



TRANSNET SOC LIMITED
(REGISTRATION NO.1990/000900/30)
TRADING AS
TRANSNET FREIGHT RAIL

NEC3 Engineering & Construction Short Contract
(ECS)

RFQ No. COAL-ERAC-FDT-015768 CIDB

UPGRADING OF MECHANICAL ENGINEERING WORKS
AT ERMELLO FUEL DEPOT, COVERING THE PUMP
HOUSE, TANK FARM AND DECANTING REFUELLING
AREAS

Opens on: 20 January 2015
Closing date: 03 February 2015(at 10h00)
Price Validity date: 30 April 2015

**Compulsory PPE to be worn during the site
briefing meeting.**

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Part T1: Tendering Procedures

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PART T1: TENDERING PROCEDURES

T1.1 TENDER NOTICE AND INVITATION TO TENDER

RFQ No COAL-ERAC-FDT-015768 CIDB

Transnet SOC Limited trading as Transnet Freight Rail invites tenderers for the **Mechanical Engineering Works Upgrade at Ermelo Diesel Storage and Dispensing Terminal.**

Tenderers should have a CIDB contractor grading designation of **JMELP2** or higher.

Queries relating to the administrative issues of these documents may be addressed to:

Mr. Nhlanhla Vilakazi

Tel. No. 013 656 4296

Fax. No. 013 656 4259

E-mail: Nhlanhla.Vilakazi@transnet.net

A compulsory clarification meeting with representatives of the Employer will take place on

Tuesday, 27th January 2015, from 11H00 – 13H00 a.m., at Transnet – Ermelo Terminal and thereafter proceed to view physical site.

(For direction please contact Thabo Nkoane (031) 361 5434 or 083 287 0866).

[Respondent to provide own PPE, transportation and accommodation].

Tenderers without a valid tender document in their possession will not be allowed to attend this compulsory clarification meeting/site inspections.

Tenderers shall be responsible for their own travel arrangements and cost regarding the site meeting and site inspections.

Transnet reserves the right to accept the whole or any part of a tender. Transnet also reserves the right to negotiate terms and conditions with all, or a short-listed group of contenders, or the preferred tenderer, should it be deemed necessary.

This tender closes punctually at 10h00 on Tuesday, 03 February 2015.

Tenders may only be submitted on the tender documentation that is issued. Telegraphic, telephonic, facsimile and late tenders will not be accepted. Tenderers are warned that a tender will be liable to disqualification should any attempt be made by a Tenderer either directly or indirectly to canvass any officer(s) or employees of Transnet Limited in respect of a tender between the date the tender is submitted and the date of the award. A Tenderer may, however, at any time communicate with the Chairperson of the Transnet Freight Rail Acquisition Council, at telephone no. 011 5449486 on any matter relating to his tender.

Envelopes must not contain documents relating to any tender other than that shown on the envelope. *No slips are to be attached to the tender documents. Any additional conditions must be embodied in an accompanying letter. Alterations, additions or deletions must not be made by the Tenderer to the actual tender documents.* Tenders submitted by Tenderers must be neatly bound and the inclusion of loose documents must be avoided.

Requirements for sealing, addressing, delivery, opening and assessment of tenders are stated in the Tender Data.

Compliance of tender(s) with Transnet's requirements is the sole responsibility of the Tenderer and any costs incurred in subsequent modifications to or replacement of equipment accepted by Transnet Limited in good faith on the grounds of certified compliance with specified standards by the contractor and in fact found to be inadequate in such respects, will be to the relevant Tenderer's account.

BROAD-BASED BLACK ECONOMIC EMPOWERMENT (BBBEE)

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

TRANSNET would therefore prefer to do business with business enterprises who share these same values and who are prepared to contribute to meaningful BBBEE initiatives (including and not limited to enterprise development, subcontracting and Joint Ventures) as part of their tender response.

Transnet would accordingly allow a "preference" in accordance with the 10% preference system, as per the Preferential Procurement Policy Framework Act 5 of 2000 (as amended) to companies who provide a BBBEE accreditation Certificate. All procurement and disposal transactions in excess of R30000 (Thirty thousand ZAR) will be evaluated accordingly. All transactions below R30000 will, as far as possible, be earmarked for Exempted Micro Enterprises (EME's).

TRANSNET consequently urges Respondents (Large enterprises and QSE's – see below) to have themselves duly accredited by any one of the Accreditation Agencies approved by SANAS (South African National Accreditation System, under the auspices of the DTI).

In terms of Government Gazette No. 32467, Notice No. 810 dated 31 July 2009, as from 1 February 2010 only BBBEE certificates issued by Accredited Verification Agencies of Verification Agencies that are in possession of a valid pre-assessment letter from South African National Accreditation System will be valid.

However accreditation certificates issued by non-accredited verification agencies before 01 February 2010 and which are still within their one (1) year validity period will still be acceptable, until their expiry date provided that the accreditation was done in accordance with the latest codes (i.e. those promulgated on 9 February 2007).

BBBEE Accreditation Certificates issued after the published date i.e. 01 February 2010, by a Verification Agency not approved by SANAS, will NOT be acceptable as from 01 February 2010.

Enterprises will be rated by such Accreditation Agencies based on the following:

- (a) **Large Enterprises (i.e. annual turnover >R35 million):**
 - Rating level based on all 7 (seven) elements of the BBBEE scorecard
 - Enterprises to provide BBBEE certificate and detailed scorecard (to be renewed annually)

(b) **Qualifying Small Enterprises – QSE (i.e. annual turnover >R5 million but <R35 million):**

- Rating based on any 4 (four) of the elements of the BBBEE scorecard
- Enterprises to provide BBBEE certificate and detailed scorecard (to be renewed annually)

(c) **Exempted Micro Enterprises – EME (i.e. annual turnover <R5m are exempted from being rated or verified):**

- Automatic BBBEE Level 4 rating, irrespective of race ownership, i.e. 100% BBBEE recognition
- Black ownership >50% or Black Women ownership >30% automatically qualify as Level 3 BBBEE rating, i.e. 110% BBBEE recognition
- EME's should provide documentary proof of annual turnover (i.e. audited financials) plus proof of Black ownership if Black ownership >50% or Black Women ownership >30% (to be renewed annually) from their Auditors / Accounting Officers

In addition to the above, Respondents who wish to enter into a Joint Venture (JV) or subcontract portions of the contract to BBBEE companies must state in their Tenders / Proposals the percentage of the total contract value which would be allocated to such BBBEE companies, should they be successful in being awarded any business. A rating certificate in respect of such BBBEE JV-partners and/or sub-contractors, as well as a breakdown of the distribution of the aforementioned percentage allocation must also be furnished with the tender response to enable Transnet to evaluate / adjudicate on all tenders received on a fair basis.

Each Respondent is required to furnish proof of its BBBEE status (Certificate and Detailed Scorecard) and ensure that the documentation is valid at the date of Tender Submission as stipulated above to TRANSNET.

Failure to submit your BBBEE Certificate and Detailed Scorecard will result in a score of zero being allocated for BBBEE evaluation.

Turnover: Indicate your company's most recent annual turnover:

R.....

- If annual turnover <R5m, please attach auditors / accounting officers letter confirming annual turnover and percentage black ownership as well as Black Women ownership
- If annual turnover >R5m please attach BBBEE certificate and detailed scorecard from an accredited rating agency.

The DTI has created an online **B-BBEE Registry** (<http://www.dti.gov.za>) in order to provide a central and standardized source of the B-BBEE status of all entities, and to facilitate the flow of this information amongst entities by providing a Unique Profile Number (UPN) per each listing. Existing and prospective suppliers are therefore urged to list their B-BBEE status on the DTI Registry. Hence, entities verified by DTI, will receive the following benefits:

- Their BBBEE status will be verified and confirmed by the DTI, before listing on the Registry
- Listing on the Registry will provide suppliers the option to market themselves on the DTI B-BBEE Opportunities Network. This is a search engine that is designed to help businesses find B-BBEE compliant entities who match specific requirements in terms of the nature of services/goods provided, region, B-BBEE status or other search criteria.

Transnet supports this DTI initiative and will use the DTI Registry to verify prospective and existing suppliers' BBBEE credentials.

Kindly provide Transnet with your DTI B-BBEE UNIQUE PROFILE NUMBER with all tender submissions.

DTI BBBEE UNIQUE PROFILE NUMBER:

Failure to submit your BBBEE information in terms of the above-mentioned clauses will result in a score of zero being allocated for BBBEE evaluation.

Suppliers and Tenderers are requested to duly complete the Supplier Declaration Form (SDF) and provide all the relevant supporting attachments as requested. Failure to provide the following may disqualify your tender submission:-

1. Duly completed SDF
2. BBBEE Certificate and detailed scorecard
3. Current tax clearance certificate

The Supplier and Tenderer shall furnish proof of the above to Transnet.

Transnet at its sole discretion may decide to allow certain price preferences in order to uplift the historically disadvantaged in terms of the PPFA (Act 5 of 2000).

Transnet insists on honesty and integrity beyond reproach at all times and will not tolerate any form of improper influencing, bribery, corruption, fraud, or any other unethical conduct on the part of bidders/ Transnet employees. If, in the opinion of Transnet's Chief Operating Officer, a tenderer/contractor/ supplier has or has caused to be promised, offered or given to any Transnet employee, any bribe, commission, gift, loan, advantage or other consideration, Transnet shall be entitled to revoke the tender/ contract by following its internal policies that govern the Exclusion process. In such an event Transnet will be entitled to place any Tenderer/Contractor/Supplier who has contravened the provisions of Transnet's business ethics on its List of Excluded Tenderers. This List will also be distributed to all other State Owned Enterprises and Government Departments.

Transnet invites its valued suppliers to report any allegations of fraud, corruption or other unethical activities to Transnet Tip-offs Anonymous, at any of the following addresses/contract numbers :-

- Toll free anonymous hotline – 0800 003 056
- Email – Transnet@tip-offs.com
- Fax number – 0800 007 788
- Freepost DN 298, Umhlanga Rocks, 4320

CONFIDENTIALITY IS GUARANTEED.

Part T1.2: Tender Data

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T1.2 TENDER DATA

The conditions of tender are the Standard Conditions of Tender as contained in Annexure F of the CIDB Standard for Uniformity in Construction Procurement. (See www.cidb.org.za) The Standard Conditions of Tender make several references to the Tender Data for details that apply specifically to this tender. The Tender Data shall have precedence in the interpretation of any ambiguity or inconsistency between it and the standard conditions of tender. Each item of data given below is cross-referenced to the clause in the Standard Conditions of Tender to which it mainly applies.

F.1.1 The employer is **Transnet Limited trading as Transnet Freight Rail**.

