TRANSNET

TRANSNET FREIGHT RAIL, a division of

TRANSNET SOC LTD

Registration Number 1990/000900/30

[hereinafter referred to as **Transnet**]

REQUEST FOR QUOTATION [RFQ] No CRAC-GMR-16544

FOR THE PROVISION OF:	**CLEANING, GARDEN AND WEED CONTROL FOR THE PERIOD OF 24 MONTHS AT UNION STATION.**
FOR DELIVERY TO:	**UNION STATION**
ISSUE DATE :	**17 FEBRUAURY 2015**
BRIEFING DATE:	**24 FEBRUARY 2015**
VENUE :	**UNION STATION (COMPULSORY) AT 13:00.**
CLOSING DATE :	**03 MARCH 2015**
CLOSING TIME :	**10:00**
OPTION DATE :	**02 JUNE 2015**

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FOR SITE CONTACT: THEMBI PHAKATHI 011 773 5798/083 268 8980

PLEASE BRING THE VALID DOCUMENT ON THE DAY OF BRIEFING, ALSO MAKE SURE THAT YOU BRING YOUR SAFETY SHOES AND REFLECTIVE VEST ON SITE

PLEASE NOTE THAT IF YOU DON'T BRING VALID TENDER DOCUMENT, SAFETY BOOTS AND REFLECTIVE VEST YOU WILL NOT BE ALLOWED IN A BRIEFING SESSION AND TO GO ON SITE.

ON CLOSING DATE PLEASE SUBMIT TWO (2) DOCUMENTS ORIGINAL & COPY IN ONE ENVELOPE. THE ENVELOPE MUST BE WRITTEN OUTSIDE THE TENDER NUMBER AND THE CLOSING DATE.

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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, Inyanda House 1, 21 Wellington Road, and 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. Transnet will accordingly allow a "preference" to companies who provide a valid B-BBEE Verification Certificate. All procurement transactions will be evaluated accordingly.

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2.1 B-BBEE Scorecard and Rating

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

- Functionality is included at a pre-qualification stage with a prescribed percentage threshold of 60%
- Proposals will be evaluated on price which will be allocated 80 or 90 points and preference which will be allocated 20 or 10 points, dependent on the value of the Goods or Services.
- The 80/20 preference point system applies where the acquisition of the Services will be less than R1 000 000.00.
- If the 80/20 preference point system is stipulated and all Bids received exceed R1 000 000.00, the RFQ will be cancelled.
- The 80/20 preference point system applies where acquisition of the Services will exceed R1 000 000.00
- If the 80/20 preference point system is stipulated and all Bids received are equal to or below R1 000 000.00, the RFQ will be cancelled.
- In this RFQ, Transnet will apply **80/20** preference point system prescribed in the PPPFA.

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

Respondent's Signature

Date & Company Stamp

(i) Verification Agencies accredited by the South African National Accreditation System [SANAS]; or

(ii) Registered Auditors approved by the Independent Regulatory Board of Auditors [**IRBA**], in accordance with the approval granted by the Department of Trade and Industry.

Enterprises will be rated by such agencies based on the following:

a) Large Enterprises [i.e. annual turnover greater than R35 million]:

- Rating level based on all seven elements of the B-BBEE scorecard

b) Qualifying Small Enterprises – QSE [i.e. annual turnover between R5 million and R35 million]:

- Rating based on any four of the elements of the B-BBEE scorecard

c) Exempted Micro Enterprises – EME [i.e. annual turnover less than R5 million]:

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

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

Sufficient evidence to qualify as an EME would be a certificate (which may be in the form of a letter) from an auditor or accounting officer or a certificate from a Verification Agency accredited by SANAS. The certificate must confirm the company's turnover, black ownership / black female ownership, B-BBEE status level and validity date.

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

Transnet will accordingly allocate a maximum of **20 [twenty] points** in accordance with the **80/20** preference point system prescribed in the Preferential Procurement Policy Framework Act (PPPFA), Act 5 of 2000 and its Regulations to the Respondent's final score based on an entity's B-BBEE scorecard rating. *[Refer **Annexure C- B-BBEE Preference Points Claim Form** for further details].*

N.B. Failure to submit a B-BBEE certificate, which is valid as at the Closing Date of this RFP, will result in a score of zero being allocated for B-BBEE.

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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: Jabulile Malindi

Telephone: 011 584 1071

Respondent's Signature

Date & Company Stamp

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Email: Jabulile.Malindi@transnet.net

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

Name: Prudence Nkabinde

Telephone: 011 544 9486

Email: prudence.nkabinde@transnet.net

The site meeting is compulsory and companies not attending **will be overlooked** during the tender awarding process.

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4 Tax Clearance

The Respondent's original valid Tax Clearance Certificate must accompany the Quotation. Failure to provide this document with the RFQ submission will result in disqualification.

5 VAT Registration

The valid VAT registration number must be stated here: _____ *[if applicable]*.

6 Legal Compliance

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

7 Changes to Quotations

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

8 Pricing

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

9 Prices Subject to Confirmation

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

10 Negotiations

Transnet reserves the right to undertake post-tender negotiations with selected Respondents or any number of short-listed Respondents.

11 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.

Respondent's Signature

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12 Disclaimers

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

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

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

I/We _____ do hereby certify that *I/we* ***have/have not been*** found guilty during the preceding 5 [five] years of a serious breach of law, including but not limited to a breach of the Competition Act, 89 of 1998, by a court of law, tribunal or other administrative body. The type of breach that the Respondent is required to disclose excludes relatively minor offences or misdemeanours, e.g. traffic offences.

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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.

13 Evaluation Criteria

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

13.1 Stage 1

13.1.1 Phase 1 Administrative Responsiveness (Essential)

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- Letter of Good Standing
- SHE Questionnaire

13.1.2 Phase 2 Substantive Responsiveness (Mandatory)

- Statutory Minimum Labourer's Wage.

13.2 Stage 2 Functionality/Quality – 100% Minimum threshold must be obtained

- Compliance to Specification – in line with scope of work & Schedule Quantity.

13.3 Stage 3

COMMERCIAL:

13.3.1 Competitive Pricing

13.3.2 B-BBEE Status of Company

Provide BBBEE level Certification and Score Card

Weighted evaluation based on 80/20 preference point system:

- Pricing and price basis [firm] - whilst not the sole factor for consideration, competitive pricing and overall level of unconditional discounts[1] will be critical

B-BBEE status of company

Preference points will be awarded to a bidder for attaining the B-BBEE status level of contribution in accordance with the table below:

B-BBEE Status Level of Contributor	Number of points (80/20 system)
1	20
2	18
3	16
4	12
5	08
6	06
7	04
8	02
Non-compliant contributor	0

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14 Validity Period

Transnet desires a validity period of 90 [ninety] days from the closing date of this RFQ.

This RFQ is valid until 25 May 2015.

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

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15 Banking Details

BANK: _____

BRANCH NAME / CODE: _____

ACCOUNT HOLDER: _____

ACCOUNT NUMBER: _____

16 Company Registration

Registration number of company / C.C. _____

Registered name of company / C.C. _____

17 Disclosure of Prices Quoted

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

YES ☐ NO ☐

18 Returnable Documents

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

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

Failure to provide all these 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.

All Sections, as indicated in the footer of each page, must be signed, stamped and dated by the Respondent. Please confirm submission of these mandatory Returnable Documents by so indicating [Yes or No] in the table below:

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Returnable Documents	Submitted [Yes or No]
SECTION 2 : Quotation Form	
- Original valid Tax Clearance Certificate [Consortia / Joint Ventures / Sub-contractors must submit a separate Tax Clearance Certificate for each party]	

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.

Respondent's Signature

Date & Company Stamp

All Sections, as indicated in the footer of each page, must be signed, stamped and dated by the Respondent. Please confirm submission of these essential Returnable Documents by so indicating [Yes or No] in the table below:

Returnable Documents	Submitted [Yes or No]
SECTION 1 : Notice to Bidders	
- Valid B-BBEE Verification Certificate [RSA Large Enterprises and QSEs] Note: failure to provide a valid B-BBEE Verification Certificate at the closing date and time of the tender will result in an automatic score of zero being allocated for B-BBEE scorecard	
- Valid B-BBEE certificate from auditor, accounting officer or SANAS accredited Verification Agency [RSA EMEs] Note: failure to provide a valid B-BBEE Verification Certificate at the closing date and time of the tender will result in an automatic score of zero being allocated for B-BBEE scorecard	
- In the case of Joint Ventures, a copy of the Joint Venture Agreement or written confirmation of the intention to enter into a Joint Venture Agreement	
- SECTION 3 : Standard Terms and Conditions of Contract for the Supply of Services to Transnet	
SECTION 4 : Vendor Application Form	
- Original cancelled cheque or bank verification of banking details	
- Certified copies of IDs of shareholder/directors/members [as applicable]	
- Certified copy of Certificate of Incorporation [CM29/CM9 name change]	
- Certified copy of share certificates [CK1/CK2 if C.C.]	
- Entity's letterhead	
- Certified copy of VAT Registration Certificate [RSA entities only]	
- Certified copy of valid Company Registration Certificate [if applicable]	
- Valid Pest Control Certificate	
- Letter of Good Standing	
- SHE Questionnaire	
- A signed letter from Respondent's auditor or accountant confirming most recent annual turnover figures	
ANNEXURE A – B-BBEE Preference Points Claim Form	

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COMPANY INFORMATION

19. STATEMENT OF WORK (S) SUCCESSFULLY CARRIED OUT BY THE TENDERER:

- Tenderers are to advise which other companies have they successfully provided or are currently providing similar services.

