

**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-VEG-9944**

**MAINTENANCE OF UNDERGROUND TELECOMMUNICATION COPPER CABLE  
FOR A PERIOD OF 3 MONTHS WITHIN THE VEREENIGING DEPOT  
BOUNDARIES (GMR-VEREENIGING, VEREENIGING-WOLWEHOEK,  
VEREENIGING-POTCHEFSTROOM)**

**ISSUE DATE: 01 FEBRUARY 2013**

**BRIEFING SESSION 06 FEBRUARY 2013 (10:00 @ Isando)**

**CLOSING DATE: 14 FEBRUARY 2013**

**CLOSING TIME: 10:00**

**OPTION DATE: 13 MAY 2013**

**FOR DIRECTION/SITE CONTACT PHINDI SIBIYA ON (083 458 1354)**

## Section 1

### NOTICE TO BIDDERS

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

<b>METHOD:</b>	Post and/or courier]
<b>CLOSING VENUE:</b>	INYANDA HOUSE 1, 21 WELLINGTON ROAD, PARKTOWN, JOHANNESBURG, 2001

#### 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 B-BBEE Verification Certificate. All procurement transactions will be evaluated accordingly.

##### 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
- Proposals will be evaluated on price which will be allocated 80 points and preference which will be allocated 20 points, dependent on the value of the Goods or Services
- The 80/20 preference point system applies where the acquisition of the Goods or Services will be less than R1 000 000.00.
- If the 80/20 preference point system is stipulated and all Bids received exceed R1 000 000.00, the RFP will be cancelled

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:

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

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

- c) **Large Enterprises** [i.e. annual turnover greater than R35 million]:
  - Rating level based on all seven elements of the B-BBEE scorecard
- d) **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

e) **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 and B-BBEE status level.

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

Transnet will accordingly allocate a maximum of **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 A** for further details].*

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

*[Refer Section 3, Vendor Application Form, for Returnable Documents required]*

2.2 **Further Recognition Criteria**

a) Further Recognition Criteria (Current)

As a pre-qualification criterion, certain minimum requirements with regard to the Respondent's CURRENT B-BBEE status at the time of submission of their bid must be met. These minimum requirements will be measured based on the extent to which the Respondent's current black ownership, management control and employment equity meets or exceeds certain minimum targets. Please note that a Respondent's ownership, management control and employment equity at the time of the submission of the bid, may differ from that which is reflected in the B-BBEE scorecard. When claiming that the minimum targets for FRC (Current) has been met, the Respondent must reflect his B-BBEE status at the time of submitting the bid. Supporting documentation may be requested in this regard. The minimum requirements for this RFP for FRC (Current) are stipulated in the table below:

PREQUALIFICATION CRITERIA	MINIMUM COMPLIANCE TARGET (%) AS A PERCENTAGE OF THE ORGANISATION
Further Recognition Criteria (Current):	
Black Ownership	35%
Black Woman Ownership	30%
QSE/EME	35%

*N.B. Failure to achieve the minimum prequalification targets allocated for FRC (Current) for any one of the criteria listed above at the closing date of this tender will result in disqualification.*

***Respondents are required to complete and submit their FRC Claim Form for FRC (Current) attached hereto as Annexure..... with their Proposals. [Refer Section ..... for further instructions]***

*Note: Should a JV be envisaged, the principal Respondent is required to submit the required responses as indicated above.*

### 3 Communication

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

Name: Tshiamo Motitswe

Email: [tshiamo.motitswe@transnet.net](mailto:tshiamo.motitswe@transnet.net)

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

A non-refundable tender fee of R 100.00 (inclusive of vat) is applicable per tender (listed below).

Payment is to be made to Transnet Freight Rail, Standard Bank Account number 203158598, Branch Code 004805. The deposit slip must reflect the tender number and Company Name. Receipt/s of To be presented prior to collect of the tender/s.

**NOTE:** This amount is not refundable.

- c) Respondents may also, at any time after the closing date of the RFQ, communicate with Prudence Nkabinde on any matter relating to its RFQ response:

Telephone 011 544 9486

Email [Prudence.nkabinde@transnet.net](mailto:Prudence.nkabinde@transnet.net)

**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.

**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.

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

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

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:

#### **Prequalification criteria**

Company safety plan IRO act 85 of 1993  
Compliance to specification

#### **Commercial terms**

Competitive pricing  
References/previous performance record  
Technical capacity (Resources)  
Delivery schedule

#### **B-BBEE**

B-BBEE certificate and scorecard

- Administrative responsiveness - Completeness of response and returnable documents
- Technical threshold of ..... %: Compliance to specification / quality, previous performance, delivery lead-time

- 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<sup>1</sup> will be critical

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

$$PS = 80 \left( 1 - \frac{Pt - Pmin}{Pmin} \right)$$

Where:

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

- B-BBEE status of company

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

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

#### 14 Validity Period

Transnet desires a validity period of 30 [thirty] days from the closing date of this RFQ.

This RFQ is valid until \_\_\_\_\_.

#### 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. \_\_\_\_\_

<sup>1</sup> 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.



**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 **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.***

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:

Returnable Documents	Submitted [Yes or No]
SECTION 1 : Notice to Bidders	
<ul style="list-style-type: none"> <li>- 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</li> </ul>	
<ul style="list-style-type: none"> <li>- 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</li> </ul>	
SECTION 2 : Quotation Form	
SECTION 3: Vendor Application Form	
<ul style="list-style-type: none"> <li>• Original cancelled cheque or bank verification of banking details</li> </ul>	
<ul style="list-style-type: none"> <li>• Certified copies of IDs of shareholder/directors/members [as applicable]</li> </ul>	
<ul style="list-style-type: none"> <li>• Certified copy of Certificate of Incorporation [CM29/CM9 name change]</li> </ul>	
<ul style="list-style-type: none"> <li>• Certified copy of share certificates [CK1/CK2 if C.C.]</li> </ul>	
<ul style="list-style-type: none"> <li>• Entity's letterhead</li> </ul>	
<ul style="list-style-type: none"> <li>• Certified copy of VAT Registration Certificate [RSA entities only]</li> </ul>	
<ul style="list-style-type: none"> <li>• Certified copy of valid Company Registration Certificate [if applicable]</li> </ul>	
<ul style="list-style-type: none"> <li>• Original valid Tax Clearance Certificate [Consortia / Joint Ventures / Sub-contractors must submit a separate Tax Clearance Certificate for each party]</li> </ul>	
SECTION ..... : Further Recognition Criteria Current	



Returnable Documents	Submitted [Yes or No]
ANNEXURE ..... : Technical Submission/Questionnaire	

“PREVIEW COPY ONLY”

Respondent's Signature

Date & Company Stamp

## Section 2

### 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 and Services to Transnet [available on request]; and
- any other standard or special conditions mentioned and/or embodied in this Request for Quotation.

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

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

#### Price Schedule

I/We quote as follows for the goods required on a "delivered nominated destination" basis, excluding VAT: **[for SERVICES, attach a scope of work & pricing schedule]**

Item No	Description of Goods	Unit of Measure	Quantity	Unit Price (ZAR)	Total Price (ZAR)
1	Trenching	metre	10 km		
2	Laying cable & closing according to specification	metre	10 km		
3	Joining the cable	Per joint	30 Joints		
4	Testing the cable	Between two joints	30 Joints		

**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.

## REQUEST FOR QUOTATION ("RFQ")

### RFQ NUMBER CRAC-VEG-9944

**MAINTENANCE OF UNDERGROUND TELECOMMUNICATION COPPER CABLE FOR THE PERIOD OF 3 MONTHS WITHIN THE VEREENIGING DEPOT BOUNDARIES (GMR-VEREENIGING, VEREENIGING-WOLWEHOEK, VEREENIGING-POTCHEFSTROOM)**

### Information Session

5.

#### RFQ SITE MEETING

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

Venue : Isando Depot( Boardroom 6<sup>th</sup> floor )

Time : 10:00

Date : 06 February 2013

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

Contact people on sites: Phindi Sibiya ( 083 458 1354)

#### 5.1 **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 : .....

**7      VERY IMPORTANT**

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

**SPECIFICATIONS**

MAINTENANCE OF UNDERGROUND TELECOMMUNICATIONS COPPER CABLE FOR A PERIOD OF 03 MONTHS ON AN AS AND WHEN BASIS WITHIN THE VEREENIGING DEPOT BOUNDARIES (GMR – VEREENIGING, VEREENIGING – WOLWEHOK, VEREENIGING – POTCHERSTROOM)

**CONTENTS**

<b>PART A:</b>	<b>GENERAL CONDITIONS</b>
<b>PART B:</b>	<b>MATERIAL</b>
<b>PART C:</b>	<b>SPECIFICATION FOR MAINTENANCE</b>
<b>PART D:</b>	<b>SCHEDULE OF QUANTITIES AND PRICES</b>

“PREVIEW COPY ONLY”

**TRANSNET FREIGHT RAIL****PART A: GENERAL CONDITIONS****A1. SCOPE OF WORKS**

This Specification covers the conditions and specifications for the maintenance of underground telecommunications copper cable on various lines within the Vereeniging Depot boundaries, including the safe making of the railway lines after the repair work has been completed.

The work performed shall be in accordance with the specified standards and requirements, as laid down by Transnet Freight Rail (TFR), this Specification, to the approval and satisfaction of the Project Manager or his legally appointed representatives.

**A2. SUPPORTING SPECIFICATIONS**

The following specifications and documents shall be applicable

- SPC -00029 Rev 4
- SPC- 00588 Rev 2
- SPC- 00589 Rev 2

**A3. DEFINITIONS**

- **Project Manager.** The person or juristic person appointed by Transnet Freight Rail from time to time as the Project Manager, to administer the contract.
- **Technical Officer.** Any person appointed by the Project Manager to deputise for him in supervising and carrying out the contract.
- **Working time:** The time between the actual start and end times
- **Occupation.** The formal closure of the line to normal rail traffic for a specified period of time arranged in accordance with Infrastructure Occupation Management System (IOMS) and implemented in accordance with the Protection Manual.
- **Machinery.** The machinery provided by the Contractor for executing the Work, complete with all fittings, accessories and ancillary equipment including trailers, caravans and spare parts, as may be required to comply with the Contract specifications.
- **Latest edition of specification/standards.** All specifications referred to in the contract documents, but not bound therein, shall be the latest edition or revision, which was published up to 3 months prior to the closing date of tenders.

**A4. DURATION OF CONTRACT**

This contract shall commence at the acceptance thereof. The Contract duration shall be for a period of 03 months from date of acceptance.

**A5. PENALTIES FOR LATE COMPLETION**

Should the contractor fail to complete the work (planned work) by the date stipulated in the Contract, or any such extended date/s as may be allowed by the Project Manager, a penalty charge of R1, 000.00 per day will be levied for late completion.

**A6. METHOD STATEMENT**

The Contractor may use machine or labour based methods or a combination thereof for the execution of the works i.e. trenching.

The Contractor shall submit a written progress report in the same format as the Schedule of Quantities, showing the status of each item of work as requested by Technical officer / Project Manager.

**A7. OCCUPATIONS / MAINTENANCE WORK**

During the contract period, all repair work will generally be carried out as and when required under the Technical officer / TFR representative's supervision. All cost incurred by cancelling any occupation will be borne by the Contractor.

