

FREIGHT RAIL

An Operating Division of **TRANSNET SOC LTD**

[Registration No. 1990/000900/30]

An authorized Financial Services Provider – FSP 18828

REQUEST FOR PROPOSAL [RFP] No. ERACB421-11936

**PROVISION OF CLEANING SERVICES TO VARIOUS BUILDINGS FROM EMPANGENI TO
THE HARBOUR AND GOLELA TO MANDINI FOR A PERIOD OF TWO YEARS**

ISSUE DATE: 29 October 2013
CLOSING DATE: 26 November 2013
CLOSING TIME: 10:00
BID VALIDITY PERIOD: 28 February 2014

"PREVIEW COPY ONLY"

SCHEDULE OF BID DOCUMENTS

SECTION	PAGE
1 NOTICE TO BIDDERS	4
1. PROPOSAL REQUEST	4
2. FORMAL BRIEFING	4
3. PROPOSAL SUBMISSION	5
4. DELIVERY INSTRUCTIONS FOR RFP	6
5. BROAD BASED BLACK ECONOMIC EMPOWERMENT & SOCIO ECONOMIC OBLIGATIONS	7
6. COMMUNICATION	9
7. INSTRUCTIONS FOR COMPLETING THE RFP	9
8. COMPLIANCE	9
9. ADDITIONAL NOTES	10
10. DISCLAIMERS	10
11. LEGAL REVIEW	11
2 SCOPE OF REQUIREMENTS	12
3 PRICING AND DELIVERY SCHEDULE	27
4 PROPOSAL FORM	34
5 SUPPLIER DECLARATION FORM	40
6 SIGNING POWER – RESOLUTION OF BOARD OF DIRECTORS	42
7 CERTIFICATE OF ACQUAINTANCE WITH RFP DOCUMENTS	43
8 GENERAL BID CONDITIONS – SERVICE	44
9 STANDARD TERMS & CONDITIONS OF CONTRACT	45
10 RFP DECLARATION FORM	46
11 BREACH OF LAW	49
12 BID CLARIFICATION REQUEST FORM	50
13 RESPONDENT CODE OF CONDUCT	51
14 CERTIFICATE OF ATTENDANCE OF RFP BRIEFING	53
15 NON DISCLOSURE ACT	54
16 SCHEDULE OF PLANT, EQUIPMENT AND TEAMS	55
17 MINIMUM COMMUNAL HEALTH REQUIREMENTS	56
18 E4E – SAFETY ARRANGEMENTS AND PROCEDURAL COMPLIANCE	59
19 CLAUSE BY CLAUSE COMPLIANCE	71

LIST OF ACRONYMS

B-BBEE	Broad-Based Black Economic Empowerment
CD	Compact/computer disc
DAC	Divisional Acquisition Council
DPE	Department of Public Enterprises
DTI	Department of Trade and Industry
EME	Exempted Micro Enterprise
FRC	Further Recognition Criteria
GBC	General Bid Conditions
ID	Identity Document
JV	Joint Venture
LOI	Letter of Intent
NDA	Non-Disclosure Agreement
NGP	New Growth Path
OD	Transnet Operating Division
PTN	Post-RFP Negotiations
QSE	Qualifying Small Enterprise
RFP	Request for Proposal
SD	Supplier Development
SME	Small Medium Enterprise
SOC	State Owned Company
ST&C	Standard Terms and Conditions
TAC	Transnet Acquisition Council
TCO	Total Cost of Ownership
VAT	Value-Added Tax
ZAR	South African Rand

**PROVISION OF CLEANING SERVICES TO VARIOUS BUILDINGS FROM EMPANGENI TO
THE HARBOUR AND GOLELA TO MANDINI FOR A PERIOD OF TWO YEARS**

Section 1: NOTICE TO BIDDERS

1 PROPOSAL REQUEST

Responses to this RFP [hereinafter referred to as a **Proposal** or **Proposals**] are requested from persons, companies, close corporations or enterprises [hereinafter referred to as an **Entity** or **Respondent**] to supply the aforementioned requirement(s) to Transnet.

On or after 29 October 2013, the RFP documents may be inspected at, and are obtainable from the office of the Secretariat, Tender Advice Centre, Inyanda House 1, Ground Floor, 21 Wellington Road, Parktown, Johannesburg, on payment of an amount of R500,00 (inclusive of VAT) per set. Payment is to be made as follows:

Bank:	Standard Bank
Account Number:	203158598
Branch:	Braamfontein
Branch code:	004805
Account Name:	Transnet Limited Head Office
Reference:	ERACBB421-11936

NOTES –

- a) This amount is not refundable.
- b) A receipt for such payment made must be presented when collecting the RFP documents and **submitted with your Proposal.**

RFP documents will only be available until **15h00 on Wednesday the 6th November 2013.**

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

2 FORMAL BRIEFING

A compulsory pre-proposal RFP briefing session will be conducted at Transnet Freight Rail, Boardroom 253, Malahle House, 4 Kiewiet Street, Empangeni on **11th November 2013, at 10h00. From the 12th to the 14th November 2013** various sites will be visited. From the 12th November 2013 at 9H00 all Empangeni sites will be visited, on the 13th November 2013 Mandini, Matubatuba, Hluhluwe, Golela sites will be visited and on the 14th November 2013 Nsezi and harbour sites will be visited (**Respondent's to provide own transportation and accommodation**).

Contact person for directions:

Mr. Michiel Els

Cell no: 083 457 448

As the briefing session will be held in an operational area of Transnet, all person entering the premises **may be subjected to a substance abuse test.**

This is a standard operational requirement for TFR, when entering any operational area in order that TFR may address the risk of injury. Any person that fails such test will not be permitted to enter the premises and thereby forfeits rights to be allowed access to the briefing session and will subsequently not be permitted to submit a bid for the tender.

- 2.1 A Certificate of Attendance in the form set out in Section 14 hereto must be completed and submitted with your Proposal.
- 2.2 Respondents failing to attend the compulsory site meeting and/or RFP briefing will be disqualified.
- 2.3 Respondents without a valid RFP document in their possession will not be allowed to attend the site meeting and/or RFP briefing.
- 2.4 The briefing session will start punctually at **10h00** and information will not be repeated for the benefit of Respondents arriving late.
- 2.5 Reflective jackets and safety shoes must be worn when visiting the site. Without the safety clothing, Respondents won't be allowed at the various sites.

3 PROPOSAL SUBMISSION

Proposals (inclusive of attachments) **in duplicate** must reach the Secretary, Transnet Acquisition Council before the closing hour on the date shown below, and must be enclosed in a sealed envelope which must have inscribed on the outside:

RFP No: ERACBB421-11936
Description: PROVISION OF CLEANING SERVICES TO VARIOUS BUILDINGS FROM EMPANGENI TO THE HARBOUR AND GOLELA TO MANDINI FOR A PERIOD OF 2 YEARS
Closing date and time: 26 November 2013, 10h00
Closing address: [Refer options in paragraph 4 below]

4 DELIVERY INSTRUCTIONS FOR RFP

4.1 Delivery by hand

If delivered by hand, the envelope is to be deposited in the Transnet tender box which is located at Transnet Acquisition Council, Ground Floor, Inyanda House 1, 21 Wellington Road, Parktown, Johannesburg, and should be addressed as follows:

THE SECRETARY
TRANSNET ACQUISITION COUNCIL
GROUND FLOOR
TNDER BOX, INYANDA HOUSE 1

21 WELLINGTON ROAD
PARKTOWN, JOHANNESBURG, 2001

- a) The measurements of the "tender box slot" are 400mm wide x 100mm high, and Respondents must please ensure that response documents or files are not 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.
- b) It should also be noted that the above tender box is located at the ground floor, main entrance in Wellington Road and is accessible to the public 24 hours a day, 7 days a week.

4.2 Dispatch by courier

If dispatched by courier, the envelope must be addressed as follows and a signature obtained from that office.

THE SECRETARY
TRANSNET ACQUISITION COUNCIL
INYANDA HOUSE 1
21 WELLINGTON ROAD
PARKTOWN
JOHANNESBURG
2001

- 4.3 Please note that this RFP closes punctually at **10:00 on Tuesday, 26 November 2013.**
- 4.4 If responses are not delivered as stipulated herein, such responses will not be considered and will be treated as "UNRESPONSIVE."
- 4.5 No email or facsimile responses will be considered, unless otherwise stated herein.
- 4.6 The responses to this RFP will be opened as soon as practicable after the expiry of the time advertised for receiving them.
- 4.7 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.
- 4.8 Envelopes must not contain documents relating to any RFP other than that shown on the envelope. All envelopes must reflect the return address of the Respondent on the reverse side.
- 4.9 No slips are to be attached to the response documents. Any additional conditions must be embodied in an accompanying letter. Subject only to clause 23 [*Alterations made by the Respondent to tendered Prices*] of the General Bid Conditions, alterations, additions or deletions must not be made by the Respondent to the actual RFP documents.

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

Transnet fully endorses and supports the Government's Broad-Based Black Economic Empowerment Programme and it is strongly of the opinion that all South African business enterprises have an equal obligation to redress the imbalances of the past.

Transnet would therefore prefer to do business with local business enterprises who share these same values and who are prepared to contribute to meaningful B-BBEE initiatives [including, but not limited to subcontracting and Joint Ventures] as part of their tendered responses. Transnet will accordingly allow "preference" points to companies who provide a B-BBEE Accreditation Certificate. All procurement transactions will be evaluated accordingly.

Consequently, when Transnet invites prospective Service Providers to submit Proposals for its various expenditure programmes, it urges Respondents [*Large Enterprises and QSE's - see below*] to have themselves accredited in compliance with the Government Gazette No 34612, Notice No. 754 dated 23 September 2011. As from 1 October 2011 valid B-BBEE Accreditation Certificates must be issued by

- a) Verification Agencies accredited by the South African National Accreditation System [**SANAS**]; or
- b) Registered auditors approved by the Independent Regulatory Board of Auditors [**IRBA**], in accordance with the approval granted by the Department of Trade and Industry.

A Verification Certificate issued must reflect the weighted points attained by the measured entity for each element of the scorecard as well as the overall B-BBEE rating.

5.1 B-BBEE Rating

Enterprises will be rated by Verification Agencies or registered auditors based on the following:

- a) **Large Enterprises** [i.e. annual turnover greater than R35 million]:
 - Rating level based on all seven elements of the B-BBEE scorecard
- b) **Qualifying Small Enterprises – QSE** [i.e. annual turnover between R5 million and R35 million]:
 - Rating based on any four of the elements of the B-BBEE scorecard
- c) **Exempted Micro Enterprises – EME** [i.e. annual turnover less than R5 million]:
 - EMEs are exempted from B-BBEE accreditation
 - Automatic rating of Level 4 B-BBEE irrespective of race or ownership greater than 50% or Black Women ownership greater than 50% automatically qualify as Level 3 B-BBEE
 - Sufficient evidence to qualify as an EME would be a certificate (which may be in the form of a letter) from an auditor or accounting officer or a certificate from a Verification Agency accredited by SANAS. The certificate must confirm the company's turnover, black ownership / black female ownership and B-BBEE status level.
 - Respondents are required to furnish proof of the above to Transnet. [i.e. a detailed scorecard as stipulated above in respect of Large Enterprises and QSEs, or a certificate in respect of EMEs].

- Transnet will accordingly allocate a maximum of 10/20 [ten/twenty] points in accordance with the 80/20 / 90/10 preference point system prescribed in the Preferential Procurement Policy Framework Act (PPPFA), Act 5 of 2000 and its Regulations to the Respondent's final score based on an entity's B-BBEE scorecard rating. [Refer Annexure A for further details].
- N.B. Failure to submit a B-BBEE certificate, which is valid as at the Closing Date of this RFP, will result in a score of zero being allocated for B-BBEE.
- [Refer Section 4, Vendor Application Form, for Returnable Documents required]
- EME's should provide documentary proof of annual turnover [i.e. annual financials signed off by an accounting officer] plus proof of Black ownership if Black ownership is greater than 50% and/or Black Women ownership is greater than 50%

Respondents will be required to furnish proof of the above to Transnet. [i.e. a detailed scorecard as stipulated above in respect of Large Enterprises and QSEs, or proof of turnover in respect of EMEs].

N.B. Failure to do so will result in a score of zero being allocated for B-BBEE.

Turnover: Kindly indicate your entity's annual turnover for the past year:

R _____

All Respondents must complete and return the B-BBEE Preference Points Claim Form attached hereto as Annexure A.

