



**TRANSNET FREIGHT RAIL**, a division of

**TRANSNET SOC LTD**

Registration Number 1990/000900/30

[hereinafter referred to as **Transnet**]

**REQUEST FOR QUOTATION [RFQ] No. DNR P13-10/10408**

Transnet Freight Rail is seeking quotations from qualified suppliers for the supply of cut and spray vegetation on the new main line

**FOR THE SUPPLY OF: CUT AND SPRAY VEGETATION ON THE NEW MAIN LINE**

**FOR DELIVERY TO: DURBAN**

**ISSUE DATE: 16 APRIL 2013**

**CLOSING DATE: 09 MAY 2013**

**CLOSING TIME: 10:00**

**SITE BRIEFING : 120 EEL ROAD, BAYHEAD (BOARDROOM)**

**DATE AND TIME: 30 APRIL 2013 @ 07:00**

**VALIDITY : 31 AUGUST 2013**

## 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 or Courier
<b>CLOSING VENUE:</b>	Chairman Transnet Freight Rail Acquisition Council Ground Floor Inyanda House 1 21 Wellington Road Parktown Johannesburg 2001 Tender Box

#### 1 Responses to RFQ

Responses to this RFQ 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:

- 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 Services
- The 80/20 preference point system applies where the acquisition of the Services will be less than R1 000 000.00.
- If the 80/20 preference point system is stipulated and all Bids received exceed R1 000 000.00, the 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 4, Vendor Application Form, for Returnable Documents required]*

### 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:	Ms Princess Ngubo	Adrian Jeffryes
Email:	<a href="mailto:princess.ngubo@transnet.net">princess.ngubo@transnet.net</a>	<a href="mailto:Jeffryes.adrian@transnet.net">Jeffryes.adrian@transnet.net</a>

A non-refundable tender fee R150.00(Inclusive of Vat) is applicable for tender(DNR P13-10/10408).Payment is to be made to Transnet Freight Rail, Standard Bank Account number 203158598, Branch Code 004805.

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

Telephone	011 544 9486	Fax 011 774 9760
Email	<a href="mailto:tac.secretariat@transnet.net">tac.secretariat@transnet.net</a>	

**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 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

### 14 TRANSNET WILL UTILISE THE FOLLOWING CRITERIA [NOT NECESSARILY IN THIS ORDER] IN CHOOSING A SUPPLIER/SERVICE PROVIDER, IF SO REQUIRED:

- Administrative responsiveness - Completeness of response and returnable documents
- Substantive responsiveness – Prequalification criteria, if any, must be met
- 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

<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.

Preference points will be awarded to a bidder for attaining the B-BBEE status level of contribution in accordance with the table below: *[Delete column that is not applicable]*

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

#### 15 Validity Period

Transnet desires a validity period of 60 days from the closing date of this RFQ.

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

#### 16 Banking Details

BANK: \_\_\_\_\_

BRANCH NAME / CODE: \_\_\_\_\_

ACCOUNT HOLDER: \_\_\_\_\_

ACCOUNT NUMBER: \_\_\_\_\_

#### 17 Company Registration

Registration number of company / C.C. \_\_\_\_\_

Registered name of company / C.C. \_\_\_\_\_

#### 18 Disclosure of Prices Quoted

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

YES ☐ NO ☐

#### 19 Returnable Documents

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

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

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

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

Returnable Documents	Submitted [Yes or No]
SECTION 1 : Notice to Bidders	
Valid B-BBEE Verification Certificate[RSA Large Enterprises and QSEs] Note: failure to provide a valid B-BBEE Verification Certificate at the closing date and time of the tender will result in an automatic score of zero being allocated for B-BBEE scorecard	
- Valid B-BBEE Certificate from auditor, accounting officer or SANAS accredited Verification Agency [RSA EMES] Note: failure to provide a valid B-BBEE Verification Certificate at the closing date and time of the tender will result in an automatic score of zero being allocated for B-BBEE scorecard	
Letter of Good Standing	
<b>CIDB CERTIFICATE (SH1) AND PCO CERTIFICATE</b>	
SECTION 2: QUOTATION FORM	

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

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

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

Returnable Documents	Submitted [Yes or No]
SECTION 3 : Standard Terms and Conditions of Contract for the Supply of Goods or Services to Transnet	
SECTION 4 : Vendor Application Form	
- Original cancelled cheque or bank verification of banking details	
- Certified copies of IDs of shareholder/directors/members [as applicable]	
- Certified copy of Certificate of Incorporation [CM29/CM9 name change]	
- Certified copy of share certificates [CK1/CK2 if C.C.]	
- Entity's letterhead	
- Certified copy of VAT Registration Certificate [RSA entities only]	
- Certified copy of valid Company Registration Certificate [if applicable]	
- A signed letter from Respondent's auditor or accountant confirming most recent annual turnover figures	
SECTION 5: Certificate of Attendance	



## 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 [Section 3 hereof]; and
- any other standard or special conditions mentioned and/or embodied in this Request for Quotation.