F.1.2 The tender documents issued by the employer comprise:

Part T1: Tendering procedure

T1.1 Tender notice and invitation to tender

- Suppliers Code of Conduct

T1.2 Tender data

Part T2: Returnable documents

T2.1 List of returnable documents

T2.2 Returnable Schedules

Part C1: Agreements and contract data

C1.1 Contract Data: General

C1.2 Contract data: The contractor's Offer and Acceptance

C1.3 Contract Data: Works Information

Part C2: Pricing data

C2.1 Pricing instructions

C2.2 Price list

Part C3: Scope of work

C3.1 Works Information

C3.2 Secondary specifications

C3.3 General Specifications

Part C4: Site information

C4 Site information

- Principal Controlled insurance

F.1.4 The employer's agent is:

Name: Thabo Nkoane

Maintenance: Chief Eng. Tech

Tel: (031) 361 5434

Cell no: 083 287 0866

E-mail: Ignatius.Nkoane@transnet.net

- F.2.11 The following Tenderers who are registered with the CIDB, or are capable of being so prior to the evaluation of submissions, in a contractor grading designation equal to or higher than a contractor grading designation determined in accordance with the sum tendered for a **3ME PE or higher** class of construction work, are eligible to submit tenders.
- a) contractors who have a contractor grading designation equal to or higher than a contractor grading designation determined in accordance with the sum tendered for a **3ME PE or higher** class of construction work; and
- F.2.11 (b) The arrangements for a compulsory clarification meeting are as stated in the Tender Notice and Invitation to Tender. Tenderers must sign the attendance list in the name of the tendering entity. Addenda will be issued to and tenders will be received only from those tendering entities appearing on the attendance list.
- F.2.12 If a Tenderer wishes to submit an alternative tender offer, the only criteria permitted for such alternative tender offer is that it demonstrably satisfies the Employer's standards and requirements, the details of which may be obtained from the Employer's Agent.
- Calculations, drawings and all other pertinent technical information and characteristics as well as modified or proposed Pricing Data must be submitted with the alternative tender offer to enable the Employer to evaluate the efficacy of the alternative and its principal elements, to take a view on the degree to which the alternative complies with the Employer's standards and requirements and to evaluate the acceptability of the pricing proposal. Calculations must be set out in a clear and logical sequence and must clearly reflect all design assumptions. Pricing Data must reflect all assumptions in the development of the pricing proposal.
- Acceptance of an alternative tender offer will mean acceptance in principle of the offer. It will be an obligation of the contract for the Tenderer, in the event that the alternative is accepted, to accept full responsibility and liability that the alternative offer complies in all respects with the Employer's standards and requirements.
- The modified Pricing Data must include an amount equal to 5% of the amount tendered for the alternative offer to cover the Employer's costs of confirming the acceptability of the detailed design before it is constructed. No alternative tender offers will be considered.
- F.2.13.2 Return all returnable documents to the employer after completing them in their entirety, either electronically (if they were issued in electronic format) or by writing in black ink.
- F.2.13.3 Parts of the tender offer communicated on paper shall be submitted as an original, plus one copy.
- F.2.13.5 The employer's address for delivery of tender offers and identification details to be shown on each tender offer package are:

If posted, the envelope must be addressed to:

**The Chairperson
Transnet Freight Rail Acquisition Council
P.O. Box 4244
JOHANNESBURG, 2000**

and must be dispatched in time for sorting by the Post Office to reach the Post Office Box indicated above, before the closing time of the tender.

If delivered by hand, to be deposited to the Transnet Freight Rail Acquisition Council tender box which is located in the foyer, and to be addressed as follows:

**The Chairperson
Transnet Freight Rail Acquisition Council
Ground Floor, Inyanda House
21 Wellington Road
ParkTown
JOHANNESBURG
2001**

It should also be noted that the above tender box is accessible to the public 24 hours per day, 7 days a week.

The measurements of the "tender slot" are 500mm wide x 100mm high, and Tenderers must please ensure that tender documents/files are not larger than the above dimensions. Tenders which are too bulky (i.e. more than 100mm thick) must be split into two or more files, and placed in separate envelopes.

Identification details

Tenders must be submitted before the closing hour on the date as shown in F.2.15 below, and must be enclosed in a sealed envelope which must have inscribed on the outside:

- (a) **Tender No**
- (b) **Description of work**
- (c) **Closing date of tender**

- F.2.13.6 A two-envelope procedure will not be followed.
- F.2.15 The closing time for submission of tender offers is as stated in the Tender Notice and Invitation to Tender.
- F.2.15 Telephonic, telegraphic, telex, facsimile or e-mailed tender offers will not be accepted.
- F.2.16 The tender offer validity period is **(28 April 2015)**
- F.2.19 Access shall be provided for the following inspections, tests and analysis:
Inspection of current arrangement foundation and steelwork condition and measurements in substation yards during the tender period after the site meeting and prior to the closing date of tender.

F.2.23 The Tenderer is required to submit with his tender:
Either a Certificate of Registration issued by the Construction Industry Development Board or a copy of the application Form for registration in terms of the construction Industry Development Board Act (Form F006) and an original valid Tax Clearance Certificate issued by the South African Revenue Services.

F.3.4 The time and location for opening of the tender offers are:
Time: **10:00** on the closing date of tender.
Location: **Transnet Freight Rail Acquisition Council,
Ground Floor,
Inyanda House,
21 Wellington Road,
Park Town,
JOHANNESBURG**

F.3.11.1 The procedure for the evaluation of responsive tenders is

The score for quality is to be calculated using the following formula:

$$W_Q = W_2 \times S_O / M_S$$

Where: W_2 is the percentage score given to quality and equals **70**
 S_O is the score for quality allocated to the submission under consideration
 M_S is the maximum possible score for quality in respect of a submission

The score for financial offer is calculated using Formula 2 (option 1) of SANS294

Formula	Comparison aimed at achieving	Option 1	Option 2
1	Highest price or discount	$A = (1 + \frac{P - P_m}{P_m})$	$A = P / P_m$
2	Lowest price or percentage commission / fee	$A = (1 - \frac{P - P_m}{P_m})$	$A = P_m / P$

where:

P_m = the comparative offer of the most favourable tender offer.
 P = the comparative offer of tender offer under consideration

Where: W_1 is the percentage score given to financial offer and equals 100 minus W_2 .

The score for quality and financial offer is to be combined, before the addition of the score for preference, as follows:

$$W_C = W_3 \times (1 + \frac{S - S_m}{S_m})$$

S_m

Where W_3 is the number of tender evaluation points for quality and financial offer and equals:

- 1) 90 where the financial value, VAT inclusive, of all responsive tenders received have a value in excess of R1,000,000; or

- 2) 80 where the financial value, VAT inclusive, of one or more responsive tender offers equals or is less than R1,000,000.

S is the sum of score for quality and financial offer of the submission under consideration.

S_m is sum of the score for quality and financial offer of the submission scoring the highest number of points

Up to 100 minus W_3 tender evaluation points will be awarded to Tenderers who complete the preference schedule and who are found to be eligible for the preference claimed. Tenderers shall submit BBBEE rating certificates with detailed scorecards that will be issued by the verification agencies matching their BBBEE ratings in accordance with the latest Department of Trade and Industry codes of Good Practice.

- F.3.11.3 Only those Tenderers who score a minimum score of **70** points in respect of the following quality criteria are eligible to submit tenders.

As prescribed in terms of the Preferential Procurement Policy Framework Act (PPPFA), Act 5 of 2000 and its Regulations, Respondents are to note the following:

- Functionality is included at a pre-qualification stage with a prescribed percentage threshold of **70**
- Proposals will be evaluated on price which will be allocated **80 or 90 points** and preference which will be allocated **20 or 10 points**, dependent on the value of the Services
- The 80/20 preference point system applies where the acquisition of the Goods or Services will be less than R1 000 000.00.
- If the 80/20 preference point system is stipulated and all Bids received exceed R1 000 000.00, the RFQ will be cancelled.
- The 90/10 preference point system applies where acquisition of the Goods or Services will exceed R1 000 000.00
- If the 90/10 preference point system is stipulated and all Bids received are equal to or below R1 000 000.00, the RFQ will be cancelled.
- In this RFQ, Transnet will apply 90/10 preference point system prescribed in the PPPFA.

In compliance with the Government Gazette No 34612, Notice No. 754 dated 23 September 2011, as from 1 October 2011 valid B-BBEE Verification Certificates must be issued by:

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

Enterprises will be rated by such agencies 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]:

In accordance with B-BBEE Codes of Good Practice [Statement 000, Section 4], any enterprise with an annual total revenue of R 5 million or less qualifies as an EME.

- Automatic rating of B-BBEE Level 4 irrespective of race or ownership
- Black ownership greater than 50% or Black Women ownership greater than 50% automatically qualify as B-BBEE Level 3

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, B-BBEE status level and validity date.

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

Transnet will accordingly allocate a maximum of **10 [ten] points** in accordance with the **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- B-BBEE Preference Points Claim Form** 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.

F3.11.4 Evaluation criteria of the tender to be met are:

Transnet will utilise the following criteria [not necessarily in this order] in choosing a Supplier/Service Provider, if so required:

Phase: 1

Administrative responsiveness - Completeness of response and returnable documents

Substantive responsiveness – Prequalification criteria, if any, must be met and whether the Bid materially complies with the scope and/or specification given

- An original or certified copy of a valid Tax Clearance Certificate
- All respondents **must be graded on a 3ME PE or higher grading category, which is a prequalification phase to proceed to Phase: 2**

Technical/Functional Evaluation.

- Letter of good standing issued by the Dept. of Labour
- Trade Test Certificate.

Phase: 2 Technical and Functional Evaluations

Technical threshold of **70%**: Compliance to specification / quality, previous performance, delivery lead-time.

- Clause by clause compliance to specification
- Relevant risk and safety plan provided to implement the project.
- Technical capacity and resources to deliver the project
- Relevant experience including contactable references.
- Submission of a measurable delivery period to complete the project

FUNCTIONAL EVALUATION	RATING					WEIGHT	TOTAL
	1	2	3	4	5		
Health, Risk and Safety Assessment Plan for the project to mitigate risks on the project						25%	
Compliance to specification in line with the scope of work						30%	
Previous Experience in similar projects						25%	
Delivery period						20%	
	TOTAL					100	

Criteria to be evaluated on the following scales as per CIDB BEST PRACTICE GUIDELINES #A4:

a) Poor	=	20 = 1
Satisfactory	=	40 = 2
Good	=	60 = 3
Very good	=	80 = 4
Excellent	=	100 = 5

Health, Risk & Safety Plan

A detailed plan indicating how risks and safety will be managed in a site must have the following key points depending on project requirements:

- a) Safe working procedures.
 - Construction Work supervisor
 - Subordinate construction work supervisor
 - Construction Safety officer
 - Health and safety representative
- b) SHE Organisation
 - Health and safety committees
 - Composition
 - Frequency of meetings
 - Minutes of meetings
 - Legal compliance audits
 - Audit reports
 - Frequency of audits
 - Finding and analysis
 - Corrective action
- c) Risk Assessment/Management
 - Task descriptions
 - Risk identification, analysis, mitigating steps, monitoring steps and review plan.
 - Risk assessment
- d) Education and training
 - Induction training
 - Site specific training
 - Certificate of competence
- e) Emergency planning (Evacuation plan)

- Client procedure
- Site procedure
- f) SHE communications
 - Safety/toolbox talks
 - Incident recall
- g) Safe working Procedures and Methods
 - Method statements.
 - Safe operating procedures
 - Task/job observations
- h) Personal Protective Equipment and Clothing
 - PPE required after all controls have been considered
 - PPE proof of issue
- i) Project security
 - Security risks identified
 - Access control
- j) Incident management
- k) Fall protection plan
- l) Substance abuse testing
- m) Logbooks and registers
- n) Health and Safety Costs

Phase: 3

This is a weighted evaluation system based on **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

- 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:

¹ Only unconditional discounts will be taken into account during evaluation. A discount which has been offered conditionally will, despite not being taken into account for evaluation purposes, be implemented when payment is effected.

B-BBEE Status Level of Contributor	Number of points (90/10) system)	Number of points (80/20 system)
1	10	20
2	9	18
3	8	16
4	6	12
5	4	8
6	3	6
7	2	4
8	1	2
Non-compliant contributor	0	0

Disclaimers

Transnet is not committed to any course of action as a result of its issuance of this RFQ and/or its receipt of a Quotation in response to it. Please note that Transnet reserves the right to:

- modify the RFQ's goods / service(s) and request Respondents to re-bid on any changes;
- reject any Quotation which does not conform to instructions and specifications which are detailed herein;
- disqualify Quotations submitted after the stated submission deadline;
- not necessarily accept the lowest priced Quotation;
- reject all Quotations, if it so decides;
- place an order in connection with this Quotation at any time after the RFQ's closing date;
- award only a portion of the proposed goods / service/s which are reflected in the scope of this RFQ;
- split the award of the order/s between more than one Supplier/Service Provider; or
- make no award at all.

F.3.13.1 Tender offers will only be accepted if:

- a) The Tenderer has in his or her possession an original valid Tax Clearance Certificate issued by the South African Revenue Services or has made arrangements to meet outstanding tax obligations.
- b) The Tenderer is registered with the Construction Industry Development Board in an appropriate contractor grading designation;
- c) The Tenderer or any of its directors is not listed on the Register of Tender Defaulters in terms of the Prevention and Combating of Corrupt Activities Act of 2004 as a person prohibited from doing business with the public sector.
- d) The Tenderer has not:
 - i) abused the Employer's Supply Chain Management System; or
 - ii) failed to perform on any previous contract and has been given a written notice to this effect; and
- e) has completed the Compulsory Enterprise Questionnaire and there are no conflicts of interest which may impact on the Tenderer's ability to perform the contract in the best interests of the employer or potentially compromise the tender process.