Service Description	For whom done	Period	Contact person and Telephone or Cell number

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SECTION 2

REQUEST FOR QUOTATION ("RFQ")

RFQ NUMBER CRAC-GMR-16544

CLEANING, GARDENING AND WEED CONTROL FOR THE PERIOD OF 24 MONTHS AT UNION STATION.

Information Session

2. RFQ SITE MEETING

A COMPULSORY INFORMATION MEETING WILL BE HELD AT THE FOLLOWING VENUE:

Venue : Union Station.

Time : 13H00

Date : 24 February 2015

The site meeting is compulsory and companies not attending **will be overlooked** during the tender awarding process.

Contact person on sites: Thembi Phakathi 083 268 8980/011 773 5798.

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2.1 **ATTENDANCE CERTIFICATE**

This is to certify that.....

Representative/s of .....

Has/have today attended the Tender briefing in respect of the proposed:

- ....

TRANSNET'S REPRESENTATIVE TENDERER'S REPRESENTATIVE

DATE :.....

3. **VERY IMPORTANT**

ANY TENDERER NOT ATTENDING THE INFORMATION MEETING WILL AUTOMATICALLY BE EXCLUDED FROM THE BUSINESS AWARDING PROCESS

Respondent's Signature Date & Company Stamp

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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 Terms and Conditions for the Supply of Goods or Services to Transnet [Section 3 hereof]; 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.

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Price Schedule

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

Item No	Description of Goods /Services	Unit of Measure	Quantity	Unit Price (ZAR)	Total Price (ZAR)
1	Cleaning, Gardening and Weed Control for the period of 24 Months at Union Station.				

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

b) To facilitate like-for-like comparison bidders must submit pricing strictly in accordance with this price schedule and not utilise a different format. Deviation from this pricing schedule could result in a bid being disqualified.

c) Please note that should you have offered a discounted price(s), Transnet will only consider such price discount(s) in the final evaluation stage if offered on an unconditional basis.

Respondent's Signature

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Section 4

SCOPE OF WORK
GARDENING, GRASS CUTTING & WEED CONTRL

BUILDING : Union

Please refer to attached Annexure A

CONTACT PERSON ON SITE

Union-
Any queries concerning work, please contact above person

GENERAL SPECIFICATION: GARDENING

SCOPE OF WORK

AREAS TO BE CLEANED AND DUTIES

All gardens and grass and weed control areas within 20m of the building or where applicable

1.GARDEN SERVICE

❖ Cutting of lawn areas to fair finish and trimming of edges weekly	Weekly
❖ Cultivating, digging and pruning of flowerbeds weekly	Weekly
❖ Removal of all dead flowers and pruning of trees as required by the Project Manager from time to time	As required
❖ Trim branches and shrubs	Weekly
❖ Clear of weeds on site's where there is no grass	Daily
❖ Remove all grass, branches and rubble from site	Daily
❖ Every porch entrance must be swept, as well as the paving and tarred road in front of the buildings	Daily
❖ No grass to be left on premises	As required
❖ Sweep and remove soil and/or leaves on entrances and exterior areas	Daily
❖ Provide season flowers for gardening	As required

2.SUPERVISION

❖ Full time supervision to be provided by Contractor/supplier	Daily
❖ Quality Control will be done by client on site (sign off of job cards).	Weekly
❖ The supplier shall be responsible for the efficient performance of the contract and for the good conduct of his employees whenever they carry out cleaning in the buildings.	
❖ TFR REM reserves the right to monitor the clock-in time and clock-out time of the suppliers employees as well as to give working instructions directly to the suppliers employees if deemed fit (within the specifications)	

3.EQUIPMENT/MATERIALS/CONSUMABLES

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To be provided by Contractor and delivered timorously

- ❖ All gardening chemicals and equipment e.g. spades/shovels, rakes, ect
- ❖ Necessary sign boards e.g. Caution tree felling, etc.
- ❖ Contractor to conform with all Safety Requirements including Safety, Health, Environment (SHE) Induction for Contractors as specified by Transnet Freight Rail (copy enclosed)

All gardening chemicals and Machinery to be supplied by cleaning company and clearly marked by the contractor

Consumables e.g. cleaning chemicals be an acceptable standard meaning **SABS** Approved or Equivalent

NB: All equipment to be kept in good and safe condition at all times and to comply with all safety regulations including all extension cords etc.

i) Toilet Area's are not to be used as change rooms. Cleaning of equipment will not be allowed in toilet areas.

ii) Disposal of dirty water to be deposited directly into toilet Pans, Toilet areas to be cleaned after work has been completed or minimum daily.

4. **STAFF REQUIREMENTS/WORKING HOURS**

a) The supplier shall be available to clean all offices from 07:00 to 16H00 **(times can be altered due to emergency requirements)** including Public Holidays. This should be done within the legal framework of housekeeping: Act 85 and Act 16

b) Please refer to Annexure "A" column "6" titled frequency in days per week.
(7 = to be cleaned 7 days per week)
(5 = to be cleaned Monday to Friday excl weekends)

5. **UNIFORM CLOTHING**

a) The Contractor shall at all times ensure that all cleaning staff has been provided with all necessary protective clothing, e.g. Gloves, Shoes, masks, etc.
All Cleaning staff to be identifiable with (Visible) identification at all times

6. **SITE BOOKS**

a) A site instruction book shall be provided by the Supplier, such book shall have numbered sheets for receiving and recording instructions by the Technical Officer and shall be clearly marked "Site Instruction Book".
b) Only persons authorized in writing by the Technical Officer or Supplier may make entries in the Site Book.
c) On completion of the contract the Site Book/Site Books shall be returned to the Technical Officer managing the contract on behalf of TFR REM.

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7. **TERMS OF CONTRACT**

24 months contract (2 years)

8. **PAYMENT**

ACCREDITED BEE SUPPLIERS

The following payment terms shall apply

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(a) All suppliers shall be paid within 30 days from date/receipt of invoice by the accounting office, following acceptance of services by Transnet freight rail, provided normal procurement procedures have been followed. All suppliers must submit their BBBEE Certificate.
(b) A month will be calculated from the 1st of the month to the 30/31st of the month.
© In the event of full staff compliment not available, payment for that specific day will be withheld.
(d) Signed register of worked performed to be submitted with the invoice. Note that the invoice should indicate all buildings (by using the asset numbers or a clear description thereof)
(e) Register to be signed by Supervisor of the specific area
(f) Invoice to be signed by the relevant Manager to indicate that the work was performed to satisfaction before submitting for payment.

9. **OTHER TRADE SUPPLIERS**

(a) All suppliers are paid within **(30 days)** from month –end statement.

(b) Early settlements are discouraged unless very special circumstances prevail.

(c) Early settlements will only be approved by the Chief Procurement officer, or his delegate, based on the Settlement discount being more advantageous than the financing cost incurred by Transnet Freight Rail.

10. **COMPLIANCE TO REGULATORY REQUIREMENTS AND REGISTRATION**

All bidders to ensure that they comply with:

- BCEA – Basic Conditions of Employment Act
- Registered with NCCA (JHB – National Contractors Cleaning Association). Please note that a valid Registration Certificate is required as proof of registration.

11. **BREACH OF CONTRACT**

The client (Transnet Freight Rail) will be allowed to terminate the contract by giving 30 days notice should the cleaning service not be according to specification and to client's full satisfaction.

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BUILDING : UNIONCLEANING- SCOPE OF WORK

See attached Annexure A

GENERAL SPECIFICATION:

CONTACT PERSON ON SITE

Union
Operations – Mmakoma Langa 011 820 2316
Infra networks- Siphiwe Ndhlela 011 570 7246/083 279 0531
Infra Networks Telecoms – Thabo Lande 011 820 2127

Any queries concerning work, please contact above person

SCOPE OF WORK CLEANING

AREAS TO BE CLEANED

(A) Main Entrance / Security / Ablution / Reception Area and surrounding depot area
(B) Office and passages (including boardrooms, store rooms, etc)
(C) Toilets: Ladies /Gents
(D) Supply two ply toilet paper
(E) Kitchens
(F) Entertainment areas / bars
(G) Windows

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DUTIES (all floors/areas where applicable)

1.DUSTING (OFFICES AND PASSAGES)

❖ Carpets	
❖ Vacuum	Weekly
❖ Spot clean	As necessary
❖ Steam clean	Quarterly

2. DUSTING (OFFICES AND PASSAGES)

❖ Clean all telephone and disinfect	Daily
❖ Dust all high ledges and fittings	Weekly
❖ Dust all horizontal surface(low level)	Daily
❖ Dust all vertical surfaces (walls, cabinets, etc. to height of 2 meters)	Weekly
❖ Dust all windows ledges/cills (low and high)	Daily

3.WASTE DISPOSAL (OFFICES, KITCHENS AND TOILET)

❖ Empty and clean all ashtrays	Daily
❖ Empty and clean all waste baskets and receptacles	Daily
Remove all waste to bins for removal by Metropolitan Council	Daily

4.WALLS/DOORS AND PAINTWORK/WALL PAPER

❖ Spot clean all low surfaces (finger marks, etc.)	Daily
❖ Washing of entire walls	Quarterly

