TRANSNET

TFR, a division of

TRANSNET SOC LTD

Registration Number 1990/000900/30

[hereinafter referred to as **Transnet]**

REQUEST FOR QUOTATION [RFQ] No: CRAC-EFQ-22387

FOR THE SUPPLY OF G4 MATERIAL, BIDIM, TENSA AND POLYTEX.

FOR DELIVERY TO: **MARIESHOOP, ZESTFONTEIN, KATBOSFONTEIN, DRYDEN AND DELMAS.**

ISSUE DATE: **05 SEPTEMBER 2016**

CLOSING DATE: **13 SEPTEMBER 2016**

CLOSING TIME: **10:00**

With effect from 1 May 2016, Transnet must implement the following:

As a general rule, Transnet may also not award business to any bidders not registered on the CSD. All prospective suppliers wanting to conduct business with organs of state are required to register on the CSD by accessing www.csd.gov.za.

DESCRIPTION	**FOR THE SUPPLY OF G4 MATERIAL, BIDIM, TENSA AND POLYTEX.**
BID FEE AND BANKING DETAILS	A Bid fee of **R250** [inclusive of VAT] per set is applicable, if the RFQ is to be collected from the Transnet Freight Rail Tender Office. Payment is to be made as follows: Account Name : Transnet Freight Rail Account : Standard Bank Account number : 203158598 Branch code : 004805 NOTE – This amount is not refundable. A receipt for such payment made must be presented when collecting the RFQ documents and submitted thereafter with your Proposal.
INSPECT / COLLECT DOCUMENTS FROM	This bid may be downloaded free of charge directly from the Transnet Freight Rail tender website at; http://www.transnetfreightrail-tfr.net/Supplier/Pages/Tenders.aspx Alternatively, this RFQ may be purchased at R250 [inclusive of VAT] per set for those Bidders that require a copy from Transnet rather than downloading from the website. If a copy of the tender document is required, prior arrangements must be made one (1) day in advance and the tender document may be collected between **09:00** and **15:00** from **05 September 2016** until **12 September 2016**. This RFQ may be picked up from the following address: **RECEPTION, TENDER ADVICE CENTRE, INYANDA HOUSE 1, GROUND FLOOR, 21 WELLINGTON ROAD, PARKTOWN, JOHANNESBURG**
CLOSING DATE	**10:00 on Tuesday 13 September 2016** This tender shall close punctually at the following address: **The Chairperson, Transnet Freight Rail Acquisition Council, Inyanda House 1, 21 Wellington Rd, Parktown, JOHANNESBURG, 2001.** As a general rule, if a bid is late or delivered to the incorrect address, it will not be accepted for consideration.
VALIDITY PERIOD	**90 Business Days from Closing Date.** **End of validity period: 18 January 2017** Bidders are to note that they may be requested to extend the validity period of their bid, on the same terms and conditions, if the internal evaluation process has not been finalised within the validity period.
SPECIAL CONDITIONS	Bidders are to note that this bid may also be downloaded directly from the Transnet Freight Rail tender website free of charge. If Bidders intend to download the bid off the Portal, they are required to indicate their intention to respond to this bid by **12 September 2016 at 15:00** by sending an email with their contact details to the following address: **Anthonie.Erasmus@transnet.net** or Lerato.morailane@transnet.net This is to ensure that any required communication (e.g. addenda to the bid) in relation to this bid reaches those intending to respond. **Transnet will not be held liable if Bidders do not respond by this date and do not receive the latest information regarding this Bid as a result thereof.**

Section 1
NOTICE TO BIDDERS

Quotations which must be completed as indicated in Section 2 of this RFQ are to be submitted as follows:

METHOD:	[post and/or courier]
CLOSING VENUE:	The Secretary, Transnet Freight Rail, Acquisition Council, Tender Box on the Ground Floor, Inyanda House 1, 21 Wellington Road, Parktown.

1 Responses to RFQ

Responses to this RFQ [**Quotations]** must not include documents or reference relating to any other quotation or proposal. Any additional conditions must be embodied in an accompanying letter.

2 Broad-Based Black Economic Empowerment [B-BBEE]

Transnet fully endorses and supports the Government's Broad-Based Black Economic Empowerment Programme and it would therefore prefer to do business with local business enterprises who share these same values. As described in more detail in the attached B-BBEE Claim Form Transnet will allow a "preference" to companies who provide a valid B-BBEE Verification Certificate.

The value of this bid is estimated to be below R1 000 000 (all applicable taxes included) and therefore the **80/20** system shall be applicable. Respondents are required to complete Annexure A [the B-BBEE Preference Point Claim Form] and submit it together with proof of their B-BBEE Status as stipulated in the Claim Form in order to obtain preference points for their B-BBEE status.

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

2.1 B-BBEE Improvement Plan

Transnet encourages its Suppliers/Service Providers to constantly strive to improve their B-BBEE rating. Whereas Respondents will be allocated points in terms of a preference point system based on its B-BBEE scorecard to be assessed as detailed in paragraph 2.1 above, in addition to such scoring, Transnet also requests that Respondents submit a B-BBEE improvement plan. Respondents are therefore requested to indicate the extent to which the extent to which they will maintain or improve their B-BBEE status over the contract period.

3 Communication

Respondents are warned that a response will be liable for disqualification should any attempt be made by a Respondent either directly or indirectly to canvass any officer(s) or employee of Transnet in respect of this RFQ between the closing date and the date of the award of the business.

A Respondent may, however, before the closing date and time, direct any written enquiries relating to the RFQ to the following Transnet employee:

Name: Nobahle Mjoli Email: Nobahle.mjoli@transnet.net

Telephone: 011 584 1141

Respondents may also, at any time after the closing date of the RFQ, communicate the following individuals on any matter relating to its RFQ response:

Name	Email address	Telephone	Fax
Lolo Sokhela	Lolo.sokhela@transnet.net	011 544 9494	011 774 9186
Thuli Mathebula	Thuli.mathebula@transnet.net	011 544 9497	011 774 9129

A non-refundable tender fee of R250.00 (incl. of Vat) is applicable per tender (listed below). Payment is to be made to Transnet Freight Rail, Standard Bank Account number: 203158598, Branch code: 004805. The deposit slip must reflect the tender number RFQ CRAC-EFQ-22387 and the Company Name. Receipt/s to be presented prior to collection of the tender/s.

4 Legal Compliance

The successful Respondent shall be in full and complete compliance with any and all applicable national and local laws and regulations.

5 Changes to Quotations

Changes by the Respondent to its submission will not be considered after the closing date and time.

6 Pricing

All prices must be quoted in South African Rand on a fixed price basis, excluding VAT.

7 Prices Subject to Confirmation

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

8 Binding Offer

Any Quotation furnished pursuant to this Request shall be deemed to be an offer. Any exceptions to this statement must be clearly and specifically indicated.

9 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 or an alternative bid;
- 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 should it at Transnet's discretion be more advantageous in terms of, amongst others, cost or developmental considerations ; or
- make no award at all.

Should a contract be awarded on the strength of information furnished by the Respondent, which after conclusion of the contract, is proved to have been incorrect, Transnet reserves the right to cancel the contract.

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

Transnet reserves the right to conduct Post Tender Negotiations (PTN) with selected Respondents or any number of short-listed Respondents, such PTN to include, at Transnet's discretion, any evaluation criteria listed in the RFQ document.

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

10 Specification/Scope of Work

G4 Material Specification

G4 Material is base and subbase materials are those materials that provide the supporting structure in any pavement design.

Material specifications

Aggregate for crushed - stone base or subbase shall be derived from hard, sound and durable rock.

Atterberg limits G1 - G7

- Atterberg limits are in accordance with the SABS/THM1 test methods.
- Test results are conducted using - 0.425 mm fraction.
- The arithmetic mean of the PI's for a lot (a minimum of six tests) shall be used to determine the result.