F.3.18 The number of paper copies of the signed contract to be provided by the employer is two.

The additional conditions of tender are:

1. The Tenderer is deemed to have satisfied himself before tendering as to the correctness and sufficiency of his tender for the *works* and of the prices stated in the priced Activity Schedule in the *works* Information. The rates and prices (except in so far as otherwise provided in the Tender) collectively cover full payment for the discharge of all his obligations under the Contract and all matters and things necessary for the proper completion of the *works*.
2. ***The tenders shall be completed in black ink only.***

3. Additional Tender Conditions

- 3.1 Contractors shall duly fill in the attached 'Bill of Quantities'. The prices shall be fixed for the duration of the contract and no escalation will be allowed. Items not reflected in the 'Bill of Quantities', but covered in the project specification or agreed at site meetings, shall be added to the 'Bill of Quantities' by the Contractor and quoted for accordingly.
- 3.2 Tenderers shall submit qualifications of the staff that will be performing the work or project. Only qualified technical personnel shall perform the works on electrical equipment or installation thereof.
- 3.3 **Clause by clause statement of compliance to General conditions of contract and technical specifications:**
- 3.4 *Tenderers shall indicate clause-by-clause compliance to technical specifications. This shall take the form of a separate document listing all the specifications and*

clause numbers indicating the individual statement of compliance or non-compliance.

- 3.5 *Tenderers shall motivate the statement of non-compliance.*
- 3.6 *Number the specification according to the tender documentations issued by Transnet.*
- 3.7 *The heading and sub-heading must be listed next to the specification number.*
- 3.8 *Indicate statement of compliance and motivate (give reasons for non-compliance)*
- 3.9 *Indicate other statements that do not require compliance.*
- 3.10 *Where equipment offered does not comply with standards or publications referred to in the specification, Contractors shall state which standards apply and submit a copy in English or certified translation.*
- 3.11 **The Tenderer shall provide a provisional Gantt Chart or a similar bar chart showing when the work will be done and energised.**
- 3.12 Contractors shall submit descriptive literature consisting of detailed technical specifications, general constructional details and principal dimensions, together with clear illustrations of the equipment offered.
- 3.13 During the duration of the contract period, the successful Contractor shall be required to inform the Project Manager / Supervisor of any changes to equipment offered and submits detailed information on replacement equipment for approval prior to it being used on this contract.
- 3.14 Contractors shall submit equipment type test certificates as specified on the contract. These shall be in English or certified translation.

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Part T2: Returnable Documents

PART T2: RETURNABLE DOCUMENTS / SCHEDULES

T2.1 LIST OF RETURNABLE DOCUMENTS

The tenderer must complete the following returnable documents:

1.0 Returnable documents required for tender evaluation purposes

No	Returnable Documents
1	Letter of Good Standing with the Compensation Commissioner
2	Safety Plan and Fall Protection Plan in accordance with the Construction Regulations of 2003 and Transnet's E4E
3	Quality Assurance/control Plan
4	Environmental Management Plan
5	Certified copy of CIDB certification
6	Proposed Organization and Staffing
7	Certified Copy of Share Certificates CK1 & CK2
8	Certified Copy of Certificate of Incorporation and CM29 and CM9
9	Certified Copy of Identity Documents of Shareholders / Directors / Members (where applicable)
10	Original or certified cancelled cheque OR original or certified letter from the bank verifying banking details (with bank stamp and signature)
11	Current and original or certified Tax Clearance Certificate
12	Certified VAT registration certificate
13	A signed letter from the Accountant/Auditor confirming most recent annual turnover and percentage black ownership in the company AND/OR certified BBBEE certificate and scorecard from an accredited rating agency
14	Programme and method statement
15	Statement of compliance or non-compliance with all clauses of the Scope of Works and all the technical specifications. The clause-by-clause statement of compliance shall take the form of a separate document listing all the clause numbers of all the above specifications indicating the individual statement of compliance or non-compliance. Tenderers shall motivate a statement of non-compliance.

T2.2 RETURNABLE SCHEDULES

The tenderer must complete the following returnable schedules:

2.0 Returnable Schedules required for tender evaluation purposes

No	Returnable schedules
1	Certificate of Attendance of Information Briefing Session & site inspection
2	Certificate of Authority for Signatory (Resolution by Board)
3	Schedule of Tenderers experience
4	Schedule of Subcontractors (where applicable)
5	Certificate of authority for joint ventures (where applicable)
6	Schedule of Plant and Equipment (Tools and Machinery)
7	Foreign Exchange Rate Information (where applicable)
8	Record of Addenda to Tender Document
9	Supplier declaration form Duly completed SDF (Supplier declaration form)
10	Compulsory enterprise Questionnaire
11	Approach paper, which responds to the proposed scope of works.
12	Experience of Key Staff in the form of Curriculum Vitae
13	Transnet SOC limited contractual safety clauses which will form part of any resulting contract.
14	Proposed amendments and qualifications
15	Labour Payment Schedule

3.0 Returnable Schedules that will be incorporated into the contract

- 3.1 Certificate of attendance of information briefing session/site inspection
- 3.2 Certificate of Authority for Signatory (Resolution by Board)
- 3.3 Schedule of Tenderers experience
- 3.4 Schedule of Sub-contractors
- 3.5 Certificate of authority for joint ventures (where applicable)
- 3.6 Schedule of Plant and equipment
- 3.7 Foreign Exchange Rate Information (where applicable)
- 3.8 Record of Addenda to Tender Document
- 3.9 Supplier declaration form duly completed (SDF)
- 3.10 Compulsory Enterprise Questionnaire
- 3.11 Approach paper, which responds to the proposed scope of works.
- 3.12 Experience of key staff in the form of Curriculum Vitae
- 3.13 Transnet SOC Limited contractual safety clauses which will form part of any resulting contract
- 3.14 Proposed amendments and qualifications.
- 3.15 Labour Payment Schedule.

Part T2: Returnable Schedules

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CERTIFICATE OF ATTENDANCE AT INFORMATION BRIEFING SESSION/SITE INSPECTION

This is to certify that

_____ (Tenderer)
of _____

_____ (address)

was represented by the person(s) named below at the compulsory site meeting held for all tenderers at _____ (location) on _____ (date), starting at _____. We acknowledge that the purpose of the meeting was to acquaint ourselves with the Site of the Works and/or matters incidental to doing the work specified in the tender documents in order for us to take account of everything necessary when compiling our rates and prices included in the tender.

Particulars of person(s) attending the meeting/site inspections:

Name: _____ Signature _____

Capacity: _____

Name: _____ Signature _____

Capacity: _____

Attendance of the above persons at the meeting is confirmed by the Employer's representative, namely:

Name: _____ Signature _____

Capacity: _____ Date and time _____

RESOLUTION OF BOARD OF DIRECTORS

Name of firm _____

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

FULL NAME(S) _____

_____**SIGNATURE** _____

_____in his capacity of _____ is/are hereby authorised to enter into, sign and
execute and complete any documents relating to Tenders and/or Contracts for the supply of goods
and services.

Confirm: Date _____

FULL NAME _____**CHAIRMAN****FULL NAME** _____**SECRETARY**

Certified true copy:

SIGNED AT _____ ON THIS _____ DAY OF _____ 20 _____

SCHEDULE OF THE TENDERER'S EXPERIENCE

The following is a statement of similar work successfully executed by myself/ourselves:

Employer, contact person and telephone number	Description of contract	Value of work inclusive of VAT (Rand)	Date completed
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Signed _____

Date _____

Name _____

Position _____

Tenderer _____

SCHEDULE OF PROPOSED SUBCONTRACTORS

We notify you that it is our intention to employ the following Subcontractors for work in this contract.

If we are awarded a contract we agree that this notification does not change the requirement for us to submit the names of proposed Subcontractors in accordance with requirements in the contract for such appointments. If there are no such requirements in the contract, then your written acceptance of this list shall be binding between us.

We confirm that all subcontractors who are contracted to construct a house are registered as home builders with the National Home Builders Registration Council.

	Name and address of proposed Subcontractor	Nature and extent of work	Previous experience with Subcontractor.
1.			
2.			
3.			
4.			
5.			

Signed _____

Date _____

Name _____

Position _____

Tenderer _____

SCHEDULE OF PLANT AND EQUIPMENT

The following are lists of major items of relevant Plant and Equipment that I/we presently own or lease and will have available for this contract or will acquire or hire for this contract if my/our tender is accepted.

(a) Details of major Plant and Equipment that is owned by and immediately available for this contract.

Quantity	Description, size, capacity, etc.

Attach additional pages if more space is required.

(b) Details of major Plant and Equipment that will be hired, or acquired for this contract if my/our tender is acceptable.

Quantity	Description, size, capacity, etc.

Attach additional pages if more space is required.

Signed _____ Date _____

Name _____ Position _____

Tenderer _____

FOREIGN EXCHANGE RATE INFORMATION REQUIRED TO BE FURNISHED BY TENDERERS.

1. Particulars of the exchange rate on which prices are based:

_____ (Foreign currency) equals R_____ (South African currency)

Note: Tenderers who offer imported material shall base their tenders on the selling rate of exchange that ruling on the last working day of the month prior to the closing date of tenders.

2. The percentage of the tender prices which is to be remitted by the Tenderers from South Africa to another country is _____% of the f.o.b./c. and f.i.r. in bond price (delete those not applicable).

- Note:**
- (1) The percentage quoted above will be deemed to apply even though a portion only of the item(s) tendered for is accepted.
 - (2) Adjustment in respect of variation in exchange rate will be allowed only on the percentage of the tendered price quoted above.

3. The tendered price shall be computed at the rate of exchange stated by the Tenderer in paragraphs 1 and 2 above as applied to the percentage of the tendered price quoted.

4. Transnet Freight Rail will accept for its account, in respect of such percentage of the tendered price as will be affected by the rate of exchange, any variation between the rate mentioned in paragraph 1 above, and the rate ruling at the date when payment for the goods is made by Transnet Freight Rail; provided that if the Contractor is required to remit the whole or portion of the contract price to another country in payment for goods or portion thereof prior to receiving payment from Transnet Freight Rail, the date(s) of such remittance(s) shall be deemed to be the date(s) of payment by Transnet Freight Rail for the purposes of this paragraph.

5. In the absence of a specific indication by the Contractor at the time of tendering that the proviso to paragraph 3 will apply, it will be assumed that the Contractor desires the adjustment to be effected by reference to the date on which actual payment is made by Transnet Freight Rail.

6. (a) The Contractor shall, if so required, furnish documentary proof to establish that the percentage of the contract price specified by him in paragraph 2 has actually been remitted to another country and the rate of exchange at which that was done.
- (b) Whenever the Contractor is required to remit the whole or portion of the contract price, to another country as contemplated in the proviso to paragraph 2 above, he shall notify Transnet Freight Rail forthwith and furnish documentary evidence of such remittance and of the rate of exchange at which that was done.
7. Invoices in respect of goods supplied must reflect the amount remitted or to be remitted to another country and the amount to be retained in South Africa.

8. The Contractor shall take out forward cover for all imported materials and services within 14 days of award of the contract. Proof shall be submitted to the Project Manager of the contract. The cost of forward cover shall be invoiced separate from the contract invoices and shall not be included in the tender price.

SIGNATURE OF TENDERER

DATE: _____

WITNESSES:

1. _____

2. _____

ADDRESS:

RECORD OF ADDENDA TO TENDER DOCUMENTS

We confirm that the following communications received from the Employer before the submission of this tender offer, amending the tender documents, have been taken into account in this tender offer:

	Date	Title or Details
1.		
2.		
3.		
4.		
5.		
6.		
7.		
8.		
9.		
10.		

Attach additional pages if more space is required.

