one another will be automatically disqualified and restricted from doing business with Transnet in the future.

7 CONFIDENTIALITY

7.1 All information related to this RFP 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 Services , which is either directly or indirectly related to Transnet's business, written approval to divulge such information must be obtained from Transnet.

8 INSTRUCTIONS FOR COMPLETING THE RFP

- 8.1 Proposals must be submitted in duplicate hard copies [1 original and 1 copy] and must be bound.
- 8.2 Sign one set of original documents [sign, stamp and date the bottom of each page]. This set will serve as the legal and binding copy. A duplicate set of documents is required. This second set must be a copy of the original signed Proposal.
- 8.3 Both sets of documents are to be submitted to the address specified in paragraph 4 above, and Bidders must ensure that the original and copies (where applicable) are identical in all respects as Transnet will not accept any liability for having disqualified a bidder for failing to provide a mandatory returnable document in either the original or the copy of the RFP albeit that it was included in the other..
- 8.4 **All returnable documents tabled in the Proposal Form [Section 4] must be returned with your Proposal.**
- 8.5 Unless otherwise expressly stated, all Proposals furnished pursuant to this RFP shall be deemed to be offers. Any exceptions to this statement must be clearly and specifically indicated.
- 8.6 Any additional conditions must be embodied in an accompanying letter. Subject only to clause 15 [Alterations made by the Respondent to Bid Prices] of the General Bid Conditions, alterations, additions or deletions must not be made by the Respondent to the actual RFP documents.

9 COMPLIANCE

The successful Respondent [hereinafter referred to as the **Service Provider**] shall be in full and complete compliance with any and all applicable laws and regulations.

10 DISCLAIMERS

Respondents are hereby advised that Transnet is not committed to any course of action as a result of its issuance of this RFP and/or its receipt of Proposals. In particular, please note that Transnet reserves the right to:

- 10.1 modify the RFP's Services and request Respondents to re-bid on any such changes;
- 10.2 reject any Proposal which does not conform to instructions and specifications which are detailed herein;
- 10.3 disqualify Proposals submitted after the stated submission deadline [Closing Date];
- 10.4 not necessarily accept the lowest priced Proposal or an alternative bid;
- 10.5 reject all Proposals, if it so decides;
- 10.6 withdraw the RFP on good cause shown;
- 10.7 award a contract in connection with this Proposal at any time after the RFP's closing date;
- 10.8 award a contract for only a portion of the proposed Services which are reflected in the scope of this RFP;

- 10.9 split the award of the contract between more than one Service Provider, should it at Transnet's discretion be more advantageous in terms of, amongst others, cost or developmental considerations;
- 10.10 make no award of a contract;
- 10.11 should a contract be awarded on the strength of information furnished by the Respondent, which after conclusion of the contract, is proved to have been incorrect, Transnet reserves the right to cancel the contract.

Transnet reserves the right to undertake post-tender negotiations [PTN] with selected Respondents or any number of short-listed Respondents, such PTN to include, at Transnet's option, any evaluation criteria listed in this RFP document.

Transnet reserves the right to award the business to the highest scoring bidder/s unless objective criteria justify the award to another bidder.

Should the preferred bidder fail to sign or commence with the contract within a reasonable period after being requested to do so, Transnet reserves the right to award the business to the next ranked bidder, provided that he/she is still prepared to provide the required goods at the quoted price.

Kindly note that Transnet will not reimburse any Respondent for any preparatory costs or other work performed in connection with its Proposal, whether or not the Respondent is awarded a contract.

11 LEGAL REVIEW

A Proposal submitted by a Respondent will be subjected to review and acceptance or rejection of its proposed contractual terms and conditions by Transnet's Legal Counsel, prior to consideration for an award of business.

**Transnet urges its clients, suppliers and the general public
to report any fraud or corruption to
TIP OFFS ANONYMOUS : 0800 003 056**

**FOR THE PROVISION OF SKILLED HOSPITALITY STAFF FOR THE BLUE TRAIN
FOR A PERIOD OF 24 MONTHS**

Section 2 : BACKGROUND, OVERVIEW AND SCOPE OF REQUIREMENTS

1 BACKGROUND

The above service is required to supply Temporary Hospitality staff for The Blue Train. The Blue Train requires a full complement of 28 hospitality staff members per train set to serve and carry out hospitality duties.

2 EXECUTIVE OVERVIEW

The purpose of this submission is to secure a pool of well trained and experienced hospitality staff with a five star hospitality industry experience for a period of twenty four months. The service is to be outsourced for the benefits of saving operational costs (should one say this in a document) like that. Should one not say due to the seasonality of the business and in line with operational requirements the service would be required. The multi skilled staff is required in the following positions for the period set out in clause above, Food and Beverage Butler /Waitron(10), Rooms Butler(11), Cook(2), Sous Chef(2), Scullery Hand(3), Cocktail Barman(6) on an as and when required basis except for the warehouse Controller (1) who is required on a full time basis and will be based in The Blue Train depot in Salvokop, Pretoria. All positions are required on a junior level position.. All the staff should be South African citizens and be conversant in the English language. All staff might not be required to work at a given time and would be in line with operational requirements.

Temporary staff must be trained to The Blue Train standards at the cost of the Temporary Employee Service ("Labour Broker") before they will be permitted to work on The Blue Train. First they would need to undergo theoretical training, followed by practice after which they need to write a test. Only with a 90% pass rate will they be allowed to start working on the train. Due to the seasonality of The Blue Train's business, temporary staff may not be required to work for The Blue Train on a continuous basis and it is the responsibility of the Temporary Employee Service ("Labour Broker") to keep the temporary staff on its books and occupied at their other establishments/clients, to ensure the retention of the skills for The Blue Train, since it cannot engage new staff members every time for The Blue Train. The preferred Temporary Employee Service ("Labour Broker") will at all times ensure that staff members are continuously trained on The Blue Train Standard Operational Procedure manual which will be issued by The Blue Train to the Temporary Employee Service ("Labour Broker").

All staff need to undergo strict screening tests to check disciplinary records with previous employers, criminal records, etc. The Temporary Employee Service ("labour broker") should have an Account Manager on site with every departure to ensure staff are dressed correctly and properly groomed. Further they would be responsible to clothe them in line with our standards and that is for their own account: For evening charters they would need to make transport available for their staff for late at night to transport to their home.

All disciplinary related matters will be reported to the Account Manager of the Temporary Employee Service ("labour broker"). On board the train they will be reporting to the Train Manager and respective Line Managers. All disciplinary procedures would be handled by the Temporary Employee Service ("labour broker") with feedback to The Blue Train.

3 SCOPE OF REQUIREMENTS

The scope of requirements includes well trained and experienced hospitality staff with a five star hospitality industry /hotel experience for a period of 24 months. The preferred Temporary Employee Service ("Labour Broker") will at all times ensure that staff members are continuously trained on The Blue Train Standard Operational Procedure manual which will be issued by The Blue Train to the Temporary Employee Service ("Labour Broker"). Detailed specifications must be read (Appendix iii).

3.1 The minimum technical threshold for technical criteria is 70%

As prescribed in terms of the PPPFA and its Regulations, Respondents are to note the following:

- Functionality is included as a threshold with a prescribed percentage threshold of 70%

Respondents must complete and **submit Annexure A – Technical Compliance Sheet.**

A Respondent's compliance with the minimum functionality/technical threshold will be measured by their responses to Annexure A.

4 GREEN ECONOMY / CARBON FOOTPRINT

Transnet wishes to have an understanding of your company's position with regard to environmental commitments, including key environmental characteristics such as waste disposal, recycling and energy conservation.

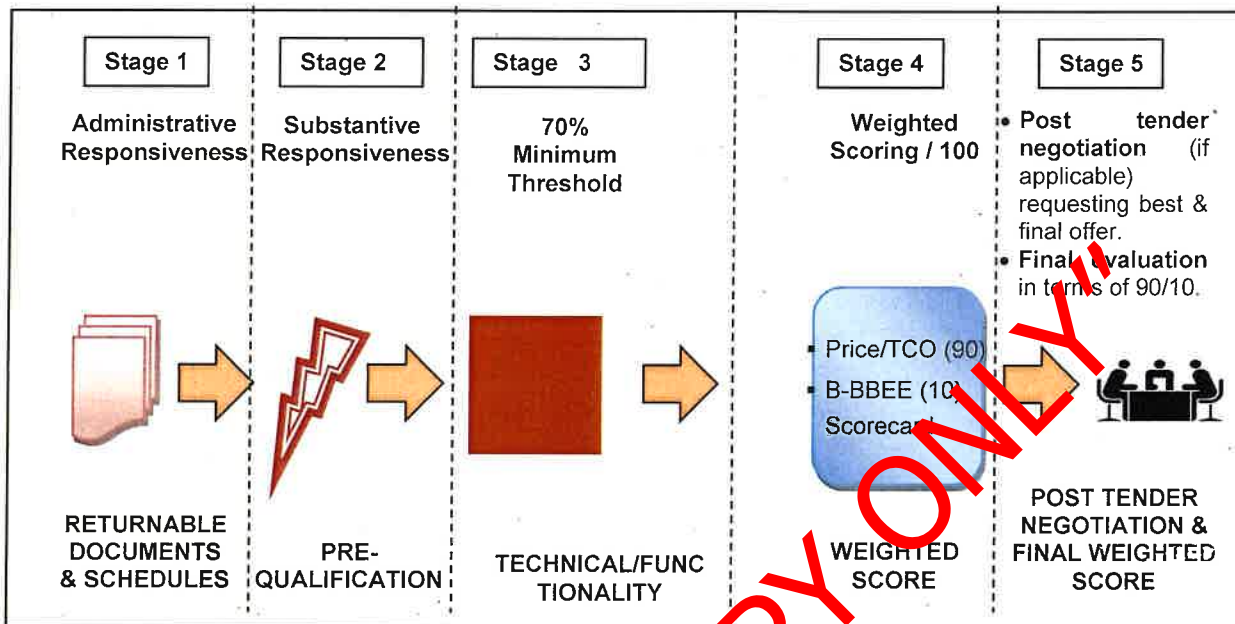
5 GENERAL SERVICE PROVIDER OBLIGATIONS

- 5.1 The Service Provider(s) shall be fully responsible to Transnet for the acts and omissions of persons directly or indirectly employed by them.
- 5.2 The Service Provider(s) must comply with the requirements stated in this RFP.

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6 EVALUATION METHODOLOGY

Transnet will utilise the following methodology and criteria in selecting a preferred Service Provider, if so required:



6.1 STAGE 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 	<i>Section 1 paragraph 3</i>
<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 	<i>Section 4</i>
<ul style="list-style-type: none"> Verify the validity of all returnable documents 	<i>Section 4, page 21 and 22</i>

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

The following applicable values will be utilised when scoring each criterion mentioned above:

1. Previous or current related experience with signed reference letter from 5 star hotels:
 - 3 years or more relevant experience with 5 star hotels accompanied by signed reference letter from the client confirming the duration of the contract.
 - 2 years or more relevant experience with 5 star hotels accompanied by signed reference letter from the client confirming the duration of the contract.
 - 1 year relevant experience with 5 star hotels accompanied by signed reference letter from the client confirming the duration of the contract.
2. Staff Capacity and relevant Staff CV's:
 - 35 staff members or more with cv's demonstrating relevant experience in 5 star hotel
 - 20-35 staff members with cv's demonstrating relevant experience in 5 star hotel
 - Less than 20 staff members with cv's demonstrating relevant experience in 5 star hotel

6.4 STAGE FOUR: Evaluation and Final Weighted Scoring

- a) **Price Criteria** [Weighted score 90 points]:

Evaluation Criteria	RFP Reference
• Commercial offer	<i>Section 3</i>

Transnet will utilise the following formula in its evaluation of price:

$$PS = 90 \left(1 - \frac{Pt - Pmin}{Pmin} \right)$$

Where:

Ps = Score for the Bid under consideration

Pt = Price of Bid under consideration

Pmin = Price of lowest acceptable Bid

- b) **Broad-Based Black Economic Empowerment criteria** [Weighted score 10 points]

B-BBEE - current scorecard / B-BBEE Preference Points Claims Form

- Preference points will be awarded to a bidder for attaining the B-BBEE status level of contribution in accordance with the table indicated in Section 4.1 of the B-BBEE Preference Points Claim Form.

6.5 SUMMARY: Applicable Thresholds and Final Evaluated Weightings

Thresholds	Minimum Percentage [%]
Technical / functionality	70%

Evaluation Criteria	Final Weighted Scores
Price	90
B-BBEE - Scorecard	10
TOTAL SCORE:	100

7 STAGE FIVE: Post Tender Negotiations (if applicable)

Transnet reserves the right to conduct post tender negotiations with a shortlist of Respondent(s). The shortlist could comprise of one or more Respondents. Should Transnet conduct post tender negotiations, Respondents will be requested to provide their best and final offers to Transnet based on such negotiations. A final evaluation will be conducted in terms of 90/10.

IMPORTANT NOTICE TO RESPONDENTS

Transnet has appointed a Procurement Ombudsman to investigate any material complaint in respect of RFPs exceeding R5million [five million S.A. Rand] in value. Should a Respondent have any material concern regarding an RFP process which meets this threshold, a complaint may be lodged with the Ombudsman for further investigation. The Ombudsman reserves the right to refer the complaint to an external service provider for investigation.

It is incumbent on the Respondent to familiarise himself/herself with the Terms of Reference OF the Ombudsman which are available for review at Transnet's website www.transnet.net.

An official complaint form may be downloaded from this website and submitted, together with any supporting documentation, within the prescribed period, to procurement.ombud@transnet.net.

For transactions below the abovementioned threshold, a complaint may be lodged with the Chief Procurement Officer of the relevant Transnet Operating Division/Specialist Unit.

Respondents are to note that a complaint must be made in good faith. If a complaint is made in bad faith, Transnet reserves the right to place such a Bidder on its List of Excluded Bidders.

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**FOR THE PROVISION OF SKILLED HOSPITALITY STAFF FOR THE BLUE TRAIN
FOR A PERIOD OF 24 MONTHS**

CLOSING VENUE 06th Floor, Transnet Park, Robert Sobukwe Road, Bellville

CLOSING DATE: 29 September 2015

CLOSING TIME: 10:00

VALIDITY PERIOD: 90 Business days

Section 3 : PRICING AND DELIVERY SCHEDULE

Respondents are required to complete the table below:

GRADE & CLASS	Base Rate per hour	Leave Pay	Sick Leave	Family Resp. Leave	CCDA	UIF	SDL	Bonus	Uniforms	Administration Fee	Total Hourly The Blue Train Rate	Sunday Time The Blue Train Rate	Public Holiday The Blue Train Rate
1 x Warehouse Controller													
10 x Food & Beverage Butler													
11 x Rooms Butler													
2 x Cook													
2 x Sous Chef													
3 x Scullery Hand													
6 x Cocktail Barman													

Respondent's Signature

Date & Company Stamp

Notes to Pricing:

- a) Prices must be quoted in South African Rand, exclusive of VAT
- b) To facilitate like-for-like comparison bidders must submit pricing strictly in accordance with this pricing schedule and not utilise a different format. Deviation from this pricing schedule could result in a bid being declared non responsive.
- c) Please note that should you have offered a discounted price(s), Transnet will only consider such price discount(s) in the final evaluation stage if offered on an unconditional basis.
- d) Respondents, if awarded the contract, are required to indicate that their prices quoted would be kept firm and fixed for the contract duration. [Not to be confused with bid validity period Section 1, clause 1]

YES	
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OR

- e) Respondents, if awarded the contract, are required to indicate that their prices quoted would be kept firm and fixed a period of **12 months** subject thereafter to adjustment (i.e. after the initial period of 12 months), utilizing the following price index/indices/adjustment formula. [Not to be confused with bid validity period Section 1, clause 1]

.....
.....

YES	
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1 DISCLOSURE OF PRICES TENDERED

- 1.1 Respondents must indicate below whether Transnet may disclose their tendered prices and conditions to other Respondents:

YES	
-----	--

NO	
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2 PRICE REVIEW

- 2.1 The successful Respondent(s) [the Service provider will be obliged to submit to an annual price review. Transnet will be benchmarking this price offering(s) against the lowest price received as per a benchmarking exercise. If the Service provider's price(s) is/are found to be higher than the benchmarked price(s), then the Service provider shall match or better such price(s) within 30 [thirty] calendar days, failing which the contract may be terminated at Transnet's discretion or the particular item(s) or service(s) purchased outside the contract.

3 "AS AND WHEN REQUIRED" CONTRACTS

- 3.1 Purchase orders will be placed on the Service provider(s) from time to time as and when Services are required.
- 3.2 Transnet reserves the right to place purchase orders until the last day of the contract for deliveries to be effected, within the delivery period / lead time specified, beyond the expiry date of the contract under the same terms and conditions as agreed upon.
- 3.3 The Respondent must state hereunder its annual holiday closedown period [if applicable] and whether this period has been included in the delivery lead time offered:

Respondents are required to indicate below the action that the Respondent proposes to take to ensure continuity of supply during non-working days or holidays

4 SERVICE LEVELS

- 4.1 An experienced national account representative(s) is required to work with Transnet's procurement department. [No sales representatives are needed for individual department or locations]. Additionally, there shall be a minimal number of people, fully informed and accountable for this agreement.
- 4.2 Transnet will have quarterly reviews with the Service provider's account representative on an on-going basis.
- 4.3 Transnet reserves the right to request that any member of the Service provider's team involved on the Transnet account be replaced if deemed not to be adding value for Transnet.
- 4.4 The Service provider guarantees that it will achieve a 95% [ninety-five per cent] service level on the following measures:
 - a) Random checks on compliance with quality/quantity/specifications
 - b) On-time delivery

If the Service provider does not achieve this level as an average over each quarter, Transnet will receive a 1.5% [one and a half per cent] rebate on quarterly sales payable in the next quarter

- 4.5 The Service provider must provide a telephone number for customer service calls.
- 4.6 Failure of the Service provider to comply with stated service level requirements will give Transnet the right to cancel the contract in whole, without penalty to Transnet, giving 30 [thirty] calendar days' notice to the Service provider of its intention to do so.

Acceptance of Service Levels:

YES	
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NO	
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5 RISK

Respondents must elaborate on the control measures put in place by their entity, which would mitigate the risk to Transnet pertaining to potential non-performance by a Service provider, in relation to:

5.1 **Quality and specification of Services delivered:**

5.2 **Continuity of supply:**

5.3 **Compliance with the Occupational Health and Safety Act, 85 of 1993:**

5.4 **Compliance with the National Railway Safety Regulator Act, 16 of 2002:**

6 REFERENCES

Please indicate below a minimum of 3 company names and contact details of previous and/or existing customers whom Transnet may contact to seek third party evaluations of your service levels:

NAME OF COMPANY	CONTACT PERSON AND NUMBER	DESCRIPTION OF PROJECT	VALUE OF PROJECT

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: _____

Respondent's Signature

Date & Company Stamp

**FOR THE PROVISION OF SKILLED HOSPITALITY STAFF FOR THE BLUE TRAIN
FOR A PERIOD OF 24 MONTHS**

Section 4 : PROPOSAL FORM AND LIST OF RETURNABLE DOCUMENTS

I/We _____
[name of entity, company, 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, dated _____ to enter into, sign execute and complete any documents relating to this proposal and any subsequent Agreement. The following list of persons are hereby authorised to negotiate on behalf of the abovementioned entity, should Transnet decide to enter into Post Tender Negotiations with shortlisted bidder(s).

FULL NAME(S)	CAPACITY	SIGNATURE
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

I/We hereby offer to supply the abovementioned Services at the prices quoted in the schedule of prices in accordance with the terms set forth in the documents listed in the accompanying schedule of RFP documents.

I/We agree to be bound by those conditions in Transnet's:

- (i) Master Agreement;
- (ii) General Bid Conditions – Services ; and
- (iii) any other standard or special conditions mentioned and/or embodied in this Request for Proposal.

I/We accept that unless Transnet should otherwise decide and so inform me/us in the letter of award/intent, this Proposal [and, if any, its covering letter and any subsequent exchange of correspondence], together with Transnet's acceptance thereof shall constitute a binding contract between Transnet and me/us.

Should Transnet decide that a formal contract should be signed and so inform me/us in a letter of intent [the **Letter of Intent**], this Proposal [and, if any, its covering letter and any subsequent exchange of

Respondent's Signature

Date & Company Stamp

correspondence] together with Transnet's Letter of Intent, shall constitute a binding contract between Transnet and me/us until the formal contract is signed.

I/We further agree that if, after I/we have been notified of the acceptance of my/our Proposal, I/we fail to enter into a formal contract if called upon to do so, or fail to commence the supply of Services within 4 [four] weeks thereafter, Transnet may, without prejudice to any other legal remedy which it may have, recover from me/us any expense to which it may have been put in calling for Proposals afresh and/or having to accept any less favourable Proposal.