5.2 Joint Ventures and Subcontractors

In addition to the above, Respondents who wish to enter into a Joint Venture with, or subcontract portions of the contract to, B-BBEE entities must state in their RFPs, the percentage of the total contract value that will be allocated to such B-BBEE entities, should they be successful in being awarded any business. A rating certificate in respect of such B-BBEE JV-partners and/or subcontractor(s), as well as a breakdown of the distribution of the aforementioned percentage must also be furnished with the RFP response to enable Transnet to evaluate in accordance with the processes outlined in the B-BBEE Preference Points Claim Form.

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 per cent] of the value of the contract to an entity that does not qualify for at least the same points that the Respondent qualifies for, unless the intended subcontractor is an EME with the capability to execute the contract.

5.3 B-BBEE Registration

In addition to the accreditation certificate, Transnet recommends that Respondents register their B-BBEE compliance and supporting documentation on the Department of Trade and Industry's [DTI] National B-BBEE IT Portal and Opportunities Network and provide Transnet with proof of registration in the form of an official B-BBEE Profile issued by the DTI.

Transnet would wish to use the DTI B-BBEE IT Portal as a data source for tracking B-BBEE compliance.

For instructions to register and obtain a DTI B-BBEE Profile go to <http://bee.thedti.gov.za>

6 COMMUNICATION

6.1 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.

6.2 For specific queries relating to this RFP, a Bid Clarification Request Form should be submitted before **10:00 on 20th November 2013**, 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 all Respondents need to indicate by email their intention to respond to this RFP by informing Transnet of their contact details as soon as possible but before **20th November 2013** to:

Barbara Bhengu on Tel: 035 906 7669 or via e-mail: Barbara.Bhengu@Transnet.Net.

6.3 Respondents may also, at any time after the closing date of the RFP, communicate with the Secretariat of the Transnet Acquisition Council on any matter relating to its RFP response:

Telephone: 011 544 9486

E-mail: Prudence.Nkabinde@Transnet.Net

Respondents found to be in collusion with one another will be automatically disqualified and blacklisted from doing business with Transnet in the future.

7 INSTRUCTIONS FOR COMPLETING THE RFP

7.1 Sign one set of 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 can be a copy of the original signed Proposal. All attached documents must also be submitted in duplicate.

7.2 Both sets of documents to be submitted to the address specified in paragraph 4 above.

7.3 All returnable documents listed [✓] in the Proposal Form [Section 4] must be returned with your Proposal.

8 COMPLIANCE

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

9 ADDITIONAL NOTES

- 9.1 All returnable documents as indicated in the Proposal Form [Section 4] must be returned with the response.
- 9.2 Changes by the Respondent to its submission will not be considered after the closing date and time.
- 9.3 The person or persons signing the Proposal must be legally authorised by the Respondent to do so [Refer Section 6 – Signing Power, Resolution of the Board of Directors]. A list of those person(s) authorised to negotiate on your behalf [if not the authorised signatories] must also be submitted along with the Proposal together with their contact details.
- 9.4 Transnet may wish to visit the Respondent's place of business during this RFP process.
- 9.5 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.
- 9.6 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. Transnet reserves the right to reject any or all offers.

**FAILURE TO OBSERVE ANY OF THE AFOREMENTIONED
REQUIREMENTS MAY RESULT IN A PROPOSAL BEING REJECTED**

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 a Proposal in response to it. 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 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;
- 10.4 not necessarily accept the lowest priced Proposal;
- 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 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 Respondent; or
- 10.10 make no award of a agreement
- 10.11 preference will be given to locally based Respondents

Transnet reserves the right to lower the threshold for Technical by 10 % [ten percent] if no Respondents pass the predetermined minimum threshold or if only one bidder passes the threshold. This right will be exercised in Transnet's sole discretion.

In addition, Transnet reserves the right to exclude any Respondent from the bidding process who has been convicted of a serious breach of law during the preceding 5 [five] years, including but not limited to breaches of the Competition Act 89 of 1998. Respondents are required to indicate in Section 11 [*Breach of Law*] whether or not they have been found guilty of a serious breach of law during the past 5 [five] years.

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

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, Respondents and the general public to report any fraud or corruption on the part of Transnet employees to TIP-OFFS ANONYMOUS: 0800 003 05

"PREVIEW COPY ONLY"

**PROVISION OF CLEANING SERVICES TO VARIOUS BUILDINGS FROM EMPANGENI TO
THE HARBOUR AND GOLELA TO MANDINI FOR A PERIOD OF TWO YEARS**

Section 2: SCOPE OF REQUIREMENTS

1. SCOPE OF WORK

Areas to be cleaned:

- 1.1. Main entrance, security, reception area and surrounding depot areas
- 1.2. Stairs and landings (service and main stairs)
- 1.3. Offices and passages (including boardrooms, etc.)
- 1.4. Toilets: ladies and gents
- 1.5. Kitchens
- 1.6. Entertainment areas / bars
- 1.7. Windows
- 1.8. Surrounding area (at main entrance) and garden area
- 1.9. Lobby's on floors outside windows
- 1.10. Store rooms
- 1.11. Parking areas

2. SUPERVISION

- 2.1. Daily full time supervision to be provided by Service Provider.
- 2.2. Quality control will be done by client on site.
- 2.3. The Service Provider shall be responsible for the efficient performance of the contract and for the good conduct of his/her employees whenever they carry out cleaning works in the buildings.
- 2.4. The supervisor, who has sound knowledge and experience in supervising cleaning works for high quality buildings, shall be the person in charge of daily operation of cleaning team and is responsible for reporting to the designated TFR manager.
- 2.5. TFR REM reserves the right to monitor the clock-in time and clock-out time of the supplier's employees as well as to give working instructions directly to the suppliers employees if deemed fit (within the specifications).

3. SAFETY FILE TO BE ON SITE AND MUST CONSIST OF

- 3.1. Risk assessment and safety plan
- 3.2. Written safe working procedures and job observations
- 3.3. Valid appointment letters (first aider, SHE rep, etc.)

- 3.4. Valid certificates (first aid, SHE rep, site access, etc.)
- 3.5. Recording of IOD incidents
- 3.6. Weekly audit and inspection of all equipment
- 3.7. Minutes of meetings
- 3.8. Register of personal protective equipment
- 3.9. Training certificates for all employees
- 3.10. Safety induction certificate for all employees
- 3.11. Medical certificates for all employees
- 3.12. General issues
- 3.13. MSDS (material safety data sheets for all cleaning chemicals)

4. TO BE PROVIDED BY TRANSNET FREIGHT RAIL

TFR will provide water and access to the successful Service Provider to all buildings that must be cleaned.

5. TO BE PROVIDED BY THE SERVICE PROVIDER

- 5.1. Necessary sign boards e.g. floor wet/slippery, etc.
- 5.2. Equipment needed but not limited to:
 - 5.2.1. Vacuum cleaners
 - 5.2.2. Mops
 - 5.2.3. Buckets
 - 5.2.4. Polishers
 - 5.2.5. Brooms
 - 5.2.6. Cloths
 - 5.2.7. Carpet machines
 - 5.2.8. Feather dusters
 - 5.2.9. Brushes
 - 5.2.10. Steam cleaners
- 5.3. Service Provider to conform to all Safety Requirements including Safety, Health, Environment (SHE) Induction for Service Providers as specified by Transnet Freight Rail.
- 5.4. All cleaning chemicals and cleaning equipment to be supplied by Service Provider must be clearly marked.
- 5.5. All cleaning consumables, e.g. cleaning chemicals must be of an acceptable standard, i.e. **SABS** approved or equivalent.
- 5.6. All equipment to be kept in good and safe condition at all times and to comply with all safety regulations including all extension cords etc.
- 5.7. Service Provider must install a white lockable toilet roll holder for 3 toilet rolls.

- 5.8. Service Provider to supply white double ply toilet paper of 500 sheets each. Toilet paper must be of an acceptable standard and SABS approved or equivalent. Toilet paper must be soft type, perforated every 111mm, maximum outside diameter of roll 105mm, width of roll 101.5mm, maximum 100mm min, nominal core diameter of 38mm (ID), specification: SABS 648-1980.
- 5.9. Toilet areas are not to be used as change rooms. Cleaning of equipment will not be allowed in toilet areas.
- 5.10. Disposal of dirty water to be deposited directly into toilet pans and thereafter toilet areas to be cleaned.

6. DUTIES

- 6.1. Carpets:
 - o Vacuum Weekly
 - o Spot clean When necessary
 - o Steam clean Quarterly
- 6.2. Tiles (Offices/Kitchens/Toilets/Passages):
 - o Sweep Daily
 - o Damp wipe with disinfectant Daily
- 6.3. Offices:
 - o Vacuum material covered furniture Weekly
 - o Steam clean material covered furniture Quarterly
 - o Dust all surfaces Weekly
 - o Spot clean When necessary
 - o Polish office furniture Weekly
 - o Wipe all window ledges Weekly
 - o Dust blinds Weekly
 - o Damp wipe all microwaves Weekly
 - o Damp wipe all fridges Weekly
- 6.4. Other:
 - o Clean and disinfect all telephones Weekly
 - o Dust all high ledges and fittings Weekly
 - o Dust all horizontal surfaces (low level) Weekly
 - o Dust all vertical surfaces (walls and cabinets) to a height of 2m Weekly
 - o Air conditioner and/or outlets to be wiped Monthly
- 6.5. Waste Disposal in Offices, Kitchens and Toilets:
 - o Empty and clean all ashtrays Daily
 - o Empty and clean all waste baskets and receptacles Daily

- Remove all waste from premises Daily
- 6.6. Walls, Doors, Paint Work and Wall Paper:
 - Spot clean all low surfaces (finger marks, etc.) Daily
 - Wash / wipe walls from top to bottom Quarterly
 - Dust all frames Weekly
- 6.7. Glass Doors and Metal Works:
 - Spot clean (finger marks, etc.) Daily
 - Clean or polish all bright metal fittings to doors / frames Weekly
- 6.8. Entrance Foyer / Reception / Reception Area / Lobby's:
 - Sweep Daily
 - Clean door mats and dust blinds Daily
 - Damp clean counter tops Daily
 - Damp mop floor with disinfectant Daily
 - Machine buff Weekly
 - Clean main entrance foyer glass window interior and exterior Daily
- 6.9. Toilets:
 - Empty and clean all waste receptacles Daily
 - Clean and sanitise all waste receptacles bowls, basins and urinal outlets Daily
 - Clean all mirrors Daily
 - Damp mop floor with disinfectants Daily
 - Clean all metal fittings Daily
 - Spot clean all wall tiles, doors, partitions, ceilings Daily
 - Treat against staining, fungal and bacterial growth Monthly
 - Provide and replenish toilet paper Daily
 - Wipe clean hand dryers and all other fixtures Daily
 - Damp wipe all window ledges Daily
 - Ensure toilet roll holders are replenished especially in buildings that are 7 day x 24hr operations Twice Daily
- 6.10. Window Cleaning:
 - Clean interior faces of all windows (low and high) Monthly
 - Clean exterior faces of all windows (low and high) Monthly
 - Clean main entrance foyer glass window interior and exterior Daily

- 6.11. Blinds:
 - o Dust Weekly
 - o Wash Quarterly
 - o Spot clean When necessary
- 6.12. Kitchens:
 - o Damp wipe cupboards with disinfectant Daily
 - o Damp wipe counter tops with disinfectant Daily
 - o Clean sinks Daily
 - o Damp wipe interior of cupboards Quarterly
 - o Wipe clean all electrical equipment and other Daily
 - o Damp wipe window ledges Daily
 - o Damp mop floors with disinfectant Daily
 - o Damp wipe all microwaves Weekly
 - o Damp wipe all fridges Weekly
 - o Supplier to provide dishwashing liquid and dish cloths Daily
 - o Dishes in all areas to be cleaned Daily
- 6.13. Parking Areas / Ramp / Guard House and Out Buildings:
 - o All surface refuse to be removed Daily
 - o Sweep around buildings Daily
 - o Dust all surface areas in guard house and out buildings Daily
 - o All parking areas must be swept Daily
- 6.14. External Area at Main Entrance and Various Assembly Points:
 - o All surface refuse to be removed Daily
 - o Area to be swept Daily
- 6.15. Entertainment Areas / Bars / Lapas (Interior and Exterior):
 - o Floor to be swept or vacuumed Weekly
 - o Tiles to be damp mopped with disinfectant Weekly
 - o All surface refuse to be removed Daily
 - o Counter tops / bar tops to be damp wiped Daily
 - o Dust all surfaces Daily
 - o Polish furniture (where possible) Weekly
 - o Outside area to be swept Daily
- 6.16. Stairs, Landings and Balustrades:
 - o Area to be swept or vacuumed Daily
 - o Tiles to be damp mopped with disinfectant Daily

PRELIMINARY COPY ONLY

- Wall panels to be damp wiped Daily
- Balustrades to be damp wiped and polished Daily

7. WORKING HOURS

Cleaning to commence from 07:00 to 16H00 (times can be altered due to emergency requirements) including Public Holidays. This should be done within the legal framework of housekeeping: Act 85 and Act 16.