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

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

#### Price Schedule

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

Item No	Description of Goods	Unit of Measure	Quantity	Unit Price (ZAR)	Total Price (ZAR)
1	Cut and Spray Vegetation on New Main Line	ea	1		

**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.



# **SPECIAL CONDITIONS OF CONTRACT AND SPECIFICATIONS**

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# SPECIAL CONDITIONS OF CONTRACT AND SPECIFICATIONS

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PART A : GENERAL

PART B : VEGETATION CONTROL

PART C : SCHEDULE OF QUANTITIES AND PRICES

PART D : SCHEDULE OF DIAGRAMMS

“PREVIEW COPY ONLY”

**A1. SCOPE OF WORK**

This contract covers the control and eradication of declared weeds and declared plant invaders in the rail reserve.

The area covered by this contract will be the **New Main Line, Hammarsdale to Rushbrook** by means of mechanical and chemical herbicide methods on Transnet property.

The geographical area controlled is under the total control of the Depot Engineer, Durban.

To this extent the areas treated chemically or otherwise in terms of this contract shall be;  
Rendered and maintained free of declared weeds

Declared invader plants eradicated

Obstructing vegetation as defined, for the periods specified herein.

The performance due by the Contractor shall include any work arising from or incidental to the above or required of the Contractor for the proper completion of the contract in accordance with the true meaning and intent of the contract documents.

The contractor shall be responsible for, all vegetation matters, for the proper delivery of the product as stated in this contract.

The Contractor shall obtain his/her own information regarding species (indigenous and exotic), occurrence, and extent of vegetation to be controlled in order to comply with the required standards.

**A2. SUFFICIENCY OF TENDER**

A2.1 The contract will only be awarded to a tenderer who has experience in the application of herbicides in Southern Africa.

A2.2 A Site Inspection Certificate (E4A) section 9, signed by the Manager or his/her deputy (compulsory), must be submitted with the tender, and the submission thereof will be deemed to indicate the Contractor's acquaintance with the occurrence and extent of species of vegetation to be controlled and all aspects that will and/or may affect such control and costs thereof.

**A3. DURATION OF CONTRACT**

The work provides for the control of vegetation for a period of two years (24 months) commencing on the awarding date of acceptance of tender with Transnet. The physical start date will be 14 calendar days after notification.

**A4. COMPLIANCE WITH STATUTES**

A4.1 The Contractor's procedures for the procurement, storage, handling, transportation, application and general use of chemicals shall comply with all applicable legislation, Codes of Practice and Local, Regional or Provincial Authorities, including but not restricted to:

- a) The Fertilizers, Farm Feeds, Agricultural Remedies and Stock Remedies Act (Act 36 of 1947) as amended.
- b) The Hazardous Substance Act (Act 15 of 1973) as amended.
- c) The Water Act (Act 54 of 1956) and the Water Amendment Act (Act 96 of 1984) (where applicable).
- d) The Environmental Conservation Act (Act 73 of 1989).
- e) SABS Code of Practice No. 0206-1985 "Safety procedures for the disposal of surplus pesticide and associated toxic waste".
- f) Conservation of Agricultural resources Act (Act 43 of 1983) (CARA) as amended.
- g) Common law of nuisance.

- h) Mountain Catchment Area Act (Act 63 of 1970).
  - i) The National Veld and Forest Fire Act (Act 101 of 1998)
- The above documents shall be purchased by the contractor

A4.2 Declared weeds and declared plant invaders means Category 1, 2 & 3 plants that are proclaimed under the Conservation of Agricultural Resources Act, 1983 (Act 43 of 1983), listed in Regulation 15.

A4.3 Where herbicides are used, the Contractor's authorised representative shall be a registered Pest Control Operator, specialising in the field of weed control and registered in terms of the Farm Feeds Agricultural and Stock Remedies Act, Act 36 of 1947 as amended. A registered Pest Control Officer shall be in direct control of work taking place on site at all times whilst herbicides are being used.

#### A5. GENERAL

Notwithstanding what is stated in clause 11 of the Notice to Tenderers, Tenderers are required to tender for all the areas quoted in the Schedule of Quantities and Prices. Transnet may conclude one or more contracts as a result of this tender.

#### A6. GAURANTEES

Guarantees are not required in this contract.

#### A7 TO BE PROVIDED BY TRANSNET

The following resources and services will be provided free of charge by Transnet where required:

A7.1 Water as a resource, required from Transnet's existing points of supply; such water may be untreated, chemically treated or borehole water. The Contractor shall be responsible for all work and equipment needed to fill the water trucks or spray units from the water point provided and to ensure that the water is suitable for its intended use.

A7.2 Inspections of the areas of work by motor trolley may be arranged with the contract supervisor, but will have to coincide with normal track inspections carried out by the inspection /technical staff of the Depot. The contract supervisor shall be given timeous notice (4 calendar weeks) of the Contractor's intention to inspect.

#### A8. NO EQUIPMENT SHALL BE PROVIDED BY TRANSNET

#### A9. TO BE PROVIDED BY THE CONTRACTOR

A9.1 In addition to all labour, materials, plant, equipment and incidentals needed to complete the work, the Contractor shall provide all accommodation for his/her employees away from any Transnet property. Toilet and showering facilities within depots may not be used. The use of mobile toilets is for the contractor discretion.

A9.2 The Contractor shall provide safe and secure storage facilities for all herbicides or chemicals brought onto and in use on the site. Such facilities shall be capable of ensuring that unauthorised persons or animals cannot gain access to such chemicals. This may mean that the vehicles and trailers will have to be kept locked if unattended.

The Contractor shall provide at his/her own cost any security measures he/she may deem necessary for safe and effective execution of the work within the contract area.