I/We accept that any contract resulting from this offer will be for a period of **24** months only.

Furthermore, I/we agree to a penalty clause/s to be negotiated with Transnet, which will allow Transnet 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 B-BBEE Improvement Plan commitments. A penalty of up to 100% of the outstanding portion of the Supplier Development commitment will be applied and Transnet reserves the right to set this off against any payment due to the Respondent. In addition, I/we agree that non compliance with any of the material terms of this RFP, including those mentioned above, will constitute a material breach of contract and provide Transnet with cause for cancellation.

ADDRESS FOR NOTICES

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 Respondent hereunder, at which all legal documents may be served on the Respondent who shall agree to submit to the jurisdiction of the courts of the Republic of South Africa. Foreign Respondents shall, therefore, state hereunder the name of their authorised representative in the Republic of South Africa who has the power of attorney to sign any contract which may have to be entered into in the event of their Proposal being accepted and to act on their behalf in all matters relating to such contract.

Respondent to indicate the details of its *domicilium citandi et executandi* hereunder:

Name of Entity:

Facsimile:

Address:

NOTIFICATION OF AWARD OF RFP

As soon as possible after approval to award the contract(s), the successful Respondent [the Service provider] will be informed of the acceptance of its Proposal. Unsuccessful Respondents will be advised in writing of the name of the successful Service provider and the reason as to why their Proposals have been unsuccessful, for example, in the category of price, delivery period, quality, B-BBEE status or for any other reason.

VALIDITY PERIOD

Transnet requires a validity period of 90 [Ninety] Business Days [from closing date] against this RFP.

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 RFP is submitted.

- (i) Registration number of company / C.C. _____
 - (ii) Registered name of company / C.C. _____
 - (iii) Full name(s) of director/member(s) . Address/Addresses ID Number(s)
- _____
- _____
- _____

RETURNABLE DOCUMENTS

All Sections, as indicated in the footer of each page, must be signed, stamped and dated by the Respondent.

Returnable Documents means all the documents, Sections and Annexures, as listed in the tables below.

a) Mandatory Returnable Documents

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

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

MANDATORY RETURNABLE DOCUMENTS	SUBMITTED [Yes/No]
SECTION 3 : Pricing and Delivery Schedule	
Submission of proof of registration as a Temporary Employee Service ("Labour Broker") with the Department of Labour	
Submission of proof of Chefs registration with the SACA	
Submission of a completed, signed and stamped Technical Compliance Sheet (Annexure A)	
Confirmation of staff Compliment and accompanied by the submission of relevant staff CV's demonstrating experience in 5 star hotels	
Submission of signed reference letters from a 5 star hotels Submission of signed reference letters from a 5 star hotels confirming the duration of the contract	

Respondent's Signature

Date & Company Stamp

b) **Essential Returnable Documents**

In addition to the requirements of section (a) above, Respondents are further required to submit with their Proposals the following **essential Returnable Documents** as detailed below.

Failure to provide all essential Returnable Documents may result in a Respondent's disqualification at Transnet's sole discretion. Bidders are therefore urged to ensure that all these documents are returned with their Proposals.

Please confirm submission of these essential Returnable Documents by so indicating [Yes or No] in the table below:

ESSENTIAL RETURNABLE DOCUMENTS & SCHEDULES	SUBMITTED [Yes or No]
Receipt for payment of RFP documents [paragraph 1]	
SECTION 4 : Proposal Form and List of Returnable documents	
<ul style="list-style-type: none"> - Valid and original, or a certified copy, of your entity's B-BBEE Accreditation Certification as per the requirements stipulated in the B-BBEE Claims Form Section 7. Note: failure to provide these required documents at the closing date and time of the RFP will result in an automatic score of zero being allocated for preference 	
<ul style="list-style-type: none"> - In the case of Joint Ventures, a copy of the Joint Venture Agreement or written confirmation of the intention to enter into a Joint Venture Agreement 	
SECTION 8 : Certificate of attendance of compulsory RFP Briefing	
Original and valid Tax Clearance Certificate [Consortia / Joint Ventures must submit a separate Tax Clearance Certificate for each party]	
SECTION 5 : RFP Declaration and Beach of Law Form	
SECTION 7 : B-BBEE Preference Claim Form	
Standard costing sheet - for remuneration	
Standard costing sheet - other stationary payment	
Standard costing sheet - Temporary Employee Service ("Labour Broker") fee	
Standard costing sheet - optional extras	
Standard costing sheet - total cost to the Blue Train	
Submission of proof of Tertiary training at a butler school or culinary school for the 10 x Food and Beverage Butler/Waitron	
Submission of proof of Tertiary training at a butler school for the 11 x Rooms Butler	
Submission of Tertiary training at a chef's school /culinary school/hotel school for the 2 x Cook	

c) **Additional Documents**

In addition to the requirements of paragraphs (a) and b) above, Respondents are further requested to submit with their Proposals the following **additional documents** as detailed below. Please confirm submission of these additional documents by so indicating [Yes or No] in the table below:

ADDITIONAL DOCUMENTS	SUBMITTED [Yes or No]
ANNEXURE B : B-BBEE Improvement Plan	

CONTINUED VALIDITY OF RETURNABLE DOCUMENTS

The successful Respondent 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. Should the Respondent be awarded the contract [the Agreement] and fail to present Transnet with such renewals as and when they become due, Transnet shall be entitled, in addition to any other rights and remedies that it may have in terms of the eventual Agreement, to terminate such Agreement forthwith without any liability and without prejudice to any claims which Transnet may have for damages against the Respondent.

By signing this certificate the Respondent is deemed to acknowledge that he/she has made himself/herself thoroughly familiar with, and agrees with all the conditions governing this RFP, including those contained in any printed form stated to form part hereof, including but not limited to the documents stated below and Transnet SOC Ltd will recognise no claim for relief based on an allegation that the Respondent overlooked any such condition or failed properly to take it into account for the purpose of calculating tendered prices or otherwise.

Bidders furthermore agree that Transnet SOC Ltd shall recognise no claim from them for relief based on an allegation that they have overlooked any RFP/contract condition or failed to take it into account for the purpose of calculating their offered prices or otherwise.

Bidders accept that an obligation rests on them to clarify any uncertainties regarding any bid which they intend to respond on, before submitting the bid. The Bidder agrees that he/she will have no claim based on an allegation that any aspect of this RFP was unclear but in respect of which he/she failed to obtain clarity.

The bidder understands that his/her Bid will be disqualified if the Certificate of Acquaintance with RFP documents included in the RFP as a returnable document, is found not to be true and complete in every respect.

- 1 General Bid Conditions*
- 2 Terms and Conditions of Contract for the supply of Services to Transnet*
- 3 Supplier Integrity Pact*
- 4 Non-disclosure Agreement*
- 5 Specifications included in this RFP
- 6 Vendor Application Form* and all supporting documents (first time vendors only)

Alternatively, for all existing vendors, please provide vendor number(s) here:

Transnet Operating Division	Unique Vendor Number	Yes / No
Transnet Group		
TFR, etc.		

--	--	--

In the Yes/No column above, please confirm that all the information e.g. company address and contact details, banking details etc. are still correct as at the time of allocation of the vendor number(s).

*(available on Transnet's website or upon request)

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: _____

"PREVIEW COPY ONLY"

Respondent's Signature

Date & Company Stamp

**FOR THE PROVISION OF SKILLED HOSPITALITY STAFF FOR THE BLUE TRAIN
FOR A PERIOD OF 24 MONTHS**

Section 5 : RFP DECLARATION AND BREACH OF LAW FORM

NAME OF ENTITY: _____

We _____ do hereby certify that:

1. Transnet has supplied and we have received appropriate responses to any/all questions [as applicable] which were submitted by ourselves for RFP Clarification purposes;
2. we have received all information we deemed necessary for the completion of this Request for Proposal [RFP];
3. we have been provided with sufficient access to the existing Transnet facilities/sites and any and all relevant information relevant to the Services as well as Transnet information and Employees, and has had sufficient time in which to conduct and perform a thorough due diligence of Transnet's operations and business requirements and assets used by Transnet. Transnet will therefore not consider or permit any pre- or post-contract verification or any related adjustment to pricing, service levels or any other provisions/conditions based on any incorrect assumptions made by the Respondent in arriving at his Bid Price.
4. at no stage have we received additional information relating to the subject matter of this RFP from Transnet sources, other than information formally received from the designated Transnet contact(s) as nominated in the RFP documents;
5. we are satisfied, insofar as our entity is concerned, that the processes and procedures adopted by Transnet 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
6. furthermore, we declare that a family, business and/or social relationship **exists / does not exist** [delete as applicable] between an owner / member / director / partner / shareholder of our entity and an employee or board member of the Transnet Group including any person who may be involved in the evaluation and/or adjudication of this Bid.
7. In addition, we declare that an owner / member / director / partner / shareholder of our entity **is / is not** [delete as applicable] an employee or board member of the Transnet Group.
8. If such a relationship as indicated in paragraph 6 and/or 7 exists, the Respondent is to complete the following section:

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

ADDRESS:

Indicate nature of relationship with Transnet:

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

9. We declare, to the extent that we are aware or become aware of any relationship between ourselves and Transnet [other than any existing and appropriate business relationship with Transnet] which could unfairly advantage our entity in the forthcoming adjudication process, we shall notify Transnet immediately in writing of such circumstances.
10. We accept that any dispute pertaining to this Bid 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.
11. We further accept that Transnet 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.

BREACH OF LAW

12. We further hereby certify that I/we (the bidding entity and/or any of its directors, members or partners) **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 Respondent is required to disclose excludes relatively minor offences or misdemeanours, e.g. traffic offences. This includes the imposition of an administrative fine or penalty.

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

NATURE OF BREACH:

DATE OF BREACH: _____

Furthermore, I/we acknowledge that Transnet SOC Ltd reserves the right to exclude any Respondent 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__

For and on behalf of _____ duly authorised hereto	AS WITNESS:
Name:	Name:
Position:	Position:
Signature:	Signature:
Date:	Registration No of Company/CC
Place:	Registration Name of Company/CC

"PREVIEW COPY ONLY"

**FOR THE PROVISION OF SKILLED HOSPITALITY STAFF FOR THE BLUE TRAIN
FOR A PERIOD OF 24 MONTHS**

Section 6 : RFP CLARIFICATION REQUEST FORM

RFP No: **BT/2005/2015**

RFP deadline for questions / RFP Clarifications: Before 12:00 on 23 September 2015

TO: Transnet SOC Ltd
ATTENTION: Tshегоfatso Shaku
EMAIL: Tshегоfatso.Shaku@transnet.net
DATE: _____
FROM: _____

RFP Clarification No [to be inserted by Transnet]

REQUEST FOR RFP CLARIFICATION

Multiple horizontal lines provided for entering the request for clarification.

"PREVIEW COPY ONLY"

Respondent's Signature

Date & Company Stamp

**FOR THE PROVISION OF SKILLED HOSPITALITY STAFF FOR THE BLUE TRAIN
FOR A PERIOD OF 24 MONTHS**

Section 7 : B-BBEE PREFERENCE POINTS CLAIM FORM

This preference form contains general information and serves as a claim for preference points for Broad-Based Black Economic Empowerment [B-BBEE] Status Level of Contribution.

1. INTRODUCTION

- 1.1 A total of 10 preference points shall be awarded for B-BBEE Status Level of Contribution.
- 1.2 Failure on the part of a Bidder to fill in and/or to sign this form and submit a B-BBEE Verification Certificate from a Verification Agency accredited by the South African Accreditation System [SANAS] or a Registered Auditor approved by the Independent Regulatory Board of Auditors [IRBA] or an Accounting Officer as contemplated in the Close Corporation Act [CCA] together with the bid will be interpreted to mean that preference points for B-BBEE Status Level of Contribution are not claimed.
- 1.3 Transnet reserves the right to require of a Bidder, either before a Bid is adjudicated or at any time subsequently, to substantiate any claim in regard to preferences, in any manner required by Transnet.

2. GENERAL DEFINITIONS

- 2.1 **"all applicable taxes"** include value-added tax, pay as you earn, income-tax, unemployment insurance fund contributions and skills development levies;
- 2.2 **"B-BBEE"** means broad-based black economic empowerment as defined in section 1 of the Broad-Based Black Economic Empowerment Act;
- 2.3 **"B-BBEE status contributor"** means the B-BBEE status received by a measured entity based on its overall performance using the relevant scorecard contained in the Codes of Good Practice on Black Economic Empowerment, issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act;
- 2.4 **"Bid"** means a written offer in a prescribed or stipulated form in response to an invitation by Transnet for the provision of goods, works or services;
- 2.5 **"Broad-Based Black Economic Empowerment Act"** means the Broad-Based Black Economic Empowerment Act, 2003 [Act No. 53 of 2003];
- 2.6 **"comparative price"** means the price after the factors of a non-firm price and all unconditional discounts that can be utilised have been taken into consideration;
- 2.7 **"consortium or joint venture"** means an association of persons for the purpose of combining their expertise, property, capital, efforts, skills and knowledge in an activity for the execution of a contract;
- 2.8 **"contract"** means the agreement that results from the acceptance of a bid by Transnet;
- 2.9 **"EME"** means any enterprise with an annual total revenue of R5 [five] million or less as per the 2007 version of the B-BBEE Codes of Good Practice and means any enterprise with an annual total revenue of R10 [ten] million or less as per the Revised Codes of Good Practice issued on 11

October 2013 in terms of Government Gazette No. 36928;

- 2.10 **"firm price"** means the price that is only subject to adjustments in accordance with the actual increase or decrease resulting from the change, imposition, or abolition of customs and excise duty and any other duty, levy, or tax, which, in terms of the law or regulation, is binding on the contractor and demonstrably has an influence on the price of any supplies, or the rendering costs of any service, for the execution of the contract;
- 2.11 **"functionality"** means the measurement according to predetermined norms, as set out in the bid documents, of a service or commodity that is designed to be practical and useful, working or operating, taking into account, among other factors, the quality, reliability, viability and durability of a service and the technical capacity and ability of a bidder;
- 2.12 **"non-firm prices"** means all prices other than "firm" prices;
- 2.13 **"person"** includes reference to a juristic person;
- 2.14 **"QSE"** means any enterprise with an annual total revenue between R5 [five] million and R35 [thirty five] million as per the 2007 version of the B-BBEE Codes of Good Practice and means any enterprise with an annual total revenue of between R40 [forty] million and R50 [fifty] million as per the Revised Codes of Good Practice issued on 1 October 2013 in terms of Government Gazette No. 36928
- 2.15 **"rand value"** means the total estimated value of a contract in South African currency, calculated at the time of bid invitations, and includes all applicable taxes and excise duties;
- 2.16 **"subcontract"** means the primary contractor's assigning or leasing or making out work to, or employing another person to support such primary contractor in the execution of part of a project in terms of the contract;
- 2.17 **"total revenue"** bears the same meaning assigned to this expression in the Codes of Good Practice on Black Economic Empowerment, issued in terms of section 9(1) of the Broad-Based Black Empowerment Act and promulgated in the Government Gazette on 9 February 2007;
- 2.18 **"trust"** means the arrangement through which the property of one person is made over or bequeathed to a trustee to administer such property for the benefit of another person; and
- 2.19 **"trustee"** means any person, including the founder of a trust, to whom property is bequeathed in order for such property to be administered for the benefit of another person.

3. ADJUDICATION USING A POINT SYSTEM

- 3.1 The Bidder obtaining the highest number of total points for the evaluation criteria as enumerated in Section 2 of the RFP will be awarded the contract, unless objective criteria justifies the award to another bidder.
- 3.2 Preference points shall be calculated after prices have been brought to a comparative basis taking into account all factors of non-firm prices and all unconditional discounts.
- 3.3 Points scored will be rounded off to 2 [two] decimal places.
- 3.4 In the event of equal points scored, the Bid will be awarded to the Bidder scoring the highest number of preference points for B-BBEE.
- 3.5 However, when functionality is part of the evaluation process and two or more Bids have scored equal points including equal preference points for B-BBEE, the successful Bid will be the one

scoring the highest score for functionality.

3.6 Should two or more Bids be equal in all respect, the award shall be decided by the drawing of lots.

4. POINTS AWARDED FOR B-BBEE STATUS LEVEL OF CONTRIBUTION

4.1 In terms of the Preferential Procurement Regulations, 2011, preference points shall be awarded to a Bidder for attaining the B-BBEE status level of contribution in accordance with the table below:

B-BBEE Status Level of Contributor	Number of Points [Maximum 10]
1	10
2	9
3	8
4	5
5	4
6	3
7	2
8	1
Non-compliant contributor	0

4.2 Bidders who qualify as EMEs in terms of the 2007 version of the Codes of Good Practice must submit a certificate issued by an Accounting Officer as contemplated in the CCA or a Verification Agency accredited by SANAS or a Registered Auditor. Registered auditors do not need to meet the prerequisite for IRBA approval for the purpose of conducting verification and issuing EME's with B-BBEE Status Level Certificates.

4.3 Bidders who qualify as EMEs in terms of the Revised Codes of Good Practice issued on 11 October 2013 in terms of Government Gazette No. 36928 are only required to obtain a sworn affidavit on an annual basis confirming that the entity has an Annual Total Revenue of R10 million or less and the entity's Level of Black ownership.

4.4 In terms of the 2007 version of the Codes of Good Practice, Bidders other than EMEs must submit their original and valid B-BBEE status level verification certificate or a certified copy thereof, substantiating their B-BBEE rating issued by a Registered Auditor approved by IRBA or a Verification Agency accredited by SANAS.

4.5 The Department of Trade and Industry recently revised the Codes of Good Practice on 11 October 2013 [Government Gazette No. 36928]. The Revised Codes will replace the Black Economic Empowerment Codes of Good Practice issued on 9 February 2007. The Revised Codes provide for a transitional period ending 30 April 2015. During the transitional period, companies may elect to be measured in terms of the Revised Codes or the 2007 version of the Codes. Companies which are governed by Sector-specific Codes will be measured in terms of those Sector Codes.

4.6 As such, Transnet will accept B-BBEE certificates issued based on the Revised Codes. Transnet will also continue to accept B-BBEE certificates issued in terms of the 2007 version of the Codes provided it was issued before 1 May 2015. Thereafter, Transnet will only accept B-BBEE certificates issued based on the Revised Codes.

4.7 In terms of the Revised Codes of Good Practice, Bidders who qualify as QSEs must comply with all

the elements of B-BBEE for the purposes of measurement. QSEs that are at least 51% or 100% Black owned are only required to obtain a sworn affidavit on an annual basis confirming that the entity has an Annual Total Revenue of R50 million or less and the entity's Level of Black ownership. Large enterprises must submit their original and valid B-BBEE status level verification certificate or a certified copy thereof, substantiating their B-BBEE rating issued by a Registered Auditor approved by IRBA or a Verification Agency accredited by SANAS.

- 4.8 A trust, consortium or joint venture will qualify for points for its B-BBEE status level as a legal entity, provided that the entity submits its B-BBEE status level certificate.
- 4.9 A trust, consortium or joint venture will qualify for points for their B-BBEE status level as an unincorporated entity, provided that the entity submits their consolidated B-BBEE scorecard as if they were a group structure and that such a consolidated B-BBEE scorecard is prepared for every separate bid.
- 4.10 Tertiary institutions and public entities will be required to submit their B-BBEE status level certificates in terms of the specialised scorecard contained in the B-BBEE Codes of Good Practice.
- 4.11 A person will not be awarded points for B-BBEE status level if it is indicated in the Bid documents that such a Bidder intends subcontracting more than 25% [twenty-five per cent] of the value of the contract to any other enterprise that does not qualify for at least the same number of points that such a Bidder qualifies for, unless the intended subcontractor is an EME that has the capability and ability to execute the subcontract.
- 4.12 A person awarded a contract may not subcontract more than 25% [twenty-five per cent] 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.
- 4.13 Bidders are to note that in terms of paragraph 2.6 of Statement 000 of the Revised Codes of Good Practice issued on 11 October 2013 in terms of Government Gazette No. 36928, any representation made by an entity about its B-BBEE compliance must be supported by suitable evidence or documentation. As such, Transnet reserves the right to request such evidence or documentation from Bidders in order to verify any B-BBEE recognition claimed.

5. B-BBEE STATUS AND SUBCONTRACTING

5.1 Bidders who claim points in respect of B-BBEE Status Level of Contribution must complete the following:

B-BBEE Status Level of Contributor _____ = _____ [maximum of 10 points]

Note: Points claimed in respect of this paragraph 5.1 must be in accordance with the table reflected in paragraph 4.1 above and must be substantiated by means of a B-BBEE certificate issued by a Verification Agency accredited by SANAS or a Registered Auditor approved by IRBA or a sworn affidavit in the case of an EME or QSE.