8. UNIFORM CLOTHING

- 8.1. The Service Provider shall at all times ensure that all staff has been provided with all necessary protective clothing, e.g. Gloves, Shoes, masks, etc.
- 8.2. All staff to be identifiable with visible identification at all times.
- 8.3. The Service Provider shall provide clean and tidy uniforms for all employees.
- 8.4. The uniform must be worn by all employees who are engaged to carry out the works.

9. MEASURE AND PAYMENT

- 9.1. A month will be calculated from the 1st of the month to the last calendar day of the month.
- 9.2. A signed register of work performed to be submitted with the delivery note. Note that the delivery note must indicate the building number (by using the asset numbers or a clear description thereof).
- 9.3. The register must be signed by the Supervisor of the specific area.
- 9.4. The delivery note must be signed by the Transnet Manager to indicate that work was performed to satisfaction.
- 9.5. Subject to the satisfactory completion of the cleaning works, the Service Provider shall be remunerated monthly in arrears.
- 9.6. In the event of full staff compliment being unavailable, payment for that specific day will be withheld.
- 9.7. All work performed under this contract shall be subject, before payment, to inspection by the Transnet Manager who may withhold payment when in his/her opinion any service has not been performed in accordance with the requirements of the contract.

10. BREACH OF CONTRACT

If the Service Provider:

- Has abandoned the contract, or
- Is not executing the service in accordance with the contract or is persistently or flagrantly neglecting to carry out his obligations under the contract. Then the Transnet Manager, after giving 30 days written notice to the Service Provider, may expel the Service Provider from the building without thereby releasing the Service Provider from any of his/her other obligations or liabilities under the contract.

11. COMPLIANCE TO REGULATORY REQUIREMENTS AND REGISTRATION

All Service Providers to ensure that they comply with:

- o BCEA – Basic Conditions of Employment Act
- o Registered with the KZN BCCCI (Bargaining Council Contract Cleaning Industry). Please note that a valid Registration Certificate is required as proof of Registration.

12. INJURY TO PERSONS

The Service Provider shall be solely liable for and shall indemnify the Transnet Manager in respect of any liability, loss, claim or proceeding whatsoever, arising under any legislation or at common law in respect of personal injury to or the death of any person whomsoever arising out of or in the course of or caused by the execution of the work whether or not due to his negligence and shall effect adequate insurance cover in respect of such risks and shall furnish the Transnet Manager with a copy of the insurance policy.

13. DAMAGE TO PROPERTY

The Service Provider shall be liable for and shall indemnify the Transnet Manager and the Owner of the buildings against any liability, loss, claim or proceedings in respect of any damage to any property whatsoever arising out of or in course of his/her negligence and shall effect adequate insurance cover in respect of such risks and shall furnish the Transnet Manager with a copy of the insurance policy. If there are any act, omission or neglect of the Service Provider, his agents, servants, workmen or others, or of any sub-contractor employed by him, cause or suffer any damage to any property whatsoever in the execution of any works under this Contract, such damage may be made good by the Transnet Manager at the cost of the Service Provider and the Service Provider shall on demand pay the damages to the Transnet Manager.

14. UIF, PENSION FUND AND BONUS

- 14.1. The Service Provider shall register his/her employees for Unemployment Insurance Fund and Pension fund for the duration of the contract.
- 14.2. The Service Provider shall further pay his/her employees Bonus or 13th cheque in the month of December.
- 14.3. The Service Provider must be registered with the NBC Provident Fund.

15. SITE BOOKS

- 15.1. A Site Instruction Book shall be provided by the Service Provider and such a book shall have numbered sheets for receiving and recording instructions by the Transnet Manager and shall be clearly marked "Site Instruction Book".
- 15.2. The site diary shall be clearly marked "Day Book". At the end of each day a line shall be drawn below the last entry of the day and both the Service Provider and Transnet Manager or his/her deputy shall sign across the line. If no entry was made, a "NIL" return must be entered and signed. Any claim arising from delays, which cannot be substantiated by reference to the site diary will not be considered.

- 15.3. Only persons authorised in writing by the Transnet Manager or Service Provider may make entries in the site books.
- 15.4. On completion of the contract the Site Book / Site Books shall be returned to the Transnet Manager managing the contract on behalf of Transnet Freight Rail.

"PREVIEW COPY ONLY"



16. RISK ASSESSMENT:

RISK IDENTIFIED	RESPONDENT TO ADDRESS HOW TO PREVENT THE RISK IDENTIFIED
Slips, trips and falls	
Contact with bleach and other cleaning chemicals	
Musculoskeletal disorders (MSDs) and injuries	
Work at height, e.g. high cleaning of windows and fascia's	
Machine cleaning of internal and external (e.g. car park, delivery zones and shopping aisles) floor areas	
Verbal abuse or assault	
Motor vehicles and lift trucks	

"PREVIEW COPY ONLY"



Electrical	
Extremes of weather	
Collecting sharp waste	
Charging and storage of batteries	
Lack of awareness of risk by staff	
Fire	

"PREVIEW COPY ONLY"

17. MINIMUM PLANT AND EQUIPMENT REQUIRED

- 17.1 Cleaning equipment ~ brooms, polishers, mops, buckets, sign boards
- 17.2 Cleaning chemicals SABS standard.
- 17.3 Safety equipment and safety wear – safety shoes, gloves, safety goggles, masks

18. GENERAL INFORMATION

- 18.1 The Respondent(s) shall be fully responsible to Transnet for the acts and omissions of persons directly or indirectly employed by them.
- 18.2 The Respondent(s) must provide the information requested and comply with the requirements stated in this RFP.

19. NATIONAL RAILWAY SAFETY REGULATOR ACT

In compliance with the National Railway Safety Regulator Act, 16 of 2002, the successful Respondent (**the Respondent**) shall ensure that the Services to be supplied to Transnet, under the terms and conditions of a agreement between the parties, comply fully with the specifications as set forth in this RFP, and shall thereby adhere to railway safety requirements and/or regulations [as applicable]. Permission for the engagement of a subcontractor by the Respondent, as applicable, both initially and during the course of a agreement, 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 Respondent 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 the organisation.

Accepted:

YES	
-----	--

NO	
----	--

20. SERVICE LEVELS

- 20.1 An experienced national account representative(s) is required to work with Transnet's sourcing/procurement department. [No sales representatives are needed for individual department/locations]. Additionally, there shall be a minimal number of people, fully informed and accountable for this agreement.
- 20.2 Transnet will have quarterly reviews with the Respondent's account representative on an on-going basis.
- 20.3 Transnet reserves the right to request that any member of the Respondent's team involved on the Transnet account be replaced if deemed not to be adding value for Transnet.
- 20.4 The Respondent guarantees that it will achieve a 95% service level on the following measures. If the Respondent does not achieve this level as an average over each quarter, Transnet will receive a 1.5% rebate on quarterly sales payable in the next quarter:

- a)
- b)
- c) on time deliverables

20.5 Respondent must provide a telephone number for customer service calls.

20.6 Failure of the Respondent to comply with stated service level requirements will give Transnet the right to cancel the agreement in whole, without penalty to Transnet, giving 30 [thirty] days' notice to the Respondent.

Acceptance of Service Levels:

YES	
-----	--

NO	
----	--

21. 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 Respondent, in relation to:

21.1 Quality of Services required:

21.2 Continuity of Services [refer clause 6.9 of Form ST&C]:

21.3 Compliance with the Occupational Health and Safety Act, 85 of 1993 [refer clause 8.1(f) of Form ST&C]:

21.4 Compliance with the National Railway Safety Regulator Act, 16 of 2002 [refer paragraph 0 above]:

22 REFERENCES

Please indicate below the company names and contact details of existing customers whom Transnet may contact to seek third party evaluations of your current service levels:

Company Name	Nature of work	Value of work	Contact person	Contact details	Year completed

"PREVIEW COPY ONLY"

23 EVALUATION CRITERIA

Phase 1: Will be a disqualifying phase. The following documents are mandatory documents and must be attached and those that comply will progress to be competitively evaluated in Phase 2. Minimum mandatory documents for progressing from phase 1 to phase 2 are detailed below:

- Valid letter of good standing issued by DTI
- Valid certificate of compliance with the KZN BCCCI
- Completed clause by clause compliance (section 19)
- Statutory minimum wage schedule

Phase 2: A minimum of 70 points must be obtained for quality (technical) before a respondent may progress to phase 3 to be evaluated on the 90/10 principle for price and BBBEE preference respectively

- Health, Risk and Safety plan (Risk Assessment)
- Technical capacity (Plant/Equipment)
- Clause by Clause Statement
- Local Based Supplier

Phase 3: All Respondents who obtained 70 points or more in phase 2 will be evaluated in phase 3. This score out of 70 has no influence in the score for Phase 3. Bids will be evaluated on 90/10 principle for price and BBBEE preference as the bid is >R1m

- Price.
- BBBEE

Weighted evaluation based on the 90/10 preference point system:

Pricing and price basis [firm] - whilst not the sole factor for consideration, competitive pricing and overall level of unconditional discounts¹ will be critical

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

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

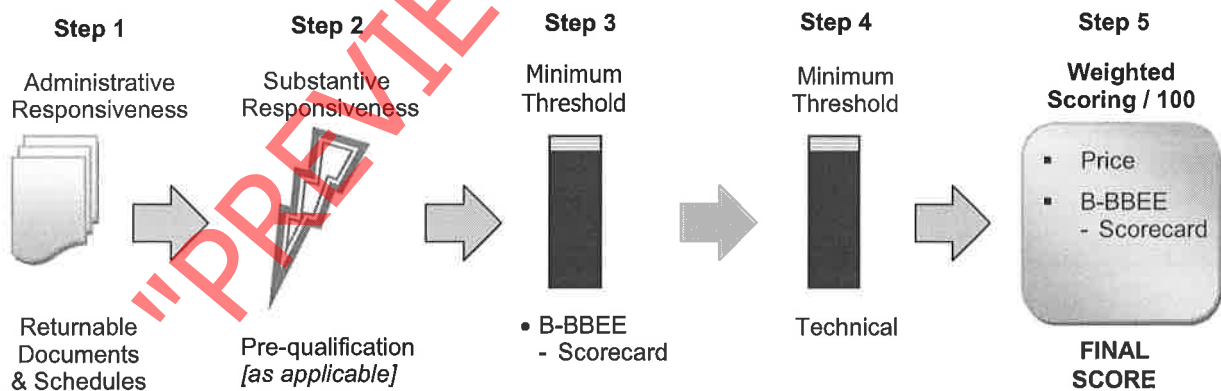
Where:

- Ps* = Score for the Bid under consideration
- Pt* = Price of Bid under consideration
- Pmin* = Price of lowest acceptable Bid

B-BBEE status of company

Preference points will 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 (90/10 system)
1	10
2	9
3	8
4	6
5	4
6	3
7	2
8	1
Non-compliant contributor	0



**PROVISION OF CLEANING SERVICES TO VARIOUS BUILDINGS FROM EMPANGENI TO
THE HARBOUR AND GOLELA TO MANDINI FOR A PERIOD OF TWO YEARS**

Section 3: PRICING AND DELIVERY SCHEDULE

Respondents are to complete the table below:

All prices must include the following:

- Basic salary, UIF, NBC Provident Fund, Annual Leave, Sick Leave, Family Responsibility leave, Annual Bonus
- Uniforms, name tags and safety clothing
- Toilet paper requirements
- Chemicals and Equipment
- Supervisor and any other admin costs
- Profit

Prices must be exclusive of VAT

"PREVIEW COPY ONLY"