Signed _____

Date _____

Name _____

Position _____

Tenderer _____

TRANSNET SUPPLIER DECLARATION/APPLICATION

The Financial Director or Company Secretary

Transnet Vendor Management has received a request to load your company on to the Transnet vendor database. Please furnish us with the following to enable us to process this request:

2. Complete the "Supplier Declaration Form" (**SDF**) on page 2 of this letter
3. **Original** cancelled cheque **OR** letter from the bank verifying banking details (**with bank stamp**)
4. **Certified** copy of Identity document of Shareholders/Directors/Members (where applicable)
5. **Certified** copy of certificate of incorporation, CM29 / CM9 (name change)
6. **Certified** copy of share Certificates of Shareholders, CM17 / CM2 (if CC)
7. A letter with the company's letterhead confirming physical and postal addresses
8. **Original** or **certified** copy of SARS Tax Clearance certificate and Vat registration certificate
9. A signed letter from the Auditor / Accountant confirming most recent annual turnover and percentage black ownership in the company **AND/OR** BBBEE certificate and detailed scorecard from an accredited rating agency (SANAS member).

NB: ▪ **Failure to submit the above documentation will delay the vendor creation process.**

▪ **Where applicable, the respective Transnet business unit processing your application may request further information from you. E.g. proof of an existence of a service/business contract between your business and the respective Transnet business unit etc.**

IMPORTANT NOTES:

- a) **If your annual turnover is less than R5 million**, then in terms of the DTI codes, you are classified as a an Exempted Micro Enterprise (EME). If your company is classified as an EME, please include in your submission, a signed letter from your Auditor / Accountant confirming your company's most recent annual turnover is less than R5 million and percentage of black ownership and black female ownership in the company **AND/OR** BBBEE certificate and detailed scorecard from an accredited rating agency (e.g. permanent SANAS Member), should you feel you will be able to attain a better BBBEE score.
- b) **If your annual turnover is between R5 million and R35million**, then in terms of the DTI codes, you are classified as a Qualifying Small Enterprise (QSE) and you claim a specific BBBEE level based on any 4 of the 7 elements of the BBBEE score-card, please include your BEE certificate in your submission as confirmation of your status.
NB: BBBEE certificate and detailed scorecard should be obtained from an accredited rating agency e.g. permanent SANASMember).
- c) **If your annual turnover is in excess of R35million**, then in terms of the DTI codes, you are classified as a Large Enterprise and you claim a specific BEE level based on all seven elements of the BBBEE generic score-card. Please include your BEE certificate in your submission as confirmation of your status.
NB: BBBEE certificate and detailed scorecard should be obtained from an accredited rating agency (permanent SANASMember).

- d) **To avoid PAYE tax being automatically deducted from any invoices received from you**, you must also contact the Transnet person who lodged this request on your behalf, so as to be correctly classified in terms of Tax legislation.
- e) Unfortunately, **No payments can be made to a vendor** until the vendor has been registered, and no vendor can be registered until the vendor application form, together with its supporting documentation, has been received and processed.
- f) **Please return the completed Supplier Declaration Form (SDF) together with the required supporting documents mentioned above to the Transnet Official who is intending to procure your company's services/products in order that he/she should complete and Internal Transnet Departmental Questionnaire before referring the matter to the appropriate Transnet Vendor Master Control.**

Regards,

Transnet Vendor/Supplier Management [please substitute this with your relevant Transnet department before sending this document out]

Supplier Declaration Form

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 Web Site Address							
Bank Name				Bank Account Number			
Postal Address						Code	
Physical Address						Code	
Contact Person							
Designation							
Telephone							
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 Path					
Name				Date	
Signature				Telephone No.	

NB: Please return the completed Supplier Declaration Form (SDF) together with the required supporting documents mentioned above to the Transnet Official who is intending to procure your company's services/products.

2. VENDOR TYPE OF BUSINESS

(Please tick as applicable) (* - Minimum requirements)

2.1 Indicate the business sector in which your company is involved/operating:			
Agriculture		Mining and Quarrying	
Manufacturing		Construction	
Electricity, Gas and Water		Finance and Business Services	
Retail, Motor Trade and Repair Services		Wholesale Trade, Commercial Agents and Allied Services	
Catering, accommodation and Other Trade		Transport, Storage and Communications	
Community, Social and Personal Services		Other (Specify)	
Principal Business Activity *			
Types of Services Provided			
Since when has the firm been in business?			

2.2	What is your company's annual turnover (excluding VAT)? *								
<R20k	>R20k <R0.3m	>R0.3m <R1m	>R1m <R5m	>R6m <R10m	>R11m <R15m	>R16m <R25m	>R26m <R30m	>R31m <R34m	>R35m
2.3	Where are your operating/distribution centres situated *								

3. VENDOR OWNERSHIP DETAIL

(Please tick as applicable)

(* - Minimum requirements)

3.1	Did the firm previously operate under another name? *		
YES		NO	
3.2	If Yes state its previous name:		
Registered Name			
Trading Name			
3.3	Who were its previous owners / partners / directors?*		
SURNAME & INITIALS		ID NUMBERS	

3.4	List Details of current partners, proprietors and shareholders by name, identity number, citizenship, status and ownership as relevant: *							
SURNAME & INITIALS	IDENTITY NUMBER	CITI-ZENSHIP	HDI	DIS - ABLED	GENDER	DATE OF OWNERSHIP	% OWNED	% VOTING

3.5	List details of current directors, officers, chairman, secretary etc. of the firm: *					
SURNAME & INITIALS	IDENTITY NUMBER	TITLE	DIS - ABLED	GENDER	% OF TIME DEVOTED TO THE FIRM	CONTACT NUMBER

3.6	List details of firms personnel who have an ownership interest in another firm: *					
SURNAME & INITIALS	IDENTITY NUMBER	NAME & ADDRESS OF OTHER FIRM	TITLE IN OTHER FIRM	% OWNED	TYPE OF BUSINESS OF OTHER FIRM	

4. VENDOR DETAIL

(Please tick as applicable)

(* - Minimum requirements)

4.1	How many personnel does the firm employ? *					
	BLACK	WHITE	COLOURED	INDIAN	OTHER	TOTAL
Permanent						
Part Time						

4.1.1	In terms of above kindly provide numbers on women and disabled personnel? *					
	BLACK	WHITE	COLOURED	INDIAN	OTHER	TOTAL
Women						
Disabled						

4.2	Provide Details of Contact Person/s Responsible for Broad Based Black Economic Empowerment (BBBEE) in the Company *					
	SURNAME	INITIALS	DESIGNATION	TELEPHONE NO.		

4.2.1	Is your company a value adding supplier (i.e. registered as a vendor under the VAT Act of 1991, where NPAT + total labour cost > 25% of total revenue)?					
YES		NO				

4.2.2	Is your company a recipient of Enterprise Development Contributions?*					
YES		NO				

4.2.3	May the above mentioned information be shared and included in Transnet Supp Database for future reference? *					
YES		NO				

4.2.4	If you are successful in the tender/contract (where applicable) and this is awarded to your company / organisation, will this have a positive impact on your employment plans? *					
YES		NO				

4.2.5	If yes (above) kindly provide the following information:					
	BLACK	WHITE	COLOURED	INDIAN	OTHER	TOTAL

Permanent						
Part Time						

4.2.6 In terms of above kindly provide numbers on woman and disabled personnel:

	BLACK	WHITE	COLOURED	INDIAN	OTHER	TOTAL
Women						
Disabled						

4.2.7 Are any of your members/shareholders/directors ex employees of Transnet

YES **NO**

4.2.8 Are any of your family members employees of Transnet

YES **NO**

4.2.9 If Yes to points 4.2.7 & 4.2.8, list details of employees/ex-employees

SURNAME & INITIALS	IDENTITY NUMBER	NAME & ADDRESS OF OTHER FIRM	TITLE IN OTHER FIRM	% OWNED	TYPE OF BUSINESS OF OTHER FIRM

Internal Transnet Departmental Questionnaire (for office use only)

Section 1: To be completed by the Transnet Requesting / Sourcing Department

TFR		TRE		TNT		TPL		TNPA		TRN	
Creat		Amer		Block		Unbloc		Once-Off / Emergency			
Exten		Delete		Undel							

Supplier's trading name

Supplier's registered name

Please indicate if the Supplier has a contract with sourcing Transnet OD

Yes

No

If yes please submit a copy of the letter of award

a) What is being procured from the supplier?

i. Products only	Yes		No	
ii. Services only	Yes		No	
iii. Labour only	Yes		No	
iv. Mix of services and products	Yes		No	
v. Mix of services and labour	Yes		No	

b) If your answer is YES to questions II, III, IV or V in paragraph a) above, please indicate whether the relevant PAYE questionnaires have been forwarded to the appropriate Transnet Operational Divisions' decision making bodies/ Strategic Supply Management team for a directive /decision on tax withholding from payments to this supplier.

Yes

No

c) If your reply to (b) is "NO", please furnish

d) Certification and Approval of proposed Vendor Creation/Unblocking/Other Changes by Transnet Official with Appropriate Delegated Authority :

I HEREBY CERTIFY THAT THE TRANSNET DETAILED PROCUREMENT PROCESS (DPP) / PROCUREMENT MECHANISM HAS IN ALL RESPECTS BEEN ADHERED TO AND I THEREFORE APPROVE THE PROPOSED VENDOR CREATION/APPROVAL/OTHER CHANGES TO BE EFFECTED ON THE VENDOR MASTER

		Grade		Date								Signature		
				Y	Y	Y	Y	Y	M	M	D	D		
Tel No:				Fax										

Section 2: To be completed by the BEE Department (this section is for											
NARROW BASED (NB)				BROADBASED (BBBEE)							
BEE O	BWBE	DPBE	MR	CONTR. LEVEL	ME: <R5m	QSE: >R5m <R35m	LARGE: >R35m	VALIDITY DATE			

		Grade		Date								Signature		
				Y	Y	Y	Y	Y	M	M	D	D		
				Y	Y	Y	Y	Y	M	M	D	D		

COMPULSORY ENTERPRISE QUESTIONNAIRE

The following particulars must be furnished. In the case of a joint venture, separate enterprise questionnaires in respect of each partner must be completed and submitted.

Section 1: Name of enterprise:

Section 2: VAT registration number, if any:

Section 3: CIDB registration number, if any:

Section 4: Particulars of sole proprietors and partners in partnerships

Name*	Identity number*	Personal income tax number*

* Complete only if sole proprietor or partnership and attach separate page if more than 3 partners

Section 5: Particulars of companies and close corporations

Company registration number

Close corporation number

Tax reference number

Section 6: Record in the service of the state

Indicate by marking the relevant boxes with a cross, if any sole proprietor, partner in a partnership or director, manager, principal shareholder or stakeholder in a company or close corporation is currently or has been within the last 12 months in the service of any of the following:

- | | |
|--|---|
| <input type="checkbox"/> a member of any municipal council | <input type="checkbox"/> an employee of any provincial department, national or provincial public entity or constitutional institution within the meaning of the Public Finance Management Act, 1999 (Act 1 of 1999) |
| <input type="checkbox"/> a member of any provincial legislature | <input type="checkbox"/> a member of an accounting authority of any national or provincial public entity |
| <input type="checkbox"/> a member of the National Assembly or the National Council of Province | <input type="checkbox"/> an employee of Parliament or a provincial legislature |
| <input type="checkbox"/> a member of the board of directors of any municipal entity | |
| <input type="checkbox"/> an official of any municipality or municipal entity | |

If any of the above boxes are marked, disclose the following:

Name of sole proprietor, partner, manager, shareholder or stakeholder	Name of institution, public office, board or organ of state and position held	Status of service (tick appropriate column)	
		Current	Within last 12 months

*insert separate page if necessary

Section 7: Record of spouses, children and parents in the service of the state

Indicate by marking the relevant boxes with a cross, if any spouse, child or parent of a sole proprietor, partner in a partnership or director, manager, principal shareholder or stakeholder in a company or close corporation is currently or has been within the last 12 months been in the service of any of the following:

- | | |
|---|---|
| <input type="checkbox"/> a member of any municipal council | <input type="checkbox"/> an employee of any provincial department, national or provincial public entity or constitutional institution within the meaning of the Public Finance Management Act, 1999 (Act 1 of 1999) |
| <input type="checkbox"/> a member of any provincial legislature | <input type="checkbox"/> a member of an accounting authority of any national or provincial public entity |
| <input type="checkbox"/> a member of the National Assembly or the National Council of Provinces | <input type="checkbox"/> an employee of Parliament or a provincial legislature |
| <input type="checkbox"/> a member of the board of directors of any municipal entity | |
| <input type="checkbox"/> an official of any municipality or municipal entity | |

Name of spouse, child or parent	Name of institution, public office, board or organ of state and position held	Status of service (tick appropriate column)	
		Current	Within last 12 months

*insert separate page if necessary

The undersigned, who warrants that he / she is duly authorized to do so on behalf of the enterprise:

- i) authorizes the Employer to obtain a tax clearance certificate from the South African Revenue Services that my / our tax matters are in order;
- ii) confirms that the neither the name of the enterprise or the name of any partner, manager, director or other person, who wholly or partly exercises, or may exercise, control over the enterprise appears on the Register of Tender Defaulters established in terms of the Prevention and Combating of Corrupt Activities Act of 2004;
- iii) confirms that no partner, member, director or other person, who wholly or partly exercises, or may exercise, control over the enterprise appears, has within the last five years been convicted of fraud or corruption;
- iv) confirms that I / we are not associated, linked or involved with any other tendering entities submitting tender offers and have no other relationship with any of the tenderers or those responsible for compiling the scope of work that could cause or be interpreted as a conflict of interest; and
- iv) confirms that the contents of this questionnaire are within my personal knowledge and are to the best of my belief both true and correct.