5.2 Subcontracting:

Will any portion of the contract be subcontracted? YES/NO [delete which is not applicable]

If YES, indicate:

(i) What percentage of the contract will be subcontracted?%

- (ii) The name of the subcontractor
- (iii) The B-BBEE status level of the subcontractor
- (iv) Is the subcontractor an EME? YES/NO

5.3 Declaration with regard to Company/Firm

- (i) Name of Company/Firm.....
- (ii) VAT registration number.....
- (iii) Company registration number.....
- (iv) Type of Company / Firm [TICK APPLICABLE BOX]
 - Partnership/Joint Venture/Consortium
 - One person business/sole propriety
 - Close Corporations
 - Company (Pty) Ltd
- (v) Describe Principal Business Activities
.....
.....
- (vi) Company Classification [TICK APPLICABLE BOX]
 - Manufacturer
 - Supplier
 - Professional Service Provider
 - Other Service Providers, e.g Transporter, etc
- (vii) Total number of years the company/firm has been in business.....

BID DECLARATION

I/we, the undersigned, who warrants that he/she is duly authorised to do so on behalf of the company/firm, certify that points claimed, based on the B-BBEE status level of contribution indicated in paragraph 4 above, qualifies the company/firm for the preference(s) shown and I / we acknowledge that:

- (i) The information furnished is true and correct.
- (ii) In the event of a contract being awarded as a result of points claimed as shown in paragraph 6 above, the contractor may be required to furnish documentary proof to the satisfaction of Transnet that the claims are correct.
- (iii) If the B-BBEE status level of contribution has been claimed or obtained on a fraudulent basis or any of the conditions of contract have not been fulfilled, Transnet may, in addition to any other remedy it may have:
 - (a) disqualify the person from the bidding process;
 - (b) recover costs, losses or damages it has incurred or suffered as a result of that person's conduct;
 - (c) cancel the contract and claim any damages which it has suffered as a result of having to make less favourable arrangements due to such cancellation;
 - (d) restrict the Bidder or contractor, its shareholders and directors, and/or associated

entities, or only the shareholders and directors who acted in a fraudulent manner, from obtaining business from Transnet for a period not exceeding 10 years, after the *audi alteram partem* [hear the other side] rule has been applied; and/or
(e) forward the matter for criminal prosecution.

WITNESSES:

- 1.
- 2.

SIGNATURE OF BIDDER

DATE:.....

COMPANY NAME:

ADDRESS:.....

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**FOR THE PROVISION OF SKILLED HOSPITALITY STAFF FOR THE BLUE TRAIN
FOR A PERIOD OF 24 MONTHS**

Section 8 : CERTIFICATE OF ATTENDANCE OF RFP BRIEFING

It is hereby certified that –

- 1. _____
- 2. _____

Representative(s) of _____ [name of entity]
attended the RFP briefing in respect of the proposed Services to be rendered in terms of this RFP on
_____ 20__

TRANSNET'S REPRESENTATIVE

RESPONDENT'S REPRESENTATIVE

DATE _____

DATE _____

EMAIL _____

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**FOR THE PROVISION OF SKILLED HOSPITALITY STAFF FOR THE BLUE TRAIN
FOR A PERIOD OF 24 MONTHS**

Section 9 : B-BBEE IMPROVEMENT PLAN

Transnet encourages its Suppliers to constantly strive to improve their B-BBEE rating and requests that Respondents submit a B-BBEE improvement plan. Respondents are therefore requested to indicate whether they will maintain or improve their BBEE status over the contract period.

Additional contractual requirements

Should a contract be awarded through this RFP process, the successful Respondent(s) may be contractually committed, *inter alia*, to the following conditions:

- a) The original B-BBEE Improvement Plan may require certain additions or updates in order to ensure that Transnet is satisfied that developmental objectives will be met.
- b) The Supplier will need to ensure that the relevant mechanisms and procedures are in place to allow Transnet access to information to measure and verify the Supplier's compliance with its stated B-BBEE Improvement commitments.
- c) The Supplier will be required to provide:
 - (i) quarterly status reports for Transnet; and
 - (ii) a final B-BBEE Improvement Plan report, to be submitted to Transnet prior to the expiry date of the contract, detailing delivery, implementation and completion of all B-BBEE Improvement components.
- d) All information provided by the Supplier in order to measure its progress against its stated targets will be auditable.

Respondents are requested to submit their B-BBEE Improvement Plan as an **additional document** with their Proposals by completion of **Annexure B** appended hereto. [*Refer Annexure B for further instructions*]

ANNEXURE – A

TECHNICAL COMPLIANCE SHEET - BT/2005/2015

The compliance response is to contain ONLY the following statements, “**Comply**”, or “**Do not comply**”.

Where either “**Do not comply**” is inserted, remarks as to the reason for the deviation from the requirement is required

Main Specification: APPENDIX (iii)		BT/2005/2015	
Item	Specification Clause No.	Compliance Response	Explanation / Deviation / Reason
1	1.2		
2	1.3.1		
3	1.3.2		
4	1.3.3		
5	1.3.4		
6	1.3.5		
7	1.3.6		
8	1.3.7		
9	1.4		
10	2.1		
11	2.2		
12	2.3		
13	2.4		
14	3.1		
15	3.2		
16	3.3		
17	4.1		
18	5.2		
19	5.3		
20	5.4		

21	5.6		
22	5.7		
23	5.8		
24	6.1		
25	6.2		
26	6.3		
27	6.4		
28	6.5		
29	6.6		
30	6.7		
31	7.1		
32	7.2		
33	7.3		
34	7.4		
35	8		
36	9		

Annexure A – Technical Compliance Sheet.BT/2005/2015

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Respondent's Signature

Date & Company Stamp



ANNEXURE B : B-BBEE IMPROVEMENT PLAN

Transnet encourages its Suppliers/Service Providers to constantly strive to improve their B-BBEE rating. Whereas Respondents will be allocated points in terms of a preference point system based on its B-BBEE scorecard, in addition to such scoring, Transnet also requests that Respondents submit a B-BBEE improvement plan. Respondents are therefore requested to indicate the extent to which their ownership, management control, Supplier Development, Preferential Procurement and Enterprise Development will be maintained or improved over the contract period.

Respondents are requested to submit their B-BBEE Improvement Plan as an additional document with their Proposals.

Respondents are to insert their current status (%) and future targets (%) for the B-BBEE Improvement Plan [i.e. not the % change but the end-state quantum expressed as a percentage] in the table below. This will indicate how you intend to sustain or improve your B-BBEE rating over the contract period. On agreement, this will represent a binding commitment to the successful Respondent.

Transnet 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 (%)
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>		
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>		
5. New Entrants ³ (Early stage business)	<i>Provide a commitment based on the extent to which new entrants will be supported over the contract period.</i>		

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

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

3 **"New Entrants"** means an early stage business which is similar to a start-up. However, an early stage business is typically 3 years old or less.

Respondent's Signature

Date & Company Stamp

		Status (%)	Targets (%)
14. 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 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>		
15. 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>		
Junior Management	Required Response	Current Status (%)	Future Targets (%)
16. Black employees in Junior management as a percentage of all junior management	<i>Provide a commitment based on the extent to which the number of Black Junior Managers as a percentage of the total junior Managers, would be sustained or increased over the contract period.</i>		
17. Black female employees in Junior management as a percentage of all junior management	<i>Provide a commitment based on the extent to which the number of Black female Junior Managers as a percentage of the total junior Managers, would be sustained or increased over the contract period.</i>		
Employees with disabilities	Required Response	Current Status (%)	Future Targets (%)
18. 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 employees in the organisation, would be sustained or increased over the contract period.</i>		
PREFERENTIAL PROCUREMENT INDICATOR	Required Responses	Current Status (%)	Future Targets (%)
19. B-BBEE procurement spend from all Empowering Suppliers ⁴ based on the B-BBEE procurement	<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>		

⁴ "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.

SUPPLIER DEVELOPMENT INDICATOR	Required Response	Current Status (%)	Future Target (%)
25. Annual value of all 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>		
ENTERPRISE DEVELOPMENT INDICATOR	Required Response	Current Status (%)	Future Target (%)
26. The organisation's annual spend on Enterprise Development ⁷ as a percentage of Net Profit after Tax [NPAT]	<i>Provide a commitment based on the retention or increase in your organisation's annual spend on Enterprise Development initiatives, as a percentage of its Net Profit after Tax, over the contract period.</i>		

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⁶ **"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.

Supplier Development within the contest of the B-BBEE scorecard must be differentiated from Transnet's Supplier Development Initiatives. Whereas the former relates to the definition above, the latter relates to improving the socio-economic environment through initiatives that are committed to as part of a contract award that contribute to the development of a competitive supplier base in relation to a particular industry.

⁷ **"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 51% Black women owned;



Appendix (i)

GENERAL BID CONDITIONS - SERVICES

[March 2015]

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1 DEFINITIONS

Where the following words or phrases are used in this Agreement, such words or phrases shall have the meaning assigned thereto in this clause, except where the context clearly requires otherwise:

- 1.1 **Bid** shall mean a Respondent's tendered response / proposal to a Transnet RFP or RFQ;
- 1.2 **Bid Document(s)** shall mean a reference to a Request for Proposal or Request for Quotation;
- 1.3 **Business Day** shall mean any day other than a Saturday, Sunday or public holiday;
- 1.4 **Respondent(s)** shall mean a respondent/bidder to a Bid Document;
- 1.5 **RFP** shall mean Request for Proposal;
- 1.6 **RFQ** shall mean Request for Quotation;
- 1.7 **RFX** shall mean RFP or RFQ, as the case may be;
- 1.8 **Services** shall mean the services required by Transnet as specified in its Bid Document;
- 1.9 **Service Provider** shall mean the successful Respondent;
- 1.10 **Tax Invoice** shall mean the document as required by Section 20 of the Value-Added Tax Act, 89 of 1991, as may be amended from time to time;
- 1.11 **Transnet** shall mean Transnet SOC Ltd, a State Owned Company; and
- 1.12 **VAT** shall mean Value-Added Tax in terms of the Value-Added Tax Act, 89 of 1991, as may be amended from time to time.

2 GENERAL

All Bid Documents and subsequent contracts and orders shall be subject to the following general conditions as laid down by Transnet and are to be strictly adhered to by any Respondent to this RFX.

3 SUBMISSION OF BID DOCUMENTS

- 3.1 A Bid which shall hereinafter include reference to an RFP or RFQ, shall be submitted to Transnet no later than the closing date and time specified in accordance with the directions issued in the Bid Documents. Late Bids will not be considered.
- 3.2 Bids shall be delivered in a sealed envelope in accordance with the instructions indicated in the Bid Documents with the Bid number and subject marked on the front of the envelope.
- 3.3 The Respondent's return address must be stated on the reverse side of the sealed envelope.

4 USE OF BID FORMS

- 4.1 Where special forms are issued by Transnet for the submission of Bids, Respondents are required to submit their Bids by completion of the appropriate sections on such official forms and not in other forms or documents bearing their own terms and conditions of contract. Non-compliance with this condition may result in the rejection of a Bid.
- 4.2 Respondents must note that the original Bid forms must be completed for submission and not a reprocessed copy thereof.

- 4.3 Only if insufficient space has been allocated for a particular response may a Respondent submit additional information under separate cover using its company's letterhead. This must be duly cross-referenced in the RFX.

5 BID FEES

- 5.1 A non-refundable fee may be charged for Bid Documents, depending on the administrative cost of preparing and issuing such Bid Documents.
- 5.2 Only Respondents that have paid the Bid fee and provided proof of payment when submitting their Bid will be considered.

6 VALIDITY PERIOD

- 6.1 Respondents must hold their Bid valid for acceptance by Transnet at any time within the requested validity period after the closing date of the bid.
- 6.2 Respondents may be requested to extend their validity period for a specified additional period. In such instances, Respondents will not be allowed to change any aspect of their Bid, unless they are able to demonstrate that the proposed change(s) is as a direct and unavoidable consequence of Transnet's extension of the validity period.

7 SITE VISIT / BRIEFING SESSION

Respondents may be requested to attend a site visit where it is considered necessary to view the site prior to the preparation of Bids, or where Transnet deems it necessary to provide Respondents with additional information relevant to the compilation of their Bids. When such visits or sessions are indicated as compulsory in the Bid Document, Respondents are obliged to attend these meetings as failure to do so will result in their disqualification.

8 CLARIFICATION BEFORE THE CLOSING DATE

Should clarification be required on any aspect of the RFX before the closing date, the Respondent must direct such queries to the contact person identified in the Bid Document.

9 COMMUNICATION AFTER THE CLOSING DATE

After the closing date of a Bid [i.e. during the evaluation period] the Respondent may only communicate with the Chairperson or Secretary of the relevant Acquisition Council.

10 UNAUTHORISED COMMUNICATION ABOUT BIDS

Where Bids are submitted to the Secretary of an Acquisition Council, Respondents may at any time communicate with the Secretary on any matter relating to its Bid but, in the absence of written authority from the Secretary, no communication on a question affecting the subject of a Bid shall take place between Respondents or other potential service providers or any member of the Acquisition Council or official of Transnet during the period between the closing date for the receipt of the Bid and the date of the notification of the successful Respondent(s). A Bid, in respect of which any such unauthorised communication has occurred, may be disqualified.

11 POST TENDER NEGOTIATIONS

Transnet reserves the right to conduct post tender negotiations with the preferred bidder or a shortlist of preferred bidders. Should Transnet decide to conduct post tender negotiations, bidders will be requested to provide their best and final offers to Transnet based on such negotiations. A final evaluation will be conducted in terms of 80/20 or 90/10 (whichever is applicable) and the contract will be negotiated and awarded to the successful bidder(s).

12 RETURNABLE DOCUMENTS

All returnable documents listed in the RFX Documents must be submitted with Respondent's Bid. Failure to submit mandatory returnable schedules / documents will result in disqualification. Failure to submit other schedules / documents may result in disqualification.

13 DEFAULTS BY RESPONDENTS

If the Respondent, after it has been notified of the acceptance of its Bid fails to:

- 13.1 enter into a formal contract when called upon to do so within such period as Transnet may specify; or
- 13.2 accept an order in terms of the Bid;
- 13.3 furnish satisfactory security when called upon to do so for the fulfilment of the contract; or
- 13.4 comply with any condition imposed by Transnet,

Transnet may, in any such case, without prejudice to any other legal remedy which it may have, proceed to accept any other Bid or, if it is necessary to do so, call for Bids afresh, and may recover from the defaulting Respondent any additional expense incurred by Transnet in calling for new offers or in accepting a less favourable offer.

14 CURRENCY

All monetary amounts referred to in a Bid response must be in Rand, the currency of the Republic of South Africa [ZAR], save to the extent specifically permitted in the RFX.

15 PRICES SUBJECT TO CONFIRMATION

- 15.1 Prices which are quoted subject to confirmation will not be considered.
- 15.2 Firm prices quoted for the duration of any resulting order and/or contract will receive precedence over prices which are subject to fluctuation if this is in Transnet's best interests.

16 ALTERATIONS MADE BY THE RESPONDENT TO BID PRICES

All alterations made by the Respondent to its Bid price(s) prior to the submission of its Bid Documents must be done by deleting the incorrect figures and words where required and by inserting the correct figures and words against the items concerned. All such alterations must be initialled by the person who signs the Bid Documents. Failure to observe this requirement may result in the particular item(s) concerned being excluded in the matter of the award of the business.

17 EXCHANGE AND REMITTANCE

- 17.1 The Respondent should note that where the whole or a portion of the contract or order value is to be remitted overseas, Transnet shall, if requested to do so by the Service Provider, effect payment

overseas directly to the foreign principal of such percentage of the contract or order value as may be stipulated by the Respondent in its Bid Documents.

- 17.2 It is Transnet's preference to enter into Rand-based agreements. Transnet would request, therefore, that the Respondent give favourable consideration to obtaining forward exchange cover on the foreign currency portion of the Agreement at a cost that is acceptable to Transnet to protect itself against any currency rate fluctuation risks for the duration of any resulting contract or order.
- 17.3 The Respondent who desires to avail itself of the aforementioned facility must at the time of bidding furnish the information called for in the *Exchange and Remittance* section of the Bid Documents and also furnish full details of the principals to whom payment is to be made.
- 17.4 The South African Reserve Bank's approval is required before any foreign currency payments can be made to or on behalf of Respondents.
- 17.5 Transnet will not recognise any claim for adjustment of the order and/or contract price if the increase in price arises after the date on which agreement on an overall Rand contract has been reached.
- 17.6 Transnet reserves the right to request a pro-forma invoice/tax invoice in order to ensure compliance with the contract and Value-Added Tax Act no. 89 of 1991 [**VAT Act**].

18 ACCEPTANCE OF BID

- 18.1 Transnet does not bind itself to accept the lowest priced or any Bid.
- 18.2 Transnet reserves the right to accept any Bid in whole or in part.
- 18.3 Upon the acceptance of a Bid by Transnet, the parties shall be bound by these General Bid Conditions and any contractual terms and/or any schedule of "Special Conditions" or otherwise which form part of the Bid Documents.
- 18.4 Where the Respondent has been informed by Transnet per fax message or email of the acceptance of its Bid, the acknowledgement of receipt transmitted shall be regarded as proof of delivery to the Respondent.

19 NOTICE TO UNSUCCESSFUL RESPONDENTS

Unsuccessful Respondents shall be advised in writing that their Bids have not been accepted as soon as possible after the closing date of the Bid. On award of business to the successful Respondent all unsuccessful Respondents shall be informed of the name of the successful Respondent and of the reason as to why their Bids have not been successful.

20 TERMS AND CONDITIONS OF CONTRACT

- 20.1 The Service Provider shall adhere to the Terms and Conditions of Contract issued with the Bid Documents, together with any schedule of "Special Conditions" or otherwise which form part of the Bid Documents.
- 20.2 Should the Respondent find any conditions unacceptable, it should indicate which conditions are unacceptable and offer amendments/ alternatives by written submission on its company letterhead. Any such submission shall be subject to review by Transnet's Legal Counsel who shall determine whether the proposed amendments/ alternative(s) are acceptable or otherwise, as the case may be.

21 CONTRACT DOCUMENTS

- 21.1 The contract documents will comprise these General Bid Conditions, the Terms and Conditions of Contract and any schedule of “Special Conditions” which form part of the Bid Documents.
- 21.2 The abovementioned documents together with the Respondent’s Bid response will constitute the contract between the parties upon receipt by the Respondent of Transnet’s letter of award / intent, subject to all additional amendments and/or special conditions thereto as agreed to by the parties.
- 21.3 Should Transnet inform the Respondent that a formal contract will be signed, the abovementioned documents together with the Respondent’s Bid response [and, if any, its covering letter and any subsequent exchange of correspondence] as well as Transnet’s Letter of Acceptance/Intent, shall constitute a binding contract until the final contract is signed.

22 LAW GOVERNING CONTRACT

The law of the Republic of South Africa shall govern the contract created by the acceptance of a Bid. The *domicilium citandi et executandi* shall be a place in the Republic of South Africa to be specified by the Respondent in its Bid at which all legal documents may be served on the Respondent who shall agree to submit to the jurisdiction of the courts of the Republic of South Africa. A foreign Respondent shall, therefore, state in its Bid the name of its authorized representative in the Republic of South Africa who is empowered to sign any contract which may be entered into in the event of its Bid being accepted and to act on its behalf in all matters relating to the contract.

23 IDENTIFICATION

If the Respondent is a company, the full names of the directors shall be stated in the Bid. If the Respondent is a close corporation, the full names of the members shall be stated in the Bid. If the Respondent is a partnership or an individual trading under a trade name, the full names of the partners or of such individual, as the case may be, shall be furnished.

24 CONTRACTUAL SECURITIES

- 24.1 The successful Respondent, when called upon to do so, shall provide security to the satisfaction of Transnet for the due fulfilment of a contract or order. Such security shall be in the form of an advanced payment guarantee [APG] and/or a performance bond [Performance Bond], as the case may be, to be furnished by an approved bank, building society, insurance or guarantee corporation carrying on business in South Africa.
- 24.2 The security may be applied in whole or part at the discretion of Transnet to make good any loss or damage which Transnet may incur in consequence of a breach of the contract or any part thereof.
- 24.3 Such security, if required, shall be an amount which will be stipulated in the Bid Documents.
- 24.4 The successful Respondent shall be required to submit to Transnet or Transnet’s designated official the specified security document(s) within 30 [thirty] calendar days from the date of signature of the contract. Failure to return the securities within the prescribed time shall, save where prior extension has been granted, entitle Transnet without notice to the Service Provider to cancel the contract with immediate effect.
- 24.5 Additional costs incurred by Transnet necessitated by reason of default on the part of the Service Provider in relation to the conditions of this clause 24 will be for the account of the Service Provider.