NOS	STATION	DESCRIPTION	INVENTORY NUMBER	CLIENT	FREQUENCY	M ²	YEAR 1 UNIT PRICE	YEAR 2 UNIT PRICE	TOTAL FOR 2 YEARS
1	BHIZOLO	BHIZOLO SHUNTERS CABIN	120241	OPS					
2	EMPANGENI	MALAHLE HOUSE	02EE001A	REM		1000			
3	EMPANGENI RAIL	TOILETS OLD MTV (HAZMAT)	02BE010A	OPS		10.1			
4	EMPANGENI RAIL	DEPT GARAGE & WORKSHOP	03BE003A	INFRA		863			
5	EMPANGENI RAIL	HOUSE R 31	01BE021A	REM		103			
6	EMPANGENI RAIL	MESS AND ABLUTIONS	02BE008A	HAZMAT		76.2			
7	EMPANGENI RAIL	MESS AND ABLUTIONS	02BE011A	OPS		78.6			
8	EMPANGENI RAIL	RELAY ROOM - NUY (GOODS SHED)	02AE011A	RME		88.5			
9	EMPANGENI RAIL	MESS AND ABLUTIONS (K BLOCK)	02AE023A	REM		34.7			
10	EMPANGENI RAIL	MESS AND ABLUTIONS	02BE017A	INFRA		126			
11	EMPANGENI RAIL	TRAINING COLLEGE COMMERCIIUM	02BE014A	INFRA		173			
12	EMPANGENI RAIL	MESS AND ABLUTIONS (BOARD ROOM)	02XE002A	INFRA		224			
13	EMPANGENI RAIL	OFFICE (K BLOCK)	02BE067A	REM		1119			
14	EMPANGENI RAIL	OFFICE	03BE004A	SCS		1188			
15	EMPANGENI RAIL	MESS AND ABLUTIONS	02BE025A	INFRA		154			
16	EMPANGENI RAIL	WORKSHOPS/OFFICE (MMC)	02XE001A	INFRA		756			



17	EMPANGENI RAIL	OFFICE (INFRA MMC)	02BE030A	INFRA	467		
18	EMPANGENI RAIL	MESS AND ABLUTIONS	02BE018A	INFRA	264		
19	EMPANGENI RAIL	MESS AND ABLUTIONS	02BE024A	INFRA	308		
20	EMPANGENI STATION	MESS AND ABLUTIONS	02AE007A	OPS	64.2		
21	EMPANGENI STATION	TELECOMMS BUILDING	02BE320A	OPS	100		
22	EMPANGENI STATION	TICKET OFFICE	02AE001A	OPS	78		
23	EMPANGENI STATION	TOILET	02BE039A	OPS	9.3		
24	EMPANGENI STATION	TOILET	02BE040A	OPS	9.3		
25	EMPANGENI STATION	REFRESHMENTS BUILDING	02BE042A	OPS	205		
26	EMPANGENI STATION	WORKSHOP & OFFICES (SIGNALS STORE)	02BE035A	INFRA	332		
27	EMPANGENI STATION	RELAY ROOM	02BE036A	INFRA	65.7		
28	EMPANGENI STATION	ROSTER COMP OFFICE ELECT TRACTION (INFRA TELECOMS)	02BE031A	INFRA	358		
29	EMPANGENI STATION	CHECKERS OFFICE (EX PX)	02BE037A	INFRA	250		
30	EMPANGENI STATION	MESS AND ABLUTIONS	02AE009A	OPS	106		
31	EMPANGENI STATION	COMMUNICATION BUILDING	02XE003A	INFRA	230		
32	EMPANGENI STATION	STATION BUILDING	02BE043A	OPS	193		
33	EMPANGENI STATION	STATION BUILDING	02BE044A	OPS	287		

PREVIEW COPY ONLY



34	GOLELA	STATION BUILDING	02AE808A	OPS	156		
35	HLUHLUWE	STATION BUILDING	02AE847	INFRA			
36	MANDINI	STATION BUILDING	02BE 614A	OPS	100		
37	MANDINI	CTC CABIN	02XE600A	OPS	150		
38	MANDINI	SECURITY ROOM		OPS	100		
39	MANDINI	YARD MASTER		OPS	100		
40	MTUBATUBA	workshop & abluition	02BE823A	OPS	40.2		
41	NSESE	OFFICE & TOILET	02BE341A	OPS	46		
42	NSESE	control cabin	02BE351A	OPS	28.8		
43	NSESE	control cabin	02BE370A	OPS	29		
44	NSESE	MESS AND ABLUTIONS	02BE348A	OPS	57		
45	NSESE	MESS AND ABLUTIONS	02BE362A	OPS	103		
46	NSESE	MESS AND ABLUTIONS	02BE360A	OPS	64		
47	NSESE	MESS AND ABLUTIONS	02BE361A	OPS	64		
48	NSESE	CTC OUTSIDE TOILET	02XE300A	OPS	2200		
49	NSESE	MESS AND ABLUTIONS	02BE353A	OPS	106		
50	NSESE	MESS AND ABLUTIONS	02BE366A	OPS			



51	NSESE	ELECTRIC KIOSK	02XE300A	OPS	2200		
52	NSESE	MESS AND ABLUTIONS	02BE346A	OPS	312		
53	NSESE	MESS AND ABLUTIONS	02BE352A	OPS	273		
54	NSESE	MESS AND ABLUTIONS	02BE345A	OPS	194		
55	NSESE	ADMIN BUILDING	02BE305A	OPS	628		
56	NSESE	MESS AND ABLUTIONS	02BE303A	OPS	297		
57	NSESE	MESS AND ABLUTIONS	02BE306A	SIGNALS	282		
58	NSESE	OFFICE & WORKSHOP	02BE304A	OPS	109		
59	NSESE	MESS AND ABLUTIONS	02BE339A	OPS	288		
60	NSESE	ADMIN BUILDING (CLIENT CENTRE)	02XE302A	OPS	862		
61	Port Richards Bay	INFRA DEPOT (TELECOMS)	120036	OPS			
62	Port Richards Bay	SKOONKAAI WAGONS OFFICE	02BG048	OPS			
63	Port Richards Bay	INFRA DEPOT (TELECOMS)	120035	OPS			
64	Port Richards Bay	SKOONKAAI CONTROL CABIN 124		OPS			
65	Port Richards Bay	SKOONKAAI CONTROL CABIN 2	120063	OPS			
66	Port Richards Bay	NEAR OLD BAYVIEW (SKOONKAAI)	120055	OPS			
67	Port Richards Bay	SKOONKAAI CONTROL CABIN 1	120062	OPS			



68	Port Richards Bay	SKOONKAAI JUMLUTI SHUNT 2		OPS						
69	Port Richards Bay	INFRA DEPOT (TELECOMS)	120092	INFRA		120				
70	Port Richards Bay	SKOONKAAI WAGONS: MESS AND ABLUTION	03BG067	OPS						
71	Port Richards Bay	SKOONKAAI OLD BAYVIEW	B8758	OPS						
72	Port Richards Bay	SKOONKAAI WAGONS: MESS AND ABLUTION	03BG065	OPS						
73	Port Richards Bay	Yard MASTER BUILDING BAYVIEW	OPERATION BAYVIEW (PORT)	OPS		500				
74	Port Richards Bay	MANAGEMENT OF BAYVIEW	OPERATION BAYVIEW (PORT)	OPS		500				
75	RICHARDS BAY HARBOUR	2279 INCOMING YARD		OPS						
76	RICHARDS BAY HARBOUR	YARD MASTER BUILDING 2279	02BG023A	OPS		200				
77	RICHARDS BAY HARBOUR	2279 DEPARTURE YARD	120010	OPS						
78	RICHARDS BAY HARBOUR	2279 DEPARTURE YARD	120009	OPS						
79	RICHARDS BAY HARBOUR	2279	02AK315A	OPS		150				
							TOTAL			

Respondents are to complete the table below:

COST BREAKDOWN PROVISION OF OFFICE CLEANING SERVICES

Description	Calculation	Per month
Cleaner		
Annual bonus		
UIF		
COID		
Provident Fund		
Annual leave		
Sick pay		
Family responsibility		
Uniform/Overalls 2 sets per annum and safety shoes		
Services seta (training)		
NCCA		
Total amount per cleaner		
_____ x cleaners at R _____ per cleaner		
Supervisor salary		
Project manager salary		
Team leader salary		
Total labour		
Consumables and equipment		
Profit/Margin		
TOTAL BID PRICE EXCLUDING Vat		
TOTAL PRICE		

NB: PRICE ESCALATION WILL BE ACCEPTED AS PER THE LABOUR LAW AND FOR MATERIAL AS PER THE CONSUMER PRICE INDEX.

PROVISION OF CLEANING SERVICES TO VARIOUS BUILDINGS FROM EMPANGENI TO THE HARBOUR AND GOLELA TO MANDINI FOR A PERIOD OF TWO YEARS

Section 4: PROPOSAL FORM

I/We _____

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

of *[full address]*

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

represented by _____

in my capacity as _____

being duly authorised thereto by a Resolution of the Board of Directors or Members or Certificate of Partners, as the case may be, dated _____ a certified copy of which is annexed hereto, hereby offer to supply the above-mentioned Services at the prices quoted in the schedule of prices in accordance with the terms set forth in the accompanying letter(s) reference _____ and dated _____ *[if any]* and the documents listed in the accompanying schedule of RFP documents.

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

1. Standard Terms and Conditions of Agreement [Form ST&C – Services];
2. General Bid Conditions – Services; and
3. 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, this Proposal [and, if any, its covering letter and any subsequent exchange of correspondence], together with Transnet's acceptance thereof shall constitute a binding agreement between Transnet and me/us.

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

Respondent's Signature

Date & Company Stamp

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 agreement 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 agreement resulting from this offer will be for a period of only; and agree to a penalty clause to be negotiated with Transnet, which will allow Transnet to invoke a penalty [details to be negotiated] against us should the delivery of the Services be delayed due to non-performance by ourselves.

The law of the Republic of South Africa shall govern any agreement 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 agreement 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 agreement.

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 agreement(s), the successful Respondent [the Respondent] will be informed of the acceptance of its Proposal. Unsuccessful Respondents will be advised in writing of the name of the successful Respondent 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 up to **28 February 2014** 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.

1. Registration number of company / C.C. _____
2. Registered name of company / C.C. _____

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

CONFIDENTIALITY

All information related to a subsequent agreement, both during and after completion, is to 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.

DISCLOSURE OF PRICES TENDERED

Respondents must indicate here whether Transnet may disclose their tendered prices and conditions to other Respondents:

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

RETURNABLE DOCUMENTS AND SCHEDULES

Respondents are required to submit the following returnable documents and schedules with their responses [see √]. All Sections, as indicated in the footer of each page, must be signed, stamped and dated by the Respondent:

SECTION 1 : Notice to Bidders	√
SECTION 2 : Background, Overview and Scope of Requirements	√
SECTION 3 : Pricing & Delivery Schedule	√
SECTION 4 : Proposal Form	√
SECTION 5 : Vendor Application Form	√
- Original or certified cancelled cheque or bank verification of banking details	√
- Certified copies of IDs of shareholder/directors/members [as applicable]	√
- Certified copy of Certificate of Incorporation [CM29/CM9 name change]	√
- Certified copy of share certificates [CK1/CK2 if CC]	√
- Entity's letterhead	√
- Original Tax Clearance Certificate	√

- Certified copy of VAT Registration Certificate	√
- Certified copy of Company Registration Certificate	√
- Certified Valid B-BBEE Accreditation Certificate [Large Enterprises and QSEs]	√
- Annual financials signed off by an accounting officer [EMEs]	√
- Audited financial for previous 3 years - Large Enterprises and QSEs	√
SECTION 6 : Signing Power - Resolution of Board of Directors	√
SECTION 7 : Certificate of Acquaintance with RFP Documents	√
SECTION 8 : General Bid Conditions – Services	√
SECTION 9 : Standard Terms and Conditions of Agreement	√
SECTION 10 : RFP Declaration Form	√
SECTION 11 : Breach of Law	√
SECTION 12 : Bid Clarification Request Form	√
SECTION 13 : Supplier Code of Conduct	√
SECTION 14 : Certificate of attendance of Site Meeting / RFP Briefing	√
SECTION 15 : Non-Disclosure Agreement	√
SECTION 16 : Plant and Equipment	√
SECTION 17 : E4B – Minimum Communal Health Requirements	√
SECTION 18 : E4E – Safety arrangements and Procedural compliance	√
SECTION 19 : Clause by clause compliance to project specification	√
Valid letter of good standing issued by DTI	√
Valid certificate of compliance with the KZN BCCCI	√
Completed clause by clause compliance (section 19)	√
Statutory minimum wage schedule	√

Failure to provide all the above-referenced returnable documents marked with a [√] will result in a Respondent’s disqualification. Respondents are therefore urged to ensure that all these documents are returned with their Proposals.