#### **A10. SCHEDULE OF QUANTITIES AND PRICES**

A10.1 The quantities in the schedule of quantities and prices are estimated and may be more or less than stated. The Contractor shall submit with his/her tender a complete and detailed priced schedule (prepared in red ink) for the Works.

A10.2 The Tenderer shall price each item. If the Contractor has omitted to price any items in the schedule, the document will be rejected and the cost of the work included in such items will not be held to be spread over and included in the prices given in the other items of work.

Reasonable prices should therefore be inserted for every item as these prices may be considered in adjudication of tenders.

A10.3 The short descriptions of the items in the schedule are for identification purposes only. The Special Conditions of Contract and Specifications shall be read in conjunction with the schedule, and in so far as they have any bearing, shall be referred to for details of the description, quality, and test of plant and material used, and the workmanship, conditions, obligations, liabilities and instructions generally which shall be complied with in carrying out the Contract.

The cost of complying with all conditions, obligations and liabilities described in the contract documents including profit, shall be deemed to be included in the rates quoted by the Contractor in the schedule of quantities and prices.

#### **A11 VALUE ADDED TAX**

A11.1 Value added tax shall be excluded from individual payment item rates as it will be added to the total of the specific inspection measurement.

#### **A12. EVALUATION OF TENDERS**

A12.1 Tenders may submit alternatives to the methods of weed control described herein. Such alternatives as well as the materials and methods which the Contractor proposes to use, as well as programmes and Transnet resources for the contract, will be considered during evaluation of tenders.

A12.2 The Tenderer shall submit as part of his/her tender, all relevant details of his/her:

- Methodology and production rate
- working plan/programme
- vehicle requirements
- machinery requirements
- water usage
- any other information needed to enable the tender to be evaluated as described above

**A13. SITE MEETINGS**

The Contractor shall attend site meetings when required. These meetings will be held under the chairmanship of the Supervisor. When sub-contractors are required to attend, the Contractor shall ensure their attendance.

**A14. SITE BOOKS**

A14.1 The "Site Instruction Book", shall have numbered sheets for receiving and recording instructions by the Supervisor and shall be clearly marked "Site Instruction Book".

A14.2 The "site diary" shall be clearly marked "Day Book". At the end of each day a line shall be drawn below the last entry of the day and the Contractor shall sign across the line. If no entry was made, the "NIL" word must be entered and signed. Any claim arising from delays that cannot be substantiated by reference to the site diary will not be considered.

A14.3 This site diary shall serve as a daily record of all relevant information concerning herbicide application and conditions prevailing on site and as required in terms of section 16 of Act 36 of 1947.

A14.4 Only persons authorised in writing by the Supervisor or Contractor may make entries in the site books.

A14.5 Receipt of materials supplied by Transnet shall be recorded in the "site diary". This would refer specifically to water taken from Transnet property. Place, time and approximate quantity of water will be recorded in the site diary.

**A15. INFORMATION TO BE PROVIDED WITH TENDER**

The Tenderer shall submit the following information at the time of tendering:

A15.1 Full description of the plant and methods of control to be used by him/her for all aspects of the work required to ensure performance as specified.

A15.2 Whether the tenderer intends to work on Saturdays, Sundays or statutory holidays or is prepared to work on such days if required to do so by Transnet.

A15.3 Proof of inspection of all sites on the enclosed Site Inspection-Certificate must be signed.

A15.4 The Schedule of Quantities and Prices must be completed in full.

A15.5 An undertaking that all spraying and mechanical equipment will be ready for operation and that the spraying can commence timeously, to comply with requirements of the contract.

A15.6 A list of registered products to be used in the work, supported by specimen labels, indicating:  
Trade name  
Generic name  
Registration Number  
Ingredients (type and content) as shown on the label  
Application rates  
Hazchem data sheets must accompany each specimen label

PLANT SPECIES SUPPLIED ON ADDENDUM 1

All relevant herbicide labels shall be linked to specific plant species to be controlled.

The Manager's approval shall first be obtained for use of other herbicides.

- A15.7
- 1 A description of the methods to be used for general vegetation control must be provided. This must include the description and rate of application of chemicals and design mixtures.
  - 2 The precautions to be taken to prevent damage of adjacent vegetation, the type and method of use of the proposed equipment and any other relevant information.
  - 3 The description and rates of application submitted shall serve as the minimum basis for estimating performance and vegetation control by the Contractor. The herbicides specified shall be used as the basis for evaluating the efficacy of the Contractor's proposed method of work.

The Contractor shall not depart from the minimum material usage tendered, without approval from the Supervisor.

A copy of the certificate issued by the Department of Agriculture to certify that the tenderer or his/her representative is a pest control operator in terms of Act 36 of 1947, as stipulated under clause A4.3, must be submitted

#### A15.8 HEALTH AND SAFETY

A15.10 Colour photographs of all safety wear (personal protective equipment) as per operator type shall be supplied. This shall include ALL personal on site. Each operator type shall be displayed on an A4 size colour photograph.

A15.11 Certified copies of all original certificates shall be required. This will include in all probability the following certificates and licenses:

Pest control operator certificates as in clause A15.9  
Vehicle driver licenses  
Brush cutter-operator-certificates  
Chainsaw-operator-certificates  
First aider certificates

A15.12 The person/s responsible for on-site safety shall be elected by the contractor.