Grading requirements on approved target for G4 material

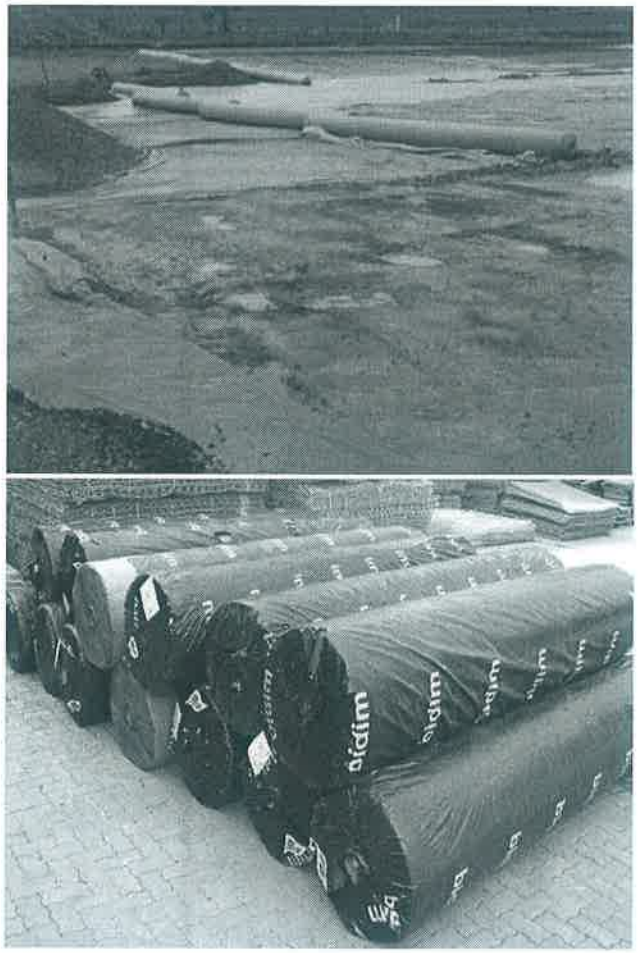
Aggregate for G4 materials			
	% Passing through sieve by map		
	Crushed materials		Uncrushed materials
Grading limits, % (m/m) passing sieve sizes, mm	Nominal maximum size 37,5 mm	Nominal maximum size 26,5 mm	53,0 mm
53,0			100
37,5	100		85 - 100
26,5	84 - 94	100	
19,0	71 - 84	85 - 95	60 - 90
13,2	59 - 75	71 - 84	
4,75	36 - 53	42 - 60	30 - 65
2,00	23 - 40	27 - 45	20 - 50
0,425	11 - 24	13 - 27	10 - 30
0,075	4 - 12	5 - 12	5 - 15

1. **Bidim(Geotextile A6 type)**

Bidim is a nonwoven needle punched geotextile made from polyester. It provides separation, filtration, protection or reinforcement functions in engineering projects. It is manufactured of 100% recycled polyester from discarded cool-drink bottles. Its versatility sees it used in various applications from erosion control against tidal action, to reinforcing earth retaining structures, to separation in railway applications, to subsoil drainage in roads and homes, to liner protection in raw water dams, and more. Made in South Africa.

Size: 4metre width 300metre length.

Pictures



Quantity

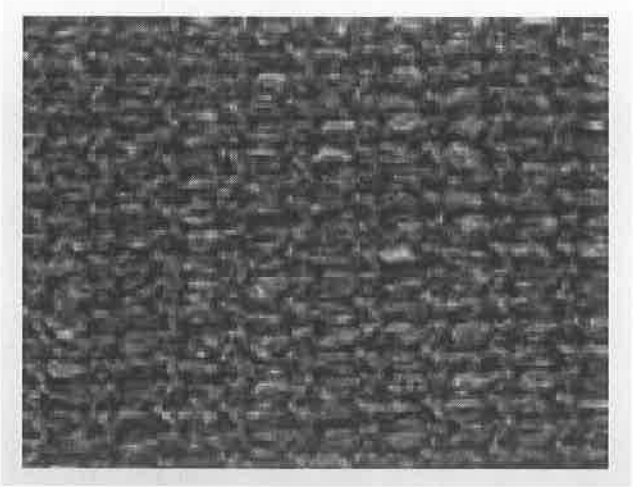
1. Bidim(Geotextile A6 type)=1400m²(350m x 4m wide)To be transported at Sentrarand.

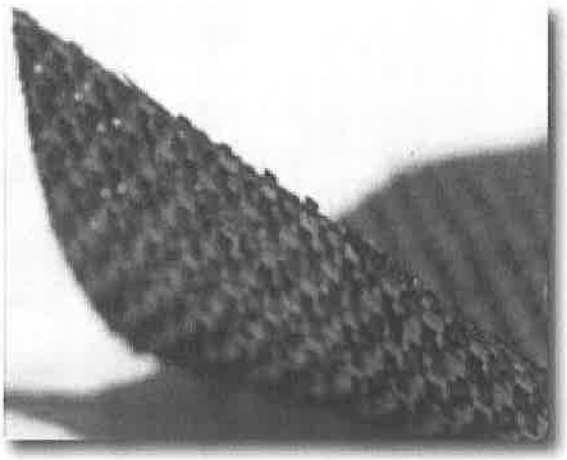
2. Polytex

The **Polytex** range consists of state of the art modern, woven polypropylene slit film geotextiles, designed to be used in filtration, separation and reinforcement. **Polytex** multi-purpose geotextiles have extremely high strength to mass ratios at low elongations, thus offering a cost effective geosynthetic solution to a variety of subsurface problems.

Polytex is extremely versatile and is used for weed growth prevention and even game capture tunnels

Pictures





Type: Polytex PT715

Quantity

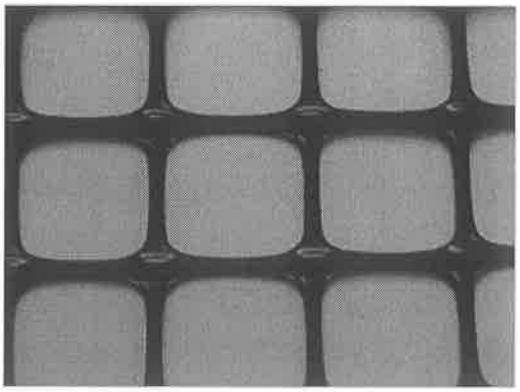
1. Polytex =600²(150m x 4m wide)To be transported at Sentrarand

3. Tensar

Description

- Pavement stabilisation
- ground improvement
- soil reinforcement and retaining structures
- water management
- Drainage systems
- hydraulic works
- Landfills

Pictures



Model: SS30 type geogrid

Size: Secugrid 30/30 Q1

Quantity

1. Tensar(Polyester PET flat bar geogrid with welded juctions)=1400m²(350m x 4m wide) To be transported at Sentrarand

CLAUSE BY CLAUSE COMPLIANCE SCHEDULE.

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

NB: Please sign the last page of Clause by Clause Compliance Schedule.

	Compliance
1. G4 Material Specification	
1.1. Material Specifications	
1.2. Atterberg Limits G1 – G7	
2. Bidim (Geotextile A6 type)	
3. Polytex	
4. Tensar	

Date

Signature

Transnet urges its clients, suppliers and the general public to report any fraud or corruption to

TIP-OFFS ANONYMOUS: 0800 003 056

RFQ FOR THE SUPPLY OF	**: G4 MATERIAL, BIDIM, TENSA AND POLYTEX.**
CLOSING VENUE	**: INYANDA HOUSE 1**
CLOSING DATE & TIME	**: 13 SEPTEMBER 2016 AT 10:00.**
VALIDITY PERIOD	**: 18 JANUARY 2017**

SECTION 2
EVALUATION CRITERA AND RETURNABLE DOCUMENTS

11 Evaluation Criteria

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

Criterion/Criteria	Explanation
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. • Compliance to Specification Claude by Clause Declaration completed in full.
Functionality Threshold	As prescribed in terms of the Preferential Procurement Policy Framework Act (PPPFA), Act 5 of 2000 and its Regulations, Respondents are to note that functionality is included as a threshold with a prescribed percentage threshold of 80% minimum. • Delivery period to all Sites.
Final weighted evaluation based on 80/20 preference point	• Pricing and price basis [firm] • 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 indicated in Annexure A: B-BBEE Claim Form.

12 Validity Period

Transnet desires a validity period of 90 [ninety] Business Days from the closing date of this RFQ.
This RFQ is valid until 31 December 2016.

13 Disclosure of Prices Quoted

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

YES ☐ NO ☐

14 Returnable Documents

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

All Returnable Sections, as indicated in the header and footer of the relevant pages, must be signed, stamped and dated by the Respondent.

a) Respondents are required to submit with their Quotations the **Mandatory Returnable Documents**, as detailed below.

Failure to provide all these Mandatory Returnable Documents at the Closing Date and time of this RFQ will result in a Respondent's disqualification. Respondents are therefore urged to ensure that all these Documents are returned with their Quotations.

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

Mandatory Returnable Documents	Submitted [Yes or No]
SECTION 3 : Quotation Form	
Compliance to Specification - Clause by Clause completed in full (Page 09)	

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

Failure to provide all these Returnable Documents may result in a Respondent's disqualification. Respondents are therefore urged to ensure that all these documents are returned with their Quotations.

Essential Returnable Documents	Submitted [Yes or No]
SECTION 2 : Evaluation criteria and list of returnable documents	
- SECTION 4 : RFQ Declaration and Breach of Law Form	
- Valid and original, or a certified copy, of your entity's B-BBEE Verification Certification as per the requirements stipulated in Annexure A: B-BBEE Claims Form Note: failure to provide these required documents at the closing date and time of the RFQ will result in an automatic score of zero being allocated for preference	
- Original valid Tax Clearance Certificate [Consortia / Joint Ventures must submit a separate Tax Clearance Certificate for each party]	
ANNEXURE A - SWORN AFFIDAVIT – B-BBEE EXEMPTED MICRO ENTERPRISE	
ANNEXURE B – B-BBEE Preference Points Claim Form	

CONTINUED VALIDITY OF RETURNABLE DOCUMENTS

The successful Respondent will be required to ensure the validity of all returnable documents, including but not limited to its Tax Clearance Certificate and valid B-BBEE Verification Certificate, for the duration of any contract

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

SECTION 3

QUOTATION FORM

I/We_____

hereby offer to supply the goods/services at the prices quoted in the Price Schedule below, in accordance with the conditions related thereto.