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 B-BBEE Accreditation Certificate, for the duration of any agreement

emanating from this RFP. Should the Respondent be awarded the agreement [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 the Agreement forthwith without any liability and without prejudice to any claims which Transnet may have for damages against the Respondent.

By signing the RFP documents, the Respondent is deemed to acknowledge that he/she has made himself/herself thoroughly familiar with all the conditions governing this RFP, including those contained in any printed form stated to form part hereof 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.

"PREVIEW COPY ONLY"

SIGNED at _____ on this _____ day of _____ 2013

NAME OF WITNESS	
ADDRESS OF WITNESS	
SIGNATURE OF WITNESS	

NAME OF WITNESS	
ADDRESS OF WITNESS	
SIGNATURE OF WITNESS	

SIGNATURE OF RESPONDENT'S AUTHORISED REPRESENTATIVE:

NAME	
DESIGNATION	
TELEPHONE	
FACSIMILE	
CELLPHONE	

PROVISION OF CLEANING SERVICES TO VARIOUS BUILDINGS FROM EMPANGENI TO THE HARBOUR AND GOLELA TO MANDINI FOR A PERIOD OF TWO YEARS

Section 5: SUPPLIER DECLARATION FORM

Supplier Declaration Form

Respondents are to furnish the following documentation and complete the Vendor Application Form below:

Note: No agreement shall be awarded to any Respondent whose tax matters have not been declared by SARS to be in order.

Company Trading Name						
Company Registered Name						
Company Registration Number Or ID Number If A Sole Proprietor						
Form of entity	CC	Trust	Pty Ltd	Limited	Partnership	Sole Proprietor
VAT number (if registered)						
Company Telephone Number						
Company Fax Number						
Company E-Mail Address						
Company Website Address						
Bank Name				Bank Account Number		
Postal Address					Code	
Physical Address					Code	
Contact Person						
Designation						
Telephone						

Respondent's Signature

Date & Company Stamp

Email					
Annual Turnover Range (Last Financial Year)	< R5 Million		R5-35 million		> R35 million
Does Your Company Provide	Products		Services		Both
Area Of Delivery	National		Provincial		Local
Is Your Company A Public Or Private Entity			Public		Private
Does Your Company Have A Tax Directive Or IRP30 Certificate			Yes		No
Main Product Or Service Supplied (E.G.: Stationery/Consulting)					

BEE Ownership Details					
% Black Ownership		% Black women ownership		% Disabled person/s ownership	
Does your company have a BEE certificate			Yes	No	
What is your broad based BEE status (Level 1 to 9 / Unknown)					
How many personnel does the firm employ		Permanent		Part time	

Transnet Contact Person	
Contact number	
Transnet operating division	

Duly Authorised To Sign For And On Behalf Of Firm / Organisation			
Name		Designation	
Signature		Date	

Stamp And Signature Of Commissioner Of Oath			
Name		Date	
Signature		Telephone No.	



PROVISION OF CLEANING SERVICES TO VARIOUS BUILDINGS FROM EMPANGENI TO THE HARBOUR AND GOLELA TO MANDINI FOR A PERIOD OF TWO YEARS

Section 6: SIGNING POWER – RESOLUTION OF BOARD OF DIRECTORS

NAME OF ENTITY: _____

It was resolved at a meeting of the Board of Directors held on _____ that

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

in his/her capacity as indicated above is/are hereby authorised to enter into, sign, execute and complete any documents relating to Proposals and/or Agreements for the supply of Services.

FULL NAME _____

SIGNATURE CHAIRMAN

FULL NAME _____

SIGNATURE SECRETARY

PROVISION OF CLEANING SERVICES TO VARIOUS BUILDINGS FROM EMPANGENI TO THE HARBOUR AND GOLELA TO MANDINI FOR A PERIOD OF TWO YEARS

Section 7: CERTIFICATE OF ACQUAINTANCE WITH RFP DOCUMENTS

NAME OF ENTITY:

I/We

_____ do hereby certify that I/we acquainted myself/ourselves with all the documentation comprising this RFP and all conditions contained therein, as laid down by Transnet SOC Ltd for the carrying out of the proposed supply/service/works for which I/we submitted my/our response.

I/We furthermore agree that Transnet SOC Ltd shall recognise no claim from me/us for relief based on an allegation that I/we overlooked any RFP/agreement condition or failed to take it into account for the purpose of calculating my/our offered prices or otherwise.

SIGNED at _____ on this _____ day of _____ 2013

SIGNATURE OF WITNESS

SIGNATURE OF RESPONDENT

**PROVISION OF CLEANING SERVICES TO VARIOUS BUILDINGS FROM EMPANGENI TO
THE HARBOUR AND GOLELA TO MANDINI FOR A PERIOD OF TWO YEARS**

Section 8: GENERAL BID CONDITIONS - SERVICES

Refer General Bid Conditions attached hereto

"PREVIEW COPY ONLY"

**PROVISION OF CLEANING SERVICES TO VARIOUS BUILDINGS FROM EMPANGENI TO
THE HARBOUR AND GOLELA TO MANDINI FOR A PERIOD OF TWO YEARS**

**Section 9: STANDARD TERMS AND CONDITIONS OF AGREEMENT
FOR THE PROVISION OF SERVICES TO TRANSNET**

Refer Form ST&C attached hereto.

"The Respondent shall adhere to the Standard Terms and Conditions of Agreement as set out in Form ST&C – Services, a copy of which is attached hereto. Should the Respondent find any conditions unacceptable, it should indicate which conditions are unacceptable and offer alternatives. 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."

"PREVIEW COPY ONLY"

PROVISION OF CLEANING SERVICES TO VARIOUS BUILDINGS FROM EMPANGENI TO THE HARBOUR AND GOLELA TO MANDINI FOR A PERIOD OF TWO YEARS

Section 10: RFP DECLARATION 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 bid clarification purposes;
2. we have received all information we deemed necessary for the completion of this Request for Proposal [RFP];
3. 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;
4. 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
5. 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.

If such a relationship exists, 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 may lead to the disqualification of a response and may preclude a Respondent from doing future business with Transnet]

6. 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.
7. 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. *[Refer "Important Notice to Respondents" overleaf].*
8. 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.

SIGNED at _____ on this ____ day of _____, 2013

For and on behalf of _____ duly authorised hereto	AS WITNESS:
Name:	Name:
Position:	Position:
Signature:	Signature:
Date:	
Place:	

"PREVIEW COPY ONLY"

**IMPORTANT NOTICE TO RESPONDENTS**

- Transnet has appointed a Procurement Ombudsman to investigate any material complaint in respect of RFPs exceeding R5,000,000.00 [five million S.A. Rand] in value. Should a Respondent have any material concern regarding an RFP process which meets this value threshold, a complaint may be lodged with Transnet's Procurement Ombudsman for further investigation.
- It is incumbent on the Respondent to familiarise himself/herself with the Terms of Reference for the Transnet Procurement Ombudsman, details of 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 R5,000,000.00 [five million S.A. Rand] threshold, a complaint may be lodged with the Chief Procurement Officer of the relevant Transnet Operating Division.
- All Respondents should 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.

"PREVIEW COPY ONLY"



PROVISION OF CLEANING SERVICES TO VARIOUS BUILDINGS FROM EMPANGENI TO THE HARBOUR AND GOLELA TO MANDINI FOR A PERIOD OF TWO YEARS

Section 11: BREACH OF LAW

NAME OF ENTITY: _____

I/We _____

do hereby certify that I/we **have/have not been** found guilty during the preceding 5 [five] years of a serious breach of law, including but not limited to a breach of the Competition Act, 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.

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__

SIGNATURE OF WITNESS

SIGNATURE OF RESPONDENT

PROVISION OF CLEANING SERVICES TO VARIOUS BUILDINGS FROM EMPANGENI TO THE HARBOUR AND GOLELA TO MANDINI FOR A PERIOD OF TWO YEARS

Section 12: BID CLARIFICATION REQUEST FORM

RFP No: ERACBB421-11936

RFP deadline for questions / bid clarifications: **Before 12:00 on 20th November 2013**

TO: Transnet SOC Ltd

ATTENTION: The Secretary, Transnet Acquisition Council [TAC]

EMAIL Prudence.Nkabinde@Transnet.Net

DATE: _____

FROM: _____

RFP Bid Clarification No [to be inserted by Transnet]

REQUEST FOR BID CLARIFICATION

PROVISION OF CLEANING SERVICES TO VARIOUS BUILDINGS FROM EMPANGENI TO THE HARBOUR AND GOLELA TO MANDINI FOR A PERIOD OF TWO YEARS

Section 13: RESPONDENT CODE OF CONDUCT

Transnet aims to achieve the best value for money when buying or selling Services and obtaining services. This however must be done in an open and fair manner that supports and drives a competitive economy. Underpinning our process are several acts and policies that any Respondent dealing with Transnet must understand and support. These are:

- The Transnet Procurement Procedures Manual [PPM];
- Section 217 of the Constitution - the five pillars of Public PSCM [Procurement and Supply Chain Management]: fair, equitable, transparent, competitive and cost effective;
- The Public Finance Management Act [PFMA];
- The Broad Based Black Economic Empowerment Act [B-BBEE]; and
- The Prevention and Combating of Corrupt Activities Act.

This Code of Conduct has been included in this RFP to formally appraise prospective Transnet Respondents of Transnet's expectations regarding behaviour and conduct of its Respondents.

Prohibition of Bribes, Kickbacks, Unlawful Payments, and Other Corrupt Practices

Transnet is in the process of transforming itself into a self-sustaining State Owned Company [SOC], actively competing in the logistics industry. Our aim is to become a world class, profitable, logistics organisation. As such, our transformation is focused on adopting a performance culture and to adopt behaviours that will enable this transformation.

1. *Transnet will not participate in corrupt practices and therefore expects its Respondents to act in a similar manner.*
 - Transnet and its employees will follow the laws of this country and keep accurate business records that reflect actual transactions with and payments to our Respondents.
 - Employees must not accept or request money or anything of value, directly or indirectly, to:
 - illegally influence their judgement or conduct or to ensure the desired outcome of a sourcing activity;
 - win or retain business or to influence any act or decision of any decision stakeholders involved in sourcing decisions; or
 - gain an improper advantage.

- There may be times when a Respondent is confronted with fraudulent or corrupt behaviour of Transnet employees. We expect our Respondents to use our "Tip-offs Anonymous" Hot line to report these acts [0800 003 056].
2. *Transnet is firmly committed to the ideas of free and competitive enterprise.*
- Respondents are expected to comply with all applicable laws and regulations regarding fair competition and antitrust.
 - Transnet does not engage with non-value adding agents or representatives solely for the purpose of increasing B-BBEE spend [fronting].
3. *Transnet's relationship with Respondents requires us to clearly define requirements, exchange information and share mutual benefits.*
- Generally, Respondents have their own business standards and regulations. Although Transnet cannot control the actions of our Respondents, we will not tolerate any illegal activities. These include, but are not limited to:
 - misrepresentation of their product [e.g. origin of manufacture, specifications, intellectual property rights];
 - collusion;
 - failure to disclose accurate information required during the sourcing activity [e.g. ownership, financial situation, B-BBEE status];
 - corrupt activities listed above; and
 - harassment, intimidation or other aggressive actions towards Transnet employees.
 - Respondents must be evaluated and approved before any materials, components, products or services are purchased from them. Rigorous due diligence is conducted and the Respondent is expected to participate in an honest and straight forward manner.
 - Respondents must record and report facts accurately, honestly and objectively. Financial records must be accurate in all material respects.

Conflicts of Interest

A conflict of interest arises when personal interests or activities influence [or appear to influence] the ability to act in the best interests of Transnet.