**A8. SAFETY OF STAFF AND PROTECTION OF TRAINS**

**A8.1** The safety of the public, and the Contractor's own staff shall be the primary responsibility of the Contractor. The Contractor will therefore ensure that a competent supervisor will oversee the safe running and completion of the works and related activities.

**A8.2** The person in charge of the occupation (taking occupations, declaring the track safe for the passage of trains, cancelling the occupation, communication with train traffic control with regards to occupation matters or maintenance work ) on the work site, will be a competent Transnet Freight Rail employee reporting to the Project Manager.

**A8.3** The Contractor will provide all protection required for the safe working of his personnel and safe passage of trains.

**A8.4** During and after completion of each day's work, the Contractor will make sure that all work are completed to ensure the safety of the track for the passage of trains. In the event that this is not possible, the contractor will inform the responsible Transnet Freight Rail representative who will make the necessary arrangements to complete the work. All costs involved to complete the works will be for the Contractor's account.

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- A8.5 The Contractor shall further ascertain himself of any other safety and/or security regulations which may be applicable to the area in which the work is undertaken and shall comply with such regulations at all times including all the safety clauses of Act 85 of 1993 as applicable to the type of work being performed.
- A8.6 The Contractor will issue all workers employed by him with the necessary protective clothing applicable to the type of work being performed at the contractor's cost.
- A8.7 The contractor shall comply with requirements of safety legislation and regulation in all respects.
- A8.8 The Contractor shall appoint a person at the work site whose sole task shall be to be on the lookout for approaching rail traffic where necessary.
- A8.9 An effective safety procedure to be followed by all personnel on any work site shall be compiled by the Contractor and implemented before any work commences. This procedure shall be updated whenever the need arises and any changes shall be communicated to all employees on a work site before work proceeds.
- A8.10 All reasonable steps to effectively prevent the occurrences of veld fires shall be required from the Contractor. Such fire fighting equipment and resources deemed necessary to effectively fight any veld fire, which may occur as a result of the work, shall be required at each defect site and shall form part of the contract. The cost to provide such fire fighting equipment and resources shall be deemed to be included in the rates tendered and no separate payment shall be made.
- A8.11 The Contractor shall not make use of any Sub-Contractor to perform the works or parts thereof without prior permission from the Project Manager.

#### A9. LABOUR AND TOOLS

The Contractor shall at his own expense supply all the necessary labour, transport, tools, materials, plant, machinery, consumables, accommodation, etc. necessary to effect the standard of the repair work required.

The Contractor shall prove to the satisfaction of the Project Manager that he and his staff have knowledge of the requirements and latest standards and specifications of Transnet Freight Rail and has the necessary competence to perform the repair work.

#### A10. CONTRACTOR'S PLANT

The plant to be used by the Contractor in the execution of the works is to be efficient, maintained in a state of efficiency and suited for the purpose for which it is to be used. The Project Manager shall also have the right to order the Contractor to remove from site and replace any plant, which he considers inefficient or unsuitable for the work, at the Contractor's own expense.





#### A11. EXPERIENCE

The Tenderers are required to give satisfactory evidence that they have had actual experience in the type of work for which they have tendered. It is the contractor's responsibility to ensure that his personnel are competent to perform the duties they are assigned to.

#### A12. KEY PERSONNEL

The Contractor shall furnish the Project Manager with a list of names, addresses and telephone numbers of key personnel in the Contractor's organisation who may be contacted in an emergency both during and outside normal office hours.

#### A13. SITE CONDITIONS AND REQUIREMENT

##### A13.1 Site locations

Maintenance work will be performed in the following areas  
 Germiston – Vereeniging  
 Vereeniging – Wolwehoek  
 Vereeniging - Potchefstroom

##### A13.2 Site records:

##### A13.2.1 Site Diary

The Contractor shall provide a diary, in triplicate to record all day-to-day incidents that could occur during the contract period. This includes weather, name & number of workers on the site, material that has been delivered, material used, incidences that have occurred, what work is to be done on that day, details of performance and operational availability of the Machinery, and actual working times - including all time lost attributable to TFR.

Details of plant and labour on site shall be recorded, signed by the Contractor's representative and countersigned by the TFR representative on a daily basis.

##### A13.2.2 Site Instruction Book

The Contractor shall provide a site instruction book, in triplicate for the Project Manager to place all instructions that are needed to compliment the specifications and drawings and any other instruction that may affect the cost of the work.

No work will be recognized for additional payment unless it has been recorded and signed by the Project Manager and the Contractor in the aforesaid book.

##### A13.2.3 Programme & Planning of the work

The contractor shall provide to the Project Manager a detail plan of how he intends to do the work and this plan must be to the requirements of the operation of Transnet Freight Rail with minor disruptions as no delays must be allowed in this regard.

The programme must be agreed to (in the site instruction book) before any work will be allowed to commence. The programme can be in a form of a pert (bar) chart and will be used as a guide to measure progress of the work.



A13.3 Offices, Workshops and Campsites

A13.3.1 The Contractor shall make his own arrangements for, water, communications, sanitary, refuse removal and all other services to these sites. On vacating these sites the Contractor shall clean the sites from all rubbish and reinstate the sites to the satisfaction of the Technical Officer.

A13.4 Clearing of site

The Contractor shall provide for cleaning up and sorting all rubbish and debris of whatever kind throughout the duration of the contract. Upon completion the Contractor shall clear away and remove all rubbish, plant debris etc and leave the site and the whole of the works clean and tidy to the satisfaction of the Project Manager.

A13.5 Access to Work Site,

The areas are restricted and the contractor must ensure that he complies with the regulations of Transnet Freight Rail in every way

A13.5.1 The Contractor may make use of existing roads to gain access to site.

A13.5.2 TFR will however not be responsible for ensuring all weather passage to the Contractor.

A13.5.3 TFR will entertain no claims from the Contractor for production delays, work done or expenditure incurred in gaining access to the work sites

A13.6 Site Meetings

A13.6.1 The Contractor shall attend meetings at dates and times convened by the Technical Officer. Such meetings shall be for the purpose of discussing Machinery moves, actual progress versus construction programme, delays, materials, conditions and specifications, occupations etc. The meeting will be held under the chairmanship of the Technical Officer and the proceedings will be minuted.

A13.7 Danger of Contact with Electrical Conductors

A13.7.1 The method of work shall be such that at all times the Contractor shall comply with the current Specification for Works On, Over, Under or Adjacent to Railway Lines and near High Voltage Equipment – E7/1 (BBD 8210), if applicable, and shall take particular care of the safety of his employees on or in close proximity to a railway line during track occupations as well as under normal operational conditions.

A13.7.2 The Contractor shall, before commencing with any work, ascertain from the appointed Technical Officer for the particular work area whether overhead or other electrical equipment are affected by the works and he shall ensure that all precautionary measures laid down in the specification as well as by the Technical Officer (Contracts) are strictly observed.

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**A13.8 Environment**

The Contractor shall at all times comply with the statutes that prohibit pollution of any kind. These statutes are enacted in the following legislation.

The National Environmental Management Act, 107/1998;  
The Environmental Conservation Act, 73/1989; and  
The National Water Act, 36/1998.

The Contractor shall appoint a responsible person to ensure that no incident shall occur on site that could cause pollution. Where the Contractor was negligent and caused any form of pollution the damage shall be rectified at the Contractors cost.

**A13.9 The Contractor shall, in particular, comply with the following Acts and Transnet Specifications:-**

A13.9.1 The Compensation for Occupational Injuries and Diseases Act, No. 130 of 1993.

A13.9.2 The Occupational Health and Safety Act (Act 85 of 1993).

A13.9.3 The Contractor shall comply with the current Transnet Specification E.4E, Safety Arrangements and Procedural Compliance with the Occupational Health and Safety Act, Act 85 of 1993 and Regulations.

**A13.10 Services**

A13.10.1 The Contractor shall inspect each worksite in advance of the day of the occupation for the presence of services / conditions that might interfere with the operation. In the event of the Contractor encountering any services that could affect the works, he shall notify the Technical Officer immediately and make arrangements for the removal thereof if possible

**A13.11 Working outside normal working hours**

The normal working hours are between 07:30 and 16:30 Mondays to Fridays. If it is required to work outside the stated normal working hours the Contractor must obtain written permission from Project Manager at least 5 days (excl emergencies) before such work needs to be undertaken. Transnet freight rail will not unreasonably withhold permission; however the Contractor may have to pay for Transnet Freight rail's supervisory personnel.

**A14 INSPECTION, TESTING AND ACCEPTANCE OF WORK**

At any time during the progress of the Contract the Technical Officer shall have the right to inspect the workmanship and materials offered or being utilised in or for any part of the works at any stage in their execution, or progress

In case of default on the part of the Contractor to carry out any rework ordered, TFR shall have the right to employ at any time and pay other persons to carry out the same and all expenses consequent thereon and incidental thereto shall be borne by the Contractor and shall be recovered from any amounts due or to become due to the Contractor and TFR shall not be answerable or accountable for any loss or damage that may arise or happen to such materials so removed nor for any loss or damage which the Contractor may claim to have sustained by reasons of the actions of Transnet Freight Rail or the Project Manager under this clause.

**A15. HANDING OVER OF WORKPLACES**

Handing over of workplaces will be done on satisfactory completion of the work.

**A16. PAYMENT**

Payments to the Contractor will be made upon approval and certification by the Project Manager of the amounts claimed. Payment will be made in respect of work carried out in terms of this contract and according to PART E of this specification against a statement submitted by the Contractor and approved and certified by the Project Manager.

**A17. QUALITY CONTROL PLAN**

The Contractor shall supply a quality control plan to the Project Manager for approval. The Contractor must further manage the quality of all work carried out by him or his sub-contractors and the onus is on the Contractor to supply proof of compliance with the specifications.

The Technical Officer and the Contractor will jointly inspect each day's work that has been completed and shall then be rejected or accepted. Any work that is not acceptable shall be rescheduled by the Contractor and repaired at the Contractor's own cost.

TFR representative will be responsible for the measurement of work to be done and completed and will also be responsible for the quality control of all work performed by the Contractor.

Work not conforming to the standards will be rejected and recorded in the site instruction book. Repairs of this work will be for the account of the Contractor. The Contractor will indicate in the site instruction book when these works will be repaired in order for the necessary occupations to be arranged by TFR. In the event of the Contractor being delayed while doing repair work to sub standard work, no claim for standing time will be accepted.

**A18. COMMUNICATION**

The Contractor will ensure that the supervisor on site has a means of communication i.e. cellular phone.

**A19. INSURANCE OF WORKS**

- A19.1 The Contractor shall take every precaution to protect the works against damage of any kind and not to cause damage to property or injury to any person as a result of his execution of the works.
- A19.2 The Contractor shall, in his own interest, obtain insurance of his own site establishment, materials, plant, and tools, as well as insurance for his motor vehicles and the common law liabilities of the contractor. The Contractor shall also arrange insurance for Public Liability.