I/We agree to be bound by those terms and conditions in:

- the Standard RFQ Terms and Conditions for the Supply of Goods or Services to Transnet; and
- any other standard or special conditions mentioned and/or embodied in this Request for Quotation.

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

I/We further agree that if, after I/we have been notified of the acceptance of my/our Quotation, I/we fail to deliver the said goods/service/s within the delivery lead-time quoted, Transnet may, without prejudice to any other legal remedy which it may have, cancel the order and recover from me/us any expenses incurred by Transnet in calling for Quotations afresh and/or having to accept any less favourable offer.

Price Schedule

I/We quote as follows for the goods required, on a "delivered nominated destination" basis, excluding VAT:

SCHEDULE OF QUANTITIES (N.B Including Transport on the price)

ITEM NO	LOCATION	QUANTITY	PRICE FOR MATERIAL	PRICE FOR TRANSPORT	TOTAL PRICE
1	Marieshoop (20 km away from Sentrarand)	**140m3**			
2	Zesfontein(10 km away from Sentrarand)	**140m3**			
3	Katbosfontein (Inside Sentrarand)	**280m3**			
4	Dryden Station (10 km away from Delmas)	**70m3**			
5	Delmas	**70m3**			
	Total m3	**700m3**			
Total amount					**R**
Vat					**R**
Total amount including vat					**R**

Respondent's Signature

Date & Company Stamp

SCHEDULE OF QUANTITIES (N.B Including Transport on the price)

ITEM NO	**LOCATION**	**Description**	**QUANTITY**	**PRICE FOR MATERIAL**	**PRICE FOR TRANSPORT**	**TOTAL PRICE**
1	Sentrarand	Bidim Geotextile A6 type(350x4)	1400m2			R
2	Sentrarand	Polytex(150x4)	600m2			R
3	Sentrarand	Tensar(350x4)	1400m2			R
4						
	Total m2		**3400m2**			
Total amount						**R**
Add Vat						**R**
Total amount Including vat						**R**

Delivery Lead-Time from date of purchase order: _____ [days/weeks]

Notes to Pricing:

a) All Prices must be quoted in South African Rand, exclusive of VAT

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

1. Specifications and drawings included in this RFQ - if applicable; and

2. The following documents all of which are available on Transnet's website or upon request:

   2.1. General Bid Conditions;

   2.2. Standard RFQ Terms and Conditions for the Supply of Goods or Services to Transnet;

   2.3. Supplier Integrity Pact;

   2.4. Non-disclosure Agreement; and

   2.5. Vendor Application Form and all supporting documents (first time vendors only)
   Alternatively, for all existing vendors, please provide vendor number(s) here:

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

In the Yes/No column above, please confirm that all the information e.g. company address and contact details, banking details etc. are still correct as at the time of allocation of the vendor number(s). Alternatively, Respondents are required to provide the updated information with their bid submission.

SIGNED at _____ on this ____ day of _____ 20___

SIGNATURE OF WITNESSES ADDRESS OF WITNESSES

1 _____ _____

Name _____ _____

2 _____ _____

Name _____ _____

SIGNATURE OF RESPONDENT'S AUTHORISED REPRESENTATIVE: _____

NAME: _____

DESIGNATION: _____

_____ _____

Respondent's Signature Date & Company Stamp

SECTION 4

RFQ DECLARATION AND BREACH OF LAW FORM

NAME OF ENTITY: _____

We _____ do hereby certify that:

1. Transnet has supplied and we have received appropriate responses to any/all questions [as applicable] which were submitted by ourselves for RFQ Clarification purposes;

2. we have received all information we deemed necessary for the completion of this Request for Quotation [**RFQ**];

3. we have been provided with sufficient access to the existing Transnet facilities/sites and any and all relevant information relevant to the Supply of the Goods as well as Transnet information and Employees, and has had sufficient time in which to conduct and perform a thorough due diligence of Transnet's operations and business requirements and assets used by Transnet. Transnet will therefore not consider or permit any pre- or post-contract verification or any related adjustment to pricing, service levels or any other provisions/conditions based on any incorrect assumptions made by the Respondent in arriving at his Bid Price.

4. at no stage have we received additional information relating to the subject matter of this RFQ from Transnet sources, other than information formally received from the designated Transnet contact(s) as nominated in the RFQ documents;

5. we are satisfied, insofar as our entity is concerned, that the processes and procedures adopted by Transnet in issuing this RFQ and the requirements requested from Bidders in responding to this RFQ have been conducted in a fair and transparent manner; and

6. furthermore, we declare that a family, business and/or social relationship **exists / does not exist** [delete as applicable] between an owner / member / director / partner / shareholder of our entity and an employee or board member of the Transnet Group including any person who may be involved in the evaluation and/or adjudication of this Bid.

7. In addition, we declare that an owner / member / director / partner / shareholder of our entity **is / is not** [delete as applicable] an employee or board member of the Transnet Group.

8. If such a relationship as indicated in paragraph 6 and/or 7 exists, the Respondent is to complete the following section:

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

_____

_____ _____

Respondent's Signature Date & Company Stamp

Indicate nature of relationship with Transnet:

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

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

BREACH OF LAW

10. We further hereby certify that *I/we* ***have/have not been*** [delete as applicable] found guilty during the preceding 5 [five] years of a serious breach of law, including but not limited to a breach of the Competition Act, 89 of 1998, by a court of law, tribunal or other administrative body. The type of breach that the Respondent is required to disclose excludes relatively minor offences or misdemeanours, e.g. traffic offences. This includes the imposition of an administrative fine or penalty.
    Where found guilty of such a serious breach, please disclose:
    NATURE OF BREACH:

    DATE OF BREACH:
    Furthermore, I/we acknowledge that Transnet SOC Ltd reserves the right to exclude any Respondent from the bidding process, should that person or entity have been found guilty of a serious breach of law, tribunal or regulatory obligation.

SIGNED at _____ on this _____ day of _____ 20___

For and on behalf of duly authorised hereto	AS WITNESS:
Name:	Name:
Position:	Position:

Respondent's Signature

Date & Company Stamp

Signature:	Signature:
Date:	Registration No of Company/CC _____
Place:	Registration Name of Company/CC _____

FOR THE SUPPLY OF: G4 MATERIAL, BIDIM, TENSA AND POLYTEX.

ANNEXURE A:

SWORN AFFIDAVIT – B-BBEE EXEMPTED MICRO ENTERPRISE

I, the undersigned,

Full Name & Surname	
Identity Number	

Hereby declare under oath as follows:
1. The contents of this statement are to the best of my knowledge a true reflection of the facts.
2. I am a member / director / owner of the following enterprise and am duly authorised to act on its behalf.

Enterprise Name	
Trading Name	
Registration Number	
Enterprise Address	

3. I hereby declare under oath that:
   - The enterprise is _____% black owned;
   - The enterprise is _____% black woman owned;
   - The enterprise is _____% black youth owned;
   - The enterprise is _____% black disabled owned;
   - Based on the management accounts and other information available for the _____ financial year, the income did not exceed R10, 000,000.00 (ten million rand).

Please confirm on the table below the B-BBEE level contributor, **by ticking the applicable box.**

100% black owned	**Level One** (135% B-BBEE procurement recognition) More than 51% black	
More than 51% black owned	**Level Two** (125% B-BBEE procurement recognition) Less than 51% black	
Less than 51% black owned	**Level Four** (100% B-BBEE procurement recognition)	

4. The entity is an empowering supplier in terms of the dti Codes of Good Practice.
5. I know and understand the contents of this affidavit and I have no objection to take the prescribed oath and consider the oath binding on my conscience and on the owners of the enterprise which I represent in this matter.
6. The sworn affidavit will be valid for a period of 12 months from the date signed by commissioner.

Deponent Signature: _____

Date: _____

_____
Commissioner of Oaths
Signature & stamp

_____ _____

Respondent's Signature Date & Company Stamp

SWORN AFFIDAVIT – B-BBEE QUALIFYING SMALL ENTERPRISE

I, the undersigned,

Full Name & Surname	
Identity Number	

Hereby declare under oath as follows:
1. The contents of this statement are to the best of my knowledge a true reflection of the facts.
2. I am a member / director / owner of the following enterprise and am duly authorised to act on its behalf.