25 DELETION OF ITEMS TO BE EXCLUDED FROM BID

The Respondent must delete items for which it has not tendered or for which the price has been included elsewhere in its Bid.

26 VALUE-ADDED TAX

26.1 In respect of local Services, i.e. Services to be rendered in the Republic of South Africa, the prices quoted by the Respondent are to be exclusive of VAT which must be shown separately at the standard rate on the Tax Invoice.

26.2 In respect of foreign Services rendered:

- a) the invoicing by a South African Service Provider on behalf of its foreign principal rendering such Service represents a Service rendered by the principal; and
- b) the Service Provider's Tax Invoice(s) for the local portion only [i.e. the "commission" for the Services rendered locally] must show the VAT separately.

27 IMPORTANT NOTICE TO RESPONDENTS REGARDING PAYMENT

27.1 Method of Payment

- a) The attention of the Respondent is directed to the Terms and Conditions of Contract which set out the conditions of payment on which Bid price(s) shall be based.
- b) However, in addition to the foregoing the Respondent is invited to submit offers based on alternative methods of payment and/or financing proposals.
- c) The Respondent is required to give full particulars of the terms that will be applicable to its alternative offer(s) and the financial merits thereof will be evaluated and taken into consideration when the Bid is adjudicated.
- d) The Respondent must, therefore, in the first instance, tender strictly in accordance with clause 27.1a) above. Failure to comply with clause 27.1a) above may preclude a Bid from further consideration.

NOTE: The successful Respondent [the **Service Provider**], where applicable, shall be required to furnish a guarantee covering any advance payments, as set out in clause 24 above [*Contractual Securities*].

27.2 Conditional Discount

Respondents offering prices which are subject to a conditional discount applicable for payment within a specific period are to note that the conditional period will be calculated from the date of receipt by Transnet of the Service Provider's month-end statement reflecting the relevant Tax Invoice(s) for payment purposes, provided the conditions of the order or contract have been fulfilled and the Tax Invoice is correct in all respects in terms of the contract or order. Incomplete and/or incorrect Tax Invoices shall be returned and the conditional discount period will be recalculated from the date of receipt of the correct documentation.

28 DELIVERY REQUIREMENTS

28.1 Period Contracts

It will be a condition of any resulting contract/order that the delivery period embodied therein will be governed by the provisions of the Terms and Conditions of Contract.

28.2 Progress Reports

The Service Provider may be required to submit periodical progress reports with regard to the delivery of the Services.

28.3 Emergency Demands as and when required

If, due to unforeseen circumstances, the rendering of the Services covered by the Bid are required at short notice for immediate delivery, the Service Provider will be given first right of refusal for such business. If it is unable to meet the desired critical delivery period, Transnet reserves the right to purchase such services as may be required to meet the emergency, outside the contract if immediate delivery can be offered from any other source. The "*Total or Partial Failure to Perform the Scope of Services*" section in the Terms and Conditions of Contract will not be applicable in these circumstances.

29 SPECIFICATIONS AND COPYRIGHT

29.1 Specifications

The Respondent should note that unless notified to the contrary by Transnet or a designated official by means of an official amendment to the Bid Documents, it is required to tender for the Services strictly in accordance with the specifications supplied by Transnet.

29.2 Copyright

Copyright in plans, drawings, diagrams, specifications and documents compiled by the Service Provider for the purpose of contract work shall be governed by the *Intellectual Property Rights* section in the Terms and Conditions of Contract.

30 BIDS BY OR ON BEHALF OF FOREIGN RESPONDENTS

30.1 Bids submitted by foreign principals may be forwarded directly by the principals or by its South African representative or agent to the Secretary of the Acquisition Council or to a designated official of Transnet according to whichever officer is specified in the Bid Documents.

30.2 In the case of a representative or agent, written proof must be submitted to the effect that such representative or agent has been duly authorised to act in that capacity by the principal. Failure to submit such authorisation by the representative or agent shall disqualify the Bid.

30.3 When legally authorised to prepare and submit Bids on behalf of their principals not domiciled in the Republic of South Africa, representatives or agents must compile the Bids in the names of such principals and sign them on behalf of the latter.

30.4 South African representatives or agents of a successful foreign Respondent must when so required enter into a formal contract in the name of their principals and must sign such contract on behalf of the latter. In every such case a legal Power of Attorney from their principals must be furnished to Transnet by the South African representative or agents authorising them to enter into and sign such contract.

- a) Such Power of Attorney must comply with Rule 63 [Authentication of documents executed outside the Republic for use within the Republic] of the Uniform Rules of Court: Rules regulating the conduct of the proceedings of the several provincial and local divisions of the Supreme Court of South Africa.
 - b) The Power of Attorney must be signed by the principal under the same title as used in the Bid Documents.
 - c) If a Power of Attorney held by the South African representative or agent includes matters of a general nature besides provision for the entering into and signing of a contract with Transnet, a certified copy thereof should be furnished.
 - d) The Power of Attorney must authorise the South African representative or agent to choose the *domicilium citandi et executandi* as provided for in the Terms and Conditions of Contract.
- 30.5 If payment is to be made in South Africa, the foreign Service Provider (i.e. the principal, or its South African agent or representative), must notify Transnet in writing whether, for payment by electronic funds transfer [EFT]:
- a) funds are to be transferred to the credit of the foreign Service Provider's account at a bank in South Africa, in which case the name and branch of such bank shall be furnished; or
 - b) funds are to be transferred to the credit of its South African agent or representative, in which case the name and branch of such bank shall be furnished.

31 CONFLICT WITH BID DOCUMENT

Should a conflict arise between these General Bid Conditions and the Bid Document issued, the conditions stated in the Bid Document shall prevail.

32 TRANSNET'S LIST OF EXCLUDED TENDERERS (BLACKLIST)

32.1 All the stipulations around Transnet's blacklisting process as laid down in Transnet's Supply Chain Policy and Procurement Procedures Manual are included herein by reference. Below follows a condensed summary of this blacklisting procedure.

32.2 Blacklisting is a mechanism used to exclude a company/person from future business with Transnet for a specified period. The decision to blacklist is based on one of the grounds for blacklisting. The standard of proof to commence the blacklisting process is whether a "prima facie" (i.e. on the face of it) case has been established.

32.3 Depending on the seriousness of the misconduct and the strategic importance of the Goods/Services, in addition to blacklisting a company/person from future business, Transnet may decide to terminate some or all existing contracts with the company/person as well.

32.4 A supplier or contractor to Transnet may not subcontract any portion of the contract to a blacklisted company.

32.5 Grounds for blacklisting include: If any person/Enterprise which has submitted a Bid, concluded a contract, or, in the capacity of agent or subcontractor, has been associated with such Bid or contract:

- a) Has, in bad faith, withdrawn such Bid after the advertised closing date and time for the receipt of Bids;

- b) has, after being notified of the acceptance of his Bid, failed or refused to sign a contract when called upon to do so in terms of any condition forming part of the bid documents;
- c) has carried out any contract resulting from such bid in an unsatisfactory manner or has breached any condition of the contract;
- d) has offered, promised or given a bribe in relation to the obtaining or execution of the contract;
- e) has acted in a fraudulent or improper manner or in bad faith towards Transnet or any Government Department or towards any public body, Enterprise or person;
- f) has made any incorrect statement in a certificate or other communication with regard to the Service or his B-BBEE status and is unable to prove to the satisfaction of Transnet that:
 - (i) he made the statement in good faith honestly believing it to be correct; and
 - (ii) before making such statement he took all reasonable steps to satisfy himself of its correctness;
- g) caused Transnet damage, or to incur costs in order to meet the contractor's requirements and which could not be recovered from the contractor;
- h) has litigated against Transnet in bad faith.

32.6 Transnet recognizes that trust and good faith are pivotal to its relationship with its suppliers. When a dispute arises between Transnet and its supplier, the parties should use their best endeavours to resolve the dispute in an amicable manner, whenever possible. Litigation in bad faith negates the principles of trust and good faith on which commercial relationships are based. Accordingly, Transnet will not do business with a company that litigates against it in bad faith or is involved in any action that reflects bad faith on its part. Litigation in bad faith includes, but is not limited to the following instances:

- a) Vexatious proceedings. These are frivolous proceedings which have been instituted without proper grounds;
- b) Perjury. Where a supplier commits perjury either in giving evidence or on affidavit;
- c) Scurrilous allegations. Where a supplier makes allegations regarding a senior Transnet employee which are without a proper foundation, scandalous, abusive or defamatory.
- d) Abuse of court process. When a supplier abuses the court process in order to gain a competitive advantage during a bid process.

32.7 Where any person or Enterprise has been found guilty by a court of law, tribunal or other administrative body of a serious breach of any law, during the preceding 5 Years, such person/Enterprise may also be blacklisted. Serious breaches of the law would include but are not limited to corruption, fraud, theft, extortion, or contraventions of the Competition Act 89 of 1998 (e.g. collusive tendering). This process excludes minor convictions such as traffic offences or personal disagreements between parties which have no bearing on the business operations of the person or Enterprise.

- 32.8 Grounds for blacklisting include a company/person recorded as being a company or person prohibited from doing business with the public sector on National Treasury's database of Restricted Suppliers or Register of Tender Defaulters.
- 32.9 Companies associated with the person/s guilty of misconduct (i.e. entities owned, controlled or managed by such persons), any companies subsequently formed by the person(s) guilty of the misconduct and/or an existing company where such person(s) acquires a controlling stake may be considered for blacklisting. The decision to extend the blacklist to associated companies will be at the sole discretion of Transnet.
- 32.10 Any person or enterprise or company against whom a decision to blacklist has been taken, may make representations to the Chief Financial Officer of Transnet SOC Ltd, whose decision shall be final.

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"PREVIEW COPY ONLY"



APPENDIX (ii)

**STANDARD TERMS AND CONDITIONS OF CONTRACT
FOR THE PROVISION OF SERVICES TO TRANSNET
[March 2015]**

"PREVIEW COPY ONLY"

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1 INTRODUCTION

When an Agreement is entered into between Transnet SOC Ltd [**Transnet**] and the appointed supplier of Services to Transnet [**the Service Provider**], these Standard Terms and Conditions of Contract, the technical specifications for the Services, a Work Order including such special conditions as may be applicable, and any terms in the associated Bid Documents, exclusively govern the provision of Services by the Service Provider to Transnet.

2 DEFINITIONS

Where the following words or phrases are used in the Agreement, such words or phrases shall have the meaning assigned thereto in this clause, except where the context clearly requires otherwise:

- 2.1 **AFSA** means the Arbitration Foundation of South Africa;
- 2.2 **Agreement** means the Agreement and its associated schedules and/or annexures and/or appendices, including the Work Order(s), specifications for the Services and such special conditions as shall apply to the Agreement, together with the General Tender Conditions and any additional provisions in the associated bid documents tendered by the Service Provider [as agreed in writing between the Parties], which collectively and exclusively govern the provision of Services by the Service Provider to Transnet;
- 2.3 **Background Intellectual Property** means all Intellectual Property introduced and required by either Party to give effect to their obligations under the Agreement owned in whole or in part by or licensed to either Party or their affiliates prior to the Commencement Date or developed after the Commencement Date otherwise pursuant to the Agreement;
- 2.4 **Business Day(s)** means Mondays to Fridays between 07:30 and 16:00, excluding public holidays as proclaimed in South Africa;
- 2.5 **Commencement Date** means [●], notwithstanding the signature date of the Agreement;
- 2.6 **Confidential Information** means any information or other data, whether in written, oral, graphic or in any other form such as in documents, papers, memoranda, correspondence, notebooks, reports, drawings, diagrams, discs, articles, samples, test results, prototypes, designs, plans, formulae, patents, or inventor's certificates, which a Party discloses or provides to the other Party [intentionally or unintentionally, or as a result of one Party permitting the representative of the other Party to visit any of its premises], or which otherwise becomes known to a Party, and which is not in the public domain and includes, without limiting the generality of the term:
- a) information relating to methods of operation, data and plans of the disclosing Party;
 - b) the contents of the Agreement;
 - c) private and personal details of employees or clients of the disclosing Party or any other person where an onus rests on the disclosing Party to maintain the confidentiality of such information;
 - d) any information disclosed by either Party and which is clearly marked as being confidential or secret;
 - e) information relating to the strategic objectives and planning of the disclosing Party relating to its existing and planned future business activities;

- f) information relating to the past, present and future research and development of the disclosing Party;
 - g) information relating to the business activities, business relationships, products, services, customers, clients and Subcontractors of the disclosing Party where an onus rests on the disclosing Party to maintain the confidentiality of such information;
 - h) information contained in the software and associated material and documentation belonging to the disclosing Party;
 - i) technical and scientific information, Know-How and trade secrets of a disclosing Party including inventions, applications and processes;
 - j) Copyright works;
 - k) commercial, financial and marketing information;
 - l) data concerning architecture, demonstrations, tools and techniques, processes, machinery and equipment of the disclosing Party;
 - m) plans, designs, concepts, drawings, functional and technical requirements and specifications of the disclosing Party;
 - n) information concerning faults or defects in goods, equipment, hardware or software or the incidence of such faults or defects; and
 - o) information concerning the charges, Fees and / or costs of the disclosing Party or its authorised Subcontractors, or their methods, practices or service performance levels actually achieved.
- 2.7 **Copyright** means the right in expressions, procedures, methods of operations or mathematical concepts, computer program codes, compilations of data or other material, literary works, musical works, artistic works, sound recordings, broadcasts, program carrying signals, published editions, photographic works, or cinematographic works of the copyright owner to do or to authorise the doing of certain acts specified in respect of the different categories of works;
- 2.8 **Default** means any breach of the obligations of either Party [including but not limited to fundamental breach or breach of a fundamental term] or any Default, act, omission, negligence or statement of either Party, its employees, agents or Subcontractors in connection with or in relation to the subject of the Agreement and in respect of which such Party is liable to the other;
- 2.9 **Deliverable(s)** means any and all works of authorship, products and materials developed, written, prepared, assembled, integrated, modified or provided by the Service Provider in relation to the Services;
- 2.10 **Designs** mean registered Designs and/or Design applications and will include the monopoly right granted for the protection of an independently created industrial design including designs dictated essentially by technical or functional considerations as well as topographies of integrated circuits and integrated circuits;
- 2.11 **Fee(s)** shall mean the agreed Fees for the Services to be purchased from the Service Provider by Transnet, as detailed in the Work Order(s), issued in accordance with the Agreement, as amended by mutual agreement between the Parties and in accordance with the provisions of the Agreement from time to time;
- 2.12 **Foreground Intellectual Property** means all Intellectual Property developed by either Party pursuant to the Agreement;

- 2.13 **Intellectual Property** means Patents, Designs, Know-How, Copyright and Trade Marks and all rights having equivalent or similar effect which may exist anywhere in the world and includes all future additions and improvements to the Intellectual Property;
- 2.14 **Know-How** means all Confidential Information of whatever nature relating to the Intellectual Property and its exploitation as well as all other Confidential Information generally relating to Transnet's field of technology, including technical information, processing or manufacturing techniques, Designs, specifications, formulae, systems, processes, information concerning materials and marketing and business information in general;
- 2.15 **Materials** means the Deliverables, the Service Provider Materials and the Third Party Materials;
- 2.16 **Parties** mean the Parties to the Agreement together with their subsidiaries, divisions, business units, successors-in-title and their assigns;
- 2.17 **Party** means either one of these Parties;
- 2.18 **Patents** mean registered Patents and Patent applications, of which the latter have proceeded to grant, and includes a right granted for any inventions, products or processes in all fields of technology;
- 2.19 **Permitted Purpose** means any activity or process to be undertaken or supervised by Personnel or employees of one Party during the term of the Agreement, for which purpose authorised disclosure of the other Party's Confidential Information or Intellectual Property is a prerequisite in order to enable such activity or process to be accomplished;
- 2.20 **Personnel** means any partner, employee, agent, consultant, independent associate or supplier, Subcontractor and the staff of such Subcontractor, or other authorised representative of either Party;
- 2.21 **Purchase Order(s)** means official orders issued by an operating division of Transnet to the Service Provider for the provision of Services;
- 2.22 **Service(s)** means [●], the Service(s) provided to Transnet by the Service Provider, pursuant to the Work Order(s) in terms of the Agreement;
- 2.23 **Service Level Agreement** or **SLA** means the processes, deliverables, key performance indicators and performance standards relating to the Services to be provided by the Service Provider;
- 2.24 **Subcontract** means any contract or agreement or proposed contract or agreement between the Service Provider and any third party whereby that third party agrees to provide to the Service Provider the Services or any part thereof;
- 2.25 **Subcontractor** means the third party with whom the Service Provider enters into a Subcontract;
- 2.26 **Service Provider Materials** means all works of authorship, products and materials [including, but not limited to, data, diagrams, charts, reports, specifications, studies, inventions, software, software development tools, methodologies, ideas, methods, processes, concepts and techniques] owned by, or licensed to, the Service Provider prior to the Commencement Date or independently developed by the Service Provider outside the scope of the Agreement at no expense to Transnet, and used by the Service Provider in the performance of the Services;
- 2.27 **Tax Invoice** means the document as required by Section 20 of the Value-Added Tax Act, 89 of 1991, as may be amended from time to time;

- 2.28 **Third Party Material** means software, software development tools, methodologies, ideas, methods, processes, concepts and techniques owned by, or licensed to a third party and used by the Service Provider in the performance of the Services;
- 2.29 **Trade Marks** mean registered Trade Marks and trade mark applications and includes any sign or logo, or combination of signs and/or logos capable of distinguishing the goods or services of one undertaking from those of another undertaking;
- 2.30 **VAT** means Value-Added Tax chargeable in terms of the Value-Added Tax Act, 89 of 1991, as may be amended from time to time; and
- 2.31 **Work Order(s)** means a detailed scope of work for a Service required by Transnet, including timeframes, Deliverable, Fees and costs for the supply of the Service to Transnet, which may be appended to the Agreement from time to time.

3 INTERPRETATION

- 3.1 Clause headings in the Agreement are included for ease of reference only and do not form part of the Agreement for the purposes of interpretation or for any other purpose. No provision shall be construed against or interpreted to the disadvantage of either Party hereto by reason of such Party having or being deemed to have structured or drafted such provision.
- 3.2 Any term, word, acronym or phrase used in the Agreement, other than those defined under the clause heading "Definitions" shall be given its plain English meaning, and those terms, words, acronyms, and phrases used in the Agreement will be interpreted in accordance with the generally accepted meanings accorded thereto.
- 3.3 A reference to the singular incorporates a reference to the plural and *vice versa*.
- 3.4 A reference to natural persons incorporates a reference to legal persons and *vice versa*.
- 3.5 A reference to a particular gender incorporates a reference to the other gender.

4 NATURE AND SCOPE

- 4.1 The Agreement is an agreement under the terms and conditions of which the Service Provider will arrange for the provision to Transnet of the Services which meet the requirements of Transnet, the delivery of which Services is controlled by means of Purchase Orders to be issued by Transnet and executed by the Service Provider, in accordance with the Agreement.
- 4.2 Such Purchase Orders shall be agreed between the Parties from time to time, subject to the terms of the relevant Work Order(s).
- 4.3 Each properly executed Purchase Order forms an inseparable part of the Agreement as if it were fully incorporated into the body of the Agreement.
- 4.4 During the period of the Agreement, both Parties can make written suggestions for amendments to the Work Order(s), in accordance with procedures set out in clause 29 [*Amendment and Change Control*] below. A Party will advise the other Party within 14 [fourteen] Business Days, or such other period as mutually agreed, whether the amendment is acceptable.
- 4.5 Insofar as any term, provision or condition in the Work Order(s) conflicts with a like term, provision or condition in the Agreement and/or a Purchase Order, or where the Agreement is silent on the matter, the term, provision or condition in this Master Agreement shall prevail, unless such term or provision or condition in this Master Agreement has been specifically revoked or amended by mutual written agreement between the Parties.

- 4.6 Time will be of the essence and the Service Provider will perform its obligations under the Agreement in accordance with the timeframe(s) [if any] set out in the relevant schedule, save that the Service Provider will not be liable under this clause if it is unable to meet such obligation within the time required as a direct result of any act or omission by Transnet and it has used its best endeavours to advise Transnet of such act or omission. In the event of such delay, any time deadlines detailed in the relevant schedule shall be extended by a period equal to the period of that delay.

5 AUTHORITY OF PARTIES

- 5.1 Nothing in the Agreement will constitute or be deemed to constitute a partnership between the Parties, or constitute or be deemed to constitute the Parties as agents or employees of one another for any purpose or in any form whatsoever.
- 5.2 Neither Party shall be entitled to, or have the power or authority to enter into an agreement in the name of the other; or give any warranty, representation or undertaking on the other's behalf; or create any liability against the other or bind the other's credit in any way or for any purpose whatsoever.