- Doing business with family members
- Having a financial interest in another company in our industry

PROVISION OF CLEANING SERVICES TO VARIOUS BUILDINGS FROM EMPANGENI TO THE HARBOUR AND GOLELA TO MANDINI FOR A PERIOD OF TWO YEARS

Section 14: CERTIFICATE OF ATTENDANCE OF INFORMATION 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 supplied in terms of this RFP on _____ 2013

TRANSNET'S REPRESENTATIVE

RESPONDENT'S REPRESENTATIVE

DATE _____

DATE _____

"PREVIEW COPY ONLY"

**PROVISION OF CLEANING SERVICES TO VARIOUS BUILDINGS FROM EMPANGENI TO
THE HARBOUR AND GOLELA TO MANDINI FOR A PERIOD OF TWO YEARS**

Section 15: NON-DISCLOSURE AGREEMENT [NDA]

Complete and sign the Non-Disclosure Agreement attached hereto

"PREVIEW COPY ONLY"

Respondent's Signature

Transnet Request for Proposal No ERACBB421-11936

Date & Company Stamp

PROVISION OF CLEANING SERVICES TO VARIOUS BUILDINGS FROM EMPANGENI TO THE HARBOUR AND GOLELA TO MANDINI FOR A PERIOD OF TWO YEARS

Section 16: SCHEDULE OF PLANT, EQUIPMENT AND TEAMS

Schedule of major plant and equipment to be used in the execution of this agreement in terms of the Agreement Conditions and specifications. The respondent must state which plant is immediately available and which will be ordered for. A complete list of herbicides and the method of control to be used must also be specified.

(i) **Plant immediately available for work tendered for :**

(ii) **Plant on order and which will be available for work tendered for :**

(iii) **Plant to be acquired for the work tendered for :**

**PROVISION OF CLEANING SERVICES TO VARIOUS BUILDINGS FROM EMPANGENI TO
THE HARBOUR AND GOLELA TO MANDINI FOR A PERIOD OF TWO YEARS**

Section 17: E4B – MINIMUM COMMUNAL HEALTH REQUIREMENTS

**MINIMUM COMMUNAL HEALTH REQUIREMENTS IN AREAS OUTSIDE THE JURISDICTION OF A LOCAL
AUTHORITY: TEMPORARY FACILITIES FOR RESPONDENT'S PERSONNEL**

1. CAMPS

- 1.1 Prior to the erection of any camp, the Respondent shall submit to the Technical Officer, for his approval, details of his Proposals as to the site, water supply, sanitation, and size and type of buildings. Where the site is on private land, the Respondent shall submit the written approval for the use of the site of the relevant statutory authority and of the owner and occupier of the land (as applicable).
- 1.2 Camps must not be erected on land infested with field rodents.
- 1.3 Adequate drainage shall be provided to carry off storm and waste water.
- 1.4 Buildings shall be built to a neat and orderly pattern.
- 1.5 All buildings shall have smooth, hard, impervious floors, graded to provide effective drainage and to permit washing.
- 1.6 Camps shall be maintained by the Respondent at his own expense in a clean and tidy condition. The Respondent shall take such steps as the Technical Officer and landowner/occupier may demand to prevent the creation of a nuisance.
- 1.7 When so instructed by the Technical Officer, the Respondent shall, at his own expense, erect suitable screens between the camp and any public road, thoroughfare or railway line.
- 1.8 After removal of a camp, the Respondent shall, at his own expense, restore the site to its original condition to the satisfaction of the Technical Officer and of the landowner and occupier where the site is on private land.

2. HOUSING

- 2.1 Every living room shall have cross ventilation, both constant and occasional. Where only one window is provided, it shall not be in the same wall as the door.
- 2.2 Dimensions of living rooms shall be sufficient to allow 3.5 square metres of floor area and 11 cubic metres of air space for each person over the age of 10 years. The floor area of any living room shall not be less than 7,8 square metres.
- 2.3 Flat-roofed quarters shall have a minimum roof height of 3 metres above floor level. For quarters with pitched roofs, the wall height shall be not less than 2,6 metres above the floor with a minimum height above floor of 3 metres at the top of the pitch.
- 2.4 Doors shall not be less than 2m x 0,75m and must be halved.

- 2.5 Windows of each living room shall have an area not less than one twelfth of the floor area and shall be capable of opening to at least half their full area.
- 2.6 In areas where malaria is prevalent, doors and windows must be fitted with gauze screens.
- 2.7 Cooking shelters shall comprise roofed structures, three sides of which shall be enclosed by a weatherproof material, approved by the Technical Officer to a height of at least 1m above ground level.
- 2.7.1 Sleeping quarters shall not accommodate more than 8 persons per room.
- 2.7.2 Pegboards shall be carried on metal or concrete supports and shall be separated by partitions not less than 0,4 metres high extending to within 150mm of the end of the bunk. Pegboards shall be removable for cleaning.

3. **WATER SUPPLY AND ABLUTION FACILITIES**

- 3.1 The Respondent shall ensure that an adequate and conveniently situated supply of potable water is provided.
- 3.2 Separate buildings for ablution facilities shall be provided. Where approval has been obtained for the housing of males and females, separate facilities for each sex shall be provided. The proportion shall be 1 cubicle for 20 persons.
- 3.3 Waste water shall be hygienically disposed of.

4. **SANITATION**

- 4.1 Separate buildings for latrine facilities shall be provided. Where housing are provided for both males and females, separate facilities for each sex shall be provided. The proportions shall be at least one squatting seat for every 15 persons or less in the case of pit latrines, or one for every 10 persons or less in case of pail latrines.
- Latrines shall be fly proof and sited at least 10 metres from any other building, and shall not face on any public road, thoroughfare, railway line or residential property. Pits shall not be less than 2,5 metres deep and sited not less than 120 metres from nearest underground water source.
- 4.2 Latrines shall be so constructed, situated and maintained, and night soil so disposed of as to prevent access by animals, breeding of flies, pollution of streams and domestic water supplies, and other nuisances. Where a night soil removal service is operated by a competent authority, use of such service shall be obligatory, and the use of pit latrines and atria pits will not be permitted.
- 4.3 At least one refuse bin of adequate size with close fitting lid shall be provided for each building. Refuse bins shall be emptied and cleaned out daily.
- 4.4 Labour shall be employed on camp sanitation duties on the following basis:-
- 4.4.1 Where the number of persons living at the camp is 20 or less - one unit.
- 4.4.2 For additional numbers over 20 living at the camp - one unit per 100 or part thereof.
- 4.5 Unless refuse is removed by a competent authority, it shall be disposed of in pits and covered over daily with a layer of earth or ash of sufficient thickness to prevent depredations by rodents and the breeding of flies.

- 4.6 Adequate measures shall be taken against all vermin and insects responsible for the spread of disease. Any instructions of a competent health authority shall be carried out promptly and implicitly.
- 4.7 Buildings and bed boards shall be treated whenever necessary with an approved insecticide.
- 4.8 The Respondent shall permit and facilitate inspection of the camp and structures on the site by the staff of Transnet or any other competent authority, and shall comply with any reasonable request by such staff or any other competent authority to eliminate any unsanitary condition.
- 4.9 Any outbreak of infectious disease shall immediately be reported telephonically and confirmed in writing to the Technical Officer.
- 4.10 The keeping of animals of any sort is not permitted.
- 4.11 The Respondent shall have on hand at the camp the necessary tools, disinfectants and cleaning materials to maintain and clean the sanitary facilities.

5. **RATIONS**

Rations, where supplied by the Respondent, shall be stored in a suitable and rodent proof building with sufficient shelving.

"PREVIEW COPY ONLY"

**PROVISION OF CLEANING SERVICES TO VARIOUS BUILDINGS FROM EMPANGENI TO
THE HARBOUR AND GOLELA TO MANDINI FOR A PERIOD OF TWO YEARS**

**Section 18: E4E – SAFETY ARRANGEMENTS AND PROCEDURAL COMPLIANCE
(ACT 85 OF 1993) AND APPLICABLE REGULATIONS**

1. General

- 1.1 The Respondent and Transnet Limited (hereinafter referred to as "Transnet") are individual employers, each in its own right, with their respective duties and obligations set out in the Occupational Health and Safety Act, Act 85 of 1993 (the Act) and applicable Regulations.
- 1.2 The Respondent accepts, in terms of the General Conditions of Agreement and in terms of the Act, his obligations as an employer in respect of all persons in his employ, other persons on the premises or the Site or place of work or on the work to be executed by him, and under his control. He shall, before commencement with the execution of the agreement work, comply with the provisions set out in the Act, and shall implement and maintain a Health and Safety Plan as described in the Construction Regulations, 2003 and as approved by Transnet, on the Site and place of work for the duration of the Agreement.
- 1.3 The Respondent accepts his obligation to complying fully with the Act and applicable Regulations notwithstanding the omission of some of the provisions of the Act and the Regulations from this document.
- 1.4 Transnet accepts, in terms of the Act, its obligations as an employer of its own employees working on or associated with the site or place of work, and the Respondent and Technical Officer or his deputy shall at all times, co-operate in respect of the health and safety management of the site, and shall agree on the practical arrangements and procedures to be implemented and maintained during execution of the Works.
- 1.5 In the event of any discrepancies between any legislation and this specification, the applicable legislation will take precedence.

2. Definitions

- 2.1 In this Specification any word or expression to which a meaning has been assigned in the Construction Regulations, shall have the meaning so assigned to it, unless the context otherwise indicates: -
- 2.2 The work included in this Agreement shall for the purposes of compliance with the Act be deemed to be "**Construction Work**", which, in terms of the Construction Regulations, 2003 means any work in connection with: -
- (a) the erection, maintenance, alteration, renovation, repair, demolition or dismantling of or addition to a building or any similar structure;
 - (b) the installation, erection, dismantling or maintenance of fixed plant where such work includes the risk of a person falling;
 - (c) the construction, maintenance, demolition or dismantling of any bridge, dam, canal, road, railway, runway, sewer or water reticulation system or any similar civil engineering structure; or
 - (d) the moving of earth, clearing of land, the making of an excavation, piling, or any similar type of work;

- 2.3 **“competent person”** in relation to construction work, means any person having the knowledge, training and experience specific to the work or task being performed: Provided that where appropriate qualifications and training are registered as per the South African Qualifications Authority Act, 1995 these qualifications and training shall be deemed to be the required qualifications and training;
- 2.4 **“respondent”** means principal respondent as defined by the Construction Regulations, 2003.
- 2.5 **“fall protection plan”** means a documented plan, of all risks relating to working from an elevated position, considering the nature of work undertaken, and setting out the procedures and methods applied to eliminate the risk;
- 2.6 **“health and safety file”** means a file, or other record in permanent form, containing the information required to be kept on site in accordance with the Act and applicable Regulations;
- 2.7 **“Health and Safety Plan ”** means a documented plan which addresses the hazards identified and include safe work procedures to mitigate, reduce or control the hazards identified;
- 2.8 **“Risk Assessment”** means a programme to determine any risk associated with any hazard at a construction site, in order to identify the steps needed to be taken to remove, reduce or control such hazard;
- 2.9 **“the Act”** means the Occupational Health and Safety Act No. 85 of 1993.

3. Procedural Compliance

- 3.1 The Respondent who intends to carry out any construction work shall, before carrying out such work, notify the Provincial Director in writing if the construction work:-
- (a) includes the demolition of a structure exceeding a height of 3 metres; or
 - (b) includes the use of explosives to perform construction work; or
 - (c) includes the dismantling of fixed plant at a height greater than 3m,
- and shall also notify the Provincial Director in writing when the construction work exceeds 30 days or will involve more than 300 person days of construction work and if the construction work:-
- (a) includes excavation work deeper than 1m; or
 - (b) includes working at a height greater than 3 metres above ground or a landing.
- 3.2 The notification to the Provincial Director shall be on a form similar to Annexure A of the Construction Regulations, 2003, also shown in Annexure 1 of this Specification. The Respondent shall ensure that a copy of the completed notification form is kept on site for inspection by an inspector, Technical Officer or employee.
- 3.3 The Respondent shall, in accordance with the Act and applicable Regulations, make all the necessary appointments of competent persons in writing on a form similar to Annexure 2 of this Specification and deliver copies thereof to the Technical Officer. Copies should also be retained on the health and safety file.
- 3.4 Subcontractors shall also make the above written appointments and the Respondent shall deliver copies thereof to the Technical Officer.
- 3.5 In the case of a self-employed Respondent or any subcontractor who have the appropriate competencies and supervises the work himself, the appointment of a construction supervisor in terms of regulation 6.1 of the Construction Regulations, 2003 will not be necessary. The Respondent shall in such a case execute

and sign a declaration, as in Annexure 3, by which he personally undertakes the duties and obligations of the "Chief Executive Officer" in terms of section 16(1) of the Act.

- 3.6 The Respondent shall, before commencing any work, obtain from the Technical Officer an access certificate as in Annexure 4 executed and signed by him, permitting and limiting access to the designated site or place of work by the Respondent and any subcontractors under his control.
- 3.7 Procedural compliance with Act and Regulations, as above, shall also apply to any subcontractors as employers in their own right. The Respondent shall furnish the Technical Officer with full particulars of such subcontractors and shall ensure that they comply with the Act and Regulations and Transnet's safety requirements and procedures.