Enterprise Name	
Trading Name	
Registration Number	
Enterprise Address	

3. I hereby declare under oath that:
   - The enterprise is _____% black owned;
   - The enterprise is _____% black woman owned;
   - The enterprise is _____% black youth owned;
   - The enterprise is _____% black disabled owned;
   - Based on the management accounts and other information available for the _____ financial year, the income did not exceed R50,000,000.00 (fifty million rand);
   - The entity is an empowering supplier in terms of Clause 3.3 (a) or (b) or (c) or (d) or as amended 3.3 (e) of **the dti** Codes of Good Practice. **(Tick appropriate box in table below).**

(a) At least 25% of cost of sales, (excluding labour costs and depreciation) must be procurement from local producers or suppliers in South Africa; for the services industry include labour costs but capped at 15%		(b) Job Creation – 50% of jobs created are for black people, provided that the number of black employees in the immediate prior verified B-BBEE measurement is maintained	
(c) At least 25% transformation of raw material / beneficiation which include local manufacturing, production and /or assembly, and / or packaging		(d) At least 12 days per annum of productivity deployed in assisting QSE and EME beneficiaries to increase their operation or financial capacity	
(e) At least 85% of labour costs should be paid to South African employees by service industry entities			

Please confirm on the table below the B-BBEE level contributor, **by ticking the applicable box.**

100% black owned	**Level One** (135% B-BBEE procurement recognition)	
More than 51% black owned	**Level Two** (125% B-BBEE procurement recognition)	

5. I know and understand the contents of this affidavit and I have no objection to take the prescribed oath and consider the oath binding on my conscience and on the owners of the enterprise which I represent in this matter.
6. The sworn affidavit will be valid for a period of 12 months from the date signed by commissioner.

Deponent Signature: _____

Date: _____

_____
Commissioner of Oaths
Signature & stamp

_____ _____

Respondent's Signature Date & Company Stamp

FOR THE SUPPLY OF: G4 MATERIAL, BIDIM, TENSA AND POLYTEX.

ANNEXURE B: B-BBEE PREFERENCE POINTS CLAIM FORM

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

1. INTRODUCTION

1.1 A total of 20 preference points shall be awarded for B-BBEE Status Level 1 of Contribution.

1.2 Failure on the part of a Bidder to fill in and/or to sign this form and submit a B-BBEE Verification Certificate from a Verification Agency accredited by the South African Accreditation System [**SANAS**] or a Registered Auditor approved by the Independent Regulatory Board of Auditors [**IRBA**] or an Accounting Officer as contemplated in the Close Corporation Act [**CCA**] together with the bid will be interpreted to mean that preference points for B-BBEE Status Level of Contribution are not claimed.

1.3 Transnet reserves the right to require of a Bidder, either before a Bid is adjudicated or at any time subsequently, to substantiate any claim in regard to preferences, in any manner required by Transnet.

2. GENERAL DEFINITIONS

2.1 **"all applicable taxes"** include value-added tax, pay as you earn, income tax, unemployment insurance fund contributions and skills development levies;

2.2 **"B-BBEE"** means broad-based black economic empowerment as defined in section 1 of the Broad-Based Black Economic Empowerment Act;

2.3 **"B-BBEE status of contributor"** means the B-BBEE status received by a measured entity based on its overall performance using the relevant scorecard contained in the Codes of Good Practice on Black Economic Empowerment, issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act;

2.4 **"Bid"** means a written offer in a prescribed or stipulated form in response to an invitation by Transnet for the provision of goods, works or services;

2.5 **"Broad-Based Black Economic Empowerment Act"** means the Broad-Based Black Economic Empowerment Act, 2003 [Act No. 53 of 2003];

2.6 **"comparative price"** means the price after the factors of a non-firm price and all unconditional discounts that can utilised have been taken into consideration;

2.7 **"consortium or joint venture"** means an association of persons for the purpose of combining their expertise, property, capital, efforts, skills and knowledge in an activity for the execution of a contract;

2.8 **"contract"** means the agreement that results from the acceptance of a bid by Transnet;

2.9 "**EME**" means any enterprise with an annual total revenue of R5 [five] million or less as per the 2007

version of the B-BBEE Codes of Good Practice and means any enterprise with an annual total revenue of R10 [ten] million or less as per the Revised Codes of Good Practice issued on 11 October 2013 in terms of Government Gazette No. 36928;

2.10 **"firm price"** means the price that is only subject to adjustments in accordance with the actual increase or decrease resulting from the change, imposition, or abolition of customs and excise duty and any other duty, levy, or tax, which, in terms of the law or regulation, is binding on the contractor and demonstrably has an influence on the price of any supplies, or the rendering costs of any service, for the execution of the contract;

2.11 **"functionality"** means the measurement according to predetermined norms, as set out in the bid documents, of a service or commodity that is designed to be practical and useful, working or operating, taking into account, among other factors, the quality, reliability, viability and durability of a service and the technical capacity and ability of a bidder;

2.12 **"non-firm prices"** means all prices other than "firm" prices;

2.13 **"person"** includes reference to a juristic person;

2.14 "**QSE**" means any enterprise with an annual total revenue between R5 [five] million and R35 [thirty five] million as per the 2007 version of the B-BBEE Codes of Good Practice and means any enterprise with an annual total revenue of between R10 [ten] million and R50 [fifty] million as per the Revised Codes of Good Practice issued on 11 October 2013 in terms of Government Gazette No. 36928

2.15 "**rand value**" means the total estimated value of a contract in South African currency, calculated at the time of bid invitations, and includes all applicable taxes and excise duties;

2.16 **"subcontract"** means the primary contractor's assigning or leasing or making out work to, or employing another person to support such primary contractor in the execution of part of a project in terms of the contract;

2.17 **"total revenue"** bears the same meaning assigned to this expression in the Codes of Good Practice on Black Economic Empowerment, issued in terms of section 9(1) of the Broad-Based Black Empowerment Act and promulgated in the Government Gazette on 9 February 2007;

2.18 **"trust"** means the arrangement through which the property of one person is made over or bequeathed to a trustee to administer such property for the benefit of another person; and

2.19 **"trustee"** means any person, including the founder of a trust, to whom property is bequeathed in order for such property to be administered for the benefit of another person.

3. ADJUDICATION USING A POINT SYSTEM

3.1 The Bidder obtaining the highest number of total points for the evaluation criteria as enumerated in Section 2 of the RFP will be awarded the contract, unless objective criteria justifies the award to another bidder.

3.2 Preference points shall be calculated after prices have been brought to a comparative basis taking into account all factors of non-firm prices and all unconditional discounts.

3.3 Points scored will be rounded off to 2 [two] decimal places.

3.4 In the event of equal points scored, the Bid will be awarded to the Bidder scoring the highest number of preference points for B-BBEE.

3.5 However, when functionality is part of the evaluation process and two or more Bids have scored equal points including equal preference points for B-BBEE, the successful Bid will be the one scoring the highest score for functionality.

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

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

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

B-BBEE Status Level of Contributor	Number of Points [Maximum 20]
1	20
2	18
3	16
4	12
5	8
6	6
7	4
8	2
Non-compliant contributor	0

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

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

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

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

the Revised Codes or the 2007 version of the Codes. Companies which are governed by Sector-specific Codes will be measured in terms of those Sector Codes.

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

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

4.8 A trust, consortium or joint venture will qualify for points for its B-BBEE status level as a legal entity, provided that the entity submits its B-BBEE status level certificate.

4.9 A trust, consortium or joint venture will qualify for points for their B-BBEE status level as an unincorporated entity, provided that the entity submits their consolidated B-BBEE scorecard as if they were a group structure and that such a consolidated B-BBEE scorecard is prepared for every separate bid.

4.10 Tertiary institutions and public entities will be required to submit their B-BBEE status level certificates in terms of the specialised scorecard contained in the B-BBEE Codes of Good Practice.

4.11 A person will not be awarded points for B-BBEE status level if it is indicated in the Bid documents that such a Bidder intends subcontracting more than 25% [twenty-five per cent] of the value of the contract to any other enterprise that does not qualify for at least the same number of points that such a Bidder qualifies for, unless the intended subcontractor is an EME that has the capability and ability to execute the subcontract.

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

4.13 Bidders are to note that in terms of paragraph 2.6 of Statement 000 of the Revised Codes of Good Practice issued on 11 October 2013 in terms of Government Gazette No. 36928, any representation made by an entity about its B-BBEE compliance must be supported by suitable evidence or documentation. As such, Transnet reserves the right to request such evidence or documentation from Bidders in order to verify any B-BBEE recognition claimed.

5. B-BBEE STATUS AND SUBCONTRACTING

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

B-BBEE Status Level of Contributor _____ = _____ [maximum of 20 points]

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

5.2 **Subcontracting:**

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

If YES, indicate:

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

(ii) The name of the subcontractor .....

(iii) The B-BBEE status level of the subcontractor .....

(iv) Is the subcontractor an EME? YES/NO

5.3 Declaration with regard to Company/Firm

(i) Name of Company/Firm.....

(ii) VAT registration number.....

(iii) Company registration number.....

(iv) Type of Company / Firm [TICK APPLICABLE BOX]

□Partnership/Joint Venture/Consortium
□One person business/sole propriety
□Close Corporations
□Company (Pty) Ltd

(v) Describe Principal Business Activities

.....

.....

(vi) Company Classification [TICK APPLICABLE BOX]

□Manufacturer
□Supplier
□Professional Service Provider
□Other Service Providers, e.g. Transporter, etc.

(vii) Total number of years the company/firm has been in business.....

BID DECLARATION

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

(i) The information furnished is true and correct.

(ii) In the event of a contract being awarded as a result of points claimed as shown in paragraph 6 above, the contractor may be required to furnish documentary proof to the satisfaction of Transnet that the claims are correct.