5.GLASS DOOR AND MENTAL WORK

	Weekly
❖ Spot clean main entrance glass doors	Weekly

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❖ Clean or polish all bright metal fittings to doors/frames

6. ENTRANCE FOYER/RECEPTION/RECEPTIONOFFICE/LOBBY'S

	Daily
❖ Sweep entrance foyer and entrance	Daily
❖ Clean door mats and dust blinds	Daily
❖ Damp clean counter tops	Daily
❖ Damp mop	Daily
❖ Machine buff	Daily
❖ Clean up Lobby's outside windows	

7.TOILETS

❖ Empty and clean all waste receptacles	Daily
❖ Clean and sanitise all W.C. bowls, basins and urinals/-outlets	Daily
❖ Clean all mirrors	Daily
❖ Damp mop floors with disinfectant	Daily
❖ Clean all metal fittings	Daily
❖ Spot clean wall tiles, doors W.C. partitions	Daily
❖ Treat against staining, fungal and bacterial growth	Quarterly
❖ Replenish toilet paper	Daily
❖ Wipe clean hand dryers and all other fixed services	Daily
❖ Supply two ply toilet paper	Daily

8.WINDOW CLEANING

❖ Clean interior faces of all windows	quarterly
❖ Clean exterior faces of all windows (low & high)	quarterly
❖ Clean main entrance foyer glass windows internally and externally	Weekly

9.VERTICAL BLINDS

❖ Dust	Daily
❖ Wash	Annually

10.MISCELLANEOUS

❖ Polish desk and office furniture	Weekly
❖ Material –covered furniture to be vacuumed	Weekly
❖ Material – covered furniture to be steam cleaned	Quarterly

11.KITCHENS

❖ Floors to be damp mopped	Daily
❖ Sinks to be cleaned	Daily
❖ Cupboard to be damp wipe	Daily
❖ Cupboard to be washed (inside)	Quarterly
❖ Wipe clean all electrical equipment and or other	Daily
❖ Defrost fridge	Quarterly
❖ Everything in the kitchen sink MUST be washed	Daily

12.ALL PAKING AREAS/RAMP/GUARD HOUSE AT ENTRANCE

❖ All surface refused to be removed	Daily
❖ Around buildings to be swept	Daily

13.EXTERNAL AREA AT MAIN ENTRACE, AREA IN FRONT OF ABLUTION AND GARDEN

❖ All surface refuse to be removed	Daily
❖ Area to be swept	Daily

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❖ Garden area to be checked and cleaned where necessary	Daily

14.ENTERTAINMENT AREAS/BARS AND LAPAS (inside & outside)

❖ Floor to be vacuumed/damp mopped	Weekly
❖ Surface refuse to be removed	Daily
❖ Sick's to be cleaned	Daily
❖ Counter tops/bar tops to be damp wiped	Daily
❖ Area to be swept	Daily

14.1 FLOOR CARPETS (inside offices and Passages)

❖ Floor carpets to be washed	Quarterly / When is necessary

15.SUPERVISION

❖ Full time supervision to be provided by Contract	Daily
❖ Quality Control will be done by client on site (sign off of job cards)	Weekly

16.EQUIPMENT/MATERIALS/CONSUMABLES

To be provided by Contractor and delivered timorously

- ❖ Vacuum cleaners
- ❖ Polishers
- ❖ Brooms
- ❖ Mops
- ❖ All cleaning chemicals
- ❖ Consumables .e.g. toilet paper of an acceptable standard
- ❖ Toilet paper double ply
- ❖ Buckets
- ❖ Necessary sign boards e.g. floor Wet Slippery, etc.
- ❖ Contractor to conform with all Safety Requirements including Safety, Health, Environment (SHE) Induction for Contractors as specified by Transnet Freight Rail (copy enclosed)

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All cleaning chemicals and cleaning Machinery to be supplied by cleaning company and clearly marked by the contractor

Consumables e.g. cleaning chemicals be an acceptable standard meaning **SABS** Approved or Equivalent

NB: All equipment to be kept in good and safe condition at all times and to comply with all safety regulations including all extension cords etc.

i) Toilet Area's are not to be used as change rooms. Cleaning of equipment will not be allowed in toilet areas.

ii) Disposal of dirty water to be deposited directly into toilet Pans, Toilet areas to be cleaned after work has been completed or minimum daily.

17. **STAFF REQUIREMENTS/WORKING HOURS**

a) Cleaning to commence from Monday to Friday 07:00 to 16H00 **(times can be altered due to emergency requirements)**

18. **UNIFORM CLOTHING**

a) The Contractor shall at all times ensure that all cleaning staff has been provided with all necessary protective clothing, e.g. Gloves, Shoes, masks, etc.

Respondent's Signature

Date & Company Stamp

All Cleaning staff to be identifiable with (Visible) identification at all times

19. **TERMS OF CONTRACT**

2 YEARS

20. **PAYMENT**

ACCREDITED BEE SUPPLIERS

The following payment terms shall apply

(a) All suppliers shall be paid within 30 days from date/receipt of invoice by the accounting office, following acceptance of services by Transnet freight rail, provided normal procurement procedures have been followed. All suppliers must submit their BBBEE Certificate.
(b) A month will be calculated from the 1st of the month to the 30/31st of the month.
© In the event of full staff compliment not available, payment for that specific day will be withheld.
(d) Signed register of worked performed to be submitted with the invoice. Note that the invoice should indicate all buildings (by using the asset numbers or a clear description thereof)
(e) Register to be signed by Supervisor of the specific area
(f) Invoice to be signed by the relevant Manager to indicate that the work was performed to satisfaction before submitting for payment.

21. **OTHER TRADE SUPPLIERS**

(a) All suppliers are paid within **(30 days)** from month –end statement.

(b) Early settlements are discouraged unless very special circumstances prevail.

(c) Early settlements will only be approved by the Chief Procurement officer, or his delegate, based on the Settlement discount being more advantageous than the financing cost incurred by Transnet Freight Rail.

22. **BREACH OF CONTRACT**

The client (Transnet Freight Rail) will be allowed to terminate the contract by giving 30 days notice should the cleaning service not be according to specification and to client's full satisfaction.

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Annexure A

Union Cleaning, Gardening, Grass Cutting & Weed control
Schedule of Quantity

Department	Asset no.	Description	Square metres	Cleaning	Frequency (cleaning)	TOTAL PRICE PER 2 YEARS
Operation	02AH366J	Relay room	276	x	daily	R
Operation	03LH026J	Carport	84	x	daily	R
Infra networks	02AH121J	Workshop/ office	153	x	daily	R
Infra networks	02AH452J	Mess + ablution	50	x	daily	R
	02AH125J	Garage	160	x	daily	R
Infra networks telecomms	02AH447J	Telecomms building	190	x	daily	R
	02AH524J	Garage	20	x	daily	R

TOTAL PRICE X2 YEARS R

CLEANING REQUIRED 24/7

02AH366J	2X SHIFTS

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Respondent's Signature

Date & Company Stamp

TRANSNET

CLAUSE BY CLAUSE COMPLIANCE SCHEDULE.

PROVISION OF CLEANING, GARDENING AND WEED CONTROL FOR THE PERIOD OF 24 MONTHS AT UNION STATION.

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

Noted is to be applied against statements and either of the other responses for other clauses. Where either "Partial Compliance" or "Do not comply" are applied, remarks as to the reason for the deviation from the requirement are required.

DESCRIPTION	Comply/Not comply	Explanation/Deviation/Reason
1. GARDEN SERVICE		
2.SUPERVISION		
3.EQUIPMENT/MATERIAL/CONSUMABLES		
4.STAFF REQUIREMENTS/WORKING HOURS		
5.UNIFORM CLOTHING		
6.SITE BOOKS		
7.TERMS OF CONTRACT		
8.PAYMENT		
9.OTHER TRADE SUPPLIERS		
10.COMPLIANCETO REGULATORY REQUIREMENTS AND REGISTRATION		
11.BREACH OF CONTRACT		

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STATUTORY LABOURERS MINUMUM SALARY WAGE

Detailed Breakdown of costs

Description	Calculation	Per month
Cleaner (basic salary)		
Annual bonus		
UIF		
COID		
Provident Fund		
Annual leave		
Sick pay		
Family responsibility		
NCCA		

Total amount per cleaner/gardener R _____ per month (all above costs inclusive)

_____ x cleaners at R _____ per cleaner (all costs above inclusive)		
Supervisor salary per month (all costs above inclusive)		
Total Labour per month (all costs above inclusive)		

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Total bid value over a period of 24 months

Total Labour (all labour related costs inclusive)		
Consumables, Chemicals and equipment		
Toilet paper		
Uniforms, name tags and safety clothing		
Training		
Admin or any other costs		
Profit/Margin		
TOTAL BID VALUE EXCLUDING VAT		
TOTAL BID VALUE INCLUSIVE VAT		

Company Name: _____

Contact person: _____

Tel: _____

Date: _____

Appendix (i)

GENERAL BID CONDITIONS - SERVICES

[February 2013]

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1) DEFINITIONS

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

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

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

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

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

e) **RFP** shall mean Request for Proposal;

f) **RFQ** shall mean Request for Quotation;

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

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

i) **Service Provider** shall mean the successful Respondent;

j) **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;

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

l) **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.

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2) GENERAL

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

3) SUBMISSION OF BID DOCUMENTS

a) A Bid, which shall hereinafter include reference to an RFP or RFQ, shall be submitted to Transnet no later than the closing date and time specified in accordance with the directions issued in the Bid Documents. Late Bids will not be considered.

b) 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.