# **SPECIAL CONDITIONS OF CONTRACT AND SPECIFICATIONS**

## **PART B: VEGETATION CONTROL**

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**B1. SCOPE**

- B1.1** The scope of the work consists of the control and eradication of declared weeds and declared plant invaders in the rail reserve, excluding yard areas, from **Hammarsdale to Rushbrook on the New Main Line** as indicated in the Schedule of Quantities and Prices.

This includes all trees and shrubs growing near open lines or cable routes deemed threatening to the normal operation of on-track machinery and vehicles.

- B1.2** The essence of the contract is that Transnet requires vegetation to be brought under control and maintained at a certain standard as specified, for the duration of the contract period.

This part covers the techniques, types and use of spraying equipment, required standards of workmanship, inspections, measurement, payment, and acceptability of the works in respect of the control of vegetation required in terms of the contract.

- B1.3** The ways and means by which the above-mentioned results are obtained are the responsibility of the Contractor. Transnet, however, shall have the right to monitor the materials and activities of the Contractor to ascertain that all procedures and herbicidal applications are in accordance with his/her tender, the relevant legislation and are conducive to the achievement of long term control of vegetation. Such right of monitoring shall be entirely without prejudice to Transnet and shall in no way relieve the Contractor of his/her responsibility for satisfactory control of vegetation.

Failure to comply with the minimum performance proposed by the Contractor in his/her tender may form the basis for non-payment for work done, pending the achievement of control as defined and/or termination or cancellation of the contract.

- B1.4** The Contractor must obtain his/her own information regarding the extent, occurrence and the species of the vegetation over the work area. He/she must also determine the best method to control the vegetation.

**B2. DEFINITIONS****B2.1 RAIL RESERVE****B2.1.1 CONTROL**

Control is achieved when all existing or potential growth of the declared weeds and declared plant invaders are permanently impaired or destroyed by the application and effects of chemical herbicides, to the extent that :

- the constituent parts of the declared weeds and declared plant invaders occurring within the area of treatment (work-lots) cease to exist as living organisms or entities; and
- declared weeds and declared plant invaders have been cut back to a height of 0.5 metres or lower and that the remaining stumps cease to exist as living organisms or entities; and
- No new growth, such as seedlings or saplings, of declared weeds or declared plant invaders, of any height occur; and
- There are no dead or dry remains of the vegetation within the treated area which may constitute a hazard, danger, or hindrance to Transnet personnel, equipment

trucks or operations.

Control constitutes a process or situation where the destruction of any new growth or re-growth of the declared weeds and declared plant invaders on treated areas occurs on an *on-going basis* and not only at the time of measurement and payment inspections.

#### **B2.1.2 AREAS**

Areas shall be defined as the entire surface area of cuttings, embankments and flat areas.

#### **B2.1.3 WORKLOTS**

A work-lot is a subdivision of any area on which the contractor shall control vegetation.

A work-lot is 250 square meters and shall be measured according to the following parameters: starting at 3 metres from the centre of track, (track verge area) and proceeding toward the fence/boundary line.

**B2.2** The rail reserve is the railroad property and includes the areas adjacent to the track from fence to fence.

**B2.3** Depots/areas are those sites where assets such as stores and workshops are located, areas of stacking space, hard standing, buildings, access roads, railway tracks and dumping areas within the railway reserve.

**This may also include radio masts, signal equipment, relay stations and electrical sub-stations and other specified areas outside the railway reserves.**

**B2.4** Declared weeds means category 1 plants and declared invader plants means category 2 and 3 plants proclaimed under the Conservation of Agricultural Resources Act, Act No. 43 of 1983, including amendments (GN Regulation 1048 of 25/05/1984 amended by GN Regulation 280 of 30/03/2001) thereto.

**B2.5** Spraying means the even and uniform application of chemical herbicides at the rate specified and applies to liquid, granular or any other formulation.

**B2.6** A staked cable route is the area directly beneath or adjacent to places where signal or other cables are suspended above ground level. Such routes are not necessarily adjacent track-work.

#### **B2.7 OBSTRUCTING VEGETATION**

This includes all vegetation of the following nature:

- Overhead cables must be free of all vegetative matter within a 5m radius.
- All protruding vegetation (inclusive of overhanging canopies but excluding grass) within 6m from the centre of the track.
- All vegetation obstructing the line of sight of essential traffic signs.
- All other vegetation as pointed out by the Manager that is deemed threatening to

the normal operation of the track.

### **B3. METHOD OF VEGETATION CONTROL**

**B3.1** The Contractor's methods and program shall provide rapid and effective control in all areas, but particularly building surrounds, staked cable routes, level crossings, shunting yards and approaches to stations. Techniques, programming and chemicals employed shall therefore be directed at this aim. The Contractor shall carry out immediate treatment of growth in all instances where rapid and effective control is not achieved during any period of the contract.

**B3.2** The type of herbicides and the methods of application to be employed are as specified by the Contractor per Part A and are subject to the approval of, and monitoring by the Manager.

Application methods shall, however, be entirely in accordance with the manufacturer's specifications and recommendations for safe and effective use of the herbicides or herbicide mixtures concerned.

**B3.3** Any deviation from the method of work submitted as per clause A16.7 by the Contractor shall be subject to the approval of the Manager.