6 WARRANTIES

- 6.1 The Service Provider warrants to Transnet that:
- it has full capacity and authority to enter into and to perform the Agreement and that the Agreement is executed by a duly authorised representatives of the Service Provider;
 - it will discharge its obligations under the Agreement and any annexure, appendix or schedule hereto with all due skill, care and diligence;
 - it will be solely responsible for the payment of remuneration and associated benefits, if any, of its Personnel and for withholding and remitting income tax for its Personnel in conformance with any applicable laws and regulations;
 - it will procure licences for Transnet in respect of all Third Party Material detailed in the Work Order(s), and will procure the right for Transnet to take such copies [in whole or in part] of such Third Party Materials as it may reasonably require for the purposes of back-up for archiving and disaster recovery; and
 - the use or possession by Transnet of any Materials will not subject Transnet to any claim for infringement of any Intellectual Property Rights of any third party.
- 6.2 The Service Provider warrants that it will perform its obligations under the Agreement in accordance with the Service Levels as defined in the relevant schedule. Transnet may at its discretion audit compliance with the Service Levels, provided that any such audit is carried out with reasonable prior notice and in a reasonable way so as not to have an adverse effect on the performance of the Services. Without prejudice to clause 6.3 below, in the event that the Service Provider fails to meet the Service Levels, Transnet may claim appropriate service credits or invoke a retention of Fees as detailed in the relevant schedule and/or Work Order.
- 6.3 The Service Provider warrants that for a period of 90 [ninety] calendar days from Acceptance of the Deliverables they will, if properly used, conform in all material respects with the requirements set out in the relevant schedule. The Service Provider will at its expense remedy any such non-conformance as soon as possible but in any event within 30 [thirty] calendar days of notification

by Transnet. In the event that the Service Provider fails or is unable to remedy such non-conformance within such time-scale, Transnet will be entitled to employ a third party to do so in place of the Service Provider and any excess charges or costs incurred by Transnet as a result shall be paid by the Service Provider.

6.4 The Service Provider will remedy any defect within 30 [thirty] calendar days of being notified of that defect by Transnet in writing.

6.5 The Service Provider will not be liable to remedy any problem arising from or caused by any modification made by Transnet to the Deliverables, or any part thereof, without the prior approval of the Service Provider.

6.6 The Service Provider shall advise Transnet of the effects of any steps proposed by Transnet pursuant to clause 6.5 above, including but not limited to any cost implications or any disruption or delay in the performance of the Services. The Parties agree that any changes to the Services, including the charges for the Services or any timetables for delivery of the Services, will be agreed in accordance with the change control procedure, as set out in clause 29 [Amendment and Change Control].

6.7 The Service Provider warrants that:

- a) it has, using the most up-to-date software available, tested for [and deleted] all commonly known viruses in the Materials and for all viruses known by the Service Provider at the date of the relevant Work Order; and
- b) at the time of delivery to Transnet, the Materials do not contain any trojan horse, worm, logic bomb, time bomb, back door, trap door, keys or other harmful components.

The Service Provider agrees that, in the event that a virus is found, it will at its own expense use its best endeavours to assist Transnet in reducing the effect of the virus and, particularly in the event that a virus causes loss of operational efficiency or loss of data, to assist Transnet to the same extent to mitigate such losses and to restore Transnet to its original operating efficiency.

6.8 The Service Provider undertakes to comply with South Africa's general privacy protection in terms of Section 14 of the Bill of Rights in connection with the Agreement and shall procure that its personnel shall observe the provisions of Section 14 [as applicable] or any amendments and enactments thereof and any regulations made pursuant thereto.

6.9 The Service Provider warrants that it has taken all reasonable precautions to ensure that, in the event of a disaster, the impact of such disaster on the ability of the Service Provider to comply with its obligations under the Agreement will be reduced to the greatest extent possible, and that the Service Provider shall ensure that it has appropriate, tested and documented recovery arrangements in place.

6.10 In compliance with the National Railway Safety Regulator Act, 16 of 2002, the Service Provider shall ensure that the Services, to be supplied to Transnet under the terms and conditions of the Agreement, comply fully with the specifications as set forth in Schedule 1 hereto, and shall thereby adhere [as applicable] to railway safety requirements and/or regulations. Permission for the engagement of a Subcontractor by the Service Provider [as applicable] shall be subject to a review of the capability of the proposed Subcontractor to comply with the specified railway safety requirements and/or regulations. The Service Provider and/or its Subcontractor shall grant Transnet access, during the term of the Agreement, to review any safety-related activities, including the coordination of such activities across all parts of its organisation.

7 TRANSNET'S OBLIGATIONS

- 7.1 Transnet undertakes to promptly comply with any reasonable request by the Service Provider for information, including information concerning Transnet's operations and activities, that relates to the Services as may be necessary for the Service Provider to perform the Services, but for no other purpose. However, Transnet's compliance with any request for information is subject to any internal security rules and requirements and subject to the observance by the Service Provider of its confidentiality obligations under the Agreement.
- 7.2 The Service Provider shall give Transnet reasonable notice of any information it requires in accordance with clause 7.1 above.
- 7.3 Subject to clause 14 [*Service Provider's Personnel*], Transnet agrees to provide the Service Provider or its Personnel such access to and use of its facilities as is necessary to allow the Service Provider to perform its obligations under the Agreement.

8 GENERAL OBLIGATIONS OF THE SERVICE PROVIDER

8.1 The Service Provider shall:

- a) respond promptly to all complaints and enquiries from Transnet;
- b) inform Transnet immediately of any dispute or complaint arising in relation to the provision of the Services;
- c) conduct its business in a professional manner that will reflect positively upon the Service Provider and the Service Provider's Services;
- d) keep full records clearly indicating all transactions concluded by the Service Provider relating to the performance of the Services and keep such records for at least 5 [five] years from the date of each such transaction;
- e) obtain, and at all times maintain in full force and effect, any and all licences, permits and the like required under applicable laws for the provision of the Services and the conduct of the business and activities of the Service Provider;
- f) observe and ensure compliance with all requirements and obligations as set out in the labour and related legislation of South Africa, including the Occupational Health and Safety Act, 85 of 1993;
- g) comply with all applicable environmental legislation and regulations, and demonstrate sound environmental policies, management and performance; and
- h) ensure the validity of all renewable certifications, including but not limited to its Tax Clearance Certificate and B-BBEE Verification Certificate, for the duration of the Agreement. Should the Service Provider fail to present Transnet with such renewals as they become due, Transnet shall be entitled, in addition to any other rights and remedies that it may have in terms of the Agreement, to terminate the Agreement forthwith without any liability and without prejudice to any claims which Transnet may have for damages against the Service Provider.

8.2 The Service Provider acknowledges and agrees that it shall at all times:

- a) render the Services and perform all its duties with honesty and integrity;
- b) communicate openly and honestly with Transnet and demonstrate a commitment to performing the Services timeously, efficiently and to the required standards;

- c) endeavour to provide the highest possible standards of service and professionalism, with a reasonable degree of care and diligence;
- d) use its best endeavours and make every diligent effort to meet agreed deadlines;
- e) treat its own Personnel, as well as all Transnet's officers, employees, agents and consultants, with fairness and courtesy and respect for their human rights;
- f) practice and promote its own internal policies aimed at prohibiting and preventing unfair discrimination [as further referred to in clause 23 – *Equality and Diversity*];
- g) treat all enquiries from Transnet in connection with the Services with courtesy and respond to all enquiries promptly and efficiently. Where the Service Provider is unable to comply with the provisions of this clause, the Service Provider will advise Transnet of the delay and the reasons therefor and will keep Transnet informed of progress made regarding the enquiry;
- h) when requested by Transnet, provide clear and accurate information regarding the Service Provider's own policies and procedures, excluding Know-How and other Confidential Information, except where a non-disclosure undertaking has been entered into between the Parties;
- i) not allow a conflict of interest to develop between its own interests [or the interests of any of its other customers] and the interests of Transnet;
- j) not accept or offer, nor allow, induce or promote the acceptance or offering of any gratuity, enticement, incentive or gift that could reasonably be regarded as bribery or an attempt to otherwise exert undue influence over the recipient;
- k) not mislead Transnet or its officers, employees and stakeholders, whether by act or omission;
- l) not otherwise act in an unethical manner or do anything which could reasonably be expected to damage or tarnish Transnet's reputation or business image; and
- m) immediately report to Transnet any unethical, fraudulent or otherwise unlawful conduct of which it becomes aware in connection with Transnet or the provision of Services.

9 B-BBEE AND SOCIO-ECONOMIC OBLIGATIONS

9.1 B-BBEE Scorecard

- a) Transnet fully endorses and supports the Broad-Based Black Economic Empowerment Programme and is strongly of the opinion that all South African business enterprises have an equal obligation to redress the imbalances of the past. It is also a fundamental requirement of the RFP that the Service Provider also contributes to the Supplier Development Programme, as applied by Transnet.
- b) In response to this requirement, the Service Provider shall submit to Transnet's Contract Manager or such other designated person details of its B-BBEE status in terms of the latest Codes of Good Practice issued in terms of the B-BBEE Act and proof thereof at the beginning of March each year during the currency of the Agreement.
- c) The Service Provider undertakes to notify and provide full details to Transnet in the event there is:

- (i) a change in the Service Provider's B-BBEE status which is less than what it was at the time of its appointment including the impact thereof; and
 - (ii) a corporate or internal restructure or change in control of the Service Provider which has or likely to impact negatively on the Service Provider's B-BBEE status.
- d) Notwithstanding any other reporting requirement in terms hereof, the Service Provider undertakes to provide any B-BBEE data (underlying data relating to the Service Provider which has been relied upon or utilised by a verification agency or auditor for the purposes of issuing a verification certificate in respect of the Service Provider B-BBEE status) which Transnet may request on written notice within 30 (thirty) calendar days of such request. A failure to provide such data shall constitute a Service Provider Default and may be dealt with in accordance with the provisions of clause 19**Error! Reference source not found.**
- e) In the event there is a change in the Service Provider's B-BBEE status, then the provisions of clause 19**Error! Reference source not found.** shall apply.

9.2 B-BBEE Improvement Plan

- a) Transnet encourages its Service Providers to constantly strive to improve their B-BBEE levels. To this end, the Service Provider undertakes to provide Transnet with a B-BBEE Improvement Plan to indicate the extent to which their B-BBEE status will be maintained or improved over the contract period, as per Annexure of the RFP.
- b) The Service Provider shall, for the duration of the Agreement, comply with the B-BBEE Improvement Plan.
- c) The terms of the B-BBEE Improvement Plan and monetary value of the commitments thereunder shall not (unless otherwise agreed in writing) be less or less favourable than the commitments made by the Service Provider in such B-BBEE Improvement Plan.

9.3 Supplier Development Implementation Plan

- a) In addition to the Supplier Development Plan which the Service Provider provided as part of its bid, the Service Provider undertakes, as stipulated in the RFP, to provide Transnet with a Supplier Development Implementation Plan [**the Implementation Plan**] setting out the nature, extent and monetary value of the Service Provider's commitments which the Service Provider shall undertake, as well as mechanisms and procedures to allow for access to information and verification of the Service Provider's compliance with the Implementation Plan, as shall be agreed with Transnet but in any event no later than 45 (forty five) calendar days from the signature date of the LOI/LOA.
- b) The Parties undertake to negotiate in good faith with a view to agreeing the content of the Implementation Plan by no later than 45 (forty five) calendar days as aforesaid (or such later date as Transnet may consent to in writing).
- c) If the Parties (acting reasonably and in good faith with due consideration to the Supplier Development Plan proposed by the Service Provider in response to the RFP fail to reach agreement on the Supplier Development Implementation Plan within the time limit stipulated in the clause above, it shall constitute a Service Provider Default and Clause 19**Error! Reference source not found.** shall apply.
- d) The Supplier's Implementation Plan shall include, but not be limited to Technology transfer, New skills development, Job creation, Job preservation, Small business promotion and Rural integration and regional development.

- e) The terms of the Implementation Plan's and the monetary value of the commitments thereunder shall not (unless otherwise agreed in writing) be less or less favourable than the commitments made by the Service Provider in the Supplier Development Implementation Plan.

9.4 **Green Economy/Carbon Footprint**

- a) In addition to the Supplier Development and B-BBEE commitments that the Service Provider makes, the Service Provider has in its bid provided Transnet with an understanding of the Service Provider's position with regard to issues such as waste disposal, recycling and energy conservation.

9.5 **Reporting**

- a) The Service Provider shall monitor, audit, and record in an auditable manner, its own implementation and compliance with the B-BBEE Improvement Plan and the Supplier Development Implementation Plan and provide the Contract Manager with such information as the Contract Manager may reasonably request concerning the implementation of the B-BBEE Improvement Plan and the Supplier Development Implementation Plan.
- b) The Service Provider shall, on a monthly basis from the Commencement Date and within 7 (seven) calendar days of the end of the previous calendar month, provide Transnet with a report (for monitoring purposes only) in respect of each of the undertakings stipulated in this clause 9.5.
- c) Transnet, through its Supplier Development division, shall, every 6 (six) months from the Commencement Date, review and verify the Service Provider's undertakings stipulated in this clause with respect to B-BBEE and Supplier Development commitments, based on the Service Provider's report.
- d) The Service Provider shall attach adequate proof to enable Transnet to verify compliance with the B-BBEE Improvement Plan and Supplier Development Implementation Plan.
- e) Post verification of the submitted report to Transnet, Transnet shall engage with the Service Provider on the findings. The Contract Manager, assisted by the relevant specialist from Transnet's Supplier Development division, must report to the Service Provider at the end of every 6 (six) months as to whether or not the Contract Manager and/or the Supplier Development specialist reasonably considers, based on the information available to it, that the Service Provider has during such time complied with the B-BBEE Improvement Plan and the Supplier Development Implementation Plan and the extent, if any, to which the Service Provider has not so complied.
- f) Without prejudice to the Transnet's rights under the Agreement:
 - (i) if the Contract Manager and/or Transnet's Supplier Development specialist reasonably considers that the Service Provider is not at any time complying with B-BBEE Improvement Plan and/or the Supplier Development Implementation Plan, the Contract Manager and/or the Supplier Development specialist may make such recommendations as is considered reasonably appropriate to the Service Provider as to the steps he reasonably considers should be taken by the Service Provider in order for the Service Provider to remedy such non-compliance and the time period within which such steps must be taken;

- (ii) If such recommendations are not implemented by the Service Provider in accordance with such recommendations, then the provisions of clause 9.6 shall apply; and
 - (iii) Transnet may at any time request a meeting with the Service Provider to consider any non-compliance reported to it by the Supplier Development specialist of Transnet and/or the Contract Manager or which otherwise comes to its attention. Both Parties must attend such a meeting and negotiate in good faith with a view to reach agreement on the steps or actions that the Service Provider must undertake in order to remedy that non-compliance.
- g) In the event the Service Provider is found not to have met the B-BBEE and Supplier Development requirements agreed upon in the B-BBEE Improvement Plan and the Supplier Development Implementation Plan, and/or is found to be fraudulent in submitting the reports, then Transnet shall impose a non-compliance penalty as provided for in clause 9.6 below or shall be entitled to terminate in terms of clauses 18 and 19.
- h) For the sake of completion of its contractual obligations, the Service Provider shall be obliged to complete all the undertakings made under the B-BBEE Improvement Plan and the Supplier Development Implementation Plan 3 to 6 months before the Termination Date.

9.6 Penalties

Non Compliance Penalties

- a) If the Service Provider fails, at any time, to achieve its commitments under and in accordance with the B-BBEE Improvement Plan and the Supplier Development Implementation Plan ("a **Non Compliance**"), the Service Provider shall, subject to the applicable Non Compliance Penalty Cap, pay a Non Compliance penalty ("Non Compliance Penalty") to Transnet in respect of such Non Compliance at the applicable rate ("Applicable Rate"), as prescribed in clause 9.6 b) to m) below.
- (i) Non Compliance Penalties shall be calculated as a percentage of the Contract Value and accrue at the Applicable Rate per month until:
 - (ii) the date on which the Service Provider has remedied such Non Compliance by complying with the Supplier Development Implementation Plan and/or the B-BBEE Improvement Plan (as applicable); or
 - (iii) the Agreement being terminated.

Applicable Rates of Non Compliance Penalties (for Large Enterprises Only):

- b) In relation to the Supplier Development Implementation Plan, Non Compliance Penalties shall accrue based on the difference between the committed SD value for the period under review and the delivered SD value (i.e. 100% of the undelivered portion of the committed SD value) plus an additional 10% (ten percent) of such difference.
- c) In relation to the B-BBEE Improvement Plan, Non Compliance Penalties shall accrue at the following Applicable Rates based on a percentage of the Contract Value:
- (i) for the first month (or part thereof), a rate of 1.0% (one percent);
 - (ii) for the second month (or part thereof), a rate of 1.5% (one and a half percent);
 - (iii) for the third month (or part thereof), a rate of 2.0% (two percent);

- (iv) for the fourth month (or part thereof), a rate of 2.5% (two and a half percent); and
- (v) for any period of Non Compliance after the fourth month, a rate of 3% (three percent).

Non Compliance Penalty Cap for Large Enterprises:

- d) The Non Compliance Penalty Cap in respect of Supplier Development commitments shall not exceed the difference between the committed SD value for the period under review and the delivered value (i.e. 100% of the undelivered portion of the committed SD value), plus an additional 10% (ten percent) of such difference.
- e) The maximum amount of the Service Provider's liability to pay Non Compliance Penalties in the case of the B-BBEE Improvement Plan shall not exceed 5% (five percent) of the Contract Value.

Applicable Rates of Non Compliance Penalties for Qualifying Small Enterprises (QSEs):

- f) In relation to the Supplier Development Implementation Plan, Non Compliance Penalties shall accrue based on the difference between the committed SD value for the period under review and the delivered SD value (i.e. 100% of the undelivered portion of the committed SD value) plus an additional 5% (five percent) of such difference;
- g) In relation to the B-BBEE Improvement Plan, Non Compliance Penalties shall apply annually at the rate of 0.5% (one half percent).

Non Compliance Penalty Cap for QSEs:

- h) The Non Compliance Penalty Cap in respect of Supplier Development commitments shall not exceed the difference between the committed SD value for the period under review and the delivered value (i.e. 100% of the undelivered portion of the committed SD value), plus an additional 5% (five percent) of such difference.
- i) The maximum amount of the Service Provider's liability to pay Non Compliance Penalties in the case of the B-BBEE Improvement Plan shall not exceed 1.5% (one and a half percent) of the Contract Value.

Applicable Rates of Non Compliance Penalties for Exempted Micro Enterprises (EMEs):

- j) In relation to the Supplier Development Implementation Plan, Non Compliance Penalties shall accrue based on the difference between the committed SD value and the delivered SD value (i.e. 100% of the undelivered portion of the committed SD value) plus an additional 3% (three percent) of such difference;
- k) In relation to the B-BBEE Improvement Plan, Non Compliance Penalties shall apply annually at the rate of 0.5% (one half percent).

Non Compliance Penalty Cap for EMEs:

- l) The Non Compliance Penalty Cap in respect of Supplier Development commitments shall not exceed the difference between the committed SD value for the period under review and the delivered value (i.e. 100% of the undelivered portion of the committed SD value), plus an additional 3% (three percent) of such difference.
- m) The maximum amount of the Service Provider's liability to pay Non Compliance Penalties in the case of the B-BBEE Improvement Plan shall not exceed 1.5% (one and a half percent) of the Contract Value.

Non Compliance Penalty Certificate:

- n) If any Non Compliance Penalty arises, the Contract Manager shall issue a Non Compliance Penalty Certificate on the last day of each month during such Non Compliance indicating the Non Compliance Penalties which have accrued during that period.
- o) A Non Compliance Penalty Certificate shall be prima facie proof of the matters to which it relates. If the Service Provider disputes any of the amounts set out in a Non Compliance Penalty Certificate:
 - (i) the dispute shall be resolved in accordance with the provisions of the Agreement; and
 - (ii) if pursuant to that referral, it is determined that the Service Provider owes any amount to Transnet pursuant to the Non Compliance Penalty Certificate, then the Supplier shall pay such amount to Transnet within 10 (ten) Business Days of the determination made pursuant to such determination and an accompanying valid Tax Invoice.