(iii) If the B-BBEE status level of contribution has been claimed or obtained on a fraudulent

basis or any of the conditions of contract have not been fulfilled, Transnet may, in addition to any other remedy it may have:

(a) disqualify the person from the bidding process;

(b) recover costs, losses or damages it has incurred or suffered as a result of that person's conduct;

(c) cancel the contract and claim any damages which it has suffered as a result of having to make less favourable arrangements due to such cancellation;

(d) restrict the Bidder or contractor, its shareholders and directors, and/or associated entities, or only the shareholders and directors who acted in a fraudulent manner, from obtaining business from Transnet for a period not exceeding 10 years, after the *audi alteram partem* [hear the other side] rule has been applied; and/or

(e) forward the matter for criminal prosecution.

WITNESSES:

1. .....

2. .....

SIGNATURE OF BIDDER

DATE: .....

COMPANY NAME: .....

ADDRESS: .....

ANNEXURE: C

NON DISCLOSURE AGREEMENT - SERVICES

[March 2015]

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 RFQ bid response hereto

WHEREAS

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

IT IS HEREBY AGREED

1. INTERPRETATION

In this Agreement:

1.1 **Agents** mean directors, officers, employees, agents, professional advisers, contractors or sub-contractors, or any Group member;

1.2 **Bid or Bid Document** means Transnet's Request for Information [RFI] Request for Proposal [RFP] or Request for Quotation [RFQ], as the case may be;

1.3 **Confidential Information** means any information or other data relating to one party [the Disclosing Party] and/or the business carried on or proposed or intended to be carried on by that party and which is made available for the purposes of the Bid to the other party [the Receiving Party] or its Agents by the Disclosing Party or its Agents or recorded in agreed minutes following oral disclosure and any other information otherwise made available by the Disclosing Party or its Agents to the Receiving Party or its Agents, whether before, on or after the date of this Agreement, and whether in writing or otherwise, including any information, analysis or specifications derived from, containing or reflecting such information but excluding information which:

a) is publicly available at the time of its disclosure or becomes publicly available [other than as a result of disclosure by the Receiving Party or any of its Agents contrary to the terms of this Agreement]; or

Respondent's Signature

Date & Company Stamp

b) was lawfully in the possession of the Receiving Party or its Agents [as can be demonstrated by its written records or other reasonable evidence] free of any restriction as to its use or disclosure prior to its being so disclosed; or

c) following such disclosure, becomes available to the Receiving Party or its Agents [as can be demonstrated by its written records or other reasonable evidence] from a source other than the Disclosing Party or its Agents, which source is not bound by any duty of confidentiality owed, directly or indirectly, to the Disclosing Party in relation to such information;

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

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

2. CONFIDENTIAL INFORMATION

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

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

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

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

b) to the extent required by law or the rules of any applicable regulatory authority, subject to clause 2.4 below.

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

2.5 In the event that any Confidential Information shall be copied, disclosed or used otherwise than as permitted under this Agreement then, upon becoming aware of the same, without prejudice to any

Respondent's Signature

Date & Company Stamp

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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ANNEXURE: D

GENERAL BID CONDITIONS - SERVICES

[March 2015]

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Respondent's Signature

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2 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:

2.1 **Bid** shall mean a Respondent's tendered response / proposal to a Transnet RFQ;

2.2 **Bid Document(s)** shall mean a reference to a Request for Proposal or Request for Quotation;

2.3 **Business Day** shall mean any day other than a Saturday, Sunday or public holiday;

2.4 **Respondent(s)** shall mean a respondent/bidder to a Bid Document;

2.5 **RFP** shall mean Request for Proposal;

2.6 **RFQ** shall mean Request for Quotation;

2.7 **RFX** shall mean RFP or RFQ, as the case may be;

2.8 **Services** shall mean the services required by Transnet as specified in its Bid Document;

2.9 **Service Provider** shall mean the successful Respondent;

2.10 **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;

2.11 **Transnet** shall mean Transnet SOC Ltd, a State Owned Company; and

2.12 **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.

3 GENERAL

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

4 SUBMISSION OF BID DOCUMENTS

4.1 A Bid, which shall hereinafter include reference to an 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.

4.2 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.

4.3 The Respondent's return address must be stated on the reverse side of the sealed envelope.

5 USE OF BID FORMS

5.1 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.

Respondent's Signature

Date & Company Stamp

5.2 Respondents must note that the original Bid forms must be completed for submission and not a reprocessed copy thereof.

5.3 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.

6 BID FEES

6.1 A non-refundable fee may be charged for Bid Documents, depending on the administrative cost of preparing and issuing such Bid Documents.

6.2 Only Respondents that have paid the Bid fee and provided proof of payment when submitting their Bid will be considered.

7 VALIDITY PERIOD

7.1 Respondents must hold their Bid valid for acceptance by Transnet at any time within the requested validity period after the closing date of the bid.

7.2 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.

8 SITE VISIT / BRIEFING SESSION

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

9 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.

10 COMMUNICATION AFTER THE CLOSING DATE

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

11 UNAUTHORISED COMMUNICATION ABOUT BIDS

Where Bids are submitted to the Secretary of an Acquisition Council, Respondents may at any time communicate with the Secretary on any matter relating to its Bid but, in the absence of written authority from the Secretary, no communication on a question affecting the subject of a Bid shall take place

Respondent's Signature

Date & Company Stamp

between Respondents or other potential service providers or any member of the Acquisition Council or official of Transnet during the period between the closing date for the receipt of the Bid and the date of the notification of the successful Respondent(s). A Bid, in respect of which any such unauthorised communication has occurred, may be disqualified.

12 POST TENDER NEGOTIATIONS

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

13 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.

14 DEFAULTS BY RESPONDENTS

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

14.1 enter into a formal contract when called upon to do so within such period as Transnet may specify; or

14.2 accept an order in terms of the Bid;

14.3 furnish satisfactory security when called upon to do so for the fulfilment of the contract; or

14.4 comply with any condition imposed by Transnet,

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

15 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.

16 PRICES SUBJECT TO CONFIRMATION

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

16.2 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.

17 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.

18 EXCHANGE AND REMITTANCE

18.1 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.

18.2 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.

18.3 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.

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

18.5 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.

18.6 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**].

19 ACCEPTANCE OF BID

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

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

19.3 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.

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

20 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.

21 TERMS AND CONDITIONS OF CONTRACT

21.1 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.

21.2 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.

22 CONTRACT DOCUMENTS

22.1 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.

22.2 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.

22.3 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.

23 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.

Respondent's Signature

Date & Company Stamp

24 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.

25 CONTRACTUAL SECURITIES

25.1 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.

25.2 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.

25.3 Such security, if required, shall be an amount which will be stipulated in the Bid Documents.

25.4 The successful Respondent shall be required to submit to Transnet or Transnet's designated official the specified security document(s) within 30 [thirty] calendar days from the date of signature of the contract. Failure to return the securities within the prescribed time shall, save where prior extension has been granted, entitle Transnet without notice to the Service Provider to cancel the contract with immediate effect.

25.5 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 25 will be for the account of the Service Provider.

26 DELETION OF ITEMS TO BE EXCLUDED FROM BID

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

27 VALUE-ADDED TAX

27.1 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.

27.2 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.

28 IMPORTANT NOTICE TO RESPONDENTS REGARDING PAYMENT

28.1 Method of Payment

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.

However, in addition to the aforegoing the Respondent is invited to submit offers based on alternative methods of payment and/or financing proposals.

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.

The Respondent must, therefore, in the first instance, tender strictly in accordance with clause 28.10 above. Failure to comply with clause 28.10 above may preclude a Bid from further consideration.

NOTE: The successful Respondent [the **Service Provider**], where applicable, shall be required to furnish a guarantee covering any advance payments, as set out in clause 25 above *[Contractual Securities]*.

28.2 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.

29 DELIVERY REQUIREMENTS

29.1 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.

29.2 Progress Reports

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

29.3 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.

30 SPECIFICATIONS AND COPYRIGHT

30.1 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.

30.2 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.

31 BIDS BY OR ON BEHALF OF FOREIGN RESPONDENTS

31.1 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.

31.2 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.

31.3 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.

31.4 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.

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.

The Power of Attorney must be signed by the principal under the same title as used in the Bid Documents.

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.

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.

31.5 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**]:

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

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.

32 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.

33 TRANSNET'S LIST OF EXCLUDED TENDERERS (BLACKLIST)

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

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

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

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

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

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

b) has, after being notified of the acceptance of his Bid, failed or refused to sign a contract when called upon to do so in terms of any condition forming part of the bid documents;

c) has carried out any contract resulting from such bid in an unsatisfactory manner or has breached any condition of the contract;

d) has offered, promised or given a bribe in relation to the obtaining or execution of the contract;

e) has acted in a fraudulent or improper manner or in bad faith towards Transnet or any Government Department or towards any public body, Enterprise or person;

f) has made any incorrect statement in a certificate or other communication with regard to the Service or his B-BBEE status and is unable to prove to the satisfaction of Transnet that:

(i) he made the statement in good faith honestly believing it to be correct; and

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

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

h) has litigated against Transnet in bad faith.