#### **B3.4 SITE CONDITION AND ACCESS**

Further to what is stated in clause B.1. of this specification, eradication of trees and shrubs may normally be required on the side slopes of embankments and cuttings. The Contractor shall make due allowance for work being carried out on steep slopes.

Access will be by way of Transnet service roads. However these roads may not meet up with all work-sites. Therefore it is the responsibility of the contractor to be well aware of this fact when undertaking the initial site inspection. Access roads may branch or be interlinked from other service roads such as farm roads or public district roads.

#### **B3.5 EXISTING VEGETATION**

The Contractor shall not damage existing indigenous vegetation that is not threatening to the normal operation of on-track machinery and vehicles and he/she shall be held responsible for the full reinstatement thereof should avoidable damage of any nature occur.

#### **B3.6 DISPOSAL OF VEGETATIVE MATERIAL**

Further to clause B2.1.1 of this specification, the Contractor at no additional cost shall remove all vegetative matter resulting from the cutting and eradication of declared weeds and declared plant invaders (trees and shrubs), from all the cuttings. The Contractor is to ensure that no vegetative matter is deposited into open lined concrete channels, earthen drains above or below cuttings and culvert inlets and outlets. No disposal of vegetative matter may be done on adjacent lands. (See Part D: Diagram D1).

All vegetative matter produced as a result of cutting of trees and shrubs must be removed from the top two meters of the bank.

Suitable areas and/or methods will be agreed to with the Manager on site prior to disposal of cut material.

Vegetative matter to be removed from cuttings is not allowed to take place across the railway lines without the necessary protection in place, and agreed to by the Manager.

#### **B4. STANDARDS OF WORKMANSHIP**

B4.1 Standard of vegetation control for individual work-lots in the Rail Reserve:

B4.1.1 Vegetation control shall be such that there is no live declared weeds and declared plant invaders exceeding 500mm in any dimension, occurring in the work-lot,

This excludes overhanging canopy growth of plants: -

- (i) With rootstock established entirely outside the work-lot
- (ii) With rootstock established on the boundary of the work-lot, provided that control was achieved over the remainder of the work-lot.

The boundary concerned is not the boundary of an adjoining work-lot.

B4.1.2 In addition, there shall be no dry or dead remains of declared weeds and declared plant invaders within the work-lot greater than 500mm in height and of a density such that it constitutes a hazard, hindrance or danger to Transnet operations, trucks or equipment in the area.

The evaluation to what density of dry or dead growth constitutes a hazard, hindrance or obstruction shall be made by the Manager.

B4.2 For this contract, the Contractor should timeously acquaint him/herself with the existing conditions of the sites and ensure that his/her tender prices for the first year only, includes all work necessary to achieve the required control, e.g. slashing and removal of debris before or just after spraying. The intention to slash and remove should be cleared with the Manager prior to work starting.

B4.3 Overall control

B4.3.1 The overall standard of control to be achieved by the Contractor over the contract area, defined as "Overall Control" and expressed as a percentage, will be determined by application of the following formula;

$$\text{Overall Control} = \frac{(\text{Worklots treated} - \text{Worklots rejected})}{\text{Worklots treated}} \times 100$$

B4.3.3 Failure by the Contractor to achieve the standard of "Overall Control" shall constitute a material breach of contract by the Contractor

**B5. PROGRAMME OF WORK**

- B5.1 The Contractor shall undertake the planning and programming of the entire vegetation control operation and shall submit to the Manager for approval full particulars thereof within 2 weeks from the date of notification by Transnet of the acceptance of his/her tender or the commencement of the annual rainy season as the case may be.
- B5.2 The particulars to be provided in respect of the Contractor's vegetation control programme shall include but not be limited to the following:
- B5.2.1 An assessment, based on a proper site investigation of the nature and types of vegetation to be controlled in the contract area,
- B5.2.2 The appropriate methods and procedures to be implemented by him/her to achieve the standards of vegetation control required in terms of the contract,
- B5.2.3 The chemicals to be applied, design mixes, rates of application and the timing and number of applications.
- B5.2.4 The methods and procedures to be implemented in mixing of chemicals pertaining to health and safety, quality control, protection of third parties and security,
- B5.3 The Contractor shall conduct regular site investigations and monitoring procedures for the purpose of:
- ascertaining the nature of weed infestation and factors that could influence the work;
  - monitoring the standard of weed control achieved;
  - identifying any damage or hazards which may have been caused by the weed control operation, and
  - planning of timeous execution of remedial work where control is not being achieved.
- B5.4 The Contractor's program shall allow for commencement with the initial application of chemicals at the appropriate timing for achieving maximum success and for completion in the shortest possible time, but not later than 14 weeks after commencement of the initial application.
- B5.5 The programme shall be based on the quantities and numbers of worklots shown in the Schedule of Quantities and Prices.
- B5.6 In addition to the annual programme provided for in terms of B5.1, the Contractor shall submit daily working programs to the Manager, 7 days in advance of the next working week, indicating the specific areas where the Contractor will be working each day of the week. Failure by the Contractor to submit a daily programme and/or deviating from it without notifying the Manager, preventing him/her from monitoring the Contractor's performance, may result in payment for such work being withheld.

**B6. PERFORMANCE MONITORING AND EVALUATION**

- B6.1 The Contractor shall at all times be responsible for supervision of the work and for follow-up inspections to monitor the successful control achieved over areas of



completed application. He/she shall immediately take appropriate remedial action in areas where the specified standards of control are not achieved.