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

4) USE OF BID FORMS

a) 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.

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

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

5) BID FEES

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

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

6) VALIDITY PERIOD

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

b) Respondents may be requested to extend their validity period for a specified additional period. In such instances, Respondents will not be allowed to change any aspect of their Bid, unless they are able to demonstrate that the proposed change(s) is as a direct and unavoidable consequence of Transnet's extension of the validity period.

7) SITE VISIT / BRIEFING SESSION

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

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8) CLARIFICATION BEFORE THE CLOSING DATE

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

9) COMMUNICATION AFTER THE CLOSING DATE

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

10) UNAUTHORISED COMMUNICATION ABOUT BIDS

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

11) RETURNABLE DOCUMENTS

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

12) DEFAULTS BY RESPONDENTS

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

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

ii) accept an order in terms of the Bid;

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

iv) 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.

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

i) has withdrawn such Bid after the advertised date and hour for the receipt of Bids; or

ii) has, after having been notified of the acceptance of its Bid, failed or refused to sign a contract when called upon to do so in terms of any condition forming part of the Bid Documents; or

iii) has carried out any contract resulting from such Bid in an unsatisfactory manner or has breached any condition of such contract; or

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

v) has acted in a fraudulent or improper manner or in bad faith towards Transnet or any government department or towards any public body, company or person; or

vi) has made any misleading or incorrect statement either

(1) in the affidavit or certificate referred to in clause 18)*[Notice to Unsuccessful Respondents]*; or

(2) in any other document submitted as part of its Bid submission

and is unable to prove to the satisfaction of Transnet that

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

(b) before making such statement, it took all reasonable steps to satisfy itself of its correctness; or

vii) caused Transnet damage, or to incur costs in order to meet the Service Provider's requirements which could not be recovered from the Service Provider;

viii) has litigated against Transnet in bad faith;

ix) has been found guilty by a court of law, tribunal or other administrative body of a serious breach of any law, during the preceding 5 [five] years;

x) has been included as a company or person prohibited from doing business with the public sector on National Treasury's database of Restricted Suppliers or Register of Bid Defaulters;

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

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c) 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.

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

13) CURRENCY

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

14) PRICES SUBJECT TO CONFIRMATION

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

b) Firm prices quoted for the duration of any resulting order and/or contract will receive precedence over prices which are subject to fluctuation if this is in Transnet's best interests.

15) ALTERATIONS MADE BY THE RESPONDENT TO BID PRICES

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

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16) EXCHANGE AND REMITTANCE

a) 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.

b) 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.

c) 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.

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

e) Transnet will not recognise any claim for adjustment of the order and/or contract price if the increase in price arises after the date on which agreement on an overall Rand contract has been reached.

16.6 Transnet reserves the right to request a pro-forma invoice/tax invoice in order to ensure compliance with the contract and Value-Added Tax Act no. 89 of 1991 [**VAT Act**].

17) ACCEPTANCE OF BID

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

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

c) 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.

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

18) NOTICE TO UNSUCCESSFUL RESPONDENTS

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

19) TERMS AND CONDITIONS OF CONTRACT

a) 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.

b) 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.

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20) CONTRACT DOCUMENTS

a) 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.

b) 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.

c) 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 Intent, shall constitute a binding contract until the final contract is signed.

21) LAW GOVERNING CONTRACT

The law of the Republic of South Africa shall govern the contract created by the acceptance of a Bid. The *domicilium citandi et executandi* shall be a place in the Republic of South Africa to be specified by the Respondent in its Bid at which all legal documents may be served on the Respondent who shall agree to submit to the jurisdiction of the courts of the Republic of South Africa. A foreign Respondent shall, therefore, state in its Bid the name of its authorised representative in the Republic of South Africa who is

empowered to sign any contract which may be entered into in the event of its Bid being accepted and to act on its behalf in all matters relating to the contract.

22) IDENTIFICATION

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

23) CONTRACTUAL SECURITIES

a) 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.

b) 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.

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

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

e) Additional costs incurred by Transnet necessitated by reason of default on the part of the Service Provider in relation to the conditions of this clause 23) will be for the account of the Service Provider.

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24) DELETION OF ITEMS TO BE EXCLUDED FROM BID

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

25) VALUE-ADDED TAX

a) 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.

b) In respect of foreign Services rendered:

i) 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

ii) the Service Provider's Tax Invoice(s) for the local portion only [i.e. the "commission" for the Services rendered locally] must show the VAT separately.

26) IMPORTANT NOTICE TO RESPONDENTS REGARDING PAYMENT

a) Method of Payment

i) 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.

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

iii) 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.

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

NOTE: The successful Respondent [the **Service Provider**], where applicable, shall be required to furnish a guarantee covering any advance payments, as set out in clause 23) above *[Contractual Securities]*.

b) 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.

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27) DELIVERY REQUIREMENTS

a) 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.

b) Progress Reports

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

c) Emergency Demands as and when required

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

28) SPECIFICATIONS AND COPYRIGHT

a) **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.

b) Copyright

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

29) BIDS BY OR ON BEHALF OF FOREIGN RESPONDENTS

a) 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.

b) 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.

c) 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.

d) 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.

i) 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.

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

iii) 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.

iv) 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.

e) 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**]:

i) 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

ii) funds are to be transferred to the credit of its South African agent or representative, in which case the name and branch of such bank shall be furnished.

30) CONFLICT WITH BID DOCUMENT

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

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TRANSNET

Appendix (ii)

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

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1) INTRODUCTION

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

2) DEFINITIONS

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

2.1 AFSA means the Arbitration Foundation of South Africa;

2.2 Agreement means the Agreement and its associated schedules and/or annexures and/or appendices, including the Work Order(s), specifications for the Services and such special conditions as shall apply to the Agreement, together with the General Tender Conditions and any additional provisions in the associated bid documents tendered by the Service Provider [as agreed in writing between the Parties], which collectively and exclusively govern the provision of Services by the Service Provider to Transnet;

2.3 Background Intellectual Property means all Intellectual Property introduced and required by either Party to give effect to their obligations under the Agreement owned in whole or in part by or licensed to either Party or their affiliates prior to the Commencement Date or developed after the Commencement Date otherwise pursuant to the Agreement;

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

2.5 Commencement Date means [●], notwithstanding the signature date of the Agreement;

2.6 Confidential Information means any information or other data, whether in written, oral, graphic or in any other form such as in documents, papers, memoranda, correspondence, notebooks, reports, drawings, diagrams, discs, articles, samples, test results, prototypes, designs, plans, formulae, patents, or inventor's certificates, which a Party discloses or provides to the other Party [intentionally or unintentionally, or as a result of one Party permitting the representative of the other Party to visit any of its premises], or which otherwise becomes known to a Party, and which is not in the public domain and includes, without limiting the generality of the term:

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

2.6.2 the contents of the Agreement;

2.6.3 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;

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

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

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Respondent's Signature

Date & Company Stamp

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

2.6.7 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;

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

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

2.6.10 Copyright works;

2.6.11 commercial, financial and marketing information;

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

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

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

2.6.15 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;

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2.7 Copyright means the right in expressions, procedures, methods of operations or mathematical concepts, computer program codes, compilations of data or other material, literary works, musical works, artistic works, sound recordings, broadcasts, program carrying signals, published editions, photographic works, or cinematographic works of the copyright owner to do or to authorise the doing of certain acts specified in respect of the different categories of works;

2.8 Default means any breach of the obligations of either Party [including but not limited to fundamental breach or breach of a fundamental term] or any Default, act, omission, negligence or statement of either Party, its employees, agents or Subcontractors in connection with or in relation to the subject of the Agreement and in respect of which such Party is liable to the other;

2.9 Deliverable(s) means any and all works of authorship, products and materials developed, written, prepared, assembled, integrated, modified or provided by the Service Provider in relation to the Services;

2.10 **Designs** mean registered Designs and/or Design applications and will include the monopoly right granted for the protection of an independently created industrial design including designs dictated essentially by technical or functional considerations as well as topographies of integrated circuits and integrated circuits;

2.11 **Fee(s)** shall mean the agreed Fees for the Services to be purchased from the Service Provider by Transnet, as detailed in the Work Order(s), issued in accordance with the Agreement, as amended by mutual agreement between the Parties and in accordance with the provisions of the Agreement from time to time;

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

2.13 **Intellectual Property** means Patents, Designs, Know-How, Copyright and Trade Marks and all rights having equivalent or similar effect which may exist anywhere in the world and includes all future additions and improvements to the Intellectual Property;

2.14 **Know-How** means all Confidential Information of whatever nature relating to the Intellectual Property and its exploitation as well as all other Confidential Information generally relating to Transnet's field of technology, including technical information, processing or manufacturing techniques, Designs, specifications, formulae, systems, processes, information concerning materials and marketing and business information in general;

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

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

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

2.18 Patents mean registered Patents and Patent applications, once the latter have proceeded to grant, and includes a right granted for any inventions, products or processes in all fields of technology;

2.19 **Permitted Purpose** means any activity or process to be undertaken or supervised by Personnel or employees of one Party during the term of the Agreement, for which purpose authorised disclosure of the other Party's Confidential Information or Intellectual Property is a prerequisite in order to enable such activity or process to be accomplished;

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

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

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

2.23 **Service Level Agreement** or **SLA** means the processes, deliverables, key performance indicators and performance standards relating to the Services to be provided by the Service Provider;