Signed _____ Date _____

Name _____ Position _____

Enterprise name _____

EVALUATION SCHEDULE: APPROACH PAPER

The approach paper must respond to the scope of work and outline the proposed approach / methodology including that relating to health and safety. The approach paper should articulate what value add the tenderer will provide in achieving the stated objectives for the project.

The tenderer must as such explain his / her understanding of the objectives of the assignment and the Employer's stated and implied requirements, highlight the issues of importance, and explain the technical approach they would adopt to address them. The approach paper should explain the methodology which are to be adopted, demonstrate the compatibility of those methodology with the proposed approach. The approach should also include a quality plan which outlines processes, procedures and associated resources, applied by whom and when, to meet the requirements and indicate how risks will be managed and what contribution can be made regarding value management.

The tenderer must attach his / her approach paper to this page. The approach paper should not be longer than 8 pages.

The scoring of the approach paper will be as follows:

	Technical approach and methodology
Poor (score 40)	The technical approach and / or methodology is poor / is unlikely to satisfy project objectives or requirements. The tenderer has misunderstood certain aspects of the scope of work and does not deal with the critical aspects of the project.
Satisfactory (score 70)	The approach is generic and not tailored to address the specific project objectives and methodology. The approach does not adequately deal with the critical characteristics of the project. The quality plan, manner in which risk is to be managed etc is too generic.
Good (score 90)	The approach is specifically tailored to address the specific project objectives and methodology and is sufficiently flexible to accommodate changes that may occur during execution. The quality plan and approach to managing risk etc is specifically tailored to the critical characteristics of the project.
Very good (score 100)	Besides meeting the "good" rating, the important issues are approached in an innovative and efficient way, indicating that the tenderer has outstanding knowledge of state-of-the-art approaches. The approach paper details ways to improve the project outcomes and the quality of the outputs

The undersigned, who warrants that he / she is duly authorized to do so on behalf of the enterprise, confirms that the contents of this schedule are within my personal knowledge and are to the best of my belief both true and correct.

Signed

Date

Name

Position

Tenderer

CURRICULUM VITAE OF KEY PERSONNEL

Name:	Date of birth:
Profession:	Nationality:
Qualifications:	
Professional registration number:	
Name of employer (firm):	
Current Position:	Years with the firm:
Employment record: (list in chronological order starting with earliest work experience)	

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Experience record pertinent to required service

Certification:

I, the undersigned, certify that to the best of my knowledge and belief, this data correctly describes me, my qualifications and my experience.

[Signature of person named in schedule]

Date

"PREVIEW COPY ONLY"

TRANSNET SOC LIMITED / CONTRACTORS / SUB-CONTRACTORS**CONTRACTUAL SAFETY CLAUSES WHICH WILL FORM PART OF ANY RESULTING CONTRACT**

The parties agree on the following arrangements according to section 37 (2) of the Occupational Health and Safety Act, 1993 (Act 85 of 1993) to ensure compliance by the mandatory with provisions of the Act.

- 1) That the Contractor is an "employer" in his own right as defined in section 1 of Act 85 of 1993 and that he must fulfil all his obligations as an employer in terms of the Act.
- 2) The Contractor shall comply with the requirements of Act 85 of 1993 in its entirety.
- 3) Where special permits are required, such as electrical switching, hot work permits, etc. the Contractor shall obtain them from a person designated by Transnet SOC Limited for this purpose, and all requirements of the Contractor must rigidly comply with the permit.
- 4) The Contractor shall conduct a risk assessment of the work to be performed by a competent person prior to the commencement of work, to identify risks and hazards that persons may be exposed to, analyse and evaluate identified hazards.
- 5) The Contractor shall have a documented Health and Safety Plan based on the risks and hazards identified before commencement of work.
- 6) The Health and Safety Plan shall include the following:
 - 6.1 The safety management structure to be instituted with all appointments in terms of the Act and Regulations
 - 6.2 The safe working methods and procedures to be implemented to ensure work are performed in compliance to the Act.
 - 6.3 The safety equipment, devices and clothing to be made available by the Contractor to his employees.
 - 6.4 The site access control measures pertaining to health and safety to be implemented.
 - 6.5 Control measures for ensuring that the Health and Safety Plan is maintained and monitored for the duration of the contract.
- 7) The Contractor shall ensure that all work is performed under the close supervision of a person trained to understand the hazards associated with the work performed and who has authority to ensure that the necessary precautionary measures are implemented.
- 8) The Contractor must appoint a Health and Safety Co-ordinator to liaise with Transnet SOC Limited on matters pertaining to occupational health and safety.
- 9) The appointed Safety Co-ordinator must liaise at least once a week with the* Health and Safety Section / Risk Manager /Occupational Risk Manager of Transnet SOC Limited.
- 10) The Contractor shall furnish the* Health and Safety Section/ Risk Manager/ Occupational Risk Manager of Transnet SOC Limited immediately with full particulars of any sub-Contractor which he may involve in the contract in order that the sub-Contractor himself can be made aware of all the clauses in this contract pertaining to health and safety.

- 11) The Contractor shall stop any sub-contractor from executing work which is not in accordance with the Health and Safety Plan or which poses a threat to health and safety of persons.
- 12) The Contractor shall ensure that all his employees and visitors undergoes health and safety induction pertaining to the hazards prevalent, proof of such training must be kept on file.
- 13) In the event where the risk assessment reveals the risk relating to working from an elevated position the Contractor shall cause the designation of a competent person, responsible for the preparation of a Fall Protection Plan.
- 14) The Fall Protection Plan shall include:
- 14.1 A risk assessment of all work carried out from an elevated position
 - 14.2 Procedures and methods to address all the identified risks per location
 - 14.3 Evaluation of employee's physical and psychological fitness necessary to work at elevated position.
 - 14.4 The training of employees working from an elevated position.
 - 14.5 Procedure addressing the inspection, testing and maintenance of all fall protection equipment.
- 15) The Contractor shall advise the * Health and Safety Section / Risk Manager/ Occupational Risk Manager of Transnet SOC Limited of any hazardous situations which may arise from work being performed either by the Contractor or his sub-Contractor.
- 16) Copies of all appointments required by the act must be given to * Health and Safety Section / Risk Manager / Occupational Risk Manager of Transnet SOC Limited.
- 17) The Contractor shall ensure that a Health and Safety File is available which shall include all documentation as required by the Act, copy of his and his Sub-Contractors Risk Assessment and Health and Safety Plan.
- 18) All incidents referred to in Section 24 of the Act involving the Contractor and his Sub-Contractor on Transnet Ltd premises, shall be reported as prescribed. Transnet Ltd hereby retains an interest in the issue of any investigation, formal inquiry conducted in terms of Section 31 and 32 of the Act into any incident involving the Contractor, his Sub-Contractor, any person or machinery under his control on Transnet Ltd premises.
- 19) No alcohol or any other intoxicating substance shall be allowed on Transnet Ltd premises. The Contractor shall not allow anyone under or suspected to be under the influence of alcohol or any other intoxicating substance on Transnet Ltd premises.
- 20) Contractor to ensure its employees undergo medical surveillance as required by legislation
- 21) Contractor will be required to provide monthly safety performance reports and statistics
- 22) A letter of good standing in terms of Section 80 (Employer to register with the Compensation Commissioner) of the Compensation for Occupational Injuries and Disease Act 1993 (Act 130 of 1993) must also be furnished.

- 23) All clauses in the contract pertaining health and safety form an integral part of the contract and if not complied with may be construed as breach of contract.

*As applicable

Tenderer OH & S Management System Questionnaire

This questionnaire forms part of TFR tender evaluation process and is to be completed by all Tenderer's and submitted with their tender offer. The objective of the questionnaire is to provide an overview of the status of the Tenderer's OH&S management system. Tenderers will be required to verify their responses noted in their questionnaire by providing evidence of their ability and capacity in relevant matters. **TFR will verify accuracy of this information during the physical visit as part of the tender evaluation.**

The information provided in this questionnaire is an accurate summary of the company's occupational health and safety management system		
Company Name:		
Signed:	Name:	
Position:	Date:	
Tender Description:		
Tender Number:		
Tenderer OH&S Management System Questionnaire	Yes	No
1. OH&S Policy and Management		
- Is there a written company health and safety policy?		
- If yes provide a copy of the policy		
- Does the company have an OH&S Management system e.g NOSA, OHSAS, IRCA System etc.		
- If yes provide details		
- Is there a company OH&S Management System, procedures manual or plan?		
- If yes provide a copy of the content page(s)		
- Are health and safety responsibilities clearly identified for all levels of Management and employees?		
- If yes provide details		
2. Safe Work Practices and Procedures		
- Are safe operating procedures or specific safety instructions relevant to its operations available?		
- If yes provide a summary listing of procedures or instructions		
- Is there a register of injury document?		
If yes provide a copy		
- Are Risk Assessments conducted and appropriate techniques used?		

- If yes provide details		
3. OH&S Training		
Describe briefly how health and safety training is conducted in your company:		
- Is a record maintained of all training and induction programs undertaken for employees in your company? - If yes provide examples of safety training records		
4. Health and Safety Workplace Inspection		
- Are regular health and safety inspections at worksites undertaken? - If yes provide details		
- Is there a procedure by which employees can report hazards at workplaces? - If yes provide details		
5. Health and Safety Consultation		
- Is there a workplace health and safety committee?		
- Are employees involved in decision making over OH&S matters? - If yes provide details		
- Are there employee elected health and safety representatives? - Comments		
6. OH&S Performance Monitoring		
- Is there a system for recording and analysing health and safety performance statistics including injuries and incidents? - If yes provide details		
- Are employees regularly provided with information on company health and safety performance? - If yes provide details		
Is company registered with workmen's compensation and up to date? - If yes provide proof of letter of good standing		
- Has the company ever been convicted of an occupational health and safety offence?		

- If yes provide details		

Safety Performance Report**Monthly DIFR for previous months**

Previous Year	No of Disabling Injuries	Total Number of employees	DIFR per month
January			
February			
March			
April			
May			
June			
July			
August			
September			
October			
November			
December			

DIFR = Number of Disabling injuries x 200000 divided by number of man hours worked for the period

Signed
(Tenderer)

PROPOSED AMENDMENTS AND QUALIFICATIONS

The Tenderer should record any deviations or qualifications he may wish to make to the tender documents in this Returnable Schedule. Alternatively, a tenderer may state such deviations and qualifications in a covering letter to his tender and reference such letter in this schedule.

The Tenderer's attention is drawn to clause F.3.8 of the Standard Conditions of Tender referenced in the Tender Data regarding the employer's handling of material deviations and qualifications.