Payment of Non Compliance Penalties:

- p) Subject to Clause o), the Service Provider shall pay the Non Compliance Penalty indicated in the Non Compliance Penalty Certificate within 10 (ten) Business Days of Transnet issuing a valid Tax Invoice to the Service Provider for the amount set out in that certificate. If Transnet does not issue a valid Tax Invoice to the Service Provider for Non Compliance Penalties accrued during any relevant period, those Non Compliance Penalties shall be carried forward to the next period.
- q) The Service Provider shall pay the amount due within 10 (ten) Business Days after receipt of a valid Tax Invoice from Transnet, failing which Transnet shall, without prejudice to any other rights of Transnet under the Agreement, be entitled to call for payment which may be in any form Transnet deems reasonable and/or appropriate.
- r) Should the Service Provider fail to pay any Non Compliance Penalties within the time indicated in above (as applicable), Transnet shall be entitled to deduct (set off) the amount not paid by the Service Provider from the account of the Service Provider in the ensuing month.
- s) The Non Compliance Penalties set forth in this Clause 9.6 are stated exclusive of VAT. Any VAT payable on Non Compliance Penalties will be for the account of the Supplier.

10 FEES AND EXPENSES

- 10.1 In consideration of the provision of the Services, Transnet will pay to the Service Provider the Fees detailed in the relevant schedule or Work Order.
- 10.2 Transnet will not be invoiced for materials used in the provision of the Services save for those materials [if any] set out in the Work Order and accepted by Transnet or in any relevant Work Order [which will be invoiced to Transnet at cost].
- 10.3 Unless otherwise agreed in a schedule or Work Order, Transnet will reimburse to the Service Provider all reasonable and proper expenses incurred directly and solely in connection with the provision of the Services, provided that all such expenses:
 - a) are agreed by Transnet in advance;
 - b) are incurred in accordance with Transnet's standard travel and expenses policies;

- c) are passed on to Transnet at cost with no administration fee; and
- d) will only be reimbursed if supported by relevant receipts.

10.4 All Tax Invoices relating to Fees, out of pocket expenses and, if applicable, travel and accommodation costs, will provide the detail for each of the Personnel carrying out the Services and incurring the expenses, and the Tax Invoice will, where appropriate, include VAT as a separate item.

11 INVOICING AND PAYMENT

- 11.1 Transnet shall pay the Service Provider the amounts stipulated in the relevant schedule or Work Order, subject to the terms and conditions of the Agreement.
- 11.2 Transnet shall pay such amounts to the Service Provider, upon receipt of a valid and undisputed Tax Invoice together with the supporting documentation as specified in the Work Order appended hereto, once the valid and undisputed Tax Invoices, or such portion of the Tax Invoices which are valid and undisputed become due and payable to the Service Provider for the provision of the Services, in terms of clause 11.4 below.
- 11.3 All Fees and other sums payable under the Agreement are exclusive of VAT, which will be payable at the applicable rate.
- 11.4 Unless otherwise provided for in the Work Order(s) appended to the Agreement, Tax Invoices shall be submitted together with a month-end statement. Payment against such month-end statement shall be made by Transnet within 30 [thirty] calendar days after date of receipt by Transnet of the statement together with all valid and undisputed Tax Invoices and supporting documentation.
- 11.5 Where the payment of any Tax Invoice, or any part thereof which is not in dispute, is not made in accordance with this clause 11, the Service Provider shall be entitled to charge interest on the outstanding amount, at The Standard Bank of South Africa's prime rate of interest in force, for the period from the due date of payment until the outstanding amount is paid.

12 FEE ADJUSTMENTS

- 12.1 Fees for Services rendered in terms of the Agreement shall be subject to review as indicated in the Work Order(s) annexed hereto from time to time.
- 12.2 No less than 2 [two] months prior to any proposed Fee adjustment, the Parties shall commence negotiations for Fees for the next period or as otherwise indicated and appended hereto.
- 12.3 Should Transnet and the Service Provider fail to reach an agreement on Fees for the successive period, either Party shall be entitled to submit this matter to dispute resolution in accordance with clause 26 of this Master Agreement [*Dispute Resolution*].

13 INTELLECTUAL PROPERTY RIGHTS

13.1 Title to Confidential Information

- a) Transnet will retain all right, title and interest in and to its Confidential Information and Background Intellectual Property and the Service Provider acknowledges that it has no claim of any nature in and to the Confidential Information and Background Intellectual Property that is proprietary to Transnet. For the avoidance of doubt, all the Service Provider's Background Intellectual Property shall remain vested in the Service Provider.

- b) Transnet shall grant to the Service Provider an irrevocable, royalty free, non-exclusive licence to use Transnet's Background Intellectual Property only for the Permitted Purpose. This licence shall not permit the Service Provider to sub-license to other parties.
- c) The Service Provider shall grant to Transnet an irrevocable, royalty free, non-exclusive licence to use the Service Provider's Background Intellectual Property for the Permitted Purpose. This licence shall not permit Transnet to sub-license to other parties.
- d) The Service Provider shall grant Transnet access to the Service Provider's Background Intellectual Property on terms which shall be *bona fide* negotiated between the Parties for the purpose of commercially exploiting the Foreground Intellectual Property, to the extent that such access is required.

13.2 Title to Intellectual Property

- a) All right, title and interest in and to Foreground Intellectual Property prepared, conceived or developed by the Service Provider, its researchers, agents and employees shall vest in Transnet and the Service Provider acknowledges that it has no claim of any nature in and to the Foreground Intellectual Property. The Service Provider shall not at any time during or after the termination or cancellation of the Agreement dispute the validity or enforceability of such Foreground Intellectual Property, or cause to be done any act or anything contesting or in any way impairing or tending to impair any part of that right, title and interest to any of the Foreground Intellectual Property and shall not counsel or assist any person to do so.
- b) Transnet shall be entitled to seek protection in respect of the Foreground Intellectual Property anywhere in the world as it shall decide in its own absolute discretion and the Service Provider shall reasonably assist Transnet in attaining and maintaining protection of the Foreground Intellectual Property.
- c) Where the Foreground Intellectual Property was created by the Service Provider or its researchers, agents and employees and where Transnet elects not to exercise its option to seek protection or decides to discontinue the financial support of the prosecution or maintenance of any such protection, Transnet shall notify the Service Provider who shall have the right of first refusal to file or continue prosecution or maintain any such applications and to maintain any protection issuing on the Foreground Intellectual Property.
- d) No consideration shall be paid by Transnet to the Service Provider for the assignment of any Foreground Intellectual Property from the Service Provider to Transnet, over and above the sums payable in terms of the Agreement. The Service Provider undertakes to sign all documents and do all things as may be necessary to effect, record and perfect the assignment of the Foreground Intellectual Property to Transnet.
- e) Subject to anything contrary contained in the Agreement and/or the prior written consent of Transnet [which consent shall not be unreasonably withheld or delayed], the Service Provider shall under no circumstances be entitled as of right, or to claim the right, to use Transnet's Background Intellectual Property and/or Foreground Intellectual Property.

13.3 Title to Improvements

Any improvements, developments, adaptations and/or modifications to the Foreground Intellectual Property, and any and all new inventions or discoveries, based on or resulting from the use of Transnet's Background Intellectual Property and/or Confidential Information shall be exclusively owned by Transnet. The Service Provider shall disclose promptly to Transnet all such improvements, developments, adaptations and/or modifications, inventions or discoveries. The Service Provider hereby undertakes to sign all documents and do all things as may be necessary to effect, record and perfect the assignment of such improvements, developments, adaptations and/or modifications, inventions or discoveries to Transnet and the Service Provider shall reasonably assist Transnet in attaining, maintaining or documenting ownership and/or protection of the improved Foreground Intellectual Property.

13.4 Unauthorised Use of Confidential Information

The Service Provider shall not authorise any party to act on or use in any way any Confidential Information belonging to Transnet whether or not such party is aware of such Confidential Information, and shall promptly notify Transnet of the information if it becomes aware of any party so acting, and shall provide Transnet the information with such assistance as Transnet reasonably requires, at Transnet's cost and expense, to prevent such third party from so acting.

13.5 Unauthorised Use of Intellectual Property

- a) The Service Provider agrees to notify Transnet in writing of any conflicting uses of, and applications of registrations of Patents, Designs and Trade Marks or any act of infringement, unfair competition or passing off involving the Intellectual Property of Transnet of which the Service Provider acquires knowledge and Transnet shall have the right, as its own option, to proceed against any party infringing its Intellectual Property.
- b) It shall be within the sole and absolute discretion of Transnet to determine what steps shall be taken against the infringer and the Service Provider shall co-operate fully with Transnet, at Transnet's cost, in whatever measure including legal action to bring any infringement of illegal use to an end.
- c) The Service Provider shall cooperate to provide Transnet promptly with all relevant ascertainable facts.
- d) If proceedings are commenced by Transnet alone, Transnet shall be responsible for all expenses but shall be entitled to all damages or other awards arising out of such proceedings. If proceedings are commenced by both Parties, both Parties will be responsible for the expenses and both Parties shall be entitled to damages or other awards arising out of proceedings.

14 SERVICE PROVIDER'S PERSONNEL

- 14.1 The Service Provider's Personnel shall be regarded at all times as employees, agents or Subcontractors of the Service Provider and no relationship of employer and employee shall arise between Transnet and any Service Provider Personnel under any circumstances regardless of the degree of supervision that may be exercised over the Personnel by Transnet.
- 14.2 The Service Provider warrants that all its Personnel will be entitled to work in South Africa or any other country in which the Services are to be performed.
- 14.3 The Service Provider will ensure that its Personnel comply with all reasonable requirements made known to the Service Provider by Transnet concerning conduct at any Transnet premises or any

other premises upon which the Services are to be performed [including but not limited to security regulations, policy standards and codes of practice and health and safety requirements]. The Service Provider will ensure that such Personnel at all times act in a lawful and proper manner in accordance with these requirements.

- 14.4 Transnet reserves the right to refuse to admit or to remove from any premises occupied by or on behalf of it, any Service Provider Personnel whose admission or presence would, in the reasonable opinion of Transnet, be undesirable or who represents a threat to confidentiality or security or whose presence would be in breach of any rules and regulations governing Transnet's Personnel, provided that Transnet notifies the Service Provider of any such refusal [with reasons why]. The reasonable exclusion of any such individual from such premises shall not relieve the Service Provider from the performance of its obligations under the Agreement.
- 14.5 The Service Provider agrees to use all reasonable endeavours to ensure the continuity of its Personnel assigned to perform the Services. If any re-assignment by the Service Provider of those Personnel is necessary, or if Transnet advises that any such Personnel assigned are in any respect unsatisfactory, including where any such Personnel are, or are expected to be or have been absent for any period, then the Service Provider will promptly supply a replacement of equivalent calibre and experience, and any such replacement shall be approved by Transnet prior to commencing provision of the Services, such approval not to be unreasonably withheld or delayed.

15 LIMITATION OF LIABILITY

- 15.1 Neither Party excludes or limits liability to the other Party for:
- death or personal injury due to negligence; or
 - fraud.
- 15.2 The Service Provider shall indemnify and keep Transnet indemnified from and against liability for damage to any Transnet property [whether tangible or intangible] or any other loss, costs or damage suffered by Transnet to the extent that it results from any act of or omission by the Service Provider or its Personnel in connection with the Agreement. The Service Provider's liability arising out of this clause 15.2 shall be limited to a maximum amount payable in respect of any one occurrence or a series of related occurrences in a single calendar year, such amount to be agreed in writing by the Parties.
- 15.3 Subject always to clauses 15.1 and 15.2 above, the liability of either the Service Provider or Transnet under or in connection with the Agreement, whether for negligence, misrepresentation, breach of contract or otherwise, for direct loss or damage arising out of each Default or series of related Defaults shall not exceed 100% [one hundred per cent] of the Fees paid under the schedule or Work Order to which the Default(s) relates.
- 15.4 Subject to clause 15.1 above, and except as provided in clauses 15.2 and 15.3 above, in no event shall either Party be liable to the other for indirect or consequential loss or damage or including indirect or consequential loss of profits, business, revenue, goodwill or anticipated savings of an indirect nature or loss or damage incurred by the other Party as a result of third party claims.
- 15.5 If for any reason the exclusion of liability in clause 15.4 above is void or unenforceable, either Party's total liability for all loss or damage under the Agreement shall be as provided in clause 15.3 above.

15.6 Nothing in this clause 15 shall be taken as limiting the liability of the Service Provider in respect of clause 13 [*Intellectual Property Rights*] or clause 17 [*Confidentiality*].

16 INSURANCES

- 16.1 Without limiting the liability of the Service Provider under the Agreement, the Service Provider shall take out insurance in respect of all risks for which it is prudent for the Service Provider to insure against, including any liability it may have as a result of its activities under the Agreement for theft, destruction, death or injury to any person and damage to property. The level of insurance will be kept under review by Transnet, on an annual basis, to ensure its adequacy, provided that any variation to the level of such insurance shall be entirely at the discretion of the Service Provider.
- 16.2 The Service Provider shall arrange insurance with reputable insurers and will produce to Transnet evidence of the existence of the policies on an annual basis within 30 [thirty] calendar days after date of policy renewals.
- 16.3 Subject to clause 16.4 below, if the Service Provider fails to effect adequate insurance under this clause 16, it shall notify Transnet in writing as soon as it becomes aware of the reduction or inadequate cover and Transnet may arrange to purchase such insurance. The Service Provider shall promptly reimburse Transnet for any premiums paid provided such insurance protects the Service Provider's liability. Transnet assumes no responsibility for such insurance being adequate to protect all of the Service Provider's liability.
- 16.4 In the event that the Service Provider receives written notice from its insurers advising of the termination of its insurance cover referred to in clause 16.1 above or if the insurance ceases to be available upon commercially reasonable terms, the Service Provider shall immediately notify Transnet in writing of such termination and/or unavailability, whereafter either the Service Provider or Transnet may terminate the Agreement on giving the other Party not less than 30 [thirty] calendar days prior written notice to that effect.

17 CONFIDENTIALITY

17.1 The Parties hereby undertake the following, with regard to Confidential Information:

- a) not to divulge or disclose to any person whomsoever in any form or manner whatsoever, either directly or indirectly, any Confidential Information of the other, without the prior written consent of such other Party, other than when called upon to do so in accordance with a statute, or by a court having jurisdiction, or by any other duly authorised and empowered authority or official, in which event the Party concerned shall do what is reasonably possible to inform the other of such a demand and each shall assist the other in seeking appropriate relief or the instituting of a defensive action to protect the Confidential Information concerned;
- b) not to use, exploit, permit the use of, directly or indirectly, or in any other manner whatsoever apply the Confidential Information, disclosed to it as a result of the Agreement, for any purpose whatsoever other than for the purpose for which it is disclosed or otherwise than in strict compliance with the provisions in the Agreement;
- c) not to make any notes, sketches, drawings, photographs or copies of any kind of any part of the disclosed Confidential Information, without the prior written consent of such other

Party, except when reasonably necessary for the purpose of the Agreement, in which case such copies shall be regarded as Confidential Information;

- d) not to de-compile, disassemble or reverse engineer any composition, compilation, concept application, item, component de-compilation, including software or hardware disclosed and shall not analyse any sample provided by Transnet, or otherwise determine the composition or structure or cause to permit these tasks to be carried out except in the performance of its obligations pursuant to the Agreement;
- e) not to exercise less care to safeguard Transnet Confidential Information than the Party exercises in safeguarding its own competitive, sensitive or Confidential Information;
- f) Confidential Information disclosed by either Party to the other or by either Party to any other party used by such Party in the performance of the Agreement, shall be dealt with as "restricted" or shall be dealt with according to any other appropriate level of confidentiality relevant to the nature of the information concerned, agreed between the Parties concerned and stipulated in writing for such information in such cases;
- g) the Parties shall not make or permit to be made by any other person subject to their control, any public statements or issue press releases or disclose Confidential Information with regard to any matter related to the Agreement, unless written authorisation to do so has first been obtained from the Party first disclosing such information;
- h) each Party shall be entitled to disclose such aspects of Confidential Information as may be relevant to one or more technically qualified employees or consultants of the Party who are required in the course of their duties to receive the Confidential Information for the Permitted Purpose provided that the employee or consultant concerned has a legitimate interest therein, and then only to the extent necessary for the Permitted Purpose, and is informed by the Party of the confidential nature of the Confidential Information and the obligations of the confidentiality to which such disclosure is subject and the Party shall ensure such employees or consultants honour such obligations;
- i) each Party shall notify the other Party of the name of each person or entity to whom any Confidential Information has been disclosed as soon as practicable after such disclosure;
- j) each Party shall ensure that any person or entity to which it discloses Confidential Information shall observe and perform all of the covenants the Party has accepted in the Agreement as if such person or entity has signed the Agreement. The Party disclosing the Confidential Information shall be responsible for any breach of the provisions of the Agreement by the person or entity; and
- k) each Party may by written notice to the other Party specify which of the Party's employees, officers or agents are required to sign a non-disclosure undertaking.

17.2 The duties and obligations with regard to Confidential Information in this clause 17 shall not apply where:

- a) a Party can demonstrate that such information is already in the public domain or becomes available to the public through no breach of the Agreement by that Party, or its Personnel;
or
- b) was rightfully in a Party's possession prior to receipt from the other Party, as proven by the first-mentioned Party's written records, without an infringement of an obligation or duty of confidentiality; or

- c) can be proved to have been rightfully received by a Party from a third party without a breach of a duty or obligation of confidentiality; or
- d) is independently developed by a Party as proven by its written records.

17.3 This clause 17 shall survive termination for any reason of the Agreement and shall remain in force and effect from the Commencement Date of the Agreement and 5 [five] years after the termination of the Agreement. Upon termination of the Agreement, all documentation furnished to the Service Provider by Transnet pursuant to the Agreement shall be returned to Transnet including, without limitation all corporate identity equipment including dyes, blocks, labels, advertising matter, printing matter and the like.

18 TOTAL OR PARTIAL FAILURE TO PERFORM THE SCOPE OF SERVICES

Should the Service Provider fail or neglect to execute the work or to deliver any portion of the Service, as required by the terms of the Agreement or Work Order, Transnet may cancel the Agreement or Work Order in so far as it relates to the unexecuted work or rejected portion of the Service, and, in such event, the provision of any remaining commitment shall remain subject in all respects to these conditions.

19 TERM AND TERMINATION

19.1 Notwithstanding the date of signature hereof, the Commencement Date if the Agreement is [●] and the duration shall be for a [●] [●] year period, expiring on [●], unless:

- a) the Agreement is terminated by either Party in accordance with the provisions incorporated herein or in any schedules or annexures appended hereto, or otherwise in accordance with law or equity; or
- b) the Agreement is extended at Transnet's option for a further period to be agreed by the Parties.

19.2 Either Party may terminate the Agreement forthwith by notice in writing to the other Party where the other Party has committed a material Default and, where such Default is capable of remedy, has failed to remedy such Default within 30 [thirty] calendar days of receiving notice specifying the Default and requiring its remedy.

19.3 Either Party may terminate the Agreement forthwith by notice in writing to the other Party when the other Party is unable to pay its debts as they fall due or commits any act or omission which would be an act of insolvency in terms of the Insolvency Act, 24 of 1936 [as may be amended from time to time], or if any action, application or proceeding is made with regard to it for:

- a) a voluntary arrangement or composition or reconstruction of its debts;
- b) its winding-up or dissolution;
- c) the appointment of a liquidator, trustee, receiver, administrative receiver or similar officer; or
- d) any similar action, application or proceeding in any jurisdiction to which it is subject.

19.4 Transnet may terminate the Agreement at any time within 2 [two] months of becoming aware of a change of control of the Service Provider by notice in writing to the Service Provider. For the purposes of this clause, "control" means the right to direct the affairs of a company whether by ownership of shares, membership of the board of directors, agreement or otherwise.

- 19.5 Transnet may cancel any schedule or Work Order hereto at any time on giving the Service Provider 30 [thirty] calendar days' written notice.
- 19.6 Notwithstanding this clause 19, either Party may cancel the Agreement without cause by giving 30 [thirty] calendar days prior written notice thereof to the other Party.