4. Special Permits

Where special permits are required before work may be carried out such as for hotwork, isolation permits, work permits and occupations, the Respondent shall apply to the Technical Officer or the relevant authority for such permits to be issued. The Respondent shall strictly comply with the conditions and requirements pertaining to the issue of such permits.

5. Health and Safety Programme

- 5.1 The respondent shall, with his RFP, submit a Health and Safety Programme setting out the practical arrangements and procedures to be implemented by him to ensure compliance by him with the Act and Regulations and particularly in respect of: -
- (i) The provision, as far as is reasonably practical, of a working environment that is safe and without risk to the health of his employees and subcontractors in terms of section 8 of the Act;
 - (ii) the execution of the agreement work in such a manner as to ensure in terms of section 9 of the Act that persons other than those in the Respondent's employment, who may be directly affected by the agreement work are not thereby exposed to hazards to their health and safety;
 - (iii) ensuring, as far as is reasonably practical, in terms of section 37 of the Act that no employee or subcontractors of the Respondent does or omits to do any act which would be an offence for the Respondent to do or omit to do.
- 5.2 The Respondent's Health and Safety Programme shall be based on a risk assessment in respect of the hazards to health and safety of his employees and other persons under his control that are associated with or directly affected by the Respondent's activities in performing the agreement work and shall establish precautionary measures as are reasonable and practical in protecting the safety and health of such employees and persons.
- 5.3 The Respondent shall cause a risk assessment contemplated in clause 5.2 above to be performed by a competent person, appointed in writing, before commencement of any Construction Work and reviewed during construction. The Risk Assessments shall form part of the Health and Safety programme to be applied on the site and shall include at least the following:
- (a) The identification of the risks and hazards that persons may be exposed to;
 - (b) the analysis and evaluation of the hazards identified;

- (c) a documented Health and Safety Plan, including safe work procedures to mitigate, reduce or control the risks identified;
- (d) a monitoring and review plan.

5.4 The Health and Safety Plan shall include full particulars in respect of: -

- (a) The safety management structure to be instituted on site or place of work and the names of the Respondent's health and safety representatives and members of safety committees where applicable;
- (b) the safe working methods and procedures to be implemented to ensure the work is performed in compliance with the Act and Regulations;
- (c) the safety equipment, devices and clothing to be made available by the Respondent to his employees;
- (d) the site access control measures pertaining to health and safety to be implemented;
- (e) the arrangements in respect of communication of health and safety related matters and incidents between the Respondent, his employees, subcontractors and the Technical Officer with particular reference to the reporting of incidents in compliance with Section 24 and General Administrative Regulation 8 of the Act and with the pertinent clause of the General Conditions of Agreement forming part of the Agreement and
- (f) the introduction of control measures for ensuring that the Safety Plan is maintained and monitored for the duration of the Agreement.

5.4.1 The Health and Safety programme shall be subject to the Technical Officer's approval and he may, in consultation with the Respondent, order that additional and/or supplementary practical arrangements and procedures be implemented and maintained by the Respondent or that different working methods or safety equipment be used or safety clothes be issued which, in the Technical Officer's opinion, are necessary to ensure full compliance by the Respondent with his obligations as an employer in terms of the Act and Regulations. The Technical Officer or his deputy shall be allowed to attend meetings of the Respondent's safety committee as an observer.

5.5 The Respondent shall take reasonable steps to ensure that each subcontractor's Health and Safety Plan is implemented and maintained on the construction site: Provided that the steps taken, shall include periodic audits at intervals mutually agreed to between the them, but at least once every month.

5.6 The Respondent shall stop any subcontractor from executing any construction work, which is not in accordance with the Respondent's, and/or subcontractor's Health and Safety Plan for the site or which poses a threat to the health and safety of persons.

5.7 The Respondent shall ensure that a copy of the Health and Safety Plan is available on site for inspection by an inspector, Technical Officer, agent, subcontractor, employee, registered employee organisation, health and safety representative or any member of the health and safety committee.

5.8 The Respondent shall consult with the health and safety committee or, if no health and safety committee exists, with a representative group of employees, on the development, monitoring and review of the Risk Assessment.

- 5.9 The Respondent shall ensure that all employees under his control are informed, instructed and trained by a competent person regarding any hazard and the related work procedures before any work commences, and thereafter at such times as may be determined in the Risk Assessment.
- 5.10 The Respondent shall ensure that all subcontractors are informed regarding any hazard as stipulated in the Risk Assessment before any work commences, and thereafter at such times as may be determined in the Risk Assessment.
- 5.11 The Respondent shall ensure that all visitors to a construction site undergoes health and safety induction pertaining to the hazards prevalent on the site and shall be provided with the necessary personal protective equipment.

6 Fall Protection Plan

- 6.1 In the event of the risk and hazard identification, as required in terms of clause 5.3 of this Specification, revealing risks relating to working from an elevated position the respondent shall cause the designation of a competent person, responsible for the preparation of a fall protection plan;
- (a) The Respondent shall implement, maintain and monitor the fall protection plan for the duration of Agreement.
- (b) The Respondent shall also take such steps to ensure the continued adherence to the fall protection plan.
- 6.2 The fall protection plan shall include:-
- (a) A Risk Assessment of all work carried out from an elevated position;
- (b) the procedures and methods to address all the identified risks per location;
- (c) the evaluation of the employees physical and psychological fitness necessary to work at elevated positions;
- (d) the training of employees working from elevated positions; and
- (e) the procedure addressing the inspection, testing and maintenance of all fall protection equipment.

7. Hazards and Potential Hazardous Situations

The Respondent and the Technical Officer shall immediately notify one another of any hazardous or potentially hazardous situations which may arise during performance of the Agreement by the Respondent or any subcontractor and, in particular, of such hazards as may be caused by the design, execution and/or location and any other aspect pertaining to the agreement work.

8. Health and Safety File

- 8.1 The Respondent shall ensure that a health and safety file is opened and kept on site and shall include all documentation required as per the Act and applicable regulations, and made available to an inspector, the Technical Officer, or subcontractor upon request.
- 8.2 The Respondent shall ensure that a copy of the both his Health and Safety Plan as well as any subcontractor's Health and Safety Plan is available on request to an employee, inspector, respondent or the Technical Officer.

- 8.3 The Respondent shall hand over a consolidated health and safety file to the Technical Officer upon completion of the Construction Work and shall in addition to documentation mentioned in the Act and applicable Regulations include a record of all drawings, designs, materials used and other similar information concerning the completed structure.

"PREVIEW COPY ONLY"

ANNEXURE 1

**OCCUPATIONAL HEALTH AND SAFETY ACT, 1993
Regulation 3(1) of the Construction Regulations
NOTIFICATION OF CONSTRUCTION WORK**

-
-
1. (a) Name and postal address of principal respondent:

 - (b) Name and tel. no of principal respondent's contact person:

 2. Principal respondent's compensation registration number: _____
 3. (a) Name and postal address of client:

 - (b) Name and tel no of client's contact person or agent:

 4. (a) Name and postal address of designer(s) for the project:

 - (b) Name and tel. no of designer(s) contact person:

 5. Name and telephone number of principal respondent's construction supervisor on site appointed in terms of regulation 6(1). _____
 6. Name/s of principal respondent's construction sub-ordinate supervisors on site appointed in terms of regulation 6(2). _____
 7. Exact physical address of the construction site or site office:

 8. Nature of the construction work:

"PREVIEW COPY ONLY"

- 9. Expected commencement date: _____
- 10. Expected completion date: _____
- 11. Estimated maximum number of persons on the construction site: _____
- 12. Planned number of respondents on the construction site accountable to the principle respondent:

13. Name(s) of respondents already chosen.

1.18	Principal Respondent	_____ Date
1.19	Client	_____ Date

- * THIS DOCUMENT IS TO BE FORWARDED TO THE OFFICE OF THE DEPARTMENT OF LABOUR **PRIOR TO COMMENCEMENT** OF WORK ON SITE.
- * **ALL PRINCIPAL RESPONDENTS** THAT QUALIFY TO NOTIFY MUST DO SO EVEN IF ANOTHER PRINCIPAL RESPONDENT ON THE SAME SITE HAD DONE SO PRIOR TO THE COMMENCEMENT OF WORK.

ANNEXURE 2

(COMPANY LETTER HEAD)

OCCUPATIONAL HEALTH AND SAFETY ACT, 1993 (ACT 85 OF 1993) :

SECTION/REGULATION: _____

REQUIRED COMPETENCY: _____

In terms of

_____, I,

representing the Employer) do hereby appoint

As the Competent Person on the
premises at

(physical address) to assist in compliance with the Act and the applicable Regulations.

Your designated area/s is/are as follows :-

Date : _____

Signature :- _____

Designation :- _____

ACCEPTANCE OF DESIGNATION

I, _____ do hereby accept this
designation and acknowledge that I understand the requirements of this appointment.

Date : _____

Signature :- _____

Designation :- _____

**ANNEXURE 3****(COMPANY LETTER HEAD)****OCCUPATIONAL HEALTH AND SAFETY ACT, 1993 (ACT 85 OF 1993) :****DECLARATION**

In terms of the above Act I, _____, am personally assuming the duties and obligations as Chief Executive Officer, defined in Section 1 of the Act and in terms of Section 16 (1), I will as far as is reasonably practicable, ensure that the duties and obligations of the Employer as contemplated in the above Act are properly discharged.

Signature :- _____**Date :** _____

"PREVIEW COPY ONLY"

**ANNEXURE 4****(LETTER HEAD OF BUSINESS DIVISION OR UNIT OF TRANSNET LIMITED)****SITE ACCESS CERTIFICATE**

Access to : _____ (Area)

Name of Respondent/Builder :- _____

Agreement/Order No.: _____

The agreement works site/area described above are made available to you for the carrying out of associated works

In terms of your agreement/order with

(company) _____

Kindly note that you are at all times responsible for the control and safety of the Works Site, and for persons under your control having access to the site.

As from the date hereof you will be responsible for compliance with the requirements of the Occupational Health and Safety Act, 1993 (Act 85 of 1993) as amended, and all conditions of the Agreement pertaining to the site of the works as defined and demarcated in the agreement documents including the plans of the site or work areas forming part thereof.

Signed : _____ Date : _____

TECHNICAL OFFICER



ACKNOWLEDGEMENT OF RECEIPT

Name _____ of
Respondent/Builder :- _____

do hereby acknowledge and accept the
duties

_____ and obligations in respect of the Safety of the site/area of Work in terms of the Occupational
Health and Safety Act; Act 85 of 1993.

Name : _____

Designation : _____

Signature : _____

Date : _____

"PREVIEW COPY ONLY"

PROVISION OF CLEANING SERVICES TO VARIOUS BUILDINGS FROM EMPANGENI TO THE HARBOUR AND GOLELA TO MANDINI FOR A PERIOD OF TWO YEARS

Section 19: CLAUSE BY CLAUSE COMPLIANCE

Clause Nr	Comply	Does Not Comply	Comments
1			
2			
3			
4			
5			
6			
7			
8			
9			
10			
11			
12			
13			
14			
15			

"PREVIEW COPY ONLY"



Appendix (i)

GENERAL BID CONDITIONS - SERVICES

[April 2013]

"PREVIEW COPY ONLY"

TABLE OF CONTENTS

1	DEFINITIONS	3
2	GENERAL.....	3
3	SUBMISSION OF BID DOCUMENTS	3
4	USE OF BID FORMS.....	3
5	BID FEES.....	4
6	VALIDITY PERIOD	4
7	SITE VISIT / BRIEFING SESSION.....	4
8	CLARIFICATION BEFORE THE CLOSING DATE	4
9	COMMUNICATION AFTER THE CLOSING DATE	4
10	UNAUTHORISED COMMUNICATION ABOUT BIDS.....	4
11	RETURNABLE DOCUMENTS	5
12	DEFAULTS BY RESPONDENTS.....	5
13	CURRENCY.....	6
14	PRICES SUBJECT TO CONFIRMATION	6
15	ALTERATIONS MADE BY THE RESPONDENT TO BID PRICES	6
16	EXCHANGE AND REMITTANCE.....	6
17	ACCEPTANCE OF BID.....	7
18	NOTICE TO UNSUCCESSFUL RESPONDENTS.....	7
19	TERMS AND CONDITIONS OF CONTRACT.....	7
20	CONTRACT DOCUMENTS	7
21	LAW GOVERNING CONTRACT.....	8
22	IDENTIFICATION.....	8
23	CONTRACTUAL SECURITIES.....	8
24	DELETION OF ITEMS TO BE EXCLUDED FROM BID	8
25	VALUE-ADDED TAX.....	8
26	IMPORTANT NOTICE TO RESPONDENTS REGARDING PAYMENT	9
27	DELIVERY REQUIREMENTS	9
28	SPECIFICATIONS AND COPYRIGHT.....	10
29	BIDS BY OR ON BEHALF OF FOREIGN RESPONDENTS	10
30	CONFLICT WITH BID DOCUMENT	11

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 **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 RFX.