- B6.2 The Manager shall at any time during the application periods carry out inspections of the Contractor's performance methods and procedures.
- B6.3 The Manager shall, during each year of the contract, carry out four official inspections of the work for the purpose of measuring progress and evaluating whether control, as defined, has been achieved.

**The Manager will inform the Contractor 14 days in advance of the schedule of these inspections and will arrange the transport such, that adequate space and time is available for the purpose of the inspection.**

The inspections shall be performed visually and the Contractor shall be present or forfeit his/her right to dispute the measurements and evaluation of the Supervisor. Completion of the Contractor's program and after he has notified the Manager that he has inspected the work and that control has been achieved.

- B6.3.1 **The first inspection will take place 16 weeks** after the actual start date (awarding date) and will be evaluated on the specified level of control as described in B4.1 and B4.2.
- B6.3.2 **The second inspection will take place 12 weeks** after the first inspection, and will be evaluated on the specified level of control as described in B4.1 and B4.2.
- B6.3.3 **The third inspection will take place 12 weeks** after the second inspection, and will be evaluated on the specified level of control as described in B4.1 and B4.2.
- B6.3.4 **The forth inspection will take place 12 weeks** after the third inspection, and will be evaluated on the specified level of control as described in B4.1 and B4.2.

**The inspection times for the second year of the contract** will be evaluated on the specified level of control as described in B4.1 and B4.2.

**The first three inspections will be conducted every 12 weeks.**

**The last inspection (number 4), will be undertaken 14 weeks after the third inspection.**

- B6.3.4 During each of these inspections the work-lots treated will each be measured and evaluated.  
A work-lot that does not comply with the specified level of control will be recorded as a "rejected work-lot".
- B6.4 In the case where the Manager and the Contractor fail to agree on whether a work-lot has failed, the work-lot shall be recorded as a "disputed work-lot" and the Contractor shall prepare an appropriate record of all disputed worklots in order that such disputes may be resolved by way of the disputes resolution.
- B6.5 The Project Manager reserves the right to forego any inspection by giving the Contractor written notice of his/her intention to do so. Should the Project Manager decide to forego any inspection, he/she would thereby indicate that he/she is satisfied with the standard of workmanship required for that specific inspection only. He/she would then make full payment to the Contractor to the value associated with that inspection.



The fact that the Project Manager may decide to forego any inspection at his/her discretion does not imply that further inspections would not be carried out. It only implies that for that inspection, the Project Manager is satisfied with the control achieved and will not penalize the Contractor for that inspection.

**B7. REMEDIAL WORK**

B7.1 The Contractor shall carry out remedial work to all worklots where control has not been achieved, prior to the official inspections in terms of clause B6 taking place. Such remedial work shall include the removal of dry or dead growth with any dimensions in excess of 300mm and forming a nuisance or hazard to Transnet Operations, from the treated worklots.

B7.2 The Manager may, at any time after the first measurement order the Contractor to carry out remedial action, to commence within 2 weeks after being so ordered. Prior to the commencement of this proposed remedial action an envisaged remedial work program must be submitted to the Manager for his/her approval. Failing to do so, the Manager may arrange for such action to be carried out by others at the cost of the Contractor.

**B8. DAMAGE TO FAUNA AND FLORA**

B8.1 The Contractor shall ensure that his/her employees at all times exercise care and consideration for the fauna and flora within and adjacent to the area to be sprayed.

The Contractor shall take the presence of drainage works within yards or depots into account and shall ensure that no water-borne movement of herbicides is possible.

B8.2 The Contractor shall not apply any chemicals of an explosive, inflammable, highly volatile or corrosive nature which may damage crops vegetation or property or be hazardous to humans or animals. The Contractor shall assume full responsibility for the efficiency and safety of whatever chemicals are used.

B8.3 Dumping or polluting of any kind will not be permitted. This stipulation is also applicable to the washing out of tanks and equipment containing harmful chemicals and pollutants. The Contractor shall institute and maintain procedures for the safe disposal of all chemicals and residual materials originating from the execution of the works.

Containers and residual material shall not be disposed of on Transnet property or as part of Transnet refuse.

B8.4 The Contractor shall take particular note of environmentally sensitive areas and shall plan and execute his/her work with the utmost care and responsibility.

B8.5 Burning will not be allowed under any circumstances as a means of control. The making of fires, for whatever purpose, on Transnet property is also strictly prohibited.

B8.6 Certain protected plant species and desirable plants are not to be controlled or removed and this plant material will be identified by the Manager or his/her deputy) prior to the start of the Contractor's program.

**B9. MEASUREMENT AND PAYMENT**

B9.1 Payment will be based on the numbers of worklots treated as instructed by the

Manager and to which the Contractor successfully applied the vegetation control measures and has achieved the standard of control defined in clause B4.1.