2.24 **Subcontract** means any contract or agreement or proposed contract or agreement between the Service Provider and any third party whereby that third party agrees to provide to the Service Provider the Services or any part thereof;

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

2.26 **Service Provider Materials** means all works of authorship, products and materials [including, but not limited to, data, diagrams, charts, reports, specifications, studies, inventions, software, software development tools, methodologies, ideas, methods, processes, concepts and

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techniques] owned by, or licensed to, the Service Provider prior to the Commencement Date or independently developed by the Service Provider outside the scope of the Agreement at no expense to Transnet, and used by the Service Provider in the performance of the Services;

2.27 **Tax Invoice** means the document as required by Section 20 of the Value-Added Tax Act, 89 of 1991, as may be amended from time to time;

2.28 **Third Party Material** means software, software development tools, methodologies, ideas, methods, processes, concepts and techniques owned by, or licensed to a third party and used by the Service Provider in the performance of the Services;

2.29 **Trade Marks** mean registered Trade Marks and trade mark applications and includes any sign or logo, or combination of signs and/or logos capable of distinguishing the goods or services of one undertaking from those of another undertaking;

2.30 **VAT** means Value-Added Tax chargeable in terms of the Value-Added Tax Act, 89 of 1991, as may be amended from time to time; and

2.31 **Work Order(s)** means a detailed scope of work for a Service required by Transnet, including timeframes, Deliverable, Fees and costs for the supply of the Service to Transnet, which may be appended to the Agreement from time to time.

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3 INTERPRETATION

3.1 Clause headings in the Agreement are included for ease of reference only and do not form part of the Agreement for the purposes of interpretation or for any other purpose. No provision shall be construed against or interpreted to the disadvantage of either Party hereto by reason of such Party having or being deemed to have structured or drafted such provision.

3.2 Any term, word, acronym or phrase used in the Agreement, other than those defined under the clause heading "Definitions" shall be given its plain English meaning, and those terms, words, acronyms, and phrases used in the Agreement will be interpreted in accordance with the generally accepted meanings accorded thereto.

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

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

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

4 NATURE AND SCOPE

4.1 The Agreement is an agreement under the terms and conditions of which the Service Provider will arrange for the provision to Transnet of the Services which meet the requirements of Transnet, the delivery of which Services is controlled by means of Purchase Orders to be issued by Transnet and executed by the Service Provider, in accordance with the Agreement.

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

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

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4.4 During the period of the Agreement, both Parties can make written suggestions for amendments to the Work Order(s), in accordance with procedures set out in clause 28*[Amendment and Change Control]* below. A Party will advise the other Party within 14 [fourteen] Business Days, or such other period as mutually agreed, whether the amendment is acceptable.

4.5 Insofar as any term, provision or condition in the Work Order(s) conflicts with a like term, provision or condition in the Agreement and/or a Purchase Order, or where the Agreement is silent on the matter, the term, provision or condition in this Master Agreement shall prevail, unless such term or provision or condition in this Master Agreement has been specifically revoked or amended by mutual written agreement between the Parties.

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

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5 AUTHORITY OF PARTIES

5.1 Nothing in the Agreement will constitute or be deemed to constitute a partnership between the Parties, or constitute or be deemed to constitute the Parties as agents or employees of one another for any purpose or in any form whatsoever.

5.2 Neither Party shall be entitled to, or have the power or authority to enter into an agreement in the name of the other; or give any warranty, representation or undertaking on the other's behalf; or create any liability against the other or bind the other's credit in any way or for any purpose whatsoever.

6 WARRANTIES

6.1 The Service Provider warrants to Transnet that:

6.1.1 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;

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

6.1.3 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;

6.1.4 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

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

6.2 The Service Provider warrants that it will perform its obligations under the Agreement in accordance with the Service Levels as defined in the relevant schedule. Transnet may at its discretion audit compliance with the Service Levels, provided that any such audit is carried out with reasonable prior notice and in a reasonable way so as not to have an adverse effect on the performance of the Services. Without prejudice to clause 6.3 below, in the event that the Service Provider fails to meet the Service Levels, Transnet may claim appropriate service credits or invoke a retention of Fees as detailed in the relevant schedule and/or Work Order.

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

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

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

6.6 The Service Provider shall advise Transnet of the effects of any steps proposed by Transnet pursuant to clause 6.5 above, including but not limited to any cost implications or any disruption or delay in the performance of the Services. The Parties agree that any changes to the Services, including the charges for the Services or any timetables for delivery of the Services, will be agreed in accordance with the change control procedure, as set out in clause 28*[Amendment and Change Control]*.

6.7 The Service Provider warrants that:

6.7.1 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

6.7.2 at the time of delivery to Transnet, the Materials do not contain any trojan horse, worm, logic bomb, time bomb, back door, trap door, keys or other harmful components.

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

6.8 The Service Provider undertakes to comply with South Africa's general privacy protection in terms of Section 14 of the Bill of Rights in connection with the Agreement and shall procure that

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its Personnel shall observe the provisions of Section 14 [as applicable] or any amendments and re-enactments thereof and any regulations made pursuant thereto.

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

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

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7 TRANSNET'S OBLIGATIONS

7.1 Transnet undertakes to promptly comply with any reasonable request by the Service Provider for information, including information concerning Transnet's operations and activities, that relates to the Services as may be necessary for the Service Provider to perform the Services, but for no other purpose. However, Transnet's compliance with any request for information is subject to any internal security rules and requirements and subject to the observance by the Service Provider of its confidentiality obligations under the Agreement.

7.2 The Service Provider shall give Transnet reasonable notice of any information it requires in accordance with clause 7.1 above.

7.3 Subject to clause 13*[Service Provider's Personnel]*, Transnet agrees to provide the Service Provider or its Personnel such access to and use of its facilities as is necessary to allow the Service Provider to perform its obligations under the Agreement.

8 GENERAL OBLIGATIONS OF THE SERVICE PROVIDER

8.1 The Service Provider shall:

8.1.1 respond promptly to all complaints and enquiries from Transnet;

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

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

8.1.4 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;

8.1.5 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;

8.1.6 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;

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

8.1.8 ensure the validity of all renewable certifications, including but not limited to its Tax Clearance Certificate and B-BBEE Verification Certificate, for the duration of the Agreement. Should the Service Provider fail to present Transnet with such renewals as they become due, Transnet shall be entitled, in addition to any other rights and remedies that it may have in terms of the Agreement, to terminate the Agreement forthwith without any liability and without prejudice to any claims which Transnet may have for damages against the Service Provider.

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

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

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

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

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

8.2.5 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;

8.2.6 practice and promote its own internal policies aimed at prohibiting and preventing unfair discrimination [as further referred to in clause 22 – *Equality and Diversity*];

8.2.7 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;

8.2.8 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;

8.2.9 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;

8.2.10 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;

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

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8.2.12 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

8.2.13 immediately report to Transnet any unethical, fraudulent or otherwise unlawful conduct of which it becomes aware in connection with Transnet or the provision of Services.

9 FEES AND EXPENSES

9.1 In consideration of the provision of the Services, Transnet will pay to the Service Provider the Fees detailed in the relevant schedule or Work Order.

9.2 Transnet will not be invoiced for materials used in the provision of the Services save for those materials [if any] set out in the Work Order and accepted by Transnet or in any relevant Work Order [which will be invoiced to Transnet at cost].

9.3 Unless otherwise agreed in a schedule or Work Order, Transnet will reimburse to the Service Provider all reasonable and proper expenses incurred directly and solely in connection with the provision of the Services, provided that all such expenses:

9.3.1 are agreed by Transnet in advance;

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

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

9.3.4 will only be reimbursed if supported by relevant receipts.

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

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10 INVOICING AND PAYMENT

10.1 Transnet shall pay the Service Provider the amounts stipulated in the relevant schedule or Work Order, subject to the terms and conditions of the Agreement.

10.2 Transnet shall pay such amounts to the Service Provider, upon receipt of a valid and undisputed Tax Invoice together with the supporting documentation as specified in the Work Order appended hereto, once the valid and undisputed Tax Invoices, or such portion of the Tax Invoices which are valid and undisputed become due and payable to the Service Provider for the provision of the Services, in terms of clause 10.4 below.

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

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

10.5 Where the payment of any Tax Invoice, or any part thereof which is not in dispute, is not made in accordance with this clause 10, the Service Provider shall be entitled to charge

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interest on the outstanding amount, at The Standard Bank of South Africa's prime rate of interest in force, for the period from the due date of payment until the outstanding amount is paid.

11 FEE ADJUSTMENTS

11.1 Fees for Services rendered in terms of the Agreement shall be subject to review as indicated in the Work Order(s) annexed hereto from time to time.

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

11.3 Should Transnet and the Service Provider fail to reach an agreement on Fees for the successive period, either Party shall be entitled to submit this matter to dispute resolution in accordance with clause 25 of this Master Agreement *[Dispute Resolution]*.

12 INTELLECTUAL PROPERTY RIGHTS

12.1 Title to Confidential Information

12.1.1 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.

12.1.2 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.

12.1.3 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.

12.1.4 The Service Provider shall grant Transnet access to the Service Provider's Background Intellectual Property on terms which shall be *bona fide* negotiated between the Parties for the purpose of commercially exploiting the Foreground Intellectual Property, to the extent that such access is required.

12.2 Title to Intellectual Property

12.2.1 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.