**A20. RISK TO PRODUCTION**

- A20.1 The risk associated with weather (i.e. rain,) is with the Contractor.
- A20.2 Occupations are not always granted on time as requested and approved. For example, instead of granting the occupation at 07h00 as requested and approved due to train operational reasons, some delays often occur, resulting in production time shifting into later in the day. The risk of working in unfavourable weather (rain) that may affect the cable shall in such case rest with the Contractor
- A20.3 The nature of occupation time is such that much of the work has to be executed during "In Between Trains Occupation". The Contractor shall allow for waiting time on site for trains to arrive or pass between occupations in the tendered rates.

**A21. SITE INSPECTION**

An official site inspection / meeting can be arranged:  
Contact person: Project Manager / Technical officer



## PART B: MATERIALS

### B1. MATERIAL FOUND ON SITE

The Contractor shall not use on the works any materials found on the site without the prior written consent of the Project Manager. No material that is lying on the site (other than that from this contract) or on Transnet freight rail's property may be removed (even if deemed as scrap) by the contractor.

No scrap or any material of value may be removed from the site without written authority of the Project Manager

### B2. REPLACEMENT OF EXISTING MATERIAL

While carrying out the repair work, the Contractor shall take note of the condition of the materials on the sections where work is being performed on and if there are any materials which are broken or otherwise dangerous for the safe running of trains, he shall immediately report to the Technical Officer all materials which he considers worn-out or otherwise unserviceable and the Project Manager will determine whether or not to replace these materials.

### B3. MATERIALS TO BE PROVIDED BY TRANSNET FREIGHT RAIL

Transnet Freight Rail will provide the contractor with all materials needed for the maintenance such as copper cable, material for joining the cable, material for securing the cable, unless agreed with contractor to bring such material.

All materials supplied by the Contractor shall be of the best quality and shall be in every way suitable for the purpose for which they are intended to be used. The Project Manager or his representative will approve of all materials supplied by the Contractor, prior to the process.

The Contractor will make his own arrangements for transportation of materials to and from site.

### B4. MATERIALS TO BE PROVIDED BY CONTRACTOR

Should Transnet Freight Rail require from the Contractor to supply certain items of material not listed in the Schedule of Quantities, the Contractor will be paid for the materials supplied, at the rates on the invoices plus 10% for handling and administration costs.

Payment for additional material supplied by the Contractor will only be made upon submission of proof of delivery, and invoices and certification by the Project Manager for the amounts claimed.





## PART C: SPECIFICATION FOR MAINTENANCE OF UNDERGROUND COPPER CABLE

### C1. DESCRIPTION OF WORK

Contractor is responsible for maintaining the existing underground telecommunications copper cable on an as and when basis for planned maintenance or when there is a breakdown.

The technical officer will show the contractor the place where maintenance will be performed i.e. location of the faulty cable or will be determined by test results as it will be expected of the contractor to be available to do repair work on any of the lines within the depot boundaries and the Contractor will be given specific instructions before proceeding with the maintenance of copper cable.

The repair work includes the following:

- Installing new underground copper cable (for repair purpose - trenching also to be performed ) and joining the cable
- Repairing all faulty or temporary joints
- Testing all cable pairs if they are through after installing or repairing
- Securing the cable by means of burying it 600mm deep from ground , Technical officer will also give extra instructions on how to further secure the cable i.e. securing with concrete

The following specifications and documents shall, be applicable

- SPC -00029 Rev 4
- SPC- 00588 Rev 2
- SPC- 00589 Rev 2

And this specification.

The removal of faulty piece of cable shall be done by means of cutting out the faulty piece or more and then installing a new cable, considering existing joints in the section. All cuts shall be made by means of approved hacksaw and no flame cutting shall be allowed.

Temporary joints or repairs can only be done when agreed with Transnet Freight Rail representative (for emergencies only). Permanent repairs shall be executed within the next 7 days after temporary repairs. Each joint should have GPS co-ordinates.

The Contractor shall be responsible to inspect all sites prior to repairing the cable. The Contractor shall timeously bring to the attention of the Project Manager or Technical Officer, on any protective measures to be effected to the signalling and / or electrical equipment / cables in order to safeguard it against damage during the execution of the work. All repair works to be performed shall be discussed with Project Manager or Technical officer before executed



TRANSCET

**C2 TRENCHING**

Technical officer will identify and indicate where the Contractor must trench.

Existing cable in the trench must not be damaged while digging

Any damage to other property i.e. other cables, water pipes will be to the cost of the Contractor.

Trenches can be done by labour or machinery at a minimum of 600 mm depth and 200mm wide

The contractor will pull in new cable into the open trench and back fill trench without damaging the new cable (where necessary).

**C3. OTHER WORKS**

The following other work may be required from the Contractor.

Rerouting the cable due to reasons like theft, water damaging the cable or any other reason. The cost for this work shall be deemed to be included in the rates tendered and no separate payment shall be made as it will be a matter of trenching, laying new cable, joining it and testing.

**C4. NATURE OF WORK**

Maintenance repairs will be done anytime, during office hours, after hours, weekends or even public holidays depending on number of factors i.e. emergency of the work, train plan, etc.

In case of the breakdown the contractor shall respond or be onsite and restore affected services within the period of 8 hours from the time of receiving the service request call.

The contract shall be able to test the cable, identify faulty cable and perform repairs

**C5 LABOUR**

In case of emergency the contractor shall bring maximum of 08 personnel onsite, one supervisor, cable joiners / technical workers (who will join and test the cable between joints and last point) and general workers.

In a case where trenching will be labour based, the contractor may bring maximum of 10 personnel onsite.

**PART D: SCHEDULE OF QUANTITIES AND PRICES**

ITEM	DESCRIPTION	UNIT	QUANTITIES	RATE	AMOUNT
1	Trenching	metre	10 km		
2.	Laying cable & closing according to specification	metre	10 km		
3.	Joining the cable	Per joint	30 joints		
4.	Testing the cable	Between two joints	30 joints		

“PREVIEW COPY ONLY”

Respondent's Signature

Date &amp; Company Stamp

### Section 3

## 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

## Vendor Application Form

Company trading name			
Company registered name			
Company Registration Number or ID Number if a Sole Proprietor			
Form of entity [v]	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			
Physical Address			

Respondent's Signature

Date & Company Stamp

		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	

**GENERAL TENDER CONDITIONS  
FORM CSS5 (REVISED FEBRUARY 2007)**

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**1. GENERAL**

All tenders and subsequent contracts and orders shall be subject to the following procedures as laid down by Transnet Limited herein after referred to as "Transnet" and are to be strictly adhered to by Tenderers (where applicable).

**2. LODGING OF TENDER**

- 2.1 Tenders shall be lodged with Transnet not later than the closing date and time specified for the receipt thereof, in accordance with the directions issued with tender documents.
- 2.2 Tenders shall be transmitted in a sealed envelope and placed in the Tender Box at a venue stipulated in the Request for Tender (RFT) or Request for Proposals (RFP) or Request for Quotations (RFQ), with the tender number and subject endorsed on the left hand bottom corner of the envelope. This condition shall NOT apply if tenders are submitted by means of a private computerised system.
- 2.3 Tenders may be transmitted electronically to a specified e-mail address, or by facsimile to a specified fax number, all of which will be stipulated in the RFT, RFP, or RFQ (collectively Tender Documents) whatever the case may be. Such Tenders will if delivered on or before the closing date and hour set out in Tender Documents for receiving tenders will be accepted by Transnet if the Tenderer's name, the items tendered for, the tendered price of each item (or one inclusive price where this is required) are all clearly stated, provided however that the tender is confirmed by a letter on the Tenderer's official letterhead and signed by the same person who signed the tender document on behalf of the tenderer, or the official tender form duly completed, is posted or forwarded by courier service not later than the closing date for the receipt of tenders.

**3. USE OF TENDER FORMS**

Where special forms are issued by Transnet for the submission of tenders, Tenderers are required to submit their tenders in the appropriate spaces on such official forms and not on office stationery bearing their own special conditions of tender; non-compliance with this conditions may result in the rejection of a tender. Tenderers must delete items on the tender form for which they have not quoted or where the price has been provided for elsewhere in the tender documents.

**4. THE RAISING OF A CHARGE FOR PLANS, SPECIFICATIONS, TENDER FORMS AND SAMPLES**

- 4.1 A non-refundable charge may be raised for tender forms, plans, specifications and samples depending on the nature, magnitude and value of technical information or samples supplied.
- 4.2 If, any of the drawings and specifications referred to in tender forms are the official publications of recognised standardising bodies, copies of such drawings and specifications shall be acquired by Tenderers at their own expense.

**5. DEFAULTS BY TENDERERS**

- 5.1 If the Tenderer, after he has been notified of the acceptance of his tender/quotation fails to:-

- 5.1.1 enter into a formal memorandum of agreement when called upon to do so in terms of clause 14, within such period as Transnet may specify; or
- 5.1.2 accept an order in terms of the tender/quotation; or
- 5.1.3 when called upon to do so, fails to furnish satisfactory security of the fulfilment of the contract in terms of clause 15;

Transnet may, in any such case, without prejudice to any other legal remedy which it may have, proceed to accept any other tender/quotation or, if it is necessary to do so, call for tenders/quotations afresh, and may recover from the defaulting Tenderer any additional expense incurred by it in calling for new offers or in accepting a lower offer.

- 5.2 If any person or enterprise or firm which has submitted a tender/quotation, concluded a contract, or in the capacity of agent or subcontractor, has been associated with such tender or contract:
  - 5.2.1 Has withdrawn such tender/quotation after the advertised date and hour for the receipt of tenders; or
  - 5.2.2 has, after having been notified of the acceptance of his tender/quotation, failed or refused to sign a contract when called upon to do so in terms of any condition forming part of the tender documents; or
  - 5.2.3 has carried out any contract resulting from such tender/quotation in an unsatisfactory manner or has breached any condition of such contract; or
  - 5.2.4 has offered, promised or given a bribe in relation to the obtaining or the execution of such contract; or
  - 5.2.5 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
  - 5.2.5 has made any incorrect statement in the affidavit or certificate referred to in Clause 11 and is unable to prove to the satisfaction of Transnet that
    - (i) he made the statement in good faith honestly believing it to be correct; and
    - (ii) before making such statement he took all reasonable steps to satisfy himself of its correctness; or
  - 5.2.6 caused Transnet damage, or to incur costs in order to meet the Contractor's requirements and which could not be recovered from the Contractor; then

a tender from any such person or enterprise shall be disqualified and the person, enterprise or firm including any directors shall subject to clause 5.3 be disqualified from tendering for any Transnet business ..
- 5.3 Any person, or enterprise, or firm against whom a decision has been given under the provisions of clauses 5.2.2 or 5.2.4 may make representations to the Group Chief Executive of Transnet, whose decision shall be final.



- 5.4 Any disqualification imposed upon any person or enterprise, unless Transnet determines otherwise, shall apply to any other enterprise under the same or different names of disqualified persons or enterprise, or firm or associates and shall for avoidance of doubt also be applied to any agent or employee of the person or enterprise concerned.

## 6. CURRENCY

Prices must be quoted in the currency of the Republic of South Africa in respect of local supplies. Prices in any other currency may be rejected by Transnet save where such price is quoted for imported Goods only.

## 7. EXCHANGE AND REMITTANCE

The Contractor 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 Contractor, effect payment overseas direct to the principal/supplier of such percentage of the contract or order value as may be stipulated by the Contractor in his tender documents and any variation in the amount to be so paid which may arise as a result of fluctuations in the rate of exchange involved, will be for the account of the Contractor.