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

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

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

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

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

33.7 Where any person or Enterprise has been found guilty by a court of law, tribunal or other administrative body of a serious breach of any law, during the preceding 5 Years, such person/Enterprise may also be blacklisted. Serious breaches of the law would include but are not limited to corruption, fraud, theft, extortion, or contraventions of the Competition Act 89 of 1998 (e.g. collusive tendering). This process excludes minor convictions such as traffic offences or

Respondent's Signature

Date & Company Stamp

personal disagreements between parties which have no bearing on the business operations of the person or Enterprise.

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

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

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

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ANNEXURE: E

STANDARD TERMS AND CONDITIONS OF CONTRACT

FOR THE PROVISION OF SERVICES TO TRANSNET

[March 2015]

Respondent's Signature

Date & Company Stamp

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34 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.

35 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:

35.1 **AFSA** means the Arbitration Foundation of South Africa;

35.2 **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;

35.3 **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;

35.4 **Business Day(s)** means Mondays to Fridays between 07:30 and 16:00, excluding public holidays as proclaimed in South Africa;

35.5 **Commencement Date** means [•], notwithstanding the signature date of the Agreement;

35.6 **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:

information relating to methods of operation, data and plans of the disclosing Party;

the contents of the Agreement;

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;

any information disclosed by either Party and which is clearly marked as being confidential or secret;

information relating to the strategic objectives and planning of the disclosing Party relating to its existing and planned future business activities;

information relating to the past, present and future research and development of the disclosing Party;

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;

information contained in the software and associated material and documentation belonging to the disclosing Party;

technical and scientific information, Know-How and trade secrets of a disclosing Party including inventions, applications and processes;

Copyright works;

commercial, financial and marketing information;

data concerning architecture, demonstrations, tools and techniques, processes, machinery and equipment of the disclosing Party;

plans, designs, concepts, drawings, functional and technical requirements and specifications of the disclosing Party;

information concerning faults or defects in goods, equipment, hardware or software or the incidence of such faults or defects; and

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;

35.7 **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;

35.8 **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;

35.9 **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;

35.10 **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;

35.11 **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;

35.12 **Foreground Intellectual Property** means all Intellectual Property developed by either Party pursuant to the Agreement;

35.13 **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;

35.14 **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;

35.15 **Materials** means the Deliverables, the Service Provider Materials and the Third Party Materials;

35.16 **Parties** mean the Parties to the Agreement together with their subsidiaries, divisions, business units, successors-in-title and their assigns;

35.17 **Party** means either one of these Parties;

35.18 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;

35.19 **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;

35.20 **Personnel** means any partner, employee, agent, consultant, independent associate or supplier, Subcontractor and the staff of such Subcontractor, or other authorised representative of either Party;

35.21 **Purchase Order(s)** means official orders issued by an operating division of Transnet to the Service Provider for the provision of Services;

35.22 **Service(s)** means [•], the Service(s) provided to Transnet by the Service Provider, pursuant to the Work Order(s) in terms of the Agreement;

35.23 **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;

35.24 **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;

35.25 **Subcontractor** means the third party with whom the Service Provider enters into a Subcontract;

35.26 **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;

35.27 **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;

35.28 **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;

35.29 **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;

35.30 **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

35.31 **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.

36 INTERPRETATION

36.1 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.

36.2 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.

36.3 A reference to the singular incorporates a reference to the plural and *vice versa*.

36.4 A reference to natural persons incorporates a reference to legal persons and *vice versa*.

36.5 A reference to a particular gender incorporates a reference to the other gender.

37 NATURE AND SCOPE

37.1 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.

37.2 Such Purchase Orders shall be agreed between the Parties from time to time, subject to the terms of the relevant Work Order(s).

37.3 Each properly executed Purchase Order forms an inseparable part of the Agreement as if it were fully incorporated into the body of the Agreement.

37.4 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 62 *[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.

37.5 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.

37.6 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.

38 AUTHORITY OF PARTIES

38.1 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.

38.2 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.

39 WARRANTIES

39.1 The Service Provider warrants to Transnet that:

it has full capacity and authority to enter into and to perform the Agreement and that the Agreement is executed by a duly authorised representatives of the Service Provider;

it will discharge its obligations under the Agreement and any annexure, appendix or schedule hereto with all due skill, care and diligence;

it will be solely responsible for the payment of remuneration and associated benefits, if any, of its Personnel and for withholding and remitting income tax for its Personnel in conformance with any applicable laws and regulations;

it will procure licences for Transnet in respect of all Third Party Material detailed in the Work Order(s), and will procure the right for Transnet to take such copies [in whole or in part] of such Third Party Materials as it may reasonably require for the purposes of back-up for archiving and disaster recovery; and

the use or possession by Transnet of any Materials will not subject Transnet to any claim for infringement of any Intellectual Property Rights of any third party.

39.2 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 39.3 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.

39.3 The Service Provider warrants that for a period of 90 [ninety] calendar days from Acceptance of the Deliverables they will, if properly used, conform in all material respects with the requirements set out in the relevant schedule. The Service Provider will at its expense remedy any such non-conformance as soon as possible but in any event within 30 [thirty] calendar days of notification by Transnet. In the event that the Service Provider fails or is unable to remedy such non-conformance within such time-scale, Transnet will be entitled to employ a third party to do so in place of the Service Provider and any excess charges or costs incurred by Transnet as a result shall be paid by the Service Provider.

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

39.5 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.

39.6 The Service Provider shall advise Transnet of the effects of any steps proposed by Transnet pursuant to clause 39.5 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 62 *[Amendment and Change Control]*.

39.7 The Service Provider warrants that:

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

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.

39.8 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.

39.9 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.

39.10 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.

40 TRANSNET'S OBLIGATIONS

40.1 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.

40.2 The Service Provider shall give Transnet reasonable notice of any information it requires in accordance with clause 40.1 above.

40.3 Subject to clause 47 *[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.

41 GENERAL OBLIGATIONS OF THE SERVICE PROVIDER

41.1 The Service Provider shall:

respond promptly to all complaints and enquiries from Transnet;

inform Transnet immediately of any dispute or complaint arising in relation to the provision of the Services;

conduct its business in a professional manner that will reflect positively upon the Service Provider and the Service Provider's Services;

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;

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;

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;

comply with all applicable environmental legislation and regulations, and demonstrate sound environmental policies, management and performance; and

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.

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

render the Services and perform all its duties with honesty and integrity;

communicate openly and honestly with Transnet and demonstrate a commitment to performing the Services timeously, efficiently and to the required standards;

endeavour to provide the highest possible standards of service and professionalism, with a reasonable degree of care and diligence;

use its best endeavours and make every diligent effort to meet agreed deadlines;

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;

practice and promote its own internal policies aimed at prohibiting and preventing unfair discrimination [as further referred to in clause 56 – *Equality and Diversity*];

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;

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;

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;

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;

not mislead Transnet or its officers, employees and stakeholders, whether by act or omission;

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

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.

42 B-BBEE AND SOCIO-ECONOMIC OBLIGATIONS

42.1 B-BBEE Scorecard

Transnet fully endorses and supports the Broad-Based Black Economic Empowerment Programme and is strongly of the opinion that all South African business enterprises have an equal obligation to redress the imbalances of the past. It is also a fundamental requirement of the RFP that the Service Provider also contributes to the Supplier Development Programme, as applied by Transnet.

In response to this requirement, the Service Provider shall submit to Transnet's Contract Manager or such other designated person details of its B-BBEE status in terms of the latest Codes of Good Practice issued in terms of the B-BBEE Act and proof thereof at the beginning of March each year during the currency of the Agreement.

The Service Provider undertakes to notify and provide full details to Transnet in the event there is:

(i) a change in the Service Provider's B-BBEE status which is less than what it was at the time of its appointment including the impact thereof; and

(ii) a corporate or internal restructure or change in control of the Service Provider which has or likely to impact negatively on the Service Provider's B-BBEE status.

Notwithstanding any other reporting requirement in terms hereof, the Service Provider undertakes to provide any B-BBEE data (underlying data relating to the Service Provider which has been relied upon or utilised by a verification agency or auditor for the purposes of issuing a verification certificate in respect of the Service Provider B-BBEE status) which Transnet may request on written notice within 30 (thirty) calendar days of such request. A failure to provide such data shall constitute a Service Provider Default and may be dealt with in accordance with the provisions of clause 52.

In the event there is a change in the Service Provider's B-BBEE status, then the provisions of clause 52**Error! Reference source not found.** shall apply.

42.2 B-BBEE Improvement Plan

Transnet encourages its Service Providers to constantly strive to improve their B-BBEE levels. To this end, the Service Provider undertakes to provide Transnet with a B-BBEE Improvement Plan to indicate the extent to which their B-BBEE status will be maintained or improved over the contract period of the RFQ.

The Service Provider shall, for the duration of the Agreement, comply with the B-BBEE Improvement Plan.

The terms of the B-BBEE Improvement Plan and monetary value of the commitments thereunder shall not (unless otherwise agreed in writing) be less or less favourable than the commitments made by the Service Provider in such B-BBEE Improvement Plan.