12.2.2 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

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shall reasonably assist Transnet in attaining and maintaining protection of the Foreground Intellectual Property.

12.2.3 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.

12.2.4 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.

12.2.5 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.

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12.3 Title to Improvements

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

12.4 Unauthorised Use of Confidential Information

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

12.5 Unauthorised Use of Intellectual Property

12.5.1 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.

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12.5.2 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.

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

12.5.4 If proceedings are commenced by Transnet alone, Transnet shall be responsible for all expenses but shall be entitled to all damages or other awards arising out of such proceedings. If proceedings are commenced by both Parties, both Parties will be responsible for the expenses and both Parties shall be entitled to damages or other awards arising out of proceedings.

13 SERVICE PROVIDER'S PERSONNEL

13.1 The Service Provider's Personnel shall be regarded at all times as employees, agents or Subcontractors of the Service Provider and no relationship of employer and employee shall arise between Transnet and any Service Provider Personnel under any circumstances regardless of the degree of supervision that may be exercised over the Personnel by Transnet.

13.2 The Service Provider warrants that all its Personnel will be entitled to work in South Africa or any other country in which the Services are to be performed.

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

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13.4 Transnet reserves the right to refuse to admit or to remove from any premises occupied by or on behalf of it, any Service Provider Personnel whose admission or presence would, in the reasonable opinion of Transnet, be undesirable or who represents a threat to confidentiality or security or whose presence would be in breach of any rules and regulations governing Transnet's Personnel, provided that Transnet notifies the Service Provider of any such refusal [with reasons why]. The reasonable exclusion of any such individual from such premises shall not relieve the Service Provider from the performance of its obligations under the Agreement.

13.5 The Service Provider agrees to use all reasonable endeavours to ensure the continuity of its Personnel assigned to perform the Services. If any re-assignment by the Service Provider of those Personnel is necessary, or if Transnet advises that any such Personnel assigned are in any respect unsatisfactory, including where any such Personnel are, or are expected to be or have been absent for any period, then the Service Provider will promptly supply a replacement of equivalent calibre and experience, and any such replacement shall be approved by Transnet prior to commencing provision of the Services, such approval not to be unreasonably withheld or delayed.

14 LIMITATION OF LIABILITY

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

1. death or personal injury due to negligence; or
2. fraud.

14.2 The Service Provider shall indemnify and keep Transnet indemnified from and against liability for damage to any Transnet property [whether tangible or intangible] or any other loss, costs or damage suffered by Transnet to the extent that it results from any act of or omission by the Service Provider or its Personnel in connection with the Agreement. The Service Provider's liability arising out of this clause 14.2 shall be limited to a maximum amount payable in respect of any one occurrence or a series of related occurrences in a single calendar year, such amount to be agreed in writing by the Parties.

14.3 Subject always to clauses 14.1 and 14.2 above, the liability of either the Service Provider or Transnet under or in connection with the Agreement, whether for negligence, misrepresentation, breach of contract or otherwise, for direct loss or damage arising out of each Default or series of related Defaults shall not exceed 100% [one hundred per cent] of the Fees paid under the schedule or Work Order to which the Default(s) relates.

14.4 Subject to clause 14.1 above, and except as provided in clauses 14.2 and 14.3 above, in no event shall either Party be liable to the other for indirect or consequential loss or damage or including indirect or consequential loss of profits, business, revenue, goodwill or anticipated savings of an indirect nature or loss or damage incurred by the other Party as a result of third party claims.

14.5 If for any reason the exclusion of liability in clause 14.4 above is void or unenforceable, either Party's total liability for all loss or damage under the Agreement shall be as provided in clause 14.3 above.

14.6 Nothing in this clause 14 shall be taken as limiting the liability of the Service Provider in respect of clause 12*[Intellectual Property Rights]* or clause 16*[Confidentiality]*.

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15 INSURANCES

15.1 Without limiting the liability of the Service Provider under the Agreement, the Service Provider shall take out insurance in respect of all risks for which it is prudent for the Service Provider to insure against, including any liability it may have as a result of its activities under the Agreement for theft, destruction, death or injury to any person and damage to property. The level of insurance will be kept under review by Transnet, on an annual basis, to ensure its adequacy, provided that any variation to the level of such insurance shall be entirely at the discretion of the Service Provider.

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

15.3 Subject to clause 15.4 below, if the Service Provider fails to effect adequate insurance under this clause 15, it shall notify Transnet in writing as soon as it becomes aware of

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the reduction or inadequate cover and Transnet may arrange or purchase such insurance. The Service Provider shall promptly reimburse Transnet for any premiums paid provided such insurance protects the Service Provider's liability. Transnet assumes no responsibility for such insurance being adequate to protect all of the Service Provider's liability.

15.4 In the event that the Service Provider receives written notice from its insurers advising of the termination of its insurance cover referred to in clause 15.1 above or if the insurance ceases to be available upon commercially reasonable terms, the Service Provider shall immediately notify Transnet in writing of such termination and/or unavailability, whereafter either the Service Provider or Transnet may terminate the Agreement on giving the other Party not less than 30 [thirty] days prior written notice to that effect.

16 CONFIDENTIALITY

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

16.1.1 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;

16.1.2 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;

16.1.3 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;

16.1.4 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;

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

16.1.6 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;

16.1.7 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

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any matter related to the Agreement, unless written authorisation to do so has first been obtained from the Party first disclosing such information;

16.1.8 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;

16.1.9 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;

16.1.10 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

16.1.11 each Party may by written notice to the other Party specify which of the Party's employees, officers or agents are required to sign a non-disclosure undertaking.

16.2 The duties and obligations with regard to Confidential Information in this clause 16 shall not apply where:

16.2.1 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

16.2.2 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

16.2.3 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

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

16.3 This clause 16 shall survive termination for any reason of the Agreement and shall remain in force and effect from the Commencement Date of the Agreement and 5 [five] years after the termination of the Agreement. Upon termination of the Agreement, all documentation furnished to the Service Provider by Transnet pursuant to the Agreement shall be returned to Transnet including, without limitation all corporate identity equipment including dyes, blocks, labels, advertising matter, printing matter and the like.

17 TOTAL OR PARTIAL FAILURE TO PERFORM THE SCOPE OF SERVICES

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

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18 TERM AND TERMINATION

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

18.1.1 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

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

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

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

18.3.1 a voluntary arrangement or composition or reconstruction of its debts;

18.3.2 its winding-up or dissolution;

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

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

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

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

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

19 CONSEQUENCE OF TERMINATION

19.1 Termination in accordance with clause 18*[Term and Termination]* shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to either Party and all provisions which are to survive the Agreement or impliedly do so shall remain in force and in effect.

19.2 On termination of the Agreement or a Work Order, the Service Provider will immediately deliver up, and procure that its Personnel will immediately deliver up to Transnet, all Deliverables and property belonging to Transnet [or, in the event of termination of a Work Order,

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such as is relevant to that Work Order] which may be in the possession of, or under the control of the Service Provider, and certify to Transnet in writing that this has been done.

19.3 To the extent that any of the Deliverables and property referred to in clause 19.2 above are in electronic form and contained on non-detachable storage devices, the Service Provider will provide Transnet with unencrypted copies of the same on magnetic media and will irretrievably destroy and delete copies so held.

19.4 In the event that the Agreement is terminated by the Service Provider under clause 18.2*[Term and Termination]*, or in the event that a Work Order is terminated by Transnet under clause 18.5*[Term and Termination]*, Transnet will pay to the Service Provider all outstanding Fees [apportioned on a *pro rata* basis] relating to the work undertaken by the Service Provider up until the date of such termination. Transnet will also pay the costs of any goods and materials ordered by the Service Provider in relation to the such work for which the Service Provider has paid or is legally obliged to pay, in which case, on delivery of such goods or materials, the Service Provider will promptly deliver such goods and materials to Transnet or as it may direct.

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

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

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19.7 Should:

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

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

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

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

20 ASSIGNMENT

Neither Party may assign the benefit of the Agreement or any interest hereunder except with the prior written consent of the other. Further, in the event that Transnet wishes to assign or novate the Agreement to any third party, the Service Provider agrees that it shall not unreasonably withhold or delay

its consent to such assignment or novation and that it shall only be entitled to recover from Transnet any reasonable legal costs incurred by it as a direct result of such assignment or novation.

21 FORCE MAJEURE

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

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

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22 EQUALITY AND DIVERSITY

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

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

23 NON-WAIVER

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

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

24 PARTIAL INVALIDITY

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

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25 DISPUTE RESOLUTION

25.1 Should any dispute of whatsoever nature arise between the Parties concerning the Agreement, the Parties shall try to resolve the dispute by negotiation within 10 [ten] Business Days of such dispute arising.

25.2 If the dispute has not been resolved by such negotiation, either of the Parties may refer the dispute to AFSA and notify the other Party accordingly, which proceedings shall be held in Johanne

25.3 sburg.

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

25.5 This clause constitutes an irrevocable consent by the Parties to any proceedings in terms hereof, and neither of the Parties shall be entitled to withdraw from the provisions of this clause or claim at any such proceedings that it is not bound by this clause 25.