- 7.1 The Contractor who desires to avail himself of the aforementioned facility must at the same time of tendering furnish the information called for in the clause "Exchange and Remittance" of the tender document and also furnish full details of the principals/suppliers to whom payment is to be made.
- 7.2 The Contractor shall at his own cost obtain forward exchange cover on foreign currency to protect himself against any currency rate fluctuation risks, for the duration of any resulting contract or order. Transnet will NOT accept any fluctuations in the rate of exchange at the time when payments are made.
- 7.3 Should it be necessary for the Contractor to establish a letter of credit through a bank, where the whole or a portion of the contract or order value to be remitted overseas by him against a contract or order and where the Goods are to be collected by or delivered to Transnet's overseas forwarding agent, then such letter of credit must clearly stipulate that for payment purposes an "Original Ocean Bill of Lading" will be the only recognised document as proof that the Goods have been collected/delivered. Failure to comply with this requirement will result in delays in delivery and payment of the Goods.

Transnet will not recognise any claim for adjustment of the order and/or contract price under clause 7.1 if the increase in price arises after the date on which the Goods were to be delivered, as set out in the order and/or contract, or any subsequent agreement between the parties,

## 8. ACCEPTANCE OF TENDER/QUOTATION

- 8.1 Transnet does not bind itself to accept the lowest or any tender/quotation nor will it give any reasons for the rejection of a tender / quotation. Transnet reserves the right to accept any tender in whole or in part.
- 8.2 Upon the acceptance of a tender/quotation by Transnet, the parties shall be bound by the General Tender Conditions and the Standard Terms and Conditions of Contract (US7)
- 8.3 Where the acceptance of the Tenderer is delivered by letter, the SA Post Office shall be regarded as the agent of the Tenderer and delivery of such notice of acceptance to the SA Post Office shall be considered as delivery to the Tenderer.

- 8.4 Where the Tenderer has been informed per facsimile message of the acceptance of his tender/quotation, the acknowledgement of receipt transmitted by his facsimile machine shall be regarded as proof of delivery to the Tenderer.

**9. LAW GOVERNING CONTRACT**

The law of the Republic of South Africa shall govern the contract created by the acceptance of a tender/quotation. The *domicilium citandi et executandi* shall be a place in the Republic of South Africa to be specified by the Tenderer in his tender/quotation at which all legal documents may be served on the Tenderer who shall agree to submit to the jurisdiction of the courts of the Republic of South Africa. Tenderers from abroad shall, therefore, state in their tender/quotation the name of their accredited agent in the Republic of South Africa who is empowered to sign any contract which may have to be entered into in the event of their tender/quotation being accepted and to act on their behalf in all matters relating to the contract.

**10. IDENTIFICATION**

If the Tenderer is a company, the full names of the directors shall be stated in the tender/quotation. If the Tenderer 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.

**11. FORMAL NOTIFICATION REGARDING NAME OF SUCCESSFUL TENDERER**

In the case of tenders returnable to the Chairman of the Tender Board, unsuccessful Tenderers will be formally notified of the names of successful Tenderers as soon as possible after the closing date for receipt of the tender in question. In the case of tenders/quotations returnable to Transnet, unsuccessful Tenderers shall, upon application, be furnished with similar information.

**12. UNAUTHORISED COMMUNICATION ABOUT TENDERS**

- 12.1 Where tenders are returnable to the Chairman of the Tender Board, Tenderers may at any time communicate with the Chairman on any matter relating to their tender but, in the absence of written authority from the Chairman, no communication on a question affecting a service, purchase, sales or disposal of assets or Goods, which is the subject of a tender, shall take place between Tenderers or other potential suppliers or any member of the Tender Board or official of Transnet during the period between the closing date for the receipt of the tender and the date of the notification of the successful Tenderer. A tender, in respect of which any such unauthorised communication has occurred, may be disqualified.

- 12.2 Where tenders are returnable to Transnet, Tenderers may at any time communicate with the designated representative of Transnet to whom tenders/quotations are to be submitted on any matter relating to their tender / quotation but, in the absence of written authority from the designated representative of Transnet concerned, no communication on a question affecting a service, purchase, sale or disposal of assets or Goods which is the subject of a tender/quotation shall take place between any other officer of Transnet and Tenderers or other potential suppliers during the period between the closing date for the receipt of the tender / quotation and the date of notification of the successful Tenderer. A tender / quotation, in respect of which any such unauthorised communication has occurred, may be disqualified.

**13. TENDERER'S SAMPLES**

- 13.1 If samples are required from Tenderers, such samples shall be suitably marked with the Tenderer's name and address, the tender number and the tender item number and must be despatched in time to reach the addressee as stipulated in the tender form on or before the closing date of the tender. Failure to submit samples by the due date may result in the rejection of a tender.
- 13.2 Transnet reserves the right to retain samples furnished by Tenderers in compliance with tender conditions.
- 13.3 Payment will not be made for successful Tenderer's samples that may be retained by Transnet for the purpose of checking the quality and workmanship of Goods delivered in execution of contracts.
- 13.4 If unsuccessful Tenderer's samples are retained and Tenderers require payment therefor, Transnet will make payment at the tendered price of the Goods. If it is not desired to retain such samples and Tenderers require their return Transnet will accept responsibility for its return to the Tenderer's nearest station or siding in South Africa.
- 13.5 Transnet will not accept liability for samples furnished by Tenderers on their own initiative. If Tenderers desire such samples returned it will be at their own risk and cost.

**14. CONTRACT DOCUMENTS**

The contract documents will comprise the General Tender Conditions the special conditions (if applicable) and General Terms and Conditions of Contract (US7)(Revised February 2007) which will constitute the contract upon receipt by the Tenderer of the acceptance letter, subject to all amendments proposed by the parties.

**15. SECURITIES**

- 15.1 The successful Tenderer, 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:
- 15.1.1 Government or approved Municipal stocks in negotiable form; or
- 15.1.2 a deed of suretyship furnished by an approved bank, building society, insurance or guarantee corporation carrying on business in South Africa.
- 15.2 The security may be applied in whole or part at the discretion of Transnet to make good any loss or damage which Transnet may incur in consequence of a breach of the contract or any part thereof.
- 15.3 For the purpose of clause 15.1.2 Transnet will supply "Deed of Suretyship" forms to the successful Tenderer for the completion by his sureties, and no guarantee in any other form will be accepted. Copies of such form will be supplied to Tenderers on request. For this purpose "Deed of Suretyship" forms will be provided which shall be completed and returned to Transnet or a designated official by the successful Tenderer within 30 (thirty) days from the date of the letter of acceptance. No payment will be made until the forms, duly completed, are delivered to Transnet. Failure to return the Deed of Suretyship within the prescribed time shall, save where prior extension has been granted, entitle Transnet without notice to the tenderer to cancel the agreement with immediate effect.

15.4 The security shall be an amount which will not exceed 5 (five) percent of the value of the contract or order unless otherwise stipulated in the tender form.

15.5 Additional costs incurred by Transnet for visits or extensions to visits necessitated by reason of default on the part of the successful Tenderer will be for the account of the successful Tenderer.

#### 16. DELIVERY BASIS

16.1 The prices quoted must be on a delivered price basis in accordance with the terms and at the delivery point or points specified in Transnet's tender forms. Tenders for supply on any other basis of delivery are liable to disqualification. The time for delivery stated by the Tenderer must be inclusive of all non-working days or holidays, and of periods occupied in stocktaking or in effecting repairs to or overhauling plant, which would ordinarily occur within the delivery period given by the Tenderer.

16.2 Tenderers must furnish their tender prices under the appropriate columns in the "Scope of Requirements" of the tender on the following basis :

16.2.1 Local Supplies - column A i.e. Prices for Goods to be manufactured, produced or assembled in the RSA, or imported supplies held in South Africa. to be quoted on a Delivered RSA named Destination basis.

16.2.2 Imported Supplies - column B i.e. Prices for Goods to be imported from all sources to be quoted on a DDU, delivered end destination RSA basis (Delivered, Duty Unpaid to named Destination, ICC Incoterms 2000)

16.3 The attention of Tenderers is drawn to the fact that should Transnet's departmental railage account numbers be used in respect of "Delivered Prices", Transnet reserves the right to cancel such contract/order with immediate effect and enforce the conditions of clause 15 headed "Rights on Cancellation" of form US7 (Revised February 2007).

#### 17. SHIPMENT

17.1 Where shipping is arranged by the successful Tenderer :

The successful Tenderer shall arrange direct with a shipping company for the Ocean Bill of Lading to be drawn in favour of Transnet or a designated official, at a port of entry.

To ensure prompt clearance at RSA port of entry.

17.1.1 the first set of negotiable shipping documents shall be posted within a maximum period of three (3) days from date of shipment to Transnet or a designated official; and

17.1.2 within twenty-four (24) hours of mailing the first set of documents, the second set of negotiable documents shall be posted to Transnet or designated official.

The successful Tenderer shall be liable for all costs, including harbour storage charges, incurred in consequence of breach of any of the abovementioned provisions.

17.2. Where shipping is arranged by the forwarding agent appointed by Transnet:



Shipping arrangements by Transnet's nominated forwarding agent shall be made direct with a shipping company to allow the Ocean Bill of Lading to be drawn in favour of Transnet or designated official at a port of entry.

17.2.1 It should be noted that when Goods are offered on a free on board an ex manufacturer's/supplier's works basis, Transnet reserves the right to nominate its own forwarding agent on condition that the successful Tenderer will not recover any additional costs from Transnet.

17.2.2 It will be a condition that all Goods collected by or delivered to Transnet's forwarding agent against any resulting contract/order must be accompanied by the overseas manufacturer's/supplier's commercial invoices (which must clearly reflect Transnet's contract / order number) and packing lists/specifications or be handed to Transnet's forwarding agent not later than 3 (three) days prior to the vessel's scheduled date of departure.

17.2.3 In respect of airfreight shipments the Executive Manager, South African Airways, Johannesburg International Airport must be reflected in the column "Sold to" appearing on the overseas supplier's manufacturer's commercial invoices.

It is imperative that the above be strictly adhered to as Goods cannot be cleared by Transnet at a port of entry in the RSA without the required documentation.

Any demurrage charges applicable to the Goods which may become payable due to late or non-submission of the aforementioned documentation will be for the successful Tenderer's account.

#### 18. EXPORT LICENCE

The award of this tender/quotation for Goods to be imported may be subject to the issue of an export licence. If necessary, the manufacturer or his overseas agent shall be required to apply for such licence.

#### 19. QUALITY OF MATERIAL

Unless otherwise stipulated the Goods tendered, shall be NEW i.e. in the unused condition, neither second-hand nor reconditioned.

#### 20. PRICES SUBJECT TO CONFIRMATION

20.1 A tender/quotation with prices which are subject to confirmation will not be considered.

20.2 Tenders, where firm prices are quoted for the duration of any resulting order and or contract, will receive precedence over prices which are subject to adjustment.

#### 21. DELETION OF ITEMS NOT TENDERED FOR

The Tenderer must delete items for which he does not tender or, if the price had been included elsewhere in the tender.