42.3 Supplier Development Implementation Plan

In addition to the Supplier Development Plan which the Service Provider provided as part of its bid, the Service Provider undertakes, as stipulated in the RFP, to provide Transnet with a Supplier Development Implementation Plan [**the Implementation Plan**] setting out the nature, extent and monetary value of the Service Provider's commitments which the Service Provider shall undertake, as well as mechanisms and procedures to allow for access to information and verification of the Service Provider's compliance with the Implementation Plan, as shall be agreed with Transnet but in any event no later than 45 (forty five) calendar days from the signature date of the LOI/LOA.

The Parties undertake to negotiate in good faith with a view to agreeing the content of the Implementation Plan by no later than 45 (forty five) calendar days as aforesaid (or such later date as Transnet may consent to in writing).

If the Parties (acting reasonably and in good faith with due consideration to the Supplier Development Plan proposed by the Service Provider in response to the RFP fail to reach agreement on the Supplier Development Implementation Plan within the time limit stipulated in the clause above, it shall constitute a Service Provider Default and Clause 52**Error! Reference source not found.** shall apply.

The Supplier's Implementation Plan shall include, but not be limited to Technology transfer, New skills development, Job creation, Job preservation, Small business promotion and Rural integration and regional development.

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

42.4 Green Economy/Carbon Footprint

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

42.5 Reporting

The Service Provider shall monitor, audit, and record in an auditable manner, its own implementation and compliance with the B-BBEE Improvement Plan and the Supplier Development Implementation Plan and provide the Contract Manager with such information as the Contract Manager may reasonably request concerning the implementation of the B-BBEE Improvement Plan and the Supplier Development Implementation Plan.

The Service Provider shall, on a monthly basis from the Commencement Date and within 7 (seven) calendar days of the end of the previous calendar month, provide Transnet with a report (for monitoring purposes only) in respect of each of the undertakings stipulated in this clause 42.5.

Transnet, through its Supplier Development division, shall, every 6 (six) months from the Commencement Date, review and verify the Service Provider's undertakings stipulated in

this clause with respect to B-BBEE and Supplier Development commitments, based on the Service Provider's report.

The Service Provider shall attach adequate proof to enable Transnet to verify compliance with the B-BBEE Improvement Plan and Supplier Development Implementation Plan.

Post verification of the submitted report to Transnet, Transnet shall engage with the Service Provider on the findings. The Contract Manager, assisted by the relevant specialist from Transnet's Supplier Development division, must report to the Service Provider at the end of every 6 (six) months as to whether or not the Contract Manager and/or the Supplier Development specialist reasonably considers, based on the information available to it, that the Service Provider has during such time complied with the B-BBEE Improvement Plan and the Supplier Development Implementation Plan and the extent, if any, to which the Service Provider has not so complied.

Without prejudice to the Transnet's rights under the Agreement:

(i) if the Contract Manager and/or Transnet's Supplier Development specialist reasonably considers that the Service Provider is not at any time complying with B-BBEE Improvement Plan and/or the Supplier Development Implementation Plan, the Contract Manager and/or the Supplier Development specialist may make such recommendations as is considered reasonably appropriate to the Service Provider as to the steps he reasonably considers should be taken by the Service Provider in order for the Service Provider to remedy such non-compliance and the time period within which such steps must be taken;

(ii) If such recommendations are not implemented by the Service Provider in accordance with such recommendations, then the provisions of clause 42.6 shall apply; and

(iii) Transnet may at any time request a meeting with the Service Provider to consider any non-compliance reported to it by the Supplier Development specialist of Transnet and/or the Contract Manager or which otherwise comes to its attention. Both Parties must attend such a meeting and negotiate in good faith with a view to reach agreement on the steps or actions that the Service Provider must undertake in order to remedy that non-compliance.

In the event the Service Provider is found not to have met the B-BBEE and Supplier Development requirements agreed upon in the B-BBEE Improvement Plan and the Supplier Development Implementation Plan, and/or is found to be fraudulent in submitting the reports, then Transnet shall impose a non-compliance penalty as provided for in clause 42.6 below or shall be entitled to terminate in terms of clauses 51 and 52.

For the sake of completion of its contractual obligations, the Service Provider shall be obliged to complete all the undertakings made under the B-BBEE Improvement Plan and the Supplier Development Implementation Plan 3 to 6 months before the Termination Date.

42.6 Penalties

Non Compliance Penalties:

If the Service Provider fails, at any time, to achieve its commitments under and in accordance with the B-BBEE Improvement Plan and the Supplier Development Implementation Plan ("a **Non Compliance**"), the Service Provider shall, subject to the applicable Non Compliance Penalty Cap, pay a Non Compliance penalty ("Non Compliance Penalty") to Transnet in respect of such Non Compliance at the applicable rate ("Applicable Rate"), as prescribed in clause 42.6 0 to 0 below.

(i) Non Compliance Penalties shall be calculated as a percentage of the Contract Value and accrue at the Applicable Rate per month until:

(ii) the date on which the Service Provider has remedied such Non Compliance by complying with the Supplier Development Implementation Plan and/or the B-BBEE Improvement Plan (as applicable); or

(iii) the Agreement being terminated.

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

In relation to the Supplier Development Implementation Plan, Non Compliance Penalties shall accrue based on the difference between the committed SD value for the period under review and the delivered SD value (i.e. 100% of the undelivered portion of the committed SD value) plus an additional 10% (ten percent) of such difference.

In relation to the B-BBEE Improvement Plan, Non Compliance Penalties shall accrue at the following Applicable Rates based on a percentage of the Contract Value:

(iv) for the first month (or part thereof), a rate of 1.0% (one percent);

(v) for the second month (or part thereof), a rate of 1.5% (one and a half percent);

(vi) for the third month (or part thereof), a rate of 2.0% (two percent);

(vii) for the fourth month (or part thereof), a rate of 2.5% (two and a half percent); and

(viii) for any period of Non Compliance after the fourth month, a rate of 3% (three percent).

Non Compliance Penalty Cap for Large Enterprises:

The Non Compliance Penalty Cap in respect of Supplier Development commitments shall not exceed the difference between the committed SD value for the period under review and the delivered value (i.e. 100% of the undelivered portion of the committed SD value), plus an additional 10% (ten percent) of such difference.

The maximum amount of the Service Provider's liability to pay Non Compliance Penalties in the case of the B-BBEE Improvement Plan shall not exceed 5% (five percent) of the Contract Value.

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

In relation to the Supplier Development Implementation Plan, Non Compliance Penalties shall accrue based on the difference between the committed SD value for the period under review and the delivered SD value (i.e. 100% of the undelivered portion of the committed SD value) plus an additional 5% (five percent) of such difference;

In relation to the B-BBEE Improvement Plan, Non Compliance Penalties shall apply annually at the rate of 0.5% (one half percent).

Non Compliance Penalty Cap for QSEs:

The Non Compliance Penalty Cap in respect of Supplier Development commitments shall not exceed the difference between the committed SD value for the period under review and the delivered value (i.e. 100% of the undelivered portion of the committed SD value), plus an additional 5% (five percent) of such difference.

The maximum amount of the Service Provider's liability to pay Non Compliance Penalties in the case of the B-BBEE Improvement Plan shall not exceed 1.5% (one and a half percent) of the Contract Value.

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

In relation to the Supplier Development Implementation Plan, Non Compliance Penalties shall accrue based on the difference between the committed SD value and the delivered SD value (i.e. 100% of the undelivered portion of the committed SD value) plus an additional 3% (three percent) of such difference;

In relation to the B-BBEE Improvement Plan, Non Compliance Penalties shall apply annually at the rate of 0.5% (one half percent).

Non Compliance Penalty Cap for EMEs:

The Non Compliance Penalty Cap in respect of Supplier Development commitments shall not exceed the difference between the committed SD value for the period under review and the delivered value (i.e. 100% of the undelivered portion of the committed SD value), plus an additional 3% (three percent) of such difference.

The maximum amount of the Service Provider's liability to pay Non Compliance Penalties in the case of the B-BBEE Improvement Plan shall not exceed 1.5% (one and a half percent) of the Contract Value.

Non Compliance Penalty Certificate:

If any Non Compliance Penalty arises, the Contract Manager shall issue a Non Compliance Penalty Certificate on the last day of each month during such Non Compliance indicating the Non Compliance Penalties which have accrued during that period.

A Non Compliance Penalty Certificate shall be prima facie proof of the matters to which it relates. If the Service Provider disputes any of the amounts set out in a Non Compliance Penalty Certificate:

(ix) the dispute shall be resolved in accordance with the provisions of the Agreement; and

(x) if pursuant to that referral, it is determined that the Service Provider owes any amount to Transnet pursuant to the Non Compliance Penalty Certificate, then the Supplier shall pay such amount to Transnet within 10 (ten) Business Days of the determination made pursuant to such determination and an accompanying valid Tax Invoice.

Payment of Non Compliance Penalties:

Subject to Clause 0, the Service Provider shall pay the Non Compliance Penalty indicated in the Non Compliance Penalty Certificate within 10 (ten) Business Days of Transnet issuing a valid Tax Invoice to the Service Provider for the amount set out in that certificate. If Transnet does not issue a valid Tax Invoice to the Service Provider for Non Compliance Penalties accrued during any relevant period, those Non Compliance Penalties shall be carried forward to the next period.