20 CONSEQUENCE OF TERMINATION

- 20.1 Termination in accordance with clause 19 [*Term and Termination*] shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to either Party and all provisions which are to survive the Agreement or impliedly do so shall remain in force and in effect.
- 20.2 On termination of the Agreement or a Work Order, the Service Provider will immediately deliver up, and procure that its Personnel will immediately deliver up to Transnet, all Deliverables and property belonging to Transnet [or, in the event of termination of a Work Order, such as is relevant to that Work Order] which may be in the possession of, or under the control of the Service Provider, and certify to Transnet in writing that this has been done.
- 20.3 To the extent that any of the Deliverables and property referred to in clause 20.2 above are in electronic form and contained on non-detachable storage devices, the Service Provider will provide Transnet with unencrypted copies of the same on magnetic media and will irretrievably destroy and delete copies so held.
- 20.4 In the event that the Agreement is terminated by the Service Provider under clause 19.2 [*Term and Termination*], or in the event that a Work Order is terminated by Transnet under clause 19.5 [*Term and Termination*], Transnet will pay to the Service Provider all outstanding Fees [apportioned on a *pro rata* basis] relating to the work undertaken by the Service Provider up until the date of such termination. Transnet will also pay the costs of any goods and materials ordered by the Service Provider in relation to the such work for which the Service Provider has paid or is legally obliged to pay, in which case, on delivery of such goods or materials, the Service Provider will promptly deliver such goods and materials to Transnet or as it may direct.
- 20.5 The provisions of clauses 1 [*Definitions*], 6 [*Warranties*], 13 [*Intellectual Property Rights*], 15 [*Limitation of Liability*], 17 [*Confidentiality*], 20 [*Consequence of Termination*], 26 [*Dispute Resolution*] and 30 [*Governing Law*] shall survive termination or expiry of the Agreement.
- 20.6 If either Party [**the Defaulting Party**] commits a material breach of the Agreement and fails to remedy such breach within 30 [thirty] calendar days of written notice thereof, the other Party [hereinafter **the Aggrieved Party**], shall be entitled, in addition to any other rights and remedies that it may have in terms of the Agreement, to terminate the Agreement forthwith without any liability and without prejudice to any claims which the Aggrieved Party may have for damages against the Defaulting Party.
- 20.7 Should:
- the Service Provider effect or attempt to effect a compromise or composition with its creditors; or
 - either Party be provisionally or finally liquidated or placed under judicial management, whether provisionally or finally; or
 - either Party cease or threaten to cease to carry on its normal line of business or default or threaten to default in the payment of its liabilities generally, or commit any act or omission

which would be an act of insolvency in terms of the Insolvency Act, 24 of 1936 [as may be amended from time to time];

then the other Party shall be entitled, but not obliged, to terminate the Agreement on written notice, in which event such termination shall be without any liability and without prejudice to any claims which either Party may have for damages against the other.

21 ASSIGNMENT

Neither Party may assign the benefit of the Agreement or any interest hereunder except with the prior written consent of the other. Further, in the event that Transnet wishes to assign or novate the Agreement to any third party, the Service Provider agrees that it shall not unreasonably withhold or delay its consent to such assignment or novation and that it shall only be entitled to recover from Transnet any reasonable legal costs incurred by it as a direct result of such assignment or novation.

22 FORCE MAJEURE

22.1 Neither Party shall have any claim against the other Party arising from any failure or delay in the performance of any obligation of either Party under the Agreement caused by an act of *force majeure* such as acts of God, fire, flood, war, lockout, government action, laws or regulations, terrorism or civil disturbance, defaults or other circumstances or factors beyond the reasonable control of either Party, and to the extent that the performance of obligations of either Party hereunder is delayed by virtue of the foregoing, any period stipulated for any such performance shall be reasonably extended. Transnet may however rely on strikes, industrial dispute and riots as a ground of *force majeure*.

22.2 Each Party will take all reasonable steps by whatever lawful means that are available, to resume full performance as soon as practicable and will seek agreement to modification of the relevant provisions of the Agreement in order to accommodate the new circumstances caused by the act of *force majeure*. If a Party fails to agree to such modifications proposed by the other Party within 90 (ninety) calendar days of the act of *force majeure* first occurring, either Party may thereafter terminate the Agreement with immediate notice.

23 EQUALITY AND DIVERSITY

23.1 The Service Provider will not victimise, harass or discriminate against any employee of either Party to the Agreement or any applicant for employment with either Party to the Agreement due to their gender, race, disability, age, religious belief, sexual orientation or part-time status. This provision applies, but is not limited to employment, upgrading, work environment, demotion, transfer, recruitment, recruitment advertising, termination of employment, rates of pay or other forms of compensation and selection for training.

23.2 Both Parties to the Agreement undertake that they will not, and shall ensure that its employees, agents and Subcontractors will not breach any applicable discrimination legislation and any amendments and re-enactments thereof.

24 NON-WAIVER

24.1 Failure or neglect by either Party, at any time, to enforce any of the provisions of the Agreement, shall not, in any manner, be construed to be a waiver of any of that Party's rights in that regard and in terms of the Agreement.

24.2 Such failure or neglect shall not, in any manner, affect the continued, unaltered validity of the Agreement, or prejudice the right of that Party to institute subsequent action.

25 PARTIAL INVALIDITY

If any provision of the Agreement shall be held to be invalid, illegal or unenforceable, or shall be required to be modified, the validity, legality and enforceability of the remaining provisions shall not be affected thereby.

26 DISPUTE RESOLUTION

- 26.1 Should any dispute of whatsoever nature arise between the Parties concerning the Agreement, the Parties shall try to resolve the dispute by negotiation within 10 [] Business Days of such dispute arising.
- 26.2 If the dispute has not been resolved by such negotiation, either of the Parties may refer the dispute to AFSA and notify the other Party accordingly, which proceedings shall be held in Johannesburg.
- 26.3 Such dispute shall be finally resolved in accordance with the rules of AFSA by an arbitrator or arbitrators appointed by AFSA.
- 26.4 This clause constitutes an irrevocable consent by the Parties to any proceedings in terms hereof, and neither of the Parties shall be entitled to withdraw from the provisions of this clause or claim at any such proceedings that it is not bound by this clause 26.
- 26.5 This clause 26 is severable from the rest of the Agreement and shall remain in effect even if the Agreement is terminated for any reason.
- 26.6 This clause 26 shall not preclude either Party from seeking urgent relief in a court of appropriate jurisdiction, where grounds for urgency exist.

27 ADDRESSES FOR NOTICES

27.1 The Parties to the Agreement select the physical addresses and facsimile numbers, as detailed hereafter, as their respective addresses for giving or sending any notice provided for or required in terms of the Agreement, provided that either Party shall be entitled to substitute such other address or facsimile number, as may be, by written notice to the other:

a) **Transnet**

- (i) For legal notices: [●]
Fax No. [●]
Attention: Legal Counsel

- (ii) For commercial matters: [●]
Fax No. [●]
Attention: [●]

b) **The Service Provider**

- (i) For legal notices: [●]
Fax No. [●]

Attention: [●]

(ii) For commercial matters: [●]

Fax No. [●]

Attention: [●]

27.2 Any notice shall be addressed to a Party at its physical address or delivered by hand, or sent by facsimile.

27.3 Any notice shall be deemed to have been given:

- a) if hand delivered, on the day of delivery; or
- b) if posted by prepaid registered post, 10 [ten] calendar days after the date of posting thereof; or
- c) if faxed, on the date and time of sending of such fax, as evidenced by a fax confirmation printout, provided that such notice shall be confirmed by prepaid registered post on the date of dispatch of such fax, or, should no postal facilities be available on that date, on the next Business Day.

28 WHOLE AND ONLY AGREEMENT

28.1 The Parties hereby confirm that the Agreement constitutes the whole and only agreement between them with regard to the subject matter of the Agreement.

28.2 The Parties hereby confirm that the Agreement replaces all other agreements which exist or may have existed in any form whatever between them, with regard to the subject matter dealt with in the Agreement, including any annexures, appendices, schedules or Work Order(s) appended hereto.

29 AMENDMENT AND CHANGE CONTROL

29.1 Any amendment or change of any nature made to this Agreement and the Schedule of Requirements thereof shall only be valid if it is in writing, signed by both Parties and added to this Agreement as an addendum hereto.

29.2 In the event the Parties cannot agree upon changes, the Parties shall in good faith seek to agree any proposed changes using the dispute resolution procedures in clause 26 [*Dispute Resolution*].

30 GOVERNING LAW

The Agreement is exclusively governed by and construed in accordance with the laws of the Republic of South Africa and is subject to the jurisdiction of the courts of the Republic of South Africa.

30.1 Change of Law

In the Agreement, unless the context otherwise requires, references to a statutory provision include references to that statutory provision as from time to time amended, extended or re-enacted and any regulations made under it, provided that in the event that the amendment, extension or re-enactment of any statutory provision or introduction of any new statutory provision has a material impact on the obligations of either Party, the Parties will negotiate in good faith to agree such amendments to the Agreement as may be appropriate in the circumstances. If, within a reasonable period of time, the Service Provider and Transnet cannot reach agreement on the nature of the changes required or on modification of Fees, Deliverables,

warranties, or other terms and conditions, either Party may seek to have the matter determined in accordance with clause 26 [*Dispute Resolution*] above.

31 COUNTERPARTS

The Agreement may be signed in any number of counterparts, all of which taken together shall constitute one and the same instrument. Either Party may enter into the Agreement by signing any such counterpart.

32 TRANSNET'S LIST OF EXCLUDED TENDERERS (BLACKLIST)

- 32.1 All the stipulations around Transnet's blacklisting process as laid down in Transnet's Supply Chain Policy and Procurement Procedures Manual are included herein by way of reference. Below follows a condensed summary of this blacklisting procedure.
- 32.2 Blacklisting is a mechanism used to exclude a company/person from future business with Transnet for a specified period. The decision to blacklist is based on one of the grounds for blacklisting. The standard of proof to commence the blacklisting process is whether a "*prima facie*" (i.e. on the face of it) case has been established.
- 32.3 Depending on the seriousness of the misconduct and the strategic importance of the Goods/Services, in addition to blacklisting a company/person from future business, Transnet may decide to terminate some or all existing contracts with the company/person as well.
- 32.4 A supplier or contractor to Transnet may not subcontract any portion of the contract to a blacklisted company.
- 32.5 Grounds for blacklisting include: If any person/Enterprise which has submitted a Bid, concluded a contract, or, in the capacity of agent or subcontractor, has been associated with such Bid or contract:
- a) has, in bad faith, withdrawn such Bid after the advertised closing date and time for the receipt of Bids;
 - b) has, after being notified of the acceptance of his Bid, failed or refused to sign a contract when called upon to do so in terms of any condition forming part of the bid documents;
 - c) has carried out any contract resulting from such bid in an unsatisfactory manner or has breached any condition of the contract;
 - d) has offered, promised or given a bribe in relation to the obtaining or execution of the contract;
 - e) has acted in a fraudulent or improper manner or in bad faith towards Transnet or any Government Department or towards any public body, Enterprise or person;
 - f) has made any incorrect statement in a certificate or other communication with regard to the Services or his B-BBEE status and is unable to prove to the satisfaction of Transnet that:
 - (i) he made the statement in good faith honestly believing it to be correct; and

(ii) before making such statement he took all reasonable steps to satisfy himself of its correctness;

g) caused Transnet damage, or to incur costs in order to meet the contractor's requirements and which could not be recovered from the contractor;

h) has litigated against Transnet in bad faith.

32.6 Transnet recognizes that trust and good faith are pivotal to its relationship with its suppliers. When a dispute arises between Transnet and its supplier, the parties should use their best endeavours to resolve the dispute in an amicable manner, whenever possible. Litigation in bad faith negates the principles of trust and good faith on which commercial relationships are based. Accordingly, Transnet will not do business with a company that litigates against it in bad faith or is involved in any action that reflects bad faith on its part. Litigation in bad faith includes, but is not limited to the following instances:

a) Vexatious proceedings. These are frivolous proceedings which have been instituted without proper grounds;

b) Perjury. Where a supplier commits perjury either in giving evidence or on affidavit;

c) Scurrilous allegations. Where a supplier makes allegations regarding a senior Transnet employee which are without a proper foundation, scandalous, abusive or defamatory.

d) Abuse of court process. When a supplier abuses the court process in order to gain a competitive advantage during a bid process.

32.7 Where any person or Enterprise has been found guilty by a court of law, tribunal or other administrative body of a serious breach of any law, during the preceding 5 Years, such person/Enterprise may also be blacklisted. Serious breaches of the law would include but are not limited to corruption, fraud, theft, extortion, or contraventions of the Competition Act 89 of 1998 (e.g. collusive tendering). This process excludes minor convictions such as traffic offences or personal disagreements between parties which have no bearing on the business operations of the Person or Enterprise.

32.8 Grounds for blacklisting include a company/person recorded as being a company or person prohibited from doing business with the public sector on National Treasury's database of Restricted Suppliers or Register of Tender Defaulters.

32.9 Companies associated with the person/s guilty of misconduct (i.e. entities owned, controlled or managed by such persons), any companies subsequently formed by the person(s) guilty of the misconduct and/or an existing company where such person(s) acquires a controlling stake may be considered for blacklisting. The decision to extend the blacklist to associated companies will be at the sole discretion of Transnet.

32.10 Any person or enterprise or company against whom a decision to blacklist has been taken, may make representations to the Chief Financial Officer of Transnet SOC Ltd, whose decision shall be final.

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Appendix (iii)

SUPPLY OF SKILLED HOSPITALITY TEMPORARY STAFF FOR THE BLUE TRAIN

PROJECT SPECIFICATION

1.1. Rates to be set out in Section 3 – Pricing and Delivery Schedule. The Price and Delivery Schedule (Section 3), must be completed by Temporary Employee Service ("Labour Broker"), and will be valid for the term of this agreement for specific job function and length of assignment. The Pricing and Delivery Schedule shall include details of the applicable hourly rates, the amount paid to the employee including hourly rates for overtime and any other additional information/charge relevant to that specific assignment. The annexure shall list each item and specify the applicable amount that is paid in respect thereof.

1.2. The Blue Train requires well trained and experienced hospitality staff with a five star lodge/ hotel experience for a period of 24 months i.e. 01 December 2015 to 30 November 2017.

1.3. The staff are required in the following positions and / multi skilled butler duties for the period set out in clause 1.2:

1.3.1. 10 x Food and Beverage Butler/Waitron

1.3.2. 11 x Rooms Butler

1.3.3. 2 x Cook

1.3.4. 2 x Sous Chef

1.3.5. 3 x Scullery Hand

1.3.6. 6 x Cocktail Barman

1.3.7. 1 x Warehouse Controller

1.4. SKILLS, STANDARDS AND RETENTION

Temporary staff must be trained to The Blue Train standards at the cost of the Temporary Employment Service ("Labour Broker") before they will be permitted to work on The Blue Train. The temporary staff need to be trained in theory, then practical training and only when they write a test and got 90% will they be permitted to work on the train. It is the responsibility of the Temporary Employment Service ("Labour Broker") to keep these staff members occupied at other establishments when they are not required to work on the train. Due to the seasonality of The Blue Train's business, temporary staff may not be required to work for The Blue Train on a continuous basis and it is the responsibility of the Temporary Employment Service ("Labour Broker") to keep the temporary staff on its books to ensure the retention of the skills for The Blue Train since it cannot engage new staff members of the Temporary Employment Service ("Labour Broker"). The preferred Temporary Employment Service ("Labour Broker") will at all times ensure that staff members are continuously trained on The Blue Train Standard Operational Procedure manual which will be issued by The Blue Train to the Temporary Employment Service ("Labour Broker").

2. SERVICE FEES AND CHARGES

2.1. Rates to be set out in Section 3. The attached **Price and Delivery Schedule (Section 3)** attached must be completed by Temporary Employee Service ("Labour Broker") and will be valid for the term of this agreement for each specific job grade and which will apply for the duration of the contract. The Pricing and Delivery Schedule shall include details of the applicable hourly rates, the amount paid to the employee including hourly rates for overtime and any other additional information/charge relevant to that specific



assignment. The annexure shall list each item and specify the applicable amount that is paid in respect thereof.

2.2. The agency fees are to be indicated separately from the total hourly rates paid to individual employees, UIF, COID, "RSC" and "SETA" levies and other related employee conditions in terms of the current legislation. The Temporary Employment Service ("Labour Broker") may increase the said fees or components thereof automatically should any amendments to applicable legislation require such amendment and this increase shall only be for the amount by which the legislation has increased the relevant pay component. **The Temporary Employment Service ("Labour Broker") shall furnish to The Blue Train written proof of the increase prior to implementing it.**

2.3. All the Temporary Employment Service ("Labour Broker") must submit a standard costing sheet that clearly indicates the (1) remuneration, (2) other statutory payments, (3) optional extras and (4) Labor Broker fee and the total cost to The Blue Train in respect of each category of employee. See Section 3 for example.

These documents are Mandatory; refer to Section 4 – Mandatory returnable documents.

2.4. Hourly rates must include uniform cost of approximately R1 500.00 per butler and kitchen personnel.

3. OVERTIME AND HOURS WORKED ON SUNDAYS AND PUBLIC HOLIDAYS

3.1. Payroll rules:

- 3.1.1. 45 hour compressed working week
- 3.1.2. Overtime paid at 1.5, over 45 hours per week
- 3.1.3. Public Holiday paid at double time
- 3.1.4. Sunday time paid at x 1.5 rates

3.1.5. Statutory cost will be provided at 3.1% (excel leave) and includes UIF, Skills Development Levy and COIDA provisions

3.1.6. Annual leave, Sick leave and Family responsibility Leave are provided for at 11.54 %.(Annual leave = 5.77%, Sick leave = 4.62%, Family Responsibility leave =1.15%)

3.2. Should the Blue Train wish to employ an Assignee in any permanent capacity within The Blue Train, Temporary Employee Service ("Labour Broker") are to advise whether a fee would become due and payable by The Blue Train?

Fee _____ (if applicable and if a percentage, kindly indicate on what the percentage is to be calculated) The Temporary Employment Service ("Labour Broker") will therefore be required to indicate the exact fee per category as stipulated in clause 3.

The Blue Train reserves the right to negotiate the fee.

3.3. The Blue Train agrees that, should there be increases in statutory wage rates or in any contributions legislation by law (e.g. COID, UIF, BCEA, etc.) such increases will lead to increased fees payable by The Blue Train subject to Para 2.2 above of the Requirements and Special terms and conditions.

4. DISCIPLINARY PROCEDURES

4.1. The Temporary Employment Service ("Labour Broker") undertakes to put in place a disciplinary code and procedures, and the assignees will be subject to the disciplinary code or procedures of the Temporary Employment Service ("Labour Broker") and the Temporary Employment Service ("Labour Broker") agrees to abide by the provisions thereof. If the Temporary Employment Service ("Labour Broker") has not put in place a disciplinary code and procedures, then it must comply with The Code of Good Practice in Schedule 8 of the Labour Relations Act

5. SPECIAL CONDITIONS

5.1. HOME DEPOT - The home depot for The Blue Train is in Pretoria.

Temporary Staff will have to join / board the train in Pretoria

5.2. REMUNERATION WHILE ON TRAIN BUT NOT REQUIRED TO WORK

If an Assignees travels spare back (i.e. not assigned to any task) from destination to the Pretoria home depot they will only be paid for 5 hours per day or any part of a day.

5.3. REMUNERATION WHILE AWAY FROM HOME DEPOT

Whilst away from the home depot (Pretoria) upon arrival in Cape Town or any other destination for an overnight or a weekend, temporary staff will get paid for hours worked until the train arrives at Cape Town depot and again when they resume their duties in the morning of departure, book-off fees, book off allowances etc. will not be paid by The Blue Train.

5.4. BONUSES - Temporary staff will not be paid any bonuses by The Blue Train

5.5. ACCOMMODATION, MEALS WHILE AWAY FROM HOME DEPOT The Blue Train will pay for Hotel accommodation and meals.

5.6. In the event where The Blue Train needs to travel to an area where there is no hotel accommodation the temporary staff might be required to stay on board at the staff accommodation on The Blue Train.

5.7. TRANSPORT TO AND FROM HOME DEPOT

In the event of an evening charter and/or late arrival of the normal scheduled train in Pretoria the Temporary Employment Service ("Labour Broker") will have to arrange and pay for transport for the temporary staff

5.8. ACCOUNT MANAGER

The Temporary Employee Service ("Labour broker") should have an Account Manager on site with every departure to ensure staff are dressed correctly and properly groomed. Further they would be responsible to clothe them in line with The Blue Train standards and that is for their own account.

6. ACTS TO COMPLY BY THE CONTRACTOR:

The Temporary Employment Service ("Labour Broker") must observe and ensure compliance with all requirements and obligations as set out in the Labour Legislation of South Africa, *inter alia*, the following:

- 6.1. Skills Development Act, 97 of 1998 ("SDA");
- 6.2. Employment Equity Act, 55 of 1998 ("EEA");
- 6.3. Basic Conditions of Employment Act, 75 of 1997 ("BCEA");
- 6.4. Labour Relations Act, 1995 ("LRA");
- 6.5. Occupational Health and Safety Act, 85 of 1993 ("OHSA"); and
- 6.6. Compensation for Occupational Injuries and Diseases Act No 130 of 1993 ("COIDA");
- 6.7. The Temporary Employment Service ("Labour Broker") must comply with all Labour legislation.

7. CONTINUITY OF SUPPLY / NOTIFICATION PERIOD

7.1. The staff required by The Blue Train will be requested from the successful Temporary Employment Service ("Labour Broker") as and when the need arise.