Page	Clause or item	Proposal

Signed

Date

Name

Position

Tenderer

TRANSNET SOC LIMITED
(REGISTRATION No. 1990/000900/06)
TRADING AS
TRANSNET FREIGHT RAIL

LABOUR PAYMENT SCHEDULE

TENDERERS ARE REQUIRED TO COMPLETE THE FOLLOWING SCHEDULE:

DAY LABOUR (IF REQUIRED)

Skilled Hour _____
Unskilled Hour _____
Labourer Hour _____
Driver/Operator Hour _____
% Profit on Material _____

TRANSPORT AND MACHINERY

RUNNING

STANDING

1.	Light vehicle up to 1 ton	_____	_____
2.	5 Ton vehicle	_____	_____
3.	10 Ton vehicle with crane	_____	_____
4.	Crane	_____	_____
5.	Scaffolding	_____	_____
6.	Generator	_____	_____
7.	Other equipment:	_____	_____

8. Full details of any other charges:

TENDERER: _____

DATE: _____



Volume 3 NEC3 Engineering and Construction

Short Contract (ECSC3)

A contract between **TRANSNET**
(the employer)

and

for **Mechanical Engineering Works Upgrade At Ermelo
Diesel Storage And Dispensing Terminal**

Contents	Page No.
Compiled in accordance with CIDB Standard for Uniformity in Construction Procurement (October 2005 amendments)	
Part C1 Agreements & Contract Data	
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Documentation prepared by:

Matete Madisha - Transnet Freight Rail

C1 Agreements & Contract Data

C1.1 Form of Offer and Acceptance

Offer

The Employer, identified in the Acceptance page signature block on the next page, has solicited offers to enter into a contract for the procurement of:

Mechanical Engineering Works Upgrade At Ermelo Diesel Storage And Dispensing Terminal

The tenderer, identified in the signature block below,

either	having examined the documents listed in the Tender Data and addenda thereto as listed in the Tender Schedules, and by submitting this Offer has accepted the Conditions of Tender.
or	has examined the draft contract as listed in the Acceptance page and agreed to provide this Offer.

By the representative of the tenderer, deemed to be duly authorised, signing this part of this Form of Offer and Acceptance the tenderer offers to perform all of the obligations and liabilities of the Contractor under the Contract including compliance with all its terms and conditions according to their true intent and meaning for an amount to be determined in accordance with the conditions of contract identified in the Contract Data.

The offered total of the Prices exclusive of VAT is	R
Value Added Tax @ 14% is	R
The offered total of the Prices inclusive of VAT is	R
(in words)	

This Offer may be accepted by the Employer by signing the form of Acceptance overleaf and returning one copy of this document including the Schedule of Deviations (if any) to the tenderer before the end of the period of validity stated in the Tender Data, or other period as agreed, whereupon the tenderer becomes the party named as the Contractor in the conditions of contract identified in the Contract Data.

Signature(s)

Name(s)

Capacity

For the
tenderer:

(Insert name and address of organisation)

Name &
signature of
witness

Date

Tenderer's CIDB registration number:

Acceptance

By signing this part of this Form of Offer and Acceptance, the Employer identified below accepts the tenderer's Offer. In consideration thereof, the Employer shall pay the Contractor the amount due in accordance with the conditions of contract identified in the Contract Data. Acceptance of the tenderer's Offer shall form an Agreement between the Employer and the tenderer upon the terms and conditions contained in this Agreement and in the Contract that is the subject of this Agreement.

The terms of the Contract, are contained in:

Part 1 Agreements and Contract Data, (which includes this Form of Offer and Acceptance)

Part 2 Pricing Data

Part 3 Scope of Work: Works Information

Part 4 Site Information

and drawings and documents (or parts thereof), which may be incorporated by reference into the above listed Parts.

Deviations from and amendments to the documents listed in the Tender Data and any addenda thereto listed in the Tender Schedules as well as any changes to the terms of the Offer agreed by the tenderer and the Employer during this process of Offer and Acceptance, are contained in the Schedule of Deviations attached to and forming part of this Form of Offer and Acceptance. No amendments to or deviations from said documents are valid unless contained in this Schedule, which must be signed by the duly authorised representative(s) for both parties.

The tenderer shall within one week of receiving a completed copy of this Agreement, including the Schedule of Deviations (if any), contact the Employer's agent (whose details are given in the Contract Data) to arrange the delivery of any securities, bonds, guarantees, proof of insurance and any other documentation to be provided in terms of the conditions of contract identified in the Contract Data at, or just after, the date this Agreement comes into effect. Failure to fulfil any of these obligations in accordance with those terms shall constitute a repudiation of this Agreement.

Notwithstanding anything contained herein, this Agreement comes into effect on the date when the tenderer receives one fully completed copy of this document, including the Schedule of Deviations (if any). Unless the tenderer (now Contractor) within five days of the date of such receipt notifies the Employer in writing of any reason why he cannot accept the contents of this Form of Offer and Acceptance, this Agreement shall constitute a binding contract between the Parties.

Signature(s)

Name(s)

Capacity

for the
Employer

(Insert name and address of organisation)

Name &
signature of
witness

Date

Note: If a tenderer wishes to submit alternative tender offers, further copies of this document may be used for that purpose, duly endorsed, 'Alternative Tender No. _____'.

Schedule of Deviations

Note:

1. To be completed by the Employer prior to award of contract. This part of the Offer & Acceptance would not be required if the contract has been developed by negotiation between the Parties and is not the result of a process of competitive tendering.
2. The extent of deviations from the tender documents issued by the Employer prior to the tender closing date is limited to those permitted in terms of the Conditions of Tender.
3. A tenderer's covering letter must not be included in the final contract document. Should any matter in such letter, which constitutes a deviation as aforesaid be the subject of agreement reached during the process of Offer and Acceptance, the outcome of such agreement shall be recorded here and the final draft of the contract documents shall be revised to incorporate the effect of it.

No.	Subject	Details
1		
2		
3		
4		
5		
6		
7		

By the duly authorised representatives signing this Schedule of Deviations below, the Employer and the tenderer agree to and accept this Schedule of Deviations as the only deviations from and amendments to the documents listed in the Tender Data and any addenda thereto listed in the Tender Schedules, as well as any confirmation, clarification or changes to the terms of the Offer agreed by the tenderer and the Employer during this process of Offer and Acceptance.

It is expressly agreed that no other matter whether in writing, oral communication or implied during the period between the issue of the tender documents and the receipt by the tenderer of a completed signed copy of this Form shall have any meaning or effect in the contract between the parties arising from this Agreement.

For the tenderer:

For the Employer

Signature

Name

Capacity

On behalf
of

(Insert name and address of organisation)

(Insert name and address of organisation)

Name &
signature
of witness

Date

C1.2 Contract Data

Data provided by the *Employer*

Please read the relevant clauses in the NEC3 Engineering and Construction Short Contract (June 2005) (ECSC3)¹ before you enter data. The number of the principal clause is shown for most statements however other clauses may also use the same data.

Completion of this data in full is essential to create a complete contract.

Clause	Statement	Data
General		
10.1	The <i>Employer</i> is	Transnet SOC Ltd
	Address	Registered Address: Tender Advice Centre, Inyanda 1 21 Wellington Road Parktown JOHANNESBURG, 2000
	Having elected its Contractual Address for the purposes of this contract as:	Option A* Transnet Freight Rail Supply Chain Services - Witbank Pavillion Building Corner Botha & Rhodes Streets WITBANK, 1035 1035
	Tel No.	013 656 4296
	Fax No.	013 656 4259
11.2(11)	The <i>works</i> are	Mechanical Engineering Works Upgrade At Ermelo Diesel Storage And Dispensing Terminal
11.2(13)	The <i>Works Information</i> is in	the document called 'Works Information' in Part 3 of this contract.
11.2(12)	The <i>Site Information</i> is in	the document called 'Site Information' in Part 4 of this contract.
11.2(12)	The <i>site</i> is	Ermelo Diesel Storage
30.1	The <i>starting date</i> isAfter receiving an official order
11.2(2)	The <i>completion date</i> is	
13.2	The <i>period for reply</i> is	Two (2) weeks
14.4	The <i>Employer's</i> representative is (name)	Thabo Nkoane Chief Eng. Tech
	Address	Maintenance Department Durban

¹ Available from Engineering Contract Strategies Tel 011 803 3008, Fax 011 803 3009.

The authority of the *Employer's* representative is

40	The <i>defects date</i> is	52 (FiftyTwo) weeks after completion
41.3	The <i>defect correction period</i> is	1 (one) week
50.1	The <i>assessment day</i> is on the	13 th (thirteen) of each month.
50.5	The <i>delay damages</i> are	R350.00 per day (penalties)
50.6	The retention is	0 (zero) %
51.2	The interest rate on late payment is	0% per complete week of delay.
80.1	The <i>Contractor</i> is not liable to the <i>Employer</i> for loss of or damage to the <i>Employer's</i> property in excess of	
82.1	The <i>Employer</i> provides this insurance	Insurance Transnet Principal Control Insurance
82.1	The minimum amount of cover for the third insurance stated in the Insurance Table is:	> R25, 000.00 (Limited to R10, 000,000.00. for any one event)
82.1	The minimum amount of cover for the fourth insurance stated in the Insurance Table is:	R
	Does the United Kingdom Housing Grants, Construction and Regeneration Act (1996) apply?	No
93.1	The <i>Adjudicator</i> is	Both parties will agree as and when a dispute arises. If the parties cannot reach an agreement on the <i>Adjudicator</i> , the chairman of the Association of Arbitrators will appoint an <i>Adjudicator</i> .
93.2(2)	The <i>Adjudicator nominating body</i> is:	
	If no <i>Adjudicator nominating body</i> is entered, it is:	The Association of Arbitrators (Southern Africa)
93.4	The <i>tribunal</i> is:	Arbitration
If the tribunal is arbitration complete this data.	The <i>arbitration procedure</i> is	The Rules for the Conduct of Arbitrations of the Association of Arbitrators (Southern Africa)
	The place where arbitration is to be held is	South Africa
	The person or organisation who will choose an arbitrator	
	- if the Parties cannot agree a choice or - if the arbitration procedure does not state who selects an arbitrator, is	The Chairman of the Association of Arbitrators (Southern Africa)

**The conditions of contract are the
NEC3 Engineering and Construction
Short Contract (June 2005)² and the
following additional conditions:**

**[Only enter details here if additional conditions
are required.]**

The additional conditions of contract are:

- 1 General Bid Conditions of Services**
- 2 Non Disclosure Agreement**

"PREVIEW COPY ONLY"

² Available from Engineering Contract Strategies Tel 011 803 3008, Fax 011 803 3009.

Data provided by the *Contractor* (the *Contractor's Offer*)

The tendering contractor is advised to read both the NEC3 Engineering and Construction Short Contract (June 2005) and the relevant parts of its Guidance Notes (ECSC3-GN)³ in order to understand the implications of this Data which the tenderer is required to complete. An example of the completed Data is provided on page 26 of the ECSC3 Guidance Notes.

Completion of the data in full is essential to create a complete contract.

10.1	The <i>Contractor</i> is (Name): Address Tel No. Fax No. E-mail address
63.2	The percentage for overheads and profit added to the Defined Cost for people is%
63.2	The percentage for overheads and profit added to other Defined Cost is%
11.2(9)	The Price List is in the document called 'Price List' in Part 2 of this contract.
11.2(10)	The offered total of the Prices is [Enter the total of the Prices from the Price List]: R.....excluding VAT [in words]excluding VAT

³ Available from Engineering Contract Strategies Tel 011 803 3008, Fax 011 803 3009.

C2 Pricing Data

C2.1 Pricing Instructions

Entries in the first four columns in the Price List are made either by the *Employer* or the *tenderer*.

If the *Contractor* is to be paid an amount for the item which is not adjusted if the quantity of work in the item changes, the tenderer enters the amount in the Price column only; the Unit, Quantity and Rate columns being left blank.

If the *Contractor* is to be paid an amount for the item of work which is the rate for the work multiplied by the quantity completed, the tenderer enters the rate which is then multiplied by the expected quantity to produce the Price, which is also entered.

All Prices are to be shown excluding VAT unless instructed otherwise by the *Employer* in Tender Data or in an instruction the *Employer* has given before the tenderer enters his Prices.

If there is insufficient space in the Price List which follows, state in which document the Price List is contained.