#### 22. ALTERATIONS MADE BY THE TENDERER TO TENDER PRICES

All alterations made by the Tenderer to his tendered price(s) prior to the submission of his tender 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 tender documents.

Failure to observe this requirement may result in the particular item(s) concerned being overlooked in the matter of the award of the business.

**23. VALUE ADDED TAX**

**23.1** In respect of local supplies, i.e. Goods to be manufactured, produced or assembled in the RSA, or imported supplies held or already in transit to South Africa, the prices quoted by the Tenderer are to be exclusive of Value added tax (VAT) which must be shown separately at the standard rate on the invoice.

**23.2** In respect of imported supplies, i.e. Goods to be imported from all sources where Transnet is responsible for the clearance of the supplies at the port of entry, Value Added Tax (VAT) will be paid by Transnet upon arrival of the Goods in the Republic of South Africa.

**23.2.1** The invoicing by the Tenderer on behalf of his overseas principal, represents a supply made by the principal, which is not subject to VAT.

**23.2.2** The Tenderer's invoice/s for the local portion only (i.e. the "commission" for the services rendered) must show the Value Added Tax (VAT) separately at zero percent if the services are in compliance with section 11(2) of the VAT Act. No. 89 of 1991

**24. TERMS AND CONDITIONS OF TENDER**

The Tenderer shall adhere to the standard terms and conditions of contract set out in Form US7 (Revised February 2007), copy attached hereto.

Should the Tenderer find any conditions unacceptable, he should indicate which conditions are unacceptable and offer an alternative. Please note that any alternative offered shall be subject to and compared with acceptance of the US7 or alternatives offered by other Tenderers, except penalties for late deliveries, the exclusion of which may disqualify the tender, save where indicated otherwise by Transnet.

**25. IMPORTANT NOTICE TO TENDERERS REGARDING PAYMENT**

**25.1 Method of Tendering:**

**25.1.1** The attention of the Tenderer is directed to clause 8 of form US7 (Revised February 2007) which sets out the conditions of payment on which tender price/s shall be based.

**25.1.2** However, in addition to the foregoing the Tenderer is invited to submit offers based on alternative methods of payment and/or financing proposals.

**25.1.3** The Tenderer is required to give full particulars of the terms that will be applicable to his alternative offers as the financial merits thereof will be evaluated and taken into consideration when the tender is adjudicated.

**25.1.4** The Tenderer must, therefore, in the first instance, tender strictly in accordance with clause 25.1.1 above.

**25.1.5** The Tenderer shall clearly indicate the terms of payment. Alternative terms of payment offered shall clearly indicate the manner in which the main offer is affected, with respect to each country of origin.

**25.1.6** Failure to comply with clauses 25.1.4 and 25.1.5 above may preclude a tender from further consideration.

**NOTE: The successful Tenderer shall, where applicable, be required to furnish a guarantee covering any advance payments.**

**25.2 Conditional Discount:**

Tenderers 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 as from the date of receipt by Transnet of the Contractor's month end statement reflecting the relevant invoice/s for payment purposes, provided the conditions of the order or contract have been fulfilled and the invoice is correct in all respects as referred to in the contract or order.

Incomplete and/or incorrect invoices shall be returned and the conditional period will be recalculated from the date of receipt of the correct documents.

**26. QUANTITIES (PERIOD CONTRACTS ONLY)**

It must be clearly understood that although Transnet does not bind itself to purchase any definite quantity/quantities under any contract which may be entered into pursuant to this tender, the successful Tenderer nevertheless undertakes to supply against the contract such quantities as may be ordered against contract orders which are posted or delivered by hand or transmitted electronically on or before the expiry date of such contract.

It is furthermore a condition that Transnet will not accept liability for any material/stocks specially ordered or carried by the Tenderer with a view to meeting the requirements under any such contract.

The estimated planned quantity/quantities likely to be ordered by Transnet per annum is/are furnished in Annexure A attached to the relevant tender. For avoidance of doubt the estimated quantities are estimates and Transnet reserves the right to order quantities sufficient for its operational requirements.

**26.1 DELIVERY PERIOD:**

**26.1.1 FIXED QUANTITY REQUIREMENTS**

It will be a condition of any resulting contract/order that the delivery period embodied therein will be governed by the provisions of clause 13, 14 and 15 of form US7 (Revised February 2007).

**26.1.2 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 clause 13, 14 and 15 of form US7 (Revised February 2007).

**26.1.3 PROGRESS REPORT**

The successful Tenderer may be required to submit periodical progress reports in regard to the delivery of the Goods.

**26.1.4 EMERGENCY DEMANDS: AS AND WHEN REQUIRED**

If, due to breakdowns, derailments, storm damage or similar unforeseen circumstances, supplies of the material covered by the tender are required at short notice for immediate delivery, the Contractor will be given first right of refusal of such business. If he is unable to meet the desired delivery period, Transnet reserves the right to purchase such supplies as may be required to meet the emergency



outside the contract if immediate delivery can be offered from any other source.

The "Non-Fulfilment of Contract Orders" clause will not be applicable in these circumstances.

**26.1.5 NON-FULFILMENT OF CONTRACT ORDERS: (AS AND WHEN REQUIRED, PERIOD CONTRACTS ONLY)**

The tender is subject to conditions contained in clauses 13, 14 and 15 of form US7 (Revised February 2007).

**27. PACKING AND MARKING**

**27.1 TIMBER USED FOR CRATING, PACKING AND WEDGING, ETC.**

Attention is directed to the Forest Act, 1968 (Act 72 of 1968), or any amendments thereto, or regulations promulgated in terms thereof.

**27.2 PRINTING ON CONTAINERS AND PACKINGS**

Printing appearing on all containers and packing of South African manufactured Goods shall be in English.

**27.3 USE OF MOBILE CONTAINERS AND SARTAINERS**

Mobile containers and sartainers are not to be used for Goods which are to be despatched "FT" (Free Traffic).

**28. PLANS, DRAWINGS, DIAGRAMS, SPECIFICATION, ETC.**

**28.1 COPYRIGHT IN PLANS, DRAWINGS, DIAGRAMS AND DOCUMENTS COMPILED BY CONTRACTOR FOR PURPOSE OF CONTRACT WORK:**

The successful Tenderer grants to Transnet a non-exclusive licence, in accordance with the provisions of section 22 of the Copyright Act, 1978,

- (a) to copy any plan, diagram, drawing, specification, bill of quantities, design calculation or other similar document made, other than under the direction or control of Transnet, by the Tenderer in connection with the tender;
- (b) to make free and unrestricted use thereof for its own purposes;
- (c) to provide copies thereof to consultants of Transnet to be used by them for the purposes of the consultancy; and
- (d) to provide other parties with copies thereof for the purpose of tenders invited by it.

The Tenderer, furthermore, if any plan, diagram, drawing, specification, bill of quantities, design calculation or other similar document made, other than under the direction or control of Transnet a similar non-exclusive licence for the purposes set out herein.

The provisions of this clause 28.1 shall not apply to documents made, in the case of equipment to be supplied, in connection with the manufacturing process of the equipment supplied but only to the equipment supplied itself. No separate or extra payment shall be due by Transnet in respect of any non-exclusive licence granted in terms of this clause.

**28.2 DRAWINGS AND SPECIFICATIONS**

In addition to what may be stated in any tender form in this connection, the Tenderer should note that, unless notified to the contrary by Transnet or a designated official by means of an official amendment to the tender form he is required to tender for Goods strictly in accordance with the drawings and specifications supplied by Transnet notwithstanding that he may be aware that alterations or amendments to such drawings or specifications are contemplated by Transnet.

**28.3 TENDERER'S DRAWINGS**

Drawings required to be submitted by the Tenderer must be furnished before the closing time and date of the tender. The non-receipt of such drawings by the appointed time may disqualify the tender.

**28.4 FOREIGN SPECIFICATIONS**

The Tenderer quoting for Goods in accordance with foreign specifications, other than British and American standards, is to submit translated copies of such specifications with the tender. In the event of any departures or variations between the foreign specification(s) quoted in the tender form, full details regarding such departures or variations must be furnished by the Tenderer in a covering letter attached to the tender. If this condition is not complied with by the Tenderer, the tender may be disregarded.

**28.5 USE OF SI ("Système International") UNITS**

The Tenderer must ensure that all capacities, physical dimensions and sizes of material and fasteners are in units complying with the SI unless otherwise specifically called for by Transnet.

**29. VISITS TO FOREIGN COUNTRIES**

29.1 Tenderers must furnish details in a covering letter if it is considered necessary that employees of Transnet should carry out inspection and/or witness any tests at the premises of the successful Tenderer or his subcontractors in the country of origin for the purpose of product demonstration and/or final acceptance or for any other reason.

29.2 If the Tenderer considers overseas visits to be necessary he must provide the following information in a covering letter in respect of each visit:

29.2.1 Countries and places to be visited.

29.2.2 Number of employees and disciplines involved.

29.2.3 Number of man days involved.

29.2.4 Motivation for visit.

29.3 Transnet will make all arrangements in regard to booking of air journeys, hotel reservations, transport to and from airports, hotels, places of inspection, etc. and all expenses will be for the account of Transnet.

29.4 Before a visit is undertaken, such as envisage in this clause 29, Transnet and the successful Tenderer will agree in writing on the number of employees of Transnet that should undertake the visit and the number of man days involved in the visit.

**30. TENDERS BY FOREIGN TENDERERS OR ON THEIR BEHALF**

30.1 Tenders submitted by foreign Principals may be forwarded direct by the Principals to the Chairman of the Tender Board or to a designated official of Transnet according to whichever officer is specified in the tender documents, or may be so forwarded on the Principal's behalf by their South African representatives and/or agents provided that written proof is submitted that such representative/agent has been duly authorised to act in that capacity by the Principal. Failure to submit such authorisation by the representative/agent shall disqualify the Tender.

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

30.3 South African representatives and / or agents of successful foreign Tenderers must when so required enter into formal memoranda of agreement in the name of their Principals and must sign such agreements on behalf of the latter. In every such case a Legal Power of Attorney from their Principals must be furnished to Transnet by South African representative and/or agents authorising them to enter into and sign such agreements.

Such Powers of Attorney must comply with Government Notice No. 1160 of 27 June 1930 (and any amendments thereto) - "Rules of the Supreme Court of South Africa for the authentication of documents executed outside the Republic for use within the Republic.

The Powers of Attorney must be signed by Principals under the same title as used in the tender documents.

On arrival within the Republic of South Africa these Powers of Attorney are to be completed in terms of Section 8(2) of the Stamp Duties Act No. 77 of 1968, or any amendment thereof.

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 contracts with Transnet, a notarially certified copy thereof should be furnished.

The Power of Attorney must authorise the South African representative or agent to choose *domicilium citandi et executandi* as provided for in Clause 8 of the General Conditions of Transnet Tenders, Contracts and Orders Form US7 (Revised February 2007).

30.4 If payment is to be made in South Africa, the Contractor (i.e. the Principals, or the South African agents or representatives), must notify Transnet in writing whether :

30.4.1 Cheques are to be drawn for payment to the credit of the Contractor's account at a bank in South Africa, in which case the name and branch of such bank shall be furnished; or

30.4.2 Cheques are to be made out in favour of the Contractors and forwarded to their South African agent or representative, in which case such agent or representative, must be duly authorised to sign the receipt on the cheque and discharge it on behalf of his Principals.