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

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

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26 ADDRESSES FOR NOTICES

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

26.1.1 Transnet

26.1.1.1	For legal notices:	[●]	
		1	Fax No. [●]
		2	Attention: Legal Counsel
26.1.1.2	For commercial matters:	[●]	
		3	Fax No. [●]
		4	Attention: [●]

26.1.2 The Service Provider

26.1.2.1	For legal notices:	[●]	
		5	Fax No. [●]
		6	Attention: [●]
26.1.2.2	For commercial matters:	[●]	
		7	Fax No. [●]

8 Attention: [●]

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

26.3 Any notice shall be deemed to have been given:

26.3.1 if hand delivered, on the day of delivery; or

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

26.3.3 if faxed, on the date and time of sending of such fax, as evidenced by a fax confirmation printout, provided that such notice shall be confirmed by prepaid registered post on the date of dispatch of such fax, or, should no postal facilities be available on that date, on the next Business Day.

27 WHOLE AND ONLY AGREEMENT

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

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

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28 AMENDMENT AND CHANGE CONTROL

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

28.2 In the event the Parties cannot agree upon changes, the Parties shall in good faith seek to agree any proposed changes using the dispute resolution procedures in clause 25*[Dispute Resolution]*.

29 GOVERNING LAW

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

29.1 Change of Law

In the Agreement, unless the context otherwise requires, references to a statutory provision include references to that statutory provision as from time to time amended, extended or re-enacted and any regulations made under it, provided that in the event that the amendment, extension or re-enactment of any statutory provision or introduction of any new statutory provision has a material impact on the obligations of either Party, the Parties will negotiate in good faith to agree such amendments to the Agreement as may be appropriate in the circumstances. If, within a reasonable period of time, the Service Provider and Transnet cannot reach agreement on the nature of the changes required or on modification of Fees, Deliverables, warranties, or other terms and conditions, either Party may seek to have the matter determined in accordance with clause 25*[Dispute Resolution]* above.

30 COUNTERPARTS

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

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Section 5

VENDOR APPLICATION FORM

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

1. **Original** cancelled cheque **OR** letter from the Respondent's bank verifying banking details [**with bank stamp]**
2. **Certified** copy of Identity Document(s) of Shareholders/Directors/Members [where applicable]
3. **Certified** copy of Certificate of Incorporation, CM29 / CM9 [name change]
4. **Certified** copy of Share Certificates [CK1/CK2 if CC]
5. A letter on the company's letterhead confirm physical and postal addresses
6. **Original** valid SARS Tax Clearance Certificate
7. **Certified copy** of VAT Registration Certificate
8. **Certified copy** of valid Company Registration Certificate [if applicable]
9. A signed letter from your auditor or accountant confirming most recent annual turnover figures

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Vendor Application Form

Company trading name						
Company registered name						
Company Registration Number or ID Number if a Sole Proprietor						
Form of entity [√]	CC	Trust	Pty Ltd	Limited	Partnership	Sole Proprietor
VAT number [if registered]						
Company telephone number						
Company fax number						
Company email address						
Company website address						
Bank name			Branch & Branch code			
Account holder			Bank account number			
Postal address						
			Code			
Physical Address						

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		Code	
Contact person			
Designation			
Telephone			
Email			

Annual turnover range [last financial year]	< R5 m		R5 - 35 m		> R35 m		
Does your company provide	Products		Services		Both		
Area of delivery	National		Provincial		Local		
Is your company a public or private entity			Public		Private		
Does your company have a Tax Directive or IRP30 Certificate			Yes		No		
Main product or services [e.g. Stationery/Consulting]							

Complete B-BBEE Ownership Details:

% Black ownership		% Black women ownership		% Disabled Black ownership			
Does your company have a B-BBEE certificate	Yes			No			
What is your B-BBEE status [Level 1 to 9 / Unknown]							
How many personnel does the firm employ	Permanent			Part time			

If you are an existing Vendor with Transnet please complete the following:

Transnet contact person	
Contact number	
Transnet Operating Division	

Duly authorised to sign for and on behalf of Company / Organisation:

Name		Designation	
Signature		Date	

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TRANSNET

ANNEXURE 1

SAFETY ARRANGEMENTS AND PROCEDURAL COMPLIANCE WITH THE OCCUPATIONAL HEALTH AND SAFETY ACT (ACT 85 OF 1993) AND APPLICABLE REGULATIONS

1. General

1.1 The Contractor and Transnet Limited (hereinafter referred to as "Transnet") are individual employers, each in its own right, with their respective duties and obligations set out in the Occupational Health and Safety Act, Act 85 of 1993 (the Act) and applicable Regulations.

1.2.1 The Contractor accepts, in terms of the General Conditions of Contract and in terms of the Act, his obligations as an employer in respect of all persons in his employ, other persons on the premises or the Site or place of work or on the work to be executed by him, and under his control. He shall, before commencement with the execution of the contract work, comply with the provisions set out in the Act, and shall implement and maintain a Health and Safety Plan as described in the Construction Regulations, 2003 and as approved by Transnet, on the Site and place of work for the duration of the Contract.

1.3.1 The Contractor accepts his obligation to comply fully with the Act and applicable Regulations notwithstanding the omission of some of the provisions of the Act and the Regulations from this document.

1.3.2 Transnet accepts, in terms of the Act, its obligations as an employer of its own employees working on or associated with the site or place of work, and the Contractor and Technical Officer or his deputy shall at all times, co-operate in respect of the health and safety management of the site, and shall agree on the practical arrangements and procedures to be implemented and maintained during execution of the Works.

1.3.3 In the event of any discrepancies between any legislation and this specification, the applicable legislation will take precedence.

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2. Definitions

2.1 In this Specification any word or expression to which a meaning has been assigned in the Construction Regulations, shall have the meaning so assigned to it, unless the context otherwise indicates: -

2.2 The work included in this Contract shall for the purposes of compliance with the Act be deemed to be "**Construction Work**", which, in terms of the Construction Regulations, 2003 means any work in connection with: -

(a) the erection, maintenance, alteration, renovation, repair, demolition or dismantling of or addition to a building or any similar structure;

(b) the installation, erection, dismantling or maintenance of fixed plant where such work includes the risk of a person falling;

(c) the construction, maintenance, demolition or dismantling of any bridge, dam, canal, road, railway, runway, sewer or water reticulation system or any similar civil engineering structure; or

(a)

(d) the moving of earth, clearing of land, the making of an excavation, piling, or any similar type of work;

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2.3 **"competent person"** in relation to construction work, means any person having the knowledge, training and experience specific to the work or task being performed: Provided that where appropriate qualifications and training are registered as per the South African Qualifications Authority Act, 1995 these qualifications and training shall be deemed to be the required qualifications and training;

2.4 **"contractor"** means principal contractor and "subcontractor" means contractor as defined by the Construction Regulations, 2003.

2.5 **"fall protection plan"** means a documented plan, of all risks relating to working from an elevated position, considering the nature of work undertaken, and setting out the procedures and methods applied to eliminate the risk;

2.6 **"health and safety file"** means a file, or other record in permanent form, containing the information required to be kept on site in accordance with the Act and applicable Regulations;

2.7 **"Health and Safety Plan "** means a documented plan which addresses the hazards identified and include safe work procedures to mitigate, reduce or control the hazards identified;

2.8 **"Risk Assessment"** means a programme to determine any risk associated with any hazard at a construction site, in order to identify the steps needed to be taken to remove, reduce or control such hazard;

2.8.1 **"the Act"** means the Occupational Health and Safety Act No. 85 of 1993.

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3.1 Procedural Compliance

3.2 The Contractor who intends to carry out any construction work shall, before carrying out such work, notify the Provincial Director in writing if the construction work:-

(a)includes the demolition of a structure exceeding a height of 3 metres; or

(b) includes the use of explosives to perform construction work; or

(c)includes the dismantling of fixed plant at a height greater than 3m,

and shall also notify the Provincial Director in writing when the construction work exceeds 30 days or will involve more than 300 person days of construction work and if the construction work:-
(d) includes excavation work deeper than 1m; or
(e) includes working at a height greater than 3 metres above ground or a landing.

3.2.1 The notification to the Provincial Director shall be on a form similar to Annexure A of the Construction Regulations, 2003, also shown in Annexure 1 of this Specification. The Contractor shall ensure that a copy of the completed notification form is kept on site for inspection by an inspector, Technical Officer or employee.

3.2.2 The Contractor shall, in accordance with the Act and applicable Regulations, make all the necessary appointments of competent persons in writing on a form similar to Annexure 2 of this Specification and deliver copies thereof to the Technical Officer. Copies should also be retained on the health and safety file.

3.2.3 Subcontractors shall also make the above written appointments and the Contractor shall deliver copies thereof to the Technical Officer.

3.2.4 In the case of a self-employed Contractor or any subcontractor who has the appropriate

competencies and supervises the work himself, the appointment of a construction supervisor in terms of regulation 6.1 of the Construction Regulations, 2003 will not be necessary. The Contractor shall in such a case execute and sign a declaration, as in Annexure 3, by which he personally undertakes the duties and obligations of the "Chief Executive Officer" in terms of section 16(1) of the Act.

3.2.5 The Contractor shall, before commencing any work, obtain from the Technical Officer an access certificate as in Annexure 4 executed and signed by him, permitting and limiting access to the designated site or place of work by the Contractor and any subcontractors under his control.

3.2.6 Procedural compliance with Act and Regulations, as above, shall also apply to any subcontractors as employers in their own right. The Contractor shall furnish the Technical Officer with full particulars of such subcontractors and shall ensure that they comply with the Act and Regulations and Protekon's safety requirements and procedures.