The Service Provider shall pay the amount due within 10 (ten) Business Days after receipt of a valid Tax Invoice from Transnet, failing which Transnet shall, without prejudice to any other rights of Transnet under the Agreement, be entitled to call for payment which may be in any form Transnet deems reasonable and/or appropriate.

Should the Service Provider fail to pay any Non Compliance Penalties within the time indicated in above (as applicable), Transnet shall be entitled to deduct (set off) the amount not paid by the Service Provider from the account of the Service Provider in the ensuing month.

The Non Compliance Penalties set forth in this Clause 42.6 are stated exclusive of VAT. Any VAT payable on Non Compliance Penalties will be for the account of the Supplier.

43 FEES AND EXPENSES

43.1 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.

43.2 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].

43.3 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:

are agreed by Transnet in advance;

are incurred in accordance with Transnet's standard travel and expenses policies;

are passed on to Transnet at cost with no administration fee; and

will only be reimbursed if supported by relevant receipts.

43.4 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.

44 INVOICING AND PAYMENT

44.1 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.

44.2 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 44.4 below.

44.3 All Fees and other sums payable under the Agreement are exclusive of VAT, which will be payable at the applicable rate.

44.4 Unless otherwise provided for in the Work Order(s) appended to the Agreement, Tax Invoices shall be submitted together with a month-end statement. Payment against such month-end statement shall be made by Transnet within 30 [thirty] calendar days after date of receipt by Transnet of the statement together with all valid and undisputed Tax Invoices and supporting documentation.

44.5 Where the payment of any Tax Invoice, or any part thereof which is not in dispute, is not made in accordance with this clause 44, 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.

45 FEE ADJUSTMENTS

45.1 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.

45.2 No less than 2 [two] months prior to any proposed Fee adjustment, the Parties shall commence negotiations for Fees for the next period or as otherwise indicated and appended hereto.

45.3 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 59 of this Master Agreement *[Dispute Resolution]*.

46 INTELLECTUAL PROPERTY RIGHTS

46.1 Title to Confidential Information

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.

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.

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.

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.

46.2 Title to Intellectual Property

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.

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.

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.

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.

Subject to anything contrary contained in the Agreement and/or the prior written consent of Transnet [which consent shall not be unreasonably be withheld or delayed], the Service Provider shall under no circumstances be entitled as of right, or to claim the right, to use Transnet's Background Intellectual Property and/or Foreground Intellectual Property.

46.3 Title to Improvements

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

reasonably assist Transnet in attaining, maintaining or documenting ownership and/or protection of the improved Foreground Intellectual Property.

46.4 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.

46.5 Unauthorised Use of Intellectual Property

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.

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.

The Service Provider shall cooperate to provide Transnet promptly with all relevant ascertainable facts.

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.

47 SERVICE PROVIDER'S PERSONNEL

47.1 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.

47.2 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.

47.3 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.

47.4 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.

47.5 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.

48 LIMITATION OF LIABILITY

48.1 Neither Party excludes or limits liability to the other Party for:

death or personal injury due to negligence; or

fraud.

48.2 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 48.2 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.

48.3 Subject always to clauses 48.1 and 48.2 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.

48.4 Subject to clause 48.1 above, and except as provided in clauses 48.2 and 48.3 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.

48.5 If for any reason the exclusion of liability in clause 48.4 above is void or unenforceable, either Party's total liability for all loss or damage under the Agreement shall be as provided in clause 48.3 above.

48.6 Nothing in this clause 48 shall be taken as limiting the liability of the Service Provider in respect of clause 46 *[Intellectual Property Rights]* or clause 50 *[Confidentiality]*.

49 INSURANCES

49.1 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.

49.2 The Service Provider shall arrange insurance with reputable insurers and will produce to Transnet evidence of the existence of the policies on an annual basis within 30 [thirty] calendar days after date of policy renewals.

49.3 Subject to clause 49.4 below, if the Service Provider fails to effect adequate insurance under this clause 49, 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.

49.4 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 49.1 above or if the insurance ceases to be available upon commercially reasonable terms, the Service Provider shall immediately notify Transnet in writing of such termination and/or unavailability, whereafter either the Service Provider or Transnet may terminate the Agreement on giving the other Party not less than 30 [thirty] calendar days prior written notice to that effect.

50 CONFIDENTIALITY

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

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;

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;

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;

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;

not to exercise less care to safeguard Transnet Confidential Information than the Party exercises in safeguarding its own competitive, sensitive or Confidential Information;

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;

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;

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;

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;

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

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.

50.2 The duties and obligations with regard to Confidential Information in this clause 50 shall not apply where:

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

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

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

is independently developed by a Party as proven by its written records.

50.3 This clause 50 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.

51 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.

52 TERM AND TERMINATION

52.1 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:

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

the Agreement is extended at Transnet's option for a further period to be agreed by the Parties.

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

52.3 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 voluntary arrangement or composition or reconstruction of its debts;

its winding-up or dissolution;

the appointment of a liquidator, trustee, receiver, administrative receiver or similar officer; or

any similar action, application or proceeding in any jurisdiction to which it is subject.

52.4 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.

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

52.6 Notwithstanding this clause 52, either Party may cancel the Agreement without cause by giving 30 [thirty] calendar days prior written notice thereof to the other Party.

53 CONSEQUENCE OF TERMINATION

53.1 Termination in accordance with clause 52 *[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.

53.2 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.

53.3 To the extent that any of the Deliverables and property referred to in clause 53.2 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.

53.4 In the event that the Agreement is terminated by the Service Provider under clause 52.2 *[Term and Termination]*, or in the event that a Work Order is terminated by Transnet under clause 52.5 *[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.

53.5 The provisions of clauses 34 *[Definitions]*, 39 *[Warranties]*, 46 *[Intellectual Property Rights]*, 48 *[Limitation of Liability]*, 50 *[Confidentiality]*, 53 *[Consequence of Termination]*, 59 *[Dispute Resolution]* and 63 *[Governing Law]* shall survive termination or expiry of the Agreement.

53.6 If either Party [**the Defaulting Party**] commits a material breach of the Agreement and fails to remedy such breach within 30 [thirty] calendar days of written notice thereof, the other Party [hereinafter **the Aggrieved Party**], shall be entitled, in addition to any other rights and remedies that it may have in terms of the Agreement, to terminate the Agreement forthwith without any liability and without prejudice to any claims which the Aggrieved Party may have for damages against the Defaulting Party.

53.7 Should:

the Service Provider effect or attempt to effect a compromise or composition with its creditors; or

either Party be provisionally or finally liquidated or placed under judicial management, whether provisionally or finally; or

either Party cease or threaten to cease to carry on its normal line of business or default or threaten to default in the payment of its liabilities generally, or commit any act or omission which would be an act of insolvency in terms of the Insolvency Act, 24 of 1936 [as may be amended from time to time];

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

54 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.

55 FORCE MAJEURE

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

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

56 EQUALITY AND DIVERSITY

56.1 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.

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

57 NON-WAIVER

57.1 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.

57.2 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.

58 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.

59 DISPUTE RESOLUTION

59.1 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.

59.2 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.

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

59.4 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 59.

59.5 This clause 59 is severable from the rest of the Agreement and shall remain in effect even if the Agreement is terminated for any reason.

59.6 This clause 59 shall not preclude either Party from seeking urgent relief in a court of appropriate jurisdiction, where grounds for urgency exist.

60 ADDRESSES FOR NOTICES

60.1 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:

Transnet

(i) For legal notices: Barbarossa Ntshingila

Tel. No.: 011 544 9073

Attention: Legal Counsel

(ii) For commercial matters: Patricia Chauke

Tel No.: 011 584 0623

Attention: Supply Chain Services

The Service Provider

(iii) For legal notices: [•]

Fax No. [•]

Attention: [•]

(iv) For commercial matters: [•]

Fax No. [•]

Attention: [•]

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

60.3 Any notice shall be deemed to have been given:

if hand delivered, on the day of delivery; or

if posted by prepaid registered post, 10 [ten] calendar days after the date of posting thereof; or

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.

61 WHOLE AND ONLY AGREEMENT

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

61.2 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.

62 AMENDMENT AND CHANGE CONTROL

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

62.2 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 59 *[Dispute Resolution]*.

63 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.

63.1 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 59 *[Dispute Resolution]* above.

64 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.

65 TRANSNET'S LIST OF EXCLUDED TENDERERS (BLACKLIST)

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

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

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

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

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

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

j) has, after being notified of the acceptance of his Bid, failed or refused to sign a contract when called upon to do so in terms of any condition forming part of the bid documents;

k) has carried out any contract resulting from such bid in an unsatisfactory manner or has breached any condition of the contract;

l) has offered, promised or given a bribe in relation to the obtaining or execution of the contract;

m) has acted in a fraudulent or improper manner or in bad faith towards Transnet or any Government Department or towards any public body, Enterprise or person;

n) has made any incorrect statement in a certificate or other communication with regard to the Services or his B-BBEE status and is unable to prove to the satisfaction of Transnet that:

(iii) he made the statement in good faith honestly believing it to be correct; and

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

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

p) has litigated against Transnet in bad faith.

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

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

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

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

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

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

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

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

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

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