7.2. Transnet (The Blue Train) reserves the right to place requests for staff requirements until the last day of the contract for services to be effected within the period specified by you beyond expiry date of the contract i.e. until completion of a trip, under the same terms and conditions as agreed upon.

- 7.3. The Temporary Employment Service ("Labour Broker") must indicate the notification period required prior to supplying appropriately qualified / skilled staff for an assignment.

Notification Period _____

- 7.4. The Temporary Employment Service ("Labour Broker") personnel will not be allowed to exceed three consecutive months of working for The Blue Train. An adequate pool of personnel will therefore have to be available from which The Blue Train can draw on rotational basis.

8. LOCATION AND HOURS OF WORK

The Temporary Employment Service ("Labour Broker") shall confine to the following location and hours of work.

The main depot of the train is in Pretoria and this is where all the preparation takes place. Further because of their early hour reporting on the day of departure at 06:00 therefore it is required that the Temporary Employment Service ("Labour Broker") and the staff members are from Gauteng and more specifically still Pretoria. We also have evening dinner charters with the train only returning at 23:00 and then it must still go to the depot with staff only leaving after midnight. So it is best that Temporary Employment Service ("Labour Broker") and the staff members are based in Gauteng.

9. CONCESSIONING

Should The Blue Train be leased / sold to a third party during the term of this contract and a contract is concluded with the Temporary Employment Service ("Labour Broker"), The Blue Train shall ensure that any prospective lessee will be notified of the existence of this contract during the "due diligence" process and it will be included in the aforementioned process. It may be necessary to cede and assign the contract to the lessee, and the successful Temporary Employment Service ("Labour Broker") will have to consent to this cession and assignment of the contract and any annexures or schedules hereto."



APPENDIX (iv)

NON DISCLOSURE AGREEMENT - SERVICES

[March 2015]

"PREVIEW COPY ONLY"

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 RFP 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:
 - 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.

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"PREVIEW COPY ONLY"

**APPENDIX (V)**

Important Note: All potential bidders must read this document and certify in the RFX Declaration Form that that have acquainted themselves with, and agree with the content. The contract with the successful bidder will automatically incorporate this Integrity Pact as part of the final concluded contract.

INTEGRITY PACT

Between

TRANSNET SOC LTD

Registration Number: 1990/000900/30

("Transnet")

and

The Bidder / Supplier/ Service Provider / Contractor (hereinafter referred to as the "Bidder / Supplier")

"PREVIEW COPY ONLY"

PREAMBLE

Transnet values full compliance with all relevant laws and regulations, ethical standards and the principles of economical use of resources, fairness and transparency in its relations with its Bidders / Suppliers.

In order to achieve these goals, Transnet and the Bidder / Supplier hereby enter into this agreement hereinafter referred to as the "Integrity Pact" which will form part of the Bidder's / Supplier's application for registration with Transnet as a vendor.

The general purpose of this Integrity Pact is to agree on avoiding all forms of dishonesty, fraud and corruption by following a system that is fair, transparent and free from any undue influence prior to, during and subsequent to the currency of any procurement and / or reverse logistics event and any further contract to be entered into between the Parties, relating to such event.

All Bidders / Suppliers will be required to sign and comply with undertakings contained in this Integrity Pact, should they want to be registered as a Transnet vendor.

1 OBJECTIVES

- 1.1 Transnet and the Bidder / Supplier agree to enter into this Integrity Pact, to avoid all forms of dishonesty, fraud and corruption including practices that are anti-competitive in nature, negotiations made in bad faith and under-pricing by following a system that is fair, transparent and free from any influence / unprejudiced dealings prior to, during and subsequent to the currency of the contract to be entered into with a view to:
- a) Enable Transnet to obtain the desired contract at a reasonable and competitive price in conformity to the defined specifications of the works, goods and services; and
 - b) Enable Bidders / Suppliers to abstain from bribing or participating in any corrupt practice in order to secure the contract.

2 COMMITMENTS OF TRANSNET

Transnet commits to take all measures necessary to prevent dishonesty, fraud and corruption and to observe the following principles:

- 2.1 Transnet hereby undertakes that no employee of Transnet connected directly or indirectly with the sourcing event and ensuing contract, will demand, take a promise for or accept directly or through intermediaries any bribe, consideration, gift, reward, favour or any material or immaterial benefit or any other advantage from the Bidder, either for themselves or for any person, organisation or third party related to the contract in exchange for an advantage in the bidding process, bid evaluation, contracting or implementation process related to any contract.
- 2.2 Transnet will, during the registration and bidding process treat all Bidders / Suppliers with equity, transparency and fairness. Transnet will in particular, before and during the registration process, provide to all Bidders / Suppliers the same information and will not provide to any Bidders / Suppliers confidential / additional information through which the Bidders / Suppliers could obtain an advantage in relation to any bidding process.
- 2.3 Transnet further confirms that its employees will not favour any prospective bidder in any form that could afford an undue advantage to a particular bidder during the tendering stage, and will further treat all Bidders / Supplier participating in the bidding process.
- 2.4 Transnet will exclude from the bidding process such employees who have any personal interest in the Bidders / Suppliers participating in the bidding process.

3 OBLIGATIONS OF THE BIDDER / SUPPLIER

- 3.1 The Bidder / Supplier commits itself to take all measures necessary to prevent corrupt practices, unfair means and illegal activities during any stage of its bid or during any ensuing contract stage in order to secure the contract or in furtherance to secure it and in particular the Bidder / Supplier commits to the following:
- a) The Bidder / Supplier will not, directly or through any other person or firm, offer, promise or give to Transnet or to any of Transnet's employees involved in the bidding process or to any third person any material or other benefit or payment, in order to obtain in exchange an advantage during the bidding process; and
 - b) The Bidder / Supplier will not offer, directly or through intermediaries, any bribe, gift, consideration, reward, favour, any material or immaterial benefit or other advantage, commission, fees, brokerage or inducement to any employee of Transnet, connected directly or indirectly with the bidding process, or to any person, organisation or third party related to the contract in exchange for any advantage in the bidding, evaluation, contracting and implementation of the contract.
- 3.2 The acceptance and giving of gifts may be permitted provided that:
- a) the gift does not exceed R1 000 (one thousand Rand) in retail value;
 - b) many low retail value gifts do not exceed R1 000 within a 12 month period;
 - c) hospitality packages do not exceed R5 000 in value or many low value hospitality packages do not cumulatively exceed R5 000;
 - d) a Bidder / Supplier does not give a Transnet employee more than 2 (two) gifts within a 12 (twelve) month period, irrespective of value;
 - e) a Bidder / Supplier does not accept more than 1 (one) gift in excess of R750 (seven hundred and fifty Rand) from a Transnet employee within a 12 (twelve) month period, irrespective of value;
 - f) a Bidder / Supplier may under no circumstances, accept from or give to, a Transnet employee any gift, business courtesy, including an invitation to a business meal and /or drinks, or hospitality package, irrespective of value, during any bid evaluation process, including a period of 12 (twelve) months after such tender has been awarded, as it may be perceived as undue and improper influence on the evaluation process or reward for the contract that has been awarded; and
 - g) a Bidder / Supplier may not offer gifts, goods or services to a Transnet employee at artificially low prices, which are not available to the public at those prices.
- 3.3 The Bidder / Supplier will not collude with other parties interested in the contract to preclude a competitive bid price, impair the transparency, fairness and progress of the bidding process, bid evaluation, contracting and implementation of the contract. The Bidder / Supplier further commits itself to delivering against all agreed upon conditions as stipulated within the contract.
- 3.4 The Bidder / Supplier will not enter into any illegal or dishonest agreement or understanding, whether formal or informal with other Bidders / Suppliers. This applies in particular to certifications, submissions or non-submission of documents or actions that are restrictive or to introduce cartels into the bidding process.
- 3.5 The Bidder / Supplier will not commit any criminal offence under the relevant anti-corruption laws of South Africa or any other country. Furthermore, the Bidder /Supplier will not use for illegitimate purposes or for restrictive purposes or personal gain, or pass on to others, any information provided by Transnet as part of the business relationship, regarding plans, technical proposals and business details, including information contained or transmitted electronically.

- 3.6 A Bidder / Supplier of foreign origin shall disclose the name and address of its agents or representatives in South Africa, if any, involved directly or indirectly in the registration or bidding process. Similarly, the Bidder / Supplier of South African nationality shall furnish the name and address of the foreign principals, if any, involved directly or indirectly in the registration or bidding process.
- 3.7 The Bidder / Supplier will not misrepresent facts or furnish false or forged documents or information in order to influence the bidding process to the advantage of the Bidder / Supplier or detriment of Transnet or other competitors.
- 3.8 The Bidder / Supplier shall furnish Transnet with a copy of its code of conduct, which code of conduct shall reject the use of bribes and other dishonest and unethical conduct, as well as compliance programme for the implementation of the code of conduct.
- 3.9 The Bidder / Supplier will not instigate third persons to commit offences outlined above or be an accessory to such offences.

4 INDEPENDENT BIDDING

- 4.1 For the purposes of that Certificate in relation to any submitted Bid, the Bidder declares to fully understand that the word "competitor" shall include any individual or organisation, other than the Bidder, whether or not affiliated with the Bidder, who
- has been requested to submit a Bid in response to this Bid invitation;
 - could potentially submit a Bid in response to this Bid invitation, based on their qualifications, abilities or experience; and
 - provides the same Goods and Services as the Bidder and/or is in the same line of business as the Bidder.
- 4.2 The Bidder has arrived at his submitted Bid 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.
- 4.3 In particular, without limiting the generality of paragraph 5 above, there has been no consultation, communication, agreement or arrangement with any competitor regarding:
- prices;
 - geographical area where Goods or Services will be rendered [market allocation];
 - methods, factors or formulas used to calculate prices;
 - the intention or decision to submit or not to submit, a Bid;
 - the submission of a Bid which does not meet the specifications and conditions of the RFP; or
 - bidding with the intention of not winning the Bid.
- 4.4 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 Goods or Services to which his/her Bid relates.
- 4.5 The terms of the Bid as submitted 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 contract.
- 4.6 Bidders are aware that, in addition and without prejudice to any other remedy provided to combat any restrictive practices related to bids and contracts, Bids 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.

- 4.7 Should the Bidder find any terms or conditions stipulated in any of the relevant documents quoted in the RFP unacceptable, it should indicate which conditions are unacceptable and offer alternatives by written submission on its company letterhead, attached to its submitted Bid. Any such submission shall be subject to review by Transnet's Legal Counsel who shall determine whether the proposed alternative(s) are acceptable or otherwise, as the case may be.

5 DISQUALIFICATION FROM BIDDING PROCESS

- 5.1 If the Bidder / Supplier has committed a transgression through a violation of section 3 of this Integrity Pact or in any other form such as to put its reliability or credibility as a Bidder / Supplier into question, Transnet may reject the Bidder's / Supplier's application from the registration or bidding process and remove the Bidder / Supplier from its database, if already registered.
- 5.2 If the Bidder / Supplier has committed a transgression through a violation of section 3, or any material violation, such as to put its reliability or credibility into question. Transnet may after following due procedures and at its own discretion also exclude the Bidder / Supplier from future bidding processes. The imposition and duration of the exclusion will be determined by the severity of the transgression. The severity will be determined by the circumstances of the case, which will include amongst others the number of transgressions, the position of the transgressors within the company hierarchy of the Bidder / Supplier and the amount of the damage. The exclusion will be imposed for up to a maximum of 10 (ten) years. However, Transnet reserves the right to impose a longer period of exclusion, depending on the gravity of the misconduct.
- 5.3 If the Bidder / Supplier can prove that it has restored the damage caused by it and has installed a suitable corruption prevention system, or taken other remedial measures as the circumstances of the case may require, Transnet may at its own discretion revoke the exclusion or suspend the imposed penalty.

6 TRANSNET'S LIST OF EXCLUDED TENDERERS (BLACKLIST)

- 6.1 All the stipulations around Transnet's blacklisting process as laid down in Transnet's Supply Chain Policy and Procurement Procedures Manual are included herein by way of reference. Below follows a condensed summary of this blacklisting procedure.
- 6.2 Blacklisting is a mechanism used to exclude a company/person from future business with Transnet for a specified period. The decision to blacklist is based on one of the grounds for blacklisting. The standard of proof to commence the blacklisting process is whether a "*prima facie*" (i.e. on the face of it) case has been established.
- 6.3 Depending on the seriousness of the misconduct and the strategic importance of the Goods/Services, in addition to blacklisting a company/person from future business, Transnet may decide to terminate some or all existing contracts with the company/person as well.
- 6.4 A supplier or contractor to Transnet may not subcontract any portion of the contract to a blacklisted company.
- 6.5 Grounds for blacklisting include: If any person/Enterprise which has submitted a Bid, concluded a contract, or, in the capacity of agent or subcontractor, has been associated with such Bid or contract:

- a) Has, in bad faith, withdrawn such Bid after the advertised closing date and time for the receipt of Bids;
- b) has, after being notified of the acceptance of his Bid, failed or refused to sign a contract when called upon to do so in terms of any condition forming part of the bid documents;
- c) has carried out any contract resulting from such bid in an unsatisfactory manner or has breached any condition of the contract;
- d) has offered, promised or given a bribe in relation to the obtaining or execution of the contract;
- e) has acted in a fraudulent or improper manner or in bad faith towards Transnet or any Government Department or towards any public body, Enterprise or person;
- f) has made any incorrect statement in a certificate or other communication with regard to the Local Content of his Goods or his B-BBEE status and is unable to prove to the satisfaction of Transnet that:
 - (i) he made the statement in good faith honestly believing it to be correct; and
 - (ii) before making such statement he took all reasonable steps to satisfy himself of its correctness;
- g) caused Transnet damage, or to incur costs, in order to meet the contractor's requirements and which could not be recovered from the contractor;
- h) has litigated against Transnet in bad faith.

6.6 Grounds for blacklisting include a company/person recorded as being a company or person prohibited from doing business with the public sector on National Treasury's database of Restricted Suppliers or Register of Tender Defaulters.

6.7 Companies associated with the person/s guilty of misconduct (i.e. entities owned, controlled or managed by such person(s)), any companies subsequently formed by the person(s) guilty of the misconduct and/or an existing company where such person(s) acquires a controlling stake may be considered for blacklisting. The decision to extend the blacklist to associated companies will be at the sole discretion of Transnet.

7 PREVIOUS TRANSGRESSIONS

7.1 The Bidder / Supplier hereby declares that no previous transgressions resulting in a serious breach of any law, including but not limited to, corruption, fraud, theft, extortion and contraventions of the Competition Act 89 of 1998, which occurred in the last 5 (five) years with any other public sector undertaking, government department or private sector company that could justify its exclusion from its registration on the Bidder's / Supplier's database or any bidding process.

7.2 If it is found to be that the Bidder / Supplier made an incorrect statement on this subject, the Bidder / Supplier can be rejected from the registration process or removed from the Bidder / Supplier database, if already registered, for such reason (refer to the Breach of Law Form contained in the applicable RFX document.)

8 SANCTIONS FOR VIOLATIONS

8.1 Transnet shall also take all or any one of the following actions, wherever required to:

- a) Immediately exclude the Bidder / Supplier from the bidding process or call off the pre-contract negotiations without giving any compensation the Bidder / Supplier. However, the proceedings with the other Bidders / Suppliers may continue;
- b) Immediately cancel the contract, if already awarded or signed, without giving any compensation to the Bidder / Supplier;
- c) Recover all sums already paid by Transnet;
- d) Encash the advance bank guarantee and performance bond or warranty bond, if furnished by the Bidder / Supplier, in order to recover the payments, already made by Transnet, along with interest;
- e) Cancel all or any other contracts with the Bidder / Supplier; and
- f) Exclude the Bidder / Supplier from entering into any bid with Transnet in future.

9 CONFLICTS OF INTEREST

- 9.1 A conflict of interest includes, inter alia, a situation in which:
- a) A Transnet employee has a personal financial interest in a bidding / supplying entity; and
 - b) A Transnet employee has private interests or personal considerations or has an affiliation or a relationship which affects, or may affect, or may be perceived to affect his / her judgment in action in the best interest of Transnet, or could affect the employee's motivations for acting in a particular manner, or which could result in, or be perceived as favouritism or nepotism.
- 9.2 A Transnet employee uses his / her position, or privileges or information obtained while acting in the capacity as an employee for:
- a) Private gain or advancement; or
 - b) The expectation of private gain, or advancement, or any other advantage accruing to the employee must be declared in a prescribed form.
- Thus, conflicts of interest of any bid committee member or any person involved in the sourcing process must be declared in a prescribed form.
- 9.3 If a Bidder / Supplier has or becomes aware of a conflict of interest i.e. a family, business and / or social relationship between its owner(s) / member(s) / director(s) / partner(s) / shareholder(s) and a Transnet employee / member of Transnet's Board of Directors in respect of a bid which will be considered for the bid process, the Bidder / Supplier:
- a) must disclose the interest and its general nature, in the Request for Proposal ("RFQ") declaration form; and
 - b) must notify Transnet immediately in writing once the circumstances has arisen.
- 9.4 The Bidder / Supplier shall not lend to or borrow any money from or enter into any monetary dealings or transactions, directly or indirectly, with any committee member or any person involved in the sourcing process, where this is done, Transnet shall be entitled forthwith to rescind the contract and all other contracts with the Bidder / Supplier.

10 MONITORING

- 10.1 Transnet will be responsible for appointing an independent Monitor to:
- a) Conduct random monitoring of compliance to the provisions of this Integrity Pact for contracts entered into between Transnet and the Bidder / Supplier for less than R100,000.000 (one hundred million Rand) in value;
 - b) Monitor compliance to the provisions of this Integrity Pact for contracts entered into between Transnet and the Bidder / Supplier for greater than R100,000.000 (one hundred million Rand) in value; and
 - c) Investigate any allegation of violation of any provisions of this Integrity Pact for contracts entered into between Transnet and the Bidder / Supplier, irrespective of value.
- 10.2 The Monitor will be subjected to Transnet's Terms of Conditions of Contract for the Provision of Services to Transnet, as well as to Transnet's Supplier Code of Conduct.

11 EXAMINATION OF FINANCIAL RECORDS, DOCUMENTATION AND/OR ELECTRONIC DATA

For the purpose of Monitoring, as stipulated above, the Monitor shall be entitled to:

- a) Examine the financial records, documentation and or electronic data of the Bidder / Supplier / Transnet. The Bidder / Supplier / Transnet shall provide all requested information / documentation / data to the Monitor and shall extend all help possible for the purpose of such examination.

12 DISPUTE RESOLUTION

12.1 Transnet recognises that trust and good faith are pivotal to its relationship with its Bidders / Suppliers. When a dispute arises between Transnet and its Bidder / Supplier, the parties should use their best endeavours to resolve the dispute in an amicable manner, whenever possible. Litigation in bad faith negates the principles of trust and good faith on which commercial relationships are based. Accordingly, following a blacklisting process as mentioned in paragraph 6 above, Transnet will not do business with a company that litigates against it in bad faith or is involved in any action that reflects bad faith on its part. Litigation in bad faith includes, but is not limited to the following instances:

- a) **Vexatious proceedings:** these are frivolous proceedings which have been instituted without proper grounds;
- b) **Perjury:** where a supplier makes a false statement, either in giving evidence or on an affidavit;
- c) **Scurrilous allegations:** where a supplier makes allegations regarding a senior Transnet employee which are without proper foundation, scandalous, abusive or defamatory; and
- d) **Abuse of court process:** when a supplier abuses the court process in order to gain a competitive advantage during a bid process.

13 GENERAL

- 13.1 This Integrity Pact is governed by and interpreted in accordance with the laws of the Republic of South Africa.
- 13.2 The actions stipulated in this Integrity Pact are without prejudice to any other legal action that may follow in accordance with the provisions of the law relating to any civil or criminal proceedings.
- 13.3 The validity of this Integrity Pact shall cover all the bidding processes and will be valid for an indefinite period unless cancelled by either Party.
- 13.4 Should one or several provisions of this Integrity Pact turn out to be invalid the remainder of this Integrity Pact remains valid.
- 13.5 Should a Bidder / Supplier be confronted with dishonest, fraudulent or corruptive behaviour of one or more Transnet employees, Transnet expects its Bidders / Suppliers to report this behaviour directly to a senior Transnet official / employee or alternatively by using Transnet's "Tip-Off Anonymous" hotline number 0800 003 056, whereby your confidentiality is guaranteed.

The Parties hereby declare that each of them has read and understood the clauses of this Integrity Pact and shall abide by it. To the best of the Parties' knowledge and belief, the information provided in this Integrity Pact is true and correct.

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"PREVIEW COPY ONLY"