30.5 The attention of the Tenderer is invited to Clause 15 regarding the provision of security for the fulfilment of contracts and orders and the manner and form in which such security is to be furnished.

**31. PREPRODUCTION SAMPLES**

Should it be necessary to submit a pre-production sample for approval by Transnet prior to the commencement of delivery of the Goods against any resulting contract, Tenderers are to note that for the purpose of calculating penalties for late delivery (if applicable) in terms of Clause 30 of form US7 (Revised October 2005) the actual contractual delivery date will be considered to be;

- 31.1 the period offered by the successful Tenderer to submit the pre-production sample calculated as from the seventh day after the date of the letter of acceptance;

**PLUS**

- 31.2 the period required by Transnet to approve the pre-production sample calculated as from the date of receipt thereof;

**PLUS**

- 31.3 the period offered to effect delivery of the Goods calculated as from the date of approval of the pre-production sample by Transnet.

Tenderers will not be held responsible for late delivery of the Goods resulting from delays on the part of Transnet to approve the pre-production sample.

**32. RAILAGE FREIGHT AND OTHER CHARGES**

- 32.1 The Tenderer must indicate whether the quoted price includes rates for inter alia the following:

- transport to port of export;
- forwarding charges
- ocean freight
- marine insurance;
- landing charges;
- dock dues;
- surcharges;
- railage, where possible, otherwise road transportation from port of discharge;

which rates are based on estimated weights and dimensions calculated by the Contractor. In the event of such estimations being exceeded by the actual weights and dimensions, Transnet shall not be liable to pay the Contractor the associated increased costs.

- 32.2 The Tenderer shall indicate whether the Contract Price is exclusive of customs, import and excise duties, surcharges and VAT.

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**SECTION 10**

**REQUEST FOR QUOTATION (“RFQ”)**

**RFQ NUMBER CRAC-EFQ-**

**CLEANING OF CONCRETE DRAINS AT SENTRARAND YARD AND  
ZESFONTEIN.**

**STANDARD TERMS AND CONDITIONS OF CONTRACT  
FOR THE PROVISION OF SERVICES TO TRANSNET**

**FORM US7 – SERVICES  
Revised October 2007**

**“PREVIEW COPY ONLY”**

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SCHEDULE 1 - SCHEDULE OF REQUIREMENTS and / or WORK ORDERS/S

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## 1. INTRODUCTION

When an Agreement is entered into between Transnet and the Supplier of Services to Transnet, these Standard Terms and Conditions, the Scope of Requirements for the Services to be rendered, the General Tenders Conditions and any terms and / or special conditions in the associated tender documents, exclusively govern the provision of Services by the Supplier 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 together with any schedules or annexures, signed by both Parties and attached thereto from time to time;
- 2.3. "Business Day/s" means Mondays to Fridays between 07:30 and 16:00, excluding public holidays;
- 2.4. "Confidential Information" means any information or other data, whether in written, oral, graphic or in any other form, which a Party discloses or provides to the other Party, 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 -
  - 2.4.1. information relating to methods of operation, data and plans of the disclosing Party;
  - 2.4.2. the contents of the Agreement;
  - 2.4.3. 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;
  - 2.4.4. any information disclosed by either Party and which is clearly marked as being confidential or secret;

- 2.4.5. information relating to the strategic objectives and planning of the disclosing Party relating to its existing and planned future business activities;
- 2.4.6. information relating to the past, present and future research and development of the disclosing Party;
- 2.4.7. information relating to the business activities, business relationships, products, services, customers, clients and sub-suppliers of the disclosing Party where an onus rests on the disclosing Party to maintain the confidentiality of such information;
- 2.4.8. information contained in the software and associated material and documentation belonging to the disclosing Party;
- 2.4.9. technical, scientific, commercial, financial and market information, know-how and trade secrets of a disclosing Party;
- 2.4.10. data concerning architecture, demonstrations, tools and techniques, processes, machinery and equipment of the disclosing Party;
- 2.4.11. plans, designs, concepts, drawings, functional and technical requirements and specifications of the disclosing Party;
- 2.4.12. information concerning faults or defects in goods, equipment, hardware or software or the incidence of such faults or defects; and
- 2.4.13. information concerning the charges, fees and / or costs of the disclosing Party or its authorised sub-suppliers, or their methods, practices or service performance levels actually achieved;
- 2.5. "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 sub-suppliers in connection with or in relation to the subject of the Agreement and in respect of which such Party is liable to the other;

- 2.6. "Deliverable(s)" means any and all works of authorship, products and materials developed, written, prepared, assembled, integrated, modified or provided by the Supplier in relation to the Services;
- 2.7. "Fee(s)" shall mean the agreed fees for the Services to be procured from the Supplier by Transnet, as detailed in the Schedule of Requirements or Work Order(s), issued in accordance with the Agreement, as amended by mutual agreement between the Parties and in accordance with the terms and conditions in the Agreement from time to time;
- 2.8. "Intellectual Property" means all rights to and ownership of any idea, discovery, design, concept, technique or improvement, know-how, or invention (whether or not patented), trademark, or copyright material;
- 2.9. "Intellectual Property Rights" include any patents or patent applications, trade and service marks whether registered or unregistered, registered design, design rights, copyright, rights in databases, domain names, trade or business names and any other similar protected rights in any country (together with the right to apply for any of the above, if applicable);
- 2.10. "Materials" means the Deliverables, the Supplier Materials and the Third Party Material;
- 2.11. "Parties" means the Parties to the Agreement, together with their subsidiaries, divisions, business units, successors-in-title and their assigns;
- 2.12. "Party" means either one of these Parties;
- 2.13. "Personnel" means any partner, employee, agent, consultant, independent associate or supplier, sub-supplier and the staff of such sub-supplier, or other authorised representative of the Supplier;
- 2.14. "Purchase Order(s)" means an official order(s) issued by an operational division of Transnet to the Supplier for the provision of Services;
- 2.15. "Rate(s)" shall mean the agreed Rate(s) for the Services to be procured from the Supplier by Transnet, as detailed in the Schedule of Requirements or Work Order(s), issued in accordance with the Agreement, as amended by mutual agreement between the Parties and in accordance with the terms and conditions in the Agreement from time to time;

- 2.16. **"Schedule of Requirements"** means Schedule 1 hereto, unless substituted by a Work Order or Work Orders, as defined;
- 2.17. **"Service(s)"** means the Service(s) provided to Transnet by the Supplier, pursuant to the Schedule of Requirements or Work Order(s) in terms of the Agreement;
- 2.18. **"Service Level Agreement"** or **"SLA"** means the processes, deliverables, key performance indicators and performance standards relating to the Services to be rendered by the Supplier;
- 2.19. **"Subcontract"** means any contract or agreement or proposed contract or agreement between the Supplier and any third party whereby that third party agrees to provide to the Supplier the Services or any part thereof;
- 2.20. **"Supplier Materials"** means all works of authorship, products and materials (including, but not limited to, data, diagrams, charts, reports, specifications, studies, inventions, software, software development tools, methodologies, ideas, methods, processes, concepts and techniques) owned by, or licensed to the Supplier prior to the commencement date or independently developed by the Supplier outside the scope of the Agreement at no expense to Transnet, and used by the Supplier in the performance of the Services;
- 2.21. **"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 Supplier in the performance of the Services;
- 2.22. **"VAT"** means Value-Added Tax in terms of the Value-Added Tax Act, No 89 of 1991; and
- 2.23. **"Work Order(s)"** means a detailed scope of work for a Service required by Transnet, including timeframes, deliverables, fees and costs for the supply of the Service to Transnet, which may be appended to the Agreement from time to time.

### 3. INTERPRETATION

- 3.1. Clause headings in the Agreement are included for ease of reference only and do not form part of the Agreement for the purposes of interpretation or for any other purpose. No provision shall be construed against or interpreted to the disadvantage of any 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 genders.

#### 4. NATURE AND SCOPE

- 4.1. The Agreement is an agreement under the terms and conditions of which the Supplier will arrange for the provision to Transnet of the Service which meets the requirements and specifications of Transnet, the delivery of which is controlled by means of a Purchase Order(s) to be issued by Transnet and executed by the Supplier, in accordance with the Agreement.
- 4.2. Such Purchase Order(s) shall be agreed between the Parties from time to time and shall be subject to the terms of the Schedule of Requirements(s) and / or relevant Work Order(s).
- 4.3. Each properly executed Purchase Order forms an inseparable part of the Agreement as if it were fully incorporated into the body of the Agreement.
- 4.4. During the period of the Agreement, both Parties can make written suggestions for amendments to the Schedule of Requirements or Work Orders, in accordance with procedures set out in clause 29 (AMENDMENT AND CHANGE CONTROL) below. A Party will advise the other Party within 14 (fourteen) Business Days, or such other period as mutually agreed, whether the amendment is acceptable.
- 4.5. Insofar as any term, provision or condition in the Schedule of Requirements and / or 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 the Schedule of Requirements and / or Work Order(s) shall prevail.
- 4.6. Time will be of the essence and the Supplier will perform its obligations under the Agreement in accordance with the timeframe(s) (if any) set out in the relevant schedule, save that the Supplier will not be liable under this clause if it is unable to meet such obligation within the time required

as a direct result of any act or omission by Transnet and it has used its best endeavours to advise Transnet of such act or omission. In the event of such delay, any time deadlines detailed in the relevant schedule shall be extended by a period equal to the period of that delay.

## 5. AUTHORITY OF PARTIES

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

5.2. Neither Party shall be entitled to, or have the power or authority to -

5.2.1. enter into an agreement in the name of the other; or

5.2.2. give any warranty, representation or undertaking on the other's behalf; or

5.2.3. 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 Supplier 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 representative of the Supplier;

6.1.2. it will discharge its obligations under the Agreement and any schedule or Work Order 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, and for withholding and remitting income tax for its Personnel in conformance with any applicable laws and regulations;

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



- 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 Supplier warrants that it will perform its obligations under the Agreement in accordance with the Service Level Agreement 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 Supplier fails to meet the Service levels, Transnet may claim appropriate service credits or invoke a retention of Fees as detailed in the relevant schedule or Work Order.
- 6.3. The Supplier warrants that for a period of 90 (ninety) days from acceptance of the Deliverables they will, if properly used, conform in all materials respects with the requirements set out in the relevant schedule or Work Order. The Supplier 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 Supplier 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 Supplier and any excess charges or costs incurred by Transnet as a result shall be paid by the Supplier.
- 6.4. The Supplier will remedy any defect within 14 (fourteen) days of being notified of that defect by Transnet in writing.
- 6.5. The Supplier 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 Supplier.
- 6.6. The Supplier warrants that:
- 6.6.1. 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 Supplier at the date of the relevant schedule or Work Order; and
- 6.6.2. 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.