- B9.2 No payment will be made for rejected work-lots where control achieved does not meet the standards of control specified.
- B9.3 Measurement and payment for the work completed will be made in 4 stages per year as follows:
- B9.3.1 After completion of the initial program of the entire contract area the Manager or his/her deputy and the Contractor will measure the work performed (number of work-lots and level crossings treated) in accordance with clause B6.3.1. The Contractor will thereafter receive **payment at 35% of the rates tendered** for all of the completed work.
- B9.3.2 A second measurement and evaluation will be made after the first official inspection conducted in accordance with clause B6.3.2. The Contractor will thereafter receive **payment at 20% of the rates tendered** for all work-lots where control as specified has been achieved.
- B9.3.3 A third measurement and evaluation will be made after the second official inspection conducted in accordance with clause B6.3.3. The Contractor will thereafter receive **payment at 15% of the rates tendered** for all work-lots where control has been achieved.
- B9.3.3 A fourth measurement and evaluation will be made after the third official inspection conducted in accordance with clause B6.3.4. The Contractor will thereafter receive **payment at 30% of the rates tendered** for all work-lots where control has been achieved.
- B9.3.4 **The same measurements and payment percentages apply to the second year of the contract.**
- B9.4 The rates and prices tendered in the Schedule of Quantities and Prices are composite and shall be fully inclusive of all the Contractor costs in respect of establishment on site, labor, material consumables, Head Office overhead costs, the Contractor's profit, for all delay and consequential costs and for everything of whatever nature required of the Contractor for completion of the work included in the Contract.
- No additional payment will be made for the procurement, handling transport and incidental costs in the amount tendered for the removal, treatment and disposal of trees and shrubs and other plant material which may occur as the result of removal / cutting.

Payment will be based on the numbers of work-lots treated as instructed by the Manager and to which the Contractor successfully applied the vegetation control measures and has achieved the standard of control defined in clause B4.1.

SPECIAL CONDITIONS OF CONTRACT AND SPECIFICATIONS

PART C: SCHEDULE OF QUANTITIES

CONTENTS

	PAGE NO.
C1 SUMMARY	C1
C2 RAIL RESERVE	C2

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PART C - TOTAL WORKS REQUIRED FOR THE NEW MAIN LINE AS PER HAMMARSDALE TO RUSHBROOK

DESCRIPTION	SQ METRES	WORKLOTS	UNIT/WORKLOT DESCRIPTION	RATE PER WORKLOT YEAR 1	TOTAL FOR YEAR 1	RATE PER WORKLOT YEAR 2	TOTAL FOR YEAR 2	TOTAL FOR 2 YEARS
OFFTRACK	1270000	5080	250 s/m-ongoing					
CESS	5000	20	250 s/m-ongoing					
TUNNEL - FACE	2500	10	250 s/m-ongoing					
CULVERTS	12500	125 each	100 s/m each-ongoing					
SERVICE ROADS	35000	140	1.66 km 250s/m					
OPEN LAND	21000	84	5 cycles-250s/m					
VELDTGRASS MOWING	100000	400	1 cycle - 250 s/m					
1446000		5734	GRAND TOTAL					

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**SPECIAL CONDITIONS OF CONTRACT AND SPECIFICATIONS**

**PART D: SCHEDULE OF DIAGRAMMS**

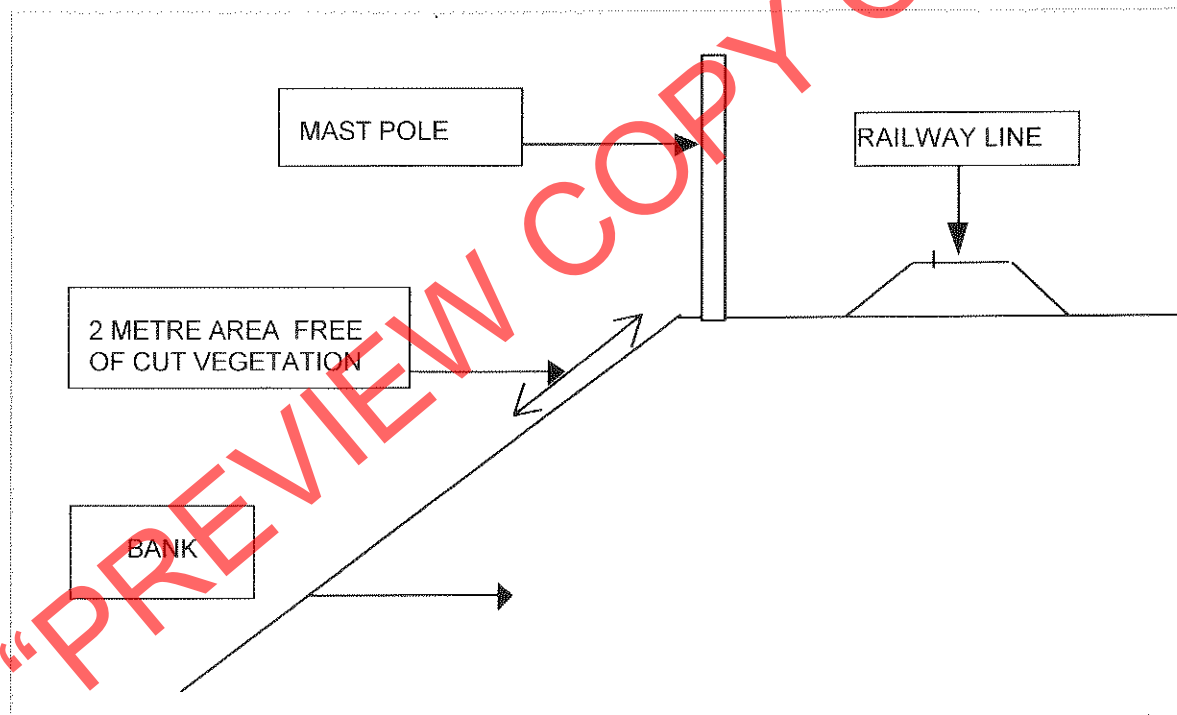
**CONTENTS**

	<b>PAGE NO.</b>
<b>D1.     DIAGRAM OF BANK</b>	<b>D2</b>
<b>D2.     DIAGRAM OF CULVERT</b>	<b>D3</b>

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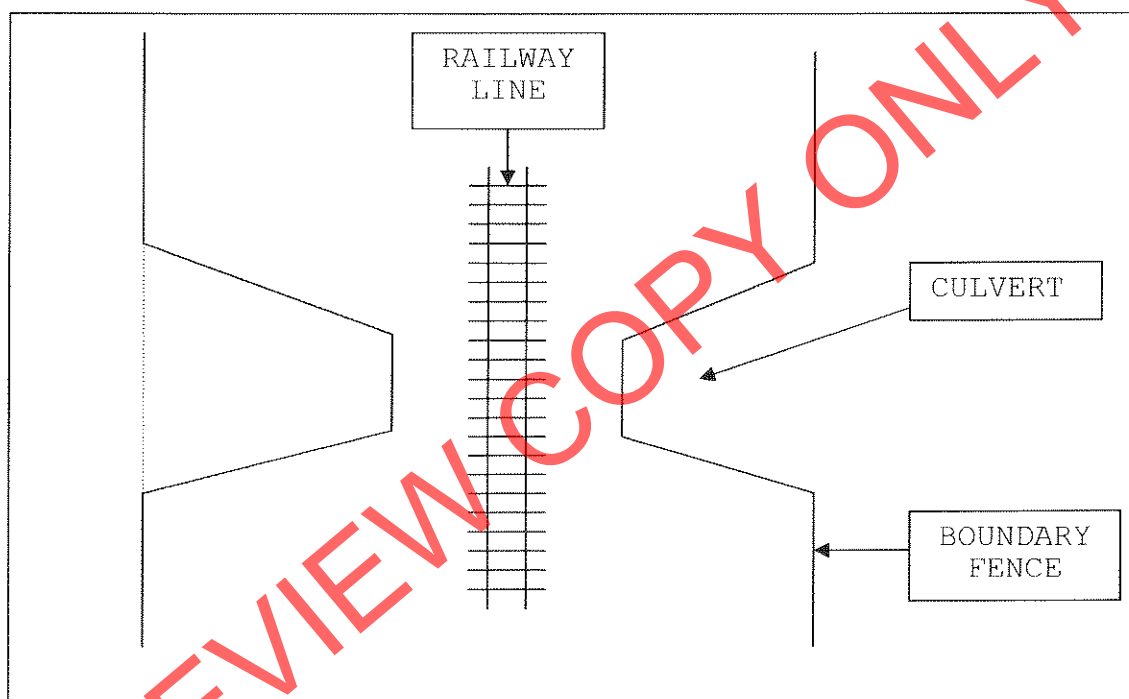
## PART D : SCHEDULE OF DIAGRAMMS

## D1: DIAGRAM OF BANK



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**PART D : SCHEDULE OF DIAGRAMMS****D2: DIAGRAM OF CULVERT**

# INVASIVE PLANTS — Terrestrial

(addendum 1)

<b><u>BOTANICAL NAME</u></b>	<b><u>COMMON NAME</u></b>	<b><u>ZONE</u></b>
<i>Acacia mearnsii</i>	Black Wattle	NML-CN
<i>Anredera cordifolia</i>	Madiera vine	SC-BYD
<i>Arundo donax</i>	Giant reed	SC-BYD-NML
<i>Caesalpinia decapetala</i>	Mauritius Thorn	CN
<i>Canna indica</i>	Wild Canna	SC-BYD
<i>Cardiospermum grandiflorum</i>	Balloon vine	BYD
<i>Cestrum laevigatum</i>	Ink Berry	SC-BYD
<i>Chromolaena odorata</i>	Triffid Weed	SC-BYD-NML
<i>Euphorbia cyathophora</i>	Wild Poinsettia	NML
<i>Ipomoea alba</i>	Moonflower	BYD
<i>Ipomoea cairica</i>	Coastal morning glory	SC-BYD
<i>Jacaranda mimosifolia</i>	Jacaranda	SC-BYD-NML-CN
<i>Lantana camara</i>	Common Lantana	SC-BYD-NML-CN
<i>Leucaena leucophala</i>	leucaena	SC-BYD-NML
<i>Melia azedarach</i>	Syringa	SC-BYD-NML-CN
<i>Morus alba</i>	Mulberry	SC-BYD-NML
<i>Opuntia ficus-indica</i>	Prickly pear	SC-NML-CN
<i>Psidium guajava</i>	Guava	SC-BYD-NML
<i>Rhus succedanea</i>	Wax Tree	NML-CN
<i>Ricinus communis</i>	Castor Oil Bush	SC-BYD-NML
<i>Rubus cuneifolius</i>	American bramble	SC-BYD-NML-CN
<i>Schinus terebinthifolius</i>	Brazilian Pepper	SC-BYD
<i>Senna didymobotrya</i>	Peanut Cassia	NML-CN
<i>Sesbania punicea</i>	Brazillian Glory Pea	NML-CN
<