4. Special Permits

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

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5. Health and Safety Programme

5.1 The Tenderer shall, with his tender, submit a Health and Safety Programme setting out the practical arrangements and procedures to be implemented by him to ensure compliance by him with the Act and Regulations and particularly in respect of: -

(i) The provision, as far as is reasonably practical, of a working environment that is safe and without risk to the health of his employees and subcontractors in terms of section 8 of the Act;

(ii) the execution of the contract work in such a manner as to ensure in terms of section 9 of the Act that persons other than those in the Contractor's employment, who may be directly affected by the contract work are not thereby exposed to hazards to their health and safety;

(iii) ensuring, as far as is reasonably practical, in terms of section 37 of the Act that no employee or subcontractor of the Contractor does or omits to do any act which would be an offence for the Contractor to do or omit to do.

5.2.1 The Contractor's Health and Safety Programme shall be based on a risk assessment in respect of the hazards to health and safety of his employees and other persons under his control that are associated with or directly affected by the Contractor's activities in performing the contract work and shall establish precautionary measures as are reasonable and practical in protecting the safety and health of such employees and persons.

5.2.2 The Contractor shall cause a risk assessment contemplated in clause 5.2 above to be performed by a competent person, appointed in writing, before commencement of any Construction Work and reviewed during construction. The Risk Assessments shall form part of the Health and Safety programme to be applied on the site and shall include at least the following:

(a) The identification of the risks and hazards that persons may be exposed to;

(b) the analysis and evaluation of the hazards identified;

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(c) a documented Health and Safety Plan, including safe work procedures to mitigate, reduce or control the risks identified;

(d) a monitoring and review plan.

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

(a) The safety management structure to be instituted on site or place of work and the names of the Contractor's health and safety representatives and members of safety committees where applicable;

(b) the safe working methods and procedures to be implemented to ensure the work is performed in compliance with the Act and Regulations;

(c) the safety equipment, devices and clothing to be made available by the Contractor to his employees;

(d) the site access control measures pertaining to health and safety to be implemented;

(e) the arrangements in respect of communication of health and safety related matters and incidents between the Contractor, his employees, subcontractors and the Technical Officer with particular reference to the reporting of incidents in compliance with Section 24 and General Administrative Regulation 8 of the Act and with the pertinent clause of the General Conditions of Contract forming part of the Contract and

(f) the introduction of control measures for ensuring that the Safety Plan is maintained and monitored for the duration of the Contract.

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

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

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

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

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

5.4.6 The Contractor shall ensure that all employees under his control are informed, instructed and trained by a competent person regarding any hazard and the related work procedures before

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any work commences, and thereafter at such times as may be determined in the Risk Assessment.

5.4.7 The Contractor shall ensure that all subcontractors are informed regarding any hazard as stipulated in the Risk Assessment before any work commences, and thereafter at such times as may be determined in the Risk Assessment.

5.4.8 The Contractor shall ensure that all visitors to a construction site undergoes health and safety induction pertaining to the hazards prevalent on the site and shall be provided with the necessary personal protective equipment.

6. Fall Protection Plan

6.1.1 In the event of the risk and hazard identification, as required in terms of clause 5.3 of this Specification, revealing risks relating to working from an elevated position the contractor shall cause the designation of a competent person, responsible for the preparation of a fall protection plan;

6.1.2 The Contractor shall implement, maintain and monitor the fall protection plan for the duration of Contract. The Contractor shall also take such steps to ensure the continued adherence to the fall protection plan.

6.2The fall protection plan shall include:-

(a) A Risk Assessment of all work carried out from an elevated position;

(b) the procedures and methods to address all the identified risks per location;

(c) the evaluation of the employees physical and psychological fitness necessary to work at elevated positions;

(d) the training of employees working from elevated positions; and

(e) the procedure addressing the inspection, testing and maintenance of all fall protection equipment.

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7. Hazards and Potential Hazardous Situations

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

8. Health and Safety File

8.1 The Contractor shall ensure that a health and safety file is opened and kept on site and shall include all documentation required as per the Act and applicable regulations, and made available to an inspector, the Technical Officer, or subcontractor upon request.

8.2 The Contractor shall ensure that a copy of the both his Health and Safety Plan as well as any subcontractor's Health and Safety Plan is available on request to an employee, inspector, contractor or the Technical Officer.

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

ANNEXURE 2

OCCUPATIONAL HEALTH AND SAFETY ACT, 1993

Regulation 3(1) of the Construction Regulations

NOTIFICATION OF CONSTRUCTION WORK

1(a) Name and postal address of principal contractor:

_____

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

_____

2. Principal contractor's compensation registration number: _____

3.(a) Name and postal address of client:

_____

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

_____

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

_____

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

_____

5. Name and telephone number of principal contractor's construction supervisor on site appointed in terms of regulation 6(1).

_____

6. Name/s of principal contractor's construction sub-ordinate supervisors on site appointed in terms of regulation 6(2).

_____

7. Exact physical address of the construction site or site office:

_____

8. Nature of the construction work:

_____

_____

_____

_____

_____

9. Expected commencement date: _____

10. Expected completion date: _____

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Date & Company Stamp

11. Estimated maximum number of persons on the construction site: _____

12. Planned number of contractors on the construction site accountable to the principle contractor: _____

13. Name(s) of contractors already chosen.

_____
_____
_____
_____
_____
_____
_____

_____ _____

Principal Contractor **Date**

_____ _____

Client **Date**

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* THIS DOCUMENT IS TO BE FORWARDED TO THE OFFICE OF THE DEPARTMENT OF LABOUR **PRIOR TO COMMENCEMENT** OF WORK ON SITE.

* **ALL PRINCIPAL CONTRACTORS** THAT QUALIFY TO NOTIFY MUST DO SO EVEN IF ANOTHER PRINCIPAL CONTRACTOR ON THE SAME SITE HAD DONE SO PRIOR TO THE COMMENCEMENT OF WORK.

Respondent's Signature Date & Company Stamp

ANNEXURE 3

(COMPANY LETTER HEAD)

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

SECTION/REGULATION: _____

REQUIRED COMPETENCY: _____

In terms of _____ I, _____

representing the Employer) do hereby appoint _____

As the Competent Person on the premises at _____

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

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

_____

_____

_____

Date : _____

Signature :- _____

Designation :- _____

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ACCEPTANCE OF DESIGNATION

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

Date : _____

Signature :- _____

Designation :- _____

TRANSNET

ANNEXURE 4

(COMPANY LETTER HEAD)

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

DECLARATION

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

Signature :- _____

Date : _____

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Respondent's Signature

Date & Company Stamp

ANNEXURE 5

(LETTER HEAD OF BUSINESS DIVISION OR UNIT OF TRANSNET LIMITED)

SITE ACCESS CERTIFICATE

Access to : _____ (Area)
Name of Contractor/Builder :- _____
Contract/Order No.: _____

The contract works site/area described above are made available to you for the carrying out of associated works
In terms of your contract/order
with
(company) _____

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

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

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Signed : _____ ***Date :*** _____
TECHNICAL OFFICER

ACKNOWLEDGEMENT OF RECEIPT

Name of Contractor/Builder :-

_____

do hereby acknowledge and accept the duties and obligations in respect of the Safety of the site/area of Work in terms of the Occupational Health and Safety Act; Act 85 of 1993.

Name : _____ ***Designation :*** _____

Signature : _____ ***Date :*** _____

Respondent's Signature Date & Company Stamp

TRANSNET

Tenderer SHE Management System Questionnaire

This questionnaire is part of the TFR tender evaluation process and is to be completed by all Tenderer's and submitted with their tender offer. The objective of the questionnaire is to provide an overview of the status of the Tenderer's SHE management system. Tenderer's will be required to verify their responses noted in their questionnaire by providing evidence of their ability and capacity in relevant matters. The tender warrants that the information provided below is accurate and correct. The tenderer shall advise TFR of any changes.

TFR may verify the accuracy of this information (where necessary) during the physical visit as part of the tender evaluation.

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

Respondent's Signature

Date & Company Stamp

- Are Risk Assessments conducted and appropriate techniques used? - If yes provide details		
3. SHE Training		
Describe briefly how health and safety training is conducted in your company:		
- Is a record maintained of all training and induction programs undertaken for employees in your company? - If yes provide examples of safety training records		
4. SHE Workplace Inspection		
- Are regular health and safety inspections at worksites undertaken? -If yes provide details		
- Is there a procedure by which employees can report hazards at workplaces? - If yes provide details		
5. SHE Consultation		
- Is there a workplace SHE committee?		
- Are employees involved in decision making over SHE matters? - If yes provide details		
- Are there appointed SHE representatives? - Comments		
6. SHE Performance Monitoring		
- Is there a system for recording and analysing health and safety performance statistics including injuries and incidents? - If yes provide details		
- Are employees regularly provided with information on company health and safety performance? - If yes provide details		
Is company registered with workmen's compensation and up		

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Respondent's Signature

Date & Company Stamp

to date? - If yes provide proof of letter of good standing		
- Has the company been fined or convicted of an occupational health and safety offence? - If yes provide details		

Safety Performance Report

Monthly DIFR for previous months

Previous Year	No of Disabling Injuries	Total Number of employees	DIFR per month
Jan			
Feb			
Mar			
Apr			
May			
Jun			
Jul			
Aug			
Sep			
Oct			
Nov			
Dec			

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

==========

Signed
(Tenderer)

Respondent's Signature

Date & Company Stamp