- 6.6.3. The Supplier 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.
- 6.7. The Supplier shall advise Transnet of the effects of any steps proposed by Transnet pursuant to clause 6.5 above, including but not limited to any cost implications or any disruption or delay in the performance of the Services. The Parties agree that any changes to the Services, including the charges for the Services or any timetables for delivery of the Services, will be agreed in accordance with the change control procedure, as set out in clause 29 (AMENDMENT AND CHANGE CONTROL).
- 6.8. The Supplier undertakes to comply with South Africa's general privacy protection in terms of the Bill of Rights (Section 14) in connection with the Agreement and shall procure that its Personnel shall observe the provisions of such Act (as applicable) or any amendments and re-enactments thereof and any regulations made pursuant thereto.
- 6.9. The Supplier 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 Supplier to comply with its obligations under the Agreement will be reduced to the greatest extent possible, and that the Supplier shall ensure that it has appropriate, tested and documented recovery arrangements in place.

## 7. TRANSNET'S OBLIGATIONS

- 7.1. Transnet undertakes to promptly comply with any reasonable request by the Supplier for information, including information concerning Transnet's operations and activities, that relate to the Services as may be necessary for the Supplier 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 Supplier of its confidentiality obligations under the Agreement.
- 7.2. The Supplier shall give Transnet reasonable notice of any information it requires in accordance with clause 7.1 above.
- 7.3. Subject to clause 14 (SUPPLIER'S PERSONNEL), Transnet agrees to provide the Supplier or its Personnel such access to and use of its facilities as is necessary to allow the Supplier to perform its obligations under the Agreement.

**8. GENERAL OBLIGATIONS OF THE SUPPLIER****8.1. The Supplier shall –**

- 8.1.1. respond promptly to all complaints and enquiries from Transnet;
- 8.1.2. conduct its business in a professional manner that will reflect positively upon the Supplier and the Supplier's Services;
- 8.1.3. keep full records clearly indicating all transactions concluded by the Supplier relating to the delivery of the Services and keep such records for at least 5 (five) years from the date of each such transaction;
- 8.1.4. obtain, and at all times maintain in full force and effect, any and all licenses, permits and the like required under applicable laws for the provision of the Services and the conduct of the business and activities of the Supplier;
- 8.1.5. demonstrate sound environmental performance and have an environmental management policy; and
- 8.1.6. inform Transnet immediately of any dispute or complaint arising in relation to the delivery of the Service.

**8.2. The Supplier acknowledges and agrees that it shall at all times -**

- 8.2.1. render the Service(s) 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 (clause 23 refers – EQUALITY AND DIVERSITY);
- 8.2.7. treat all enquiries from Transnet in connection with the supply of the Services with courtesy and respond to all enquiries promptly and efficiently. Where the Supplier is unable to comply with the provisions of this clause, the Supplier will advise Transnet of the delay and the reasons therefore 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 Supplier's own policies and procedures, excluding trade secrets and other Confidential information;
- 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;
- 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 the Services.

## 9. RATES, FEES AND EXPENSES

- 9.1. In consideration of the provision of the Services, Transnet will pay to the Supplier the Rates and / or Fees as 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 a schedule or Work Order and accepted by Transnet, which will be invoiced to Transnet at cost.

9.3. Unless otherwise agreed in a Work Order, Transnet will reimburse to the Supplier 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 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 Service and incurring the expenses, and the invoice will, where appropriate, include VAT as a separate item.

## 10. INVOICING AND PAYMENT

10.1. Transnet shall pay the Supplier 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 Supplier (upon receipt of a correct and undisputed invoice together with the supporting documentation as specified in the Schedule of Requirements or Work Orders appended hereto) once the undisputed invoices or such portion of the invoice which is undisputed become due and payable to the Supplier in terms of clause 10.4 below.

10.3. All Fees, Rates 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 the Schedule of Requirements or Work Orders appended hereto, invoices shall be submitted at month end together with a monthly statement. Payment against such monthly statement shall be made by Transnet within 30 (thirty) days after date of receipt by Transnet of the statement together with all invoices and relevant supporting documentation.

10.5. Where the payment of any invoice or any part of an invoice is not made in accordance with this clause 10, the Supplier shall be entitled to charge interest on the outstanding amount at the rate

of 1½ % per annum above Transnet's bankers base rate in force for the time from the due date until the outstanding amount is paid.

#### **11. ADJUSTMENT OF FEES OR RATES**

- 11.1. Fees or Rates for Services rendered in terms of the Agreement shall be subject to review as indicated in the Schedule of Requirements or Work Orders annexed hereto from time to time.
- 11.2. No less than 2 (two) months prior to any proposed Fee or Rate adjustment, the Parties shall commence negotiations for Fees or Rates payable for the next period or as otherwise indicated and appended hereto.
- 11.3. Should Transnet and the Supplier fail to reach an agreement on Fees or Rates for the successive period, either Party shall be entitled to terminate the Agreement and /or the relevant Work Order after giving 30 (thirty) days written notice to the other.
- 11.4. Neither Party shall have any claim against the other of whatsoever nature by reason of such cancellation as envisaged in clause 11.3 above.

#### **12. INTELLECTUAL PROPERTY**

- 12.1. Subject to clauses 12.2 and 12.3, the Deliverables and all Intellectual Property Rights therein shall be and remain the exclusive property of Transnet.
- 12.2. All Intellectual Property Rights in the Supplier Materials and Third Party Material vest in the Supplier or the third party as appropriate. The Supplier hereby grants or will procure a grant to Transnet of an irrevocable, royalty-free, non-transferable licence to use such Supplier Materials and/or Third Party Material for its own business purposes
- 12.3. Where there are modifications to pre-existing Material, which are inseparable from the pre-existing Material, the owner of the pre-existing Material will own the modifications. However, the Supplier will use its best endeavours to procure from the owner for Transnet the grant of an irrevocable, royalty free, fully transferable licence to use such modifications as Transnet in its absolute discretion thinks fit.
- 12.4. All rights in the Transnet name and logo remain the absolute property of Transnet.

#### **13. INTELLECTUAL PROPERTY RIGHTS INDEMNITY**



- 13.1. The Supplier shall promptly notify Transnet of any infringement or apparent or threatened infringement (or any circumstances which may potentially give rise to an infringement) of, or any actions, claims or demands in relation to any Intellectual Property Rights (whether occurring during or after the termination of the Agreement) and shall provide to Transnet all assistance which Transnet may reasonably require in connection herewith including, but not limited to, the prosecution of any rights in relation to such Intellectual Property Rights.
- 13.2. The Supplier shall at all times, whether during or after termination or expiry of the Agreement, indemnify and keep Transnet indemnified against all losses, claims, damages and expenses (including all reasonable legal fees) in relation to any infringement or alleged infringement of any Intellectual Property Rights suffered by Transnet as a result of Transnet's use or possession of the Materials or any part thereof.
- 13.3. The Supplier shall be entitled to conduct all negotiations and proceedings in relation to any such claims brought against Transnet, but shall not be entitled to settle or compromise any claim without Transnet's prior written consent (not to be unreasonably withheld).
- 13.4. If at any time an allegation of infringement of Intellectual Property Rights is made, the Supplier may, at its own expense and sole option, either:
- 13.4.1. procure for Transnet the right to continue using the relevant Materials; or
  - 13.4.2. replace or modify the Materials with non-infringing substitutes, provided that any substitute shall not materially prejudice Transnet's beneficial use of the Materials or the Services, or cause the Supplier no longer to comply with the Work Order, and that such substitution will be carried out so as to avoid or reduce insofar as possible any interruption to Transnet's business operations; or
  - 13.4.3. failing 13.4.1 or 13.4.2 above, without prejudice to the indemnity in clause 13.2, refund in full all Fees paid by Transnet under the Agreement in relation to such Materials, and Transnet will return such Materials to the Supplier.

#### 14. SUPPLIER'S PERSONNEL

- 14.1. The Personnel shall be regarded at all times as employees, agents or sub-contractors of the Supplier and no relationship of employer and employee shall arise between Transnet and any Personnel under any circumstances regardless of the degree of supervision that may be exercised over the Personnel by Transnet.
- 14.2. The Supplier warrants that all Personnel will be entitled to work in South Africa or any other country in which the Services are performed.
- 14.3. The Supplier will ensure that its Personnel comply with all reasonable requirements made known to the Supplier 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 Supplier will ensure that such Personnel at all times act in a lawful and proper manner in accordance with these requirements.
- 14.4. Transnet reserves the right to refuse to admit or to remove from any premises occupied by or on behalf of it, any 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 own staff, provided that Transnet notifies the Supplier of any such refusal (with reasons why). The reasonable exclusion of any such individual from such premises shall not relieve the Supplier from the performance of its obligations under the Agreement.
- 14.5. The Supplier agrees to use all reasonable endeavours to ensure the continuity of the Personnel assigned to perform the Services. If any re-assignment by the Supplier of those Personnel is necessary, or if Transnet advises that any 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 Supplier 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.

#### 15. LIABILITY

- 15.1. Neither Party excludes or limits liability to the other Party for -

15.1.1. death or personal injury due to negligence; or

15.1.2. fraud.

15.2. The Supplier 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 Supplier or its Personnel in connection with the Agreement. The Supplier's liability arising out of this clause 15.2 shall be limited to a maximum amount payable in respect of any one occurrence or a series of related occurrences in a single calendar year, such amount to be agreed in writing by the Parties.

15.3. Subject always to clauses 15.1 and 15.2, the liability of either the Supplier 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 percent) of the fees paid under the schedule or Work Order to which the Default(s) relates.

15.4. Subject to clause 15.1 above, and except as provided in clauses 15.2 and 15.3, in no event shall either Party be liable to the other for indirect or consequential loss or damage or including indirect or consequential loss of profits, business, revenue, goodwill or anticipated savings of an indirect nature or loss or damage incurred by the other Party as a result of third party claims.

15.5. If for any reason the exclusion of liability in clause 15.4 above is void or unenforceable, either Party's total liability for all loss or damage under the Agreement shall be as provided in clause 15.3.

15.6. Nothing in this clause 15 shall be taken as limiting the liability of the Supplier in respect of clause 13 (INTELLECTUAL PROPERTY RIGHTS INDEMNITY), or clause 17 (CONFIDENTIALITY).

## 16. INSURANCES

16.1. Without limiting the liability of the Supplier under the Agreement, the Supplier shall take out insurance in respect of all risks for which it is prudent for the Supplier 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 Supplier.

- 16.2. The Supplier shall arrange insurance with reputable insurers and will produce to Transnet evidence of the existence of the policies and the receipts for payment of the current premiums, on an annual basis within 30 (thirty) days after date of policy renewals.
- 16.3. Subject to clause 16.4, if the Supplier fails to effect adequate insurance under this clause 16, it shall notify Transnet in writing as soon as it becomes aware of the reduction or inadequate cover and Transnet may arrange or purchase such insurance. The Supplier shall promptly reimburse Transnet for any premiums paid provided such insurance protects the Supplier's liability. Transnet assumes no responsibility for such insurance being adequate to protect all of the Supplier's liabilities.
- 16.4. In the event that the Supplier receives written notice from its insurers advising of the termination of its insurance cover referred to in clause 16.1 or if the insurance ceases to be available upon commercially reasonable terms, the Supplier shall immediately notify Transnet in writing of such termination and / or unavailability, whereafter the Supplier or Transnet may terminate the Agreement on giving the other Party not less than 30 (thirty) days prior written notice to that effect.