C2.2 Price List

The Price List is as follows:

(CONTRACTOR)

Item	Bill description	Unit	Qty	Rate	Unit Price	Total Price
A	PRELIMINARY & GENERAL					
	FIXED CHARGE ITEMS					
A1	Contractual requirements					
A1.1	Site Supervision staff.	Sum	1			
A1.2	Construction Programme.	Sum	1			
A1.3	Construction EMP.	Sum	1			
A1.4	Provision of site specific PPE for contractors.	Sum	1			
A2	Establish facilities on site for the contractor.	Sum	1			
A3	Remove site establishment on completion.	Sum	1			
A4	Provision of QA and As-Built data pack.	Sum	1			
B	Supply, install, align, protect and commission the following pumps:					
	Decanting					
B1	Gorman Rupp self-priming centrifugal type pump (84B3-B) directly coupled to 15kW/2P/380V flame proof motor for Diesel fuel.	no	2			
	Loading					
B2	Gorman Rupp self-priming centrifugal type pump (84B3-B) directly coupled to 22kW/2P/380V flame proof motor for Diesel fuel.	no	2			
C	Supply, Install and commission the following filters/separators:					
C1	2 off 10 µm and 2 off 5 µm diesel filter banks	no	4			
D	Fuel Strainers:					
	Bucket strainers 2 off 20 µm and 15 µm Ø100mm	no	2			
E	Mechanical Positive Displacement flow meter (LC M25), Air Eliminator and Shut-Off Valve:					

	Ø100mm	no	1			
F	Coupling for Decanting and Loading of Tankers with 5m hose:					
	Ø65mm	no	3			
G	Install new pressure reducing valve (PRV) upstream of the flow meter strainer on the recirculation line feeding back to the tanks, the loop shall be integrated to the fuel management system.					
	Ø100mm	no	1			
H	Replace all four pressure gauges (1000kPa).					
	1000 kPa glycerine filled	no	4			
I	Install non-return valves on both suction and delivery lines.					
	Ø100mm	no	2			
J	Install a break away coupling on the filling hose/s.	no	3			
K	Install Wiggins nozzles at the refuelling area.	no	3			
L	Supply and install Mechanical Positive Displacement flow meter (LC M25), Air Eliminator and Shut-Off Valve:					
	Ø50mm	no	3			
M	Install low point drains and high point vents in suitable positions.	sum	1			
O	Pressure test and certify the piping.	sum	1			
	Colour code and label the piping.	sum	1			
N	Indicate flow direction/s on pipelines.	sum	1			
O	SECTION F: CONTINGENCY					
	ALLOW: 10% CONTINGENCIES TO BE EXPENDED AT THE DISCRETION OF THE ENGINEER.	%		10%		

SUMMARY					
A	PRELIMINARY & GENERAL				
B	DECANTING AND LOADING PUMPS				
C	DECANTING AND LOADING FILTERS				
D	DECANTING AND LOADING STRAINERS				
E	DECANTING FLOWMETER				
F	DECANTING HOSE c/w COUPLING				
G	PRESSURE REDUCING VALVE (PRV's)				
H	PRESSURE GAUGES				
I	NON - RETURN VALVES				
J	BREAK AWAY COUPLINGS				
K	LOW/HIGH POINT DRAINS c/w BALL VALVES				
L	PRESSURE TEST - PIPELINE				
M	PIPELINE PAINTING AND LABELING				
N	PIPELINE DIRECTION ARROWS				
O	CONTINGENCY (10%)				
SUB TOTAL (EXCL VAT)					
INCL VAT @14%					
TOTAL TENDER AMOUNT Incl VAT					

C3: Scope of Work

1. Description of the works

TABLE OF CONTENTS

1. Introduction
2. Proposed Scope Of Work (Tank Farm, Decanting & Refuelling Area, And Pump House)
3. Bill Of Quantities

1. INTRODUCTION

Ermelo Terminal is located at Msukaligwa Local Municipality in Mpumalanga Province at the following location; Latitude S: 26° 31' 29.67", Longitude E: 26° 59' 59.32".

Site infrastructure and operations are summarised as follows:

Main Site Activity: Locomotive movement facility
Main Infrastructure: • Rail Tank Car Decanting Area

- Spill Containment Area
- Tankage
- Tank Bund
- Locomotive Refuelling Area
- Fuel Pump House
- Drainage System
- Separators
- Workshop
- Offices

Tankage: Two 941m³ above ground (A/G) bulk diesel storage tanks within a bund area.

The tenderer is invited to tender for the upgrade, design, co-ordination, supply, fabrication, delivery, installation, painting, testing, commissioning and handover in complete working order ready for immediate use a diesel fuelling facility at Ermelo Terminal.

The tenderer shall be responsible for all aspects of design and shall follow the best-accepted engineering practice in order to provide the Client with a fuelling facility that is in accordance with the requirements and specifications detailed in various parts and sections of this document, and to be erected whilst complying with the local authority's requirements and the following minimum standards:

- SANS 10089-1 - Storage and distribution of Petroleum products in aboveground Bulk installations
- SANS 10131 - Above-ground storage tanks for petroleum products.
- SANS 10150-1 - Basis of structural design and actions for buildings and Industrial structures.
- SANS 10162-1 - The structural use of steel Part 1: Limit-states design of hot rolled steelwork.
- SANS 10400 - The application of the National Building Regulations

2. PROPOSED SCOPE OF WORK

The scope of work to be carried out under this contract shall consist of the co-ordination, design, supply of materials, manufacture, delivery, installation, commissioning, handing over instruction and maintenance documentation of the following:

2.1 TANK FARM

- a) Install flame arrestors in accordance with API 2000 on to the storage tanks' vent pipes.
- b) Redesign and reroute pipework that might be penetrating the bund wall.
- c) Supply and install a Varec gauge on Tank 2 or Tank B.

2.2 RAIL DECANTING AREA

- a) Three off Ø65mm coupling for decanting and loading of tankers complete with 5m hose.

2.3 LOCOMOTIVE REFUELLING AREA

- a) Supply and install mechanical positive displacement LC flow meters 3 off (LC M25) complete with air eliminator and mechanical totalizer and shut off valve.
- b) Supply and install two 10µm and two 5 µm diesel filter bank should be in parallel connection, please see the PFD in the attachment. These filters should have visual indication on the side to inspect operation efficiency.
- c) Supply and install loading/ refuelling Wiggins nozzles complete with 5m hose.
- d) The decanting pump will be provided with a lockable remote control switch (RCU) for hand start and stop operation.
- e) Supply and install three solo node valves on each line of the refuelling station. Also install the bypass line across the solo node valve with non-return in the middle with 2 isolation valves before and after the non-return valve.

2.4 PUMP HOUSE

- a) Replace the existing locomotive refuelling pumps with dedicated duty and stand-by pump-sets.
- b) Replace the existing road tanker decanting pumps with dedicated duty and stand-by pump-sets.
- c) Supply and install the following new pumps to achieve a decanting flow rate of 1000l/min - Gorman Rupp self-priming centrifugal type pump (84B3-B) directly coupled to 15kW/2P/380V flame proof motor for diesel fuel decanting and refuelling.
- d) A bucket strainer Ø100 mm with 20 µm for Diesel Decanting. The strainer should be fitted with air eliminator; air release chamber shall be provided with a float switch which when detecting air will operate causing the flow control valve to ramp down or close.
- e) Mechanical Positive Displacement LC flow meters (LC M25) complete with air eliminator and mechanical totalizer and shut off valve for decanting.
- f) Install a flow meter proving point.
- g) Install new pressure reducing valve (PRV) upstream of the flow meter strainer on the recirculation line feeding back to the tanks, the loop shall be integrated to the fuel management system.
- h) The decanting pump will be equipped with an FCI thermal dispersion no flow switch.
- i) Replace all four pressure gauges (1000kPa).
- j) Install non-return valves on both suction and delivery lines.
- k) Install a break away coupling on the filling hose/s.
- l) Install low point drains and high point vents in suitable positions.
- m) Pressure test and certify the piping.
- n) Colour code and label the piping.
- o) Indicate flow direction/s on pipelines.

2. Drawings

Drawing number	Revision	Title
Not applicable		

3. Specifications

Title	Date or revision	Tick if publicly available
Not applicable		

4. Constraints on how the Contractor Provides the Works

- 4.1.1. The Contractor shall at his own cost arrange for connections and extensions (if necessary) to existing supplies and for the removal of these connections and extensions on completion of the contract.
- 4.1.2. The Contractor must not turn off any Electrical or water supply without obtaining permission from the Employer's Deputy or his Supervisor.
- 4.1.3. The Contractor must be in possession of or have access to a cellular phone and a facsimile machine.
- 4.1.4. The Contractor will be responsible for his own measurements. Left over material, rubble and all equipment stripped by the Contractor are to be removed from site by the Contractor as his property.
- 4.1.5. The premises shall be left perfectly clean after completion of the work, before payment will be made.
- 4.1.6. The Contractor will supply all equipment and material. The Contractor shall include for the proper completion of the work as described and shall allow for all cost incurred. Except otherwise specified, the contractor shall provide all labour, tools, consumables stores, plant, equipment, services, materials, materials and ingredients of every description required for the carrying out and completion of the work included in this contract.
- 4.1.7. Proof of prices paid by the Contractor for such consumable stores, materials and ingredients shall be made available for Transnet on a monthly basis together with the Contractor's invoice.
- 4.1.8. The Contractor shall provide sufficient communication facilities including a fax machine in order that he may be reached at any time and place during the duration of the contract. The contractor must be able to respond to any emergency request within twenty four hours after he is notified thereof.

6. Services and other things provided by the Employer

Item	Date by which it will be provided
Water and electricity will be supplied free of charge by Transnet Freight Rail.	
A continuous supply of water and electricity can however not be guaranteed.	

7. Procurement

7.1 Code of Conduct

Transnet aims to achieve the best value for money when buying or selling goods 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 supplier dealing with Transnet must understand and support. These are:

- The Transnet Detailed Procurement Procedure (DPP);
- 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 (BBBEE); and
- The Anti Corruption Act.

This code of conduct has been included in this contract to formally apprise Transnet Suppliers of Transnet's expectations regarding behaviour and conduct of its Suppliers.

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

Transnet is in the process of transforming itself into a self-sustaining State Owned Enterprise, 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 suppliers 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 suppliers.
- 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 supplier is confronted with fraudulent or corrupt behaviour of Transnet employees. We expect our Suppliers 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.

RFQ: COAL-ERAC-FDT-015768 CIDB

Description of the Works: Mechanical Engineering Works Upgrade At Ermelo Diesel Storage And Dispensing Terminal

- Suppliers 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 BBBEE spend (fronting)

3. *Transnet's relationship with suppliers requires us to clearly define requirements, exchange information and share mutual benefits.*

- Generally, Suppliers have their own business standards and regulations. Although Transnet cannot control the actions of our suppliers, we will not tolerate any illegal activities. These include, but are not limited to:
 - Misrepresentation of their product (origin of manufacture, specifications, intellectual property rights, etc);
 - Collusion;
 - Failure to disclose accurate information required during the sourcing activity (ownership, financial situation, BBBEE status, etc.);
 - Corrupt activities listed above; and
 - Harassment, intimidation or other aggressive actions towards Transnet employees.
- Suppliers must be evaluated and approved before any materials, components, products or services are purchased from them. Rigorous due diligence is conducted and the supplier is expected to participate in an honest and straight forward manner.
- Suppliers must record and report facts accurately, honestly and objectively. Financial records must be accurate in all material respects.

Conflicts of Interest

1. *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

8.1 The Contractor's Invoices

8.1.1 When the *Project Manager* certifies payment (see ECSC3 Clause 50) following an assessment date, the *Contractor* complies with the *Employer's* procedure for invoice submission.

8.1.2 The invoice must correspond to the *Project Manager's* assessment of the amount due to the *Contractor* as stated in the payment certificate.