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 (i) a site visit where it is considered necessary to view the site prior to the preparation of Bids, or (ii) an RFX briefing session when 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 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, could be disqualified.

11 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.

12 DEFAULTS BY RESPONDENTS

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

- a) enter into a formal contract when called upon to do so within such period as Transnet may specify; or
- b) accept an order in terms of the Bid;
- c) furnish satisfactory security when called upon to do so for the fulfilment of the contract; or
- d) 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.

12.2 If any Respondent, who has submitted a Bid and/or concluded a contract with Transnet [hereinafter referred to as the **Service Provider**], or in the capacity of agent or subcontractor who has been associated with such Bid or contract:

- a) has withdrawn such Bid after the advertised date and hour for the receipt of Bids; or
- b) has, after having been notified of the acceptance of its 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; or
- c) has carried out any contract resulting from such Bid in an unsatisfactory manner or has breached any condition of such contract; or
- d) has offered, promised or given a bribe in relation to the obtaining or the execution of such contract; or
- e) has acted in a fraudulent or improper manner or in bad faith towards Transnet or any government department or towards any public body, company or person; or
- f) has made any misleading or incorrect statement either
 - (i) in the affidavit or certificate referred to in clause 18 [*Notice to Unsuccessful Respondents*]; or
 - (ii) in any other document submitted as part of its Bid submissionand is unable to prove to the satisfaction of Transnet that
 - it made the statement in good faith honestly believing it to be correct; and
 - before making such statement, it took all reasonable steps to satisfy itself of its correctness; or
- g) caused Transnet damage, or to incur costs in order to meet the Service Provider's requirements which could not be recovered from the Service Provider;
- h) has litigated against Transnet in bad faith;

- i) 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 [five] years;
- j) has been included as a company or person prohibited from doing business with the public sector on National Treasury's database of Restricted Suppliers or Register of Bid Defaulters;

then a Bid from any such Respondent shall be disqualified and the person, enterprise or company [including any directors] shall, subject to clause 12.3 below, be disqualified from bidding for any Transnet business through its "blacklisting" process.

12.3 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.

12.4 Any disqualification [**Blacklisting**] imposed upon any person or enterprise or company, may also apply to any other enterprise under the same or different names of disqualified persons or enterprise or company [or associates thereof] and may also be applied to any agent or employee of the person or enterprise or company concerned.

13 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.

14 PRICES SUBJECT TO CONFIRMATION

14.1 Prices which are quoted subject to confirmation will not be considered.

14.2 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.

15 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.

16 EXCHANGE AND REMITTANCE

16.1 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.

16.2 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.

16.3 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.

- 16.4 The South African Reserve Bank's approval is required before any foreign currency payments can be made to or on behalf of Respondents.
- 16.5 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.
- 16.6 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**].

17 ACCEPTANCE OF BID

- 17.1 Transnet does not bind itself to accept the lowest priced or any Bid.
- 17.2 Transnet reserves the right to accept any Bid in whole or in part.
- 17.3 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.
- 17.4 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.

18 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.

19 TERMS AND CONDITIONS OF CONTRACT

- 19.1 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.
- 19.2 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.

20 CONTRACT DOCUMENTS

- 20.1 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.
- 20.2 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.
- 20.3 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.

21 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 authorised 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.

22 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.

23 CONTRACTUAL SECURITIES

- 23.1 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.
- 23.2 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.
- 23.3 Such security, if required, shall be an amount which will be stipulated in the Bid Documents.
- 23.4 The successful Respondent shall be required to submit to Transnet or Transnet's designated official the specified security document(s) within 30 [thirty] 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.
- 23.5 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 23 will be for the account of the Service Provider.

24 DELETION OF ITEMS TO BE EXCLUDED FROM BID

The Respondent must delete items for which it does not wish to tender.

25 VALUE-ADDED TAX

- 25.1 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.
- 25.2 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.

26 IMPORTANT NOTICE TO RESPONDENTS REGARDING PAYMENT

26.1 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 26.1a) above. Failure to comply with clause 26.1a) 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 23 above [*Contractual Securities*].

26.2 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.

27 DELIVERY REQUIREMENTS

27.1 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.

27.2 Progress Reports

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

27.3 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.

28 SPECIFICATIONS AND COPYRIGHT

28.1 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.

28.2 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.

29 BIDS BY OR ON BEHALF OF FOREIGN RESPONDENTS

29.1 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.

29.2 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.

29.3 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.

29.4 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.

29.5 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.

30 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.

oooo0000oooo

"PREVIEW COPY ONLY"



Appendix (ii)

**STANDARD TERMS AND CONDITIONS OF CONTRACT
FOR THE PROVISION OF SERVICES TO TRANSNET
[April 2013]**

"PREVIEW COPY ONLY"

TABLE OF CONTENTS

1	INTRODUCTION.....	3
2	DEFINITIONS.....	3
3	INTERPRETATION	6
4	NATURE AND SCOPE	6
5	AUTHORITY OF PARTIES	7
6	WARRANTIES.....	7
7	TRANSNET'S OBLIGATIONS	9
8	GENERAL OBLIGATIONS OF THE SERVICE PROVIDER.....	9
9	FEES AND EXPENSES.....	10
10	INVOICING AND PAYMENT.....	11
11	FEE ADJUSTMENTS	11
12	INTELLECTUAL PROPERTY RIGHTS.....	11
13	SERVICE PROVIDER'S PERSONNEL	13
14	LIMITATION OF LIABILITY	14
15	INSURANCES	15
16	CONFIDENTIALITY	15
17	TOTAL OR PARTIAL FAILURE TO PERFORM THE SCOPE OF SERVICES.....	17
18	TERM AND TERMINATION	17
19	CONSEQUENCE OF TERMINATION.....	18
20	ASSIGNMENT.....	19
21	FORCE MAJEURE.....	19
22	EQUALITY AND DIVERSITY	19
23	NON-WAIVER.....	19
24	PARTIAL INVALIDITY.....	20
25	DISPUTE RESOLUTION	20
26	ADDRESSES FOR NOTICES.....	20
27	WHOLE AND ONLY AGREEMENT	21
28	AMENDMENT AND CHANGE CONTROL	21
29	GOVERNING LAW	21
30	COUNTERPARTS.....	22

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, once 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 28 [*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:
- a) 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;
 - b) it will discharge its obligations under the Agreement and any annexure, appendix or schedule hereto with all due skill, care and diligence;
 - c) 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;
 - d) 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
 - e) 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] 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] 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] 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 28 [*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 re-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 13 [*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 22 – *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 FEES AND EXPENSES

- 9.1 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.
- 9.2 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].
- 9.3 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.

- 9.4 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.

10 INVOICING AND PAYMENT

- 10.1 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.
- 10.2 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 10.4 below.
- 10.3 All Fees and other sums payable under the Agreement are exclusive of VAT, which will be payable at the applicable rate.
- 10.4 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] days after date of receipt by Transnet of the statement together with all valid and undisputed Tax Invoices and supporting documentation.
- 10.5 Where the payment of any Tax Invoice, or any part thereof which is not in dispute, is not made in accordance with this clause 10, 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.

11 FEE ADJUSTMENTS

- 11.1 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.
- 11.2 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.
- 11.3 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 25 of this Master Agreement [*Dispute Resolution*].

12 INTELLECTUAL PROPERTY RIGHTS

12.1 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 license 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.

12.2 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 be 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.

12.3 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.

12.4 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.

12.5 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.

13 SERVICE PROVIDER'S PERSONNEL

13.1 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.

13.2 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.

13.3 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.

- 13.4 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.
- 13.5 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.

14 LIMITATION OF LIABILITY

- 14.1 Neither Party excludes or limits liability to the other Party for:
- a) death or personal injury due to negligence; or
 - b) fraud.
- 14.2 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 14.2 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.
- 14.3 Subject always to clauses 14.1 and 14.2 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.
- 14.4 Subject to clause 14.1 above, and except as provided in clauses 14.2 and 14.3 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.
- 14.5 If for any reason the exclusion of liability in clause 14.4 above is void or unenforceable, either Party's total liability for all loss or damage under the Agreement shall be as provided in clause 14.3 above.
- 14.6 Nothing in this clause 14 shall be taken as limiting the liability of the Service Provider in respect of clause 12 [*Intellectual Property Rights*] or clause 16 [*Confidentiality*].

15 INSURANCES

- 15.1 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.
- 15.2 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] days after date of policy renewals.
- 15.3 Subject to clause 15.4 below, if the Service Provider fails to effect adequate insurance under this clause 15, it shall notify Transnet in writing as soon as it becomes aware of the reduction or inadequate cover and Transnet may arrange or 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.
- 15.4 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 15.1 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] days prior written notice to that effect.

16 CONFIDENTIALITY

- 16.1 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.

16.2 The duties and obligations with regard to Confidential Information in this clause 16 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.

16.3 This clause 16 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.

17 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.

18 TERM AND TERMINATION

18.1 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.

18.2 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] days of receiving notice specifying the Default and requiring its remedy.

18.3 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.

18.4 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.

18.5 Transnet may cancel any schedule or Work Order hereto at any time on giving the Service Provider 30 [thirty] days' written notice.

18.6 Notwithstanding this clause 18, either Party may cancel the Agreement without cause by giving 30 [thirty] days prior written notice thereof to the other Party.

19 CONSEQUENCE OF TERMINATION

19.1 Termination in accordance with clause 18 [*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.

19.2 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.

19.3 To the extent that any of the Deliverables and property referred to in clause 19.2 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.

19.4 In the event that the Agreement is terminated by the Service Provider under clause 18.2 [*Term and Termination*], or in the event that a Work Order is terminated by Transnet under clause 18.5 [*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.

19.5 The provisions of clauses 1 [*Definitions*], 6 [*Warranties*], 12 [*Intellectual Property Rights*], 14 [*Limitation of Liability*], 16 [*Confidentiality*], 19 [*Consequence of Termination*], 25 [*Dispute Resolution*] and 29 [*Governing Law*] shall survive termination or expiry of the Agreement.

19.6 If either Party [**the Defaulting Party**] commits a material breach of the Agreement and fails to remedy such breach within 30 [thirty] Business 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.

19.7 Should:

- a) the Service Provider effect or attempt to effect a compromise or composition with its creditors; or
- b) either Party be provisionally or finally liquidated or placed under judicial management, whether provisionally or finally; or
- c) 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.

20 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.

21 FORCE MAJEURE

21.1 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, strike, lockout, industrial dispute, government action, laws or regulations, riots, terrorism or civil disturbance, defaults, delays or discontinuance on the part of independent contractors, suppliers, 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.

21.2 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] days of the act of *force majeure* first occurring, either Party may thereafter terminate the Agreement with immediate notice.

22 EQUALITY AND DIVERSITY

22.1 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.

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

23 NON-WAIVER

23.1 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.

23.2 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.

24 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.

25 DISPUTE RESOLUTION

25.1 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 [ten] Business Days of such dispute arising.

25.2 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.

25.3 Such dispute shall be finally resolved in accordance with the rules of AFSA by an arbitrator or arbitrators appointed by AFSA.

25.4 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 25.

25.5 This clause 25 is severable from the rest of the Agreement and shall remain in effect even if the Agreement is terminated for any reason.

25.6 This clause 25 shall not preclude either Party from seeking urgent relief in a court of appropriate jurisdiction, where grounds for urgency exist.

26 ADDRESSES FOR NOTICES

26.1 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: [●]

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

26.3 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] 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.

27 WHOLE AND ONLY AGREEMENT

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

27.2 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.

28 AMENDMENT AND CHANGE CONTROL

28.1 Any requirement for an amendment or change to the Agreement or to a Work Order shall only be valid if it is in writing, signed by both Parties and added to the Agreement as an addendum hereto.

28.2 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 25 [*Dispute Resolution*].

29 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.

29.1 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 25 [*Dispute Resolution*] above.

30 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.

ooo000ooo

"PREVIEW COPY ONLY"