## 17. CONFIDENTIALITY

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

- 17.1.1. 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;
- 17.1.2. 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;

- 17.1.3. 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;
- 17.1.4. the Parties shall not make or permit to be made by any other person subject to their control, any public statements or issue press releases or disclose Confidential Information with regard to any matter related to the Agreement, unless written authorisation to do so has first been obtained from the Party first disclosing such information; and
- 17.1.5. each Party shall ensure that Confidential Information is disclosed to its Personnel or staff or to any other person, on a strictly need to know basis, and that, when such disclosure is made, the Personnel or staff or person to whom such disclosure is made is admonished and formally undertakes to comply with the terms and conditions of confidentiality stipulated herein.
- 17.2. The duties and obligations with regard to Confidential Information in this clause 17 shall not apply where -
- 17.2.1. 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 staff; or
- 17.2.2. 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
- 17.2.3. 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
- 17.2.4. is independently developed by a Party as proven by its written records.
- 17.3. This clause 17 shall survive termination for any reason of the Agreement and shall remain in force and effect from the commencement date of the Agreement and for 5 (five) years after the termination of the Agreement.

**18. TOTAL OR PARTIAL FAILURE TO PERFORM THE SCOPE OF SERVICES**

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

**19. TERM AND TERMINATION**

19.1. The Agreement shall commence on the commencement date, as specified in the schedules hereto, and shall continue subject to termination in accordance with the provisions of the Agreement or otherwise in accordance with law or equity.

19.2. Transnet may terminate the Agreement without cause by giving the Supplier 30 (thirty) days notice in writing.

19.3. If either Party (the "Defaulting Party") commits a material breach of the Agreement and fails to remedy such breach within 10 (ten) Business Days of written notice thereof, the other Party (hereinafter the "Aggrieved Party"), shall be entitled, in addition to any other rights and remedies that it may have in terms of the Agreement, to terminate the Agreement forthwith without any liability and without prejudice to any claims which the Aggrieved Party may have for damages against the Defaulting Party.

19.4. 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, 1936 (as amended), or if any actions, application or proceeding are made in this regard for -

19.4.1. a voluntary arrangement or composition or reconstructions of its debts;

19.4.2. the presentation of an administrative petition;

19.4.3. its winding-up or dissolution;

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

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



19.5. Transnet may terminate the Agreement at any time within 2 (two) months of becoming aware of a change of control of the Supplier, by notice in writing to the Supplier. For the purpose of this clause, "control" means the right to direct the affairs of a company whether by ownership of shares, membership of the board of directors, agreement or otherwise.

19.6. Transnet may cancel any schedule or Work Order hereto at any time on giving the Supplier 30 (thirty) days notice to this effect.

## 20. CONSEQUENCE OF TERMINATION

20.1. Termination in accordance with clause 19 above shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to either Party and all provisions which are to survive the Agreement or impliedly do so shall remain in force and in effect.

20.2. On termination of the Agreement or a schedule or Work Order, the Supplier will immediately deliver up, and procure that its Personnel will immediately deliver up to Transnet, all Deliverables and property belonging to Transnet (or, in the event of termination of a Work Order, such as is relevant to that Work Order) which may be in the possession of, or under the control of the Supplier, and certify to Transnet in writing that this has been done.

20.3. To the extent that any of the Deliverables and property referred to in clause 20.2 above are in electronic form and contained on non-detachable storage devices, the Supplier will provide Transnet with unencrypted copies of the same on magnetic media and will irretrievably destroy and delete copies so held.

20.4. In the event that the Agreement is terminated by the Supplier under clause 19.3 (material breach), or in the event that a Work Order is terminated by Transnet under clause 19.6 (cancellation at any time), Transnet will pay to the Supplier all outstanding Fees (apportioned on a daily basis if appropriate) or Rates relating to the work undertaken by the Supplier up until the date of such termination. Transnet will also pay the costs of any materials ordered by the Supplier in relation to the such work for which the Supplier has paid or is legally obliged to pay, in which case, on delivery of such goods or materials, the Supplier will promptly deliver such materials to Transnet or as it may direct.

20.5. The provisions of Clauses 2 (DEFINITIONS), 6, (WARRANTIES), 12 (INTELLECTUAL PROPERTY), 13 (INTELLECTUAL PROPERTY RIGHTS INDEMNITY), 15 (LIABILITY), 17 (CONFIDENTIALITY), 20 (CONSEQUENCE OF TERMINATION), 26 (DISPUTE RESOLUTION) and 30 (GOVERNING LAW) shall survive termination or expiry of the Agreement.

**21. ASSIGNMENT**

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

**22. FORCE MAJEURE**

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

22.2. Each Party will take all reasonable steps by whatever lawful means that are available, to resume full performance as soon as practicable and will seek agreement to modification of the relevant provisions of the Agreement in order to accommodate the new circumstances caused by the act of force majeure. If the Parties fail to agree within 30 (thirty) days of the act of force majeure first occurring, either Party may thereafter terminate the Agreement with immediate notice.

**23. EQUALITY AND DIVERSITY**

23.1. The Supplier 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 including selection for training.

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

**24. NON WAIVER**

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

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

**25. PARTIAL INVALIDITY**

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

**26. DISPUTE RESOLUTION**

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

26.2. If the dispute has not been resolved by such negotiation, either of the Parties may refer the dispute to AFSA and notify the other Party accordingly.

26.3. If a dispute has been referred to AFSA as envisaged in clause 26.2, such dispute shall be finally resolved in accordance with the rules of AFSA by an arbitrator or arbitrators appointed by AFSA.

26.4. This clause constitutes an irrevocable consent by the Parties to any proceedings in terms hereof, and neither of the Parties shall be entitled to withdraw from the provisions of this clause or claim at any such proceedings that it is not bound by this clause 26.

26.5. This clause 26 is severable from the rest of the Agreement and shall remain in effect even if the Agreement is terminated for any reason.

26.6. This clause 26 shall not preclude either Party from seeking urgent relief in a court of appropriate jurisdiction, where grounds for urgency exist.

## 27. ADDRESSES FOR NOTICES

27.1. The Parties to the Agreement select the physical addresses and facsimile ("fax") numbers, detailed in Schedule 2 hereto, 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 fax number, as may be, by written notice to the other.

27.2. Any notice addressed to a Party at its physical or postal address shall be sent by prepaid registered post, or delivered by hand, or sent by fax.

27.3. Any notice shall be deemed to have been given -

27.3.1. if posted by prepaid registered post, 10 (ten) days after the date of posting thereof;

27.3.2. if hand delivered, on the day of delivery; or

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

## 28. WHOLE AND ONLY AGREEMENT

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

28.2. The Parties hereby confirm that the Agreement replaces all other agreements which exist or may have existed in any form whatever between them, with regard to the subject matter dealt with in the Agreement, any annexures appended hereto, and the Schedule of Requirements.

## 29. AMENDMENT AND CHANGE CONTROL

Any amendment or change of any nature made to the Agreement, and / or the Schedule of Requirements and / or Work Order(s) appended hereto, shall only be valid if it is in writing, signed

by both Parties and added to the Agreement as an addendum hereto.

**30. GOVERNING LAW**

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

**31. COUNTERPARTS**

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

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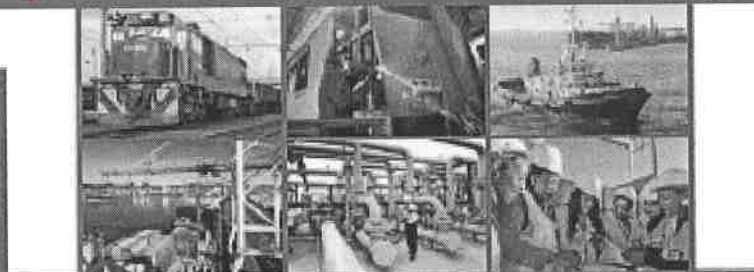
“PREVIEW COPY ONLY”

delivering on our commitment to you



## Suppliers Code of Conduct

**“PREVIEW COPY ONLY”**





## Suppliers Code of Conduct

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

These are:

- » Transnet Procurement Policy- A guide for tenderers;
- » Section 217 of the Constitution- the five pillars of Public PSCM (Procurement and Supply Chain Management): fair, equitable, transparent, competitive and cost effective;
- » The Public Finance Management Act (PFMA);
- » The Broad Based Black Economic Empowerment Act (BBBEE); and
- » The Anti-Corruption Act.

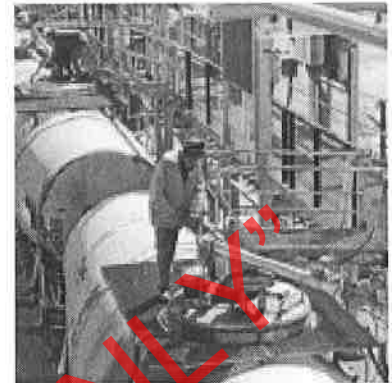
This code of conduct has been compiled to formally apprise Transnet Suppliers of Transnet's expectations regarding behaviour and conduct of its Suppliers.

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

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

**Transnet will not participate in corrupt practices. Therefore, it expects its suppliers to act in a similar manner.**

- » Transnet and its employees will follow the laws of this country and keep accurate business records that reflect actual transactions with, and payments to, our suppliers.



These include, but are not limited to:

- Misrepresentation of their product (origin of manufacture, specifications, intellectual property rights, etc);
  - Collusion;
  - Failure to disclose accurate information required during the sourcing activity (ownership financial situation, BBBEE status, etc.);
  - Corrupt activities listed above; and harassment, intimidation or other aggressive actions towards Transnet employees.
- >> Suppliers must be evaluated and approved before any materials, components, products or services are purchased from them. Rigorous due diligence must be conducted and the supplier is expected to participate in an honest and straight forward manner.
- >> Suppliers must record and report facts accurately, honestly and objectively. Financial records must be accurate in all material respects.

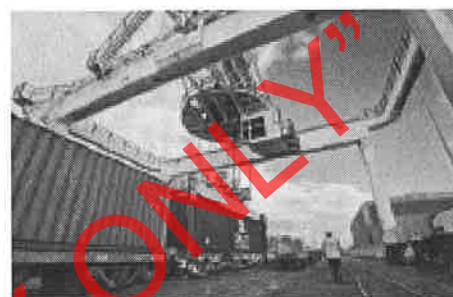
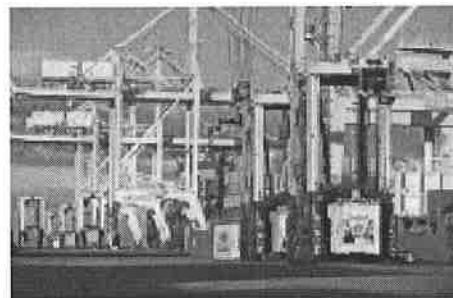
### Conflict of Interest

A conflict of interest arises when personal interests or activities influence (or appear to influence) the ability to act in the best interests of Transnet. Examples are:

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

Show that you support good business practice by logging onto [www.transnet-suppliers.net](http://www.transnet-suppliers.net) and completing the form.

This will allow us to confirm that you have received, and agree to, the terms and conditions set out in our Suppliers Code of Conduct.



**TIP-OFFS ANONYMOUS HOTLINE**  
**0800 003 056**

“PREVIEW COPY ONLY”

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Respondent's Signature

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Date & Company Stamp