8.1.3 The invoice states the following:

- Invoice addressed to Transnet Limited;
- Transnet Limited's VAT No: 4720103177;
- Invoice number;
- The *Contractor's* VAT Number; and
- The Contract number

8.1.4 The invoice contains the supporting detail

8.1.5 The invoice is presented either by post or by hand delivery.

8.1.6 Invoices submitted by post are addressed to:

HMG Joint Venture
Private Bag X20
Gallo Manor
2052

For the attention of The Marine Invoice Controller, Transnet Capital Projects

8.1.7 Invoices submitted by hand are presented to:

HMG Joint Venture
Building 17
Harrowdene Office Park
Woodmead
Sandton

For the attention of The Marine Invoice Controller, Transnet Capital Projects

8.1.8 The invoice is presented as an original.

"PREVIEW COPY ONLY"

C4: Site Information

C4.1: Information about the *site* at time of tender which may affect the work in this contract

1. Access limitations

The works shall be performed at **Ermelo Diesel Storage at Ermelo.**

"PREVIEW COPY ONLY"



Appendix (ii)

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

"PREVIEW COPY ONLY"

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1 INTRODUCTION

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

2 DEFINITIONS

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

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

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

- 2.13 **Intellectual Property** means Patents, Designs, Know-How, Copyright and Trade Marks and all rights having equivalent or similar effect which may exist anywhere in the world and includes all future additions and improvements to the Intellectual Property;
- 2.14 **Know-How** means all Confidential Information of whatever nature relating to the Intellectual Property and its exploitation as well as all other Confidential Information generally relating to Transnet's field of technology, including technical information, processing or manufacturing techniques, Designs, specifications, formulae, systems, processes, information concerning materials and marketing and business information in general;
- 2.15 **Materials** means the Deliverables, the Service Provider Materials and the Third Party Materials;
- 2.16 **Parties** mean the Parties to the Agreement together with their subsidiaries, divisions, business units, successors-in-title and their assigns;
- 2.17 **Party** means either one of these Parties;
- 2.18 **Patents** mean registered Patents and Patent applications, 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 each 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 representative 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 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 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

All 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) was 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 hereof, 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.

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Appendix (i)

GENERAL BID CONDITIONS - SERVICES

[January 2014]

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31 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:

- 31.1 **Bid** shall mean a Respondent's tendered response / proposal to a Transnet RFP or RFQ;
- 31.2 **Bid Document(s)** shall mean a reference to a Request for Proposal or Request for Quotation;
- 31.3 **Day** shall mean any day other than a Saturday, Sunday or public holiday;
- 31.4 **Respondent(s)** shall mean a respondent/bidder to a Bid Document;
- 31.5 **RFP** shall mean Request for Proposal;
- 31.6 **RFQ** shall mean Request for Quotation;
- 31.7 **RFX** shall mean RFP or RFQ, as the case may be;
- 31.8 **Services** shall mean the services required by Transnet as specified in its Bid Document;
- 31.9 **Service Provider** shall mean the successful Respondent;
- 31.10 **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;
- 31.11 **Transnet** shall mean Transnet SOC Ltd, a State Owned Company; and
- 31.12 **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.

32 GENERAL

- 1 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.

33 SUBMISSION OF BID DOCUMENTS

- 33.1 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.
- 33.2 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.
- 33.3 The Respondent's return address must be stated on the reverse side of the sealed envelope.

34 USE OF BID FORMS

- 34.1 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.
- 34.2 Respondents must note that the original Bid forms must be completed for submission and not a reprocessed copy thereof.
- 34.3 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.

35 BID FEES

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

36 VALIDITY PERIOD

- 36.1 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.
- 36.2 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.

37 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.

38 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.

39 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.

40 UNAUTHORISED COMMUNICATION ABOUT BIDS

While 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.

41 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.

42 DEFAULTS BY RESPONDENTS

42.1 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.

42.2 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 48 [*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 42.3 below, be disqualified from bidding for any Transnet business through its "blacklisting" process.

42.3 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.

42.4 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.

43 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.

44 PRICES SUBJECT TO CONFIRMATION

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

44.2 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.

45 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.

46 EXCHANGE AND REMITTANCE

46.1 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.

46.2 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.

46.3 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.

46.4 The South African Reserve Bank's approval is required before any foreign currency payments can be made to or on behalf of Respondents.

46.5 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**].

47 ACCEPTANCE OF BID

47.1 Transnet does not bind itself to accept the lowest priced or any Bid.

47.2 Transnet reserves the right to accept any Bid in whole or in part.

47.3 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.

47.4 Where the Respondent has been informed by Transnet per fax message or e-mail of the acceptance of its Bid, the acknowledgement of receipt transmitted shall be regarded as proof of delivery to the Respondent.

48 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.

49 TERMS AND CONDITIONS OF CONTRACT

49.1 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.

49.2 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.

50 CONTRACT DOCUMENTS

50.1 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.

50.2 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.

50.3 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.

51 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.

52 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.

53 CONTRACTUAL SECURITIES

- 53.1 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.
- 53.2 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.
- 53.3 Such security, if required, shall be an amount which will be stipulated in the Bid Documents.
- 53.4 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.
- 53.5 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 53 will be for the account of the Service Provider.

54 DELETION OF ITEMS TO BE EXCLUDED FROM BID

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

55 VALUE-ADDED TAX

- 55.1 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.
- 55.2 In respect of foreign Services rendered:
- 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
 - 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.

56 IMPORTANT NOTICE TO RESPONDENTS REGARDING PAYMENT

56.1 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 56.1a) above. Failure to comply with clause 56.1a) above may preclude a Bid from further consideration.

NOTE: The successful Respondent [the **Service Provider**] when applicable, shall be required to furnish a guarantee covering any advance payments as set out in clause 53 above [*Contractual Securities*].

56.2 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.

57 DELIVERY REQUIREMENTS

57.1 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.

57.2 Progress Reports

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

57.3 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.

58 SPECIFICATIONS AND COPYRIGHT

58.1 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.

58.2 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.

59 BIDS BY OR ON BEHALF OF FOREIGN RESPONDENTS

- 59.1 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.
- 59.2 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.
- 59.3 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.
- 59.4 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.
- 59.5 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.

60 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.

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Appendix (v)

NON DISCLOSURE AGREEMENT - SERVICES

[January 2014]

"PREVIEW COPY ONLY"

THIS AGREEMENT is made between

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

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

and

the Company as indicated in the RFP bid response hereto

WHEREAS

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

IT IS HEREBY AGREED

1. INTERPRETATION

In this Agreement:

- 1.1 **Agents** mean directors, officers, employees, agents, professional advisers, contractors or sub-contractors, or any Group member;
- 1.2 **Bid or Bid Document** means Transnet's Request for Information [RFI] Request for Proposal [RFP] or Request for Quotation [RFQ], as the case may be;
- 1.3 **Confidential Information** means any information or other data relating to one party [the Disclosing Party] and/or the business carried on or proposed or intended to be carried on by that party and which is made available for the purposes of the Bid to the other party [the Receiving Party] by its Agents by the Disclosing Party or its Agents or recorded in agreed minutes following oral disclosure and any other information otherwise made available by the Disclosing Party or its Agents to the Receiving Party or its Agents, whether before, on or after the date of this Agreement, and whether in writing or otherwise, including any information, analysis or specifications derived from, containing or reflecting such information but excluding information which:
 - a) is publicly available at the time of its disclosure or becomes publicly available [other than as a result of disclosure by the Receiving Party or any of its Agents contrary to the terms of this Agreement]; or
 - b) was lawfully in the possession of the Receiving Party or its Agents [as can be demonstrated by its written records or other reasonable evidence] free of any restriction as to its use or disclosure prior to its being so disclosed; or
 - c) following such disclosure, becomes available to the Receiving Party or its Agents [as can be demonstrated by its written records or other reasonable evidence] from a source other than the Disclosing Party or its Agents, which source is not bound by any duty of confidentiality owed, directly or indirectly, to the Disclosing Party in relation to such information;

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

2. CONFIDENTIAL INFORMATION

- 2.1 All Confidential Information given by one party to this Agreement [the Disclosing Party] to the other party [the Receiving Party] will be treated by the Receiving Party as secret and confidential and will not, without the Disclosing Party's written consent, directly or indirectly communicate or disclose [whether in writing or orally or in any other manner] Confidential Information to any other person other than in accordance with the terms of this Agreement.
- 2.2 The Receiving Party will only use the Confidential Information for the sole purpose of technical and commercial discussions between the parties in relation to the Bid or for the subsequent performance of any contract between the parties in relation to the Bid.
- 2.3 Notwithstanding clause 2.1 above, the Receiving Party may disclose Confidential Information:
- to those of its Agents who strictly need to know the Confidential Information for the sole purpose set out in clause 2.2 above, provided that the Receiving Party shall ensure that such Agents are made aware prior to the disclosure of any part of the Confidential Information that the same is confidential and that they owe a duty of confidence to the Disclosing Party. The Receiving Party shall at all times remain liable for any actions of such Agents that would constitute a breach of this Agreement; or
 - to the extent required by law or the rules of any applicable regulatory authority, subject to clause 2.4 below.
- 2.4 In the event that the Receiving Party is required to disclose any Confidential Information in accordance with clause 2.3 b) above, it shall promptly notify the Disclosing Party and cooperate with the Disclosing Party regarding the form, nature, content and purpose of such disclosure or any action which the Disclosing Party may reasonably take to challenge the validity of such requirement.
- 2.5 In the event that any Confidential Information shall be copied, disclosed or used otherwise than as permitted under this Agreement then, upon becoming aware of the same, without prejudice to any rights or remedies of the Disclosing Party, the Receiving Party shall as soon as practicable notify the Disclosing Party of such event and if requested take such steps [including the institution of legal proceedings] as shall be necessary to remedy [if capable of remedy] the default and/or to prevent further unauthorised copying, disclosure or use.
- 2.6 All Confidential Information shall remain the property of the Disclosing Party and its disclosure shall not confer on the Receiving Party any rights, including intellectual property rights over the Confidential Information whatsoever, beyond those contained in this Agreement.

3. RECORDS AND RETURN OF INFORMATION

- 3.1 The Receiving Party agrees to ensure proper and secure storage of all Information and any copies thereof.
- 3.2 The Receiving Party shall keep a written record, to be supplied to the Disclosing Party upon request, of the Confidential Information provided and any copies made thereof and, so far as is reasonably practicable, of the location of such Confidential Information and any copies thereof.

3.3 The Company shall, within 7 [seven] days of receipt of a written demand from Transnet:

- a) return all written Confidential Information [including all copies]; and
- b) expunge or destroy any Confidential Information from any computer, word processor or other device whatsoever into which it was copied, read or programmed by the Company or on its behalf.

3.4 The Company shall on request supply a certificate signed by a director as to its full compliance with the requirements of clause 3.3 b) above.

4. ANNOUNCEMENTS

4.1 Neither party will make or permit to be made any announcement or disclosure of its prospective interest in the Bid without the prior written consent of the other party.

4.2 Neither party shall make use of the other party's name or any information acquired through its dealings with the other party for publicity or marketing purposes without the prior written consent of the other party.

5. DURATION

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

6. PRINCIPAL

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

7. ADEQUACY OF DAMAGES

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

8. PRIVACY AND DATA PROTECTION

8.1 The Receiving Party undertakes to comply with South Africa's general privacy protection in terms Section 14 of the Bill of Rights in connection with this Bid and shall procure that its personnel shall observe the provisions of such Act [as applicable] or any amendments and re-enactments thereof and any regulations made pursuant thereto.

8.2 The Receiving Party warrants that it and its Agents have the appropriate technical and organisational measures in place against unauthorised or unlawful processing of data relating to the Bid and against accidental loss or destruction of, or damage to such data held or processed by them.

9. GENERAL

9.1 Neither party may assign the benefit of this Agreement, or any interest hereunder, except with the prior written consent of the other, save that Transnet may assign this Agreement at any time to any member of the Transnet Group.

9.2 No failure or delay in exercising any right, power or privilege under this Agreement will operate as a waiver of it, nor will any single or partial exercise of it preclude any further exercise or the exercise of any right, power or privilege under this Agreement or otherwise.

9.3 The provisions of this Agreement shall be severable in the event that any of its provisions are held by a court of competent jurisdiction or other applicable authority to be invalid, void or otherwise unenforceable, and the remaining provisions shall remain enforceable to the fullest extent permitted by law.

9.4 This Agreement may only be modified by a written agreement duly signed by persons authorised on behalf of each party.

9.5 Nothing in this Agreement shall constitute the creation of a partnership, joint venture or agency between the parties.

9.6 This Agreement will be governed by and construed in accordance with South African law and the parties irrevocably submit to the exclusive jurisdiction of the South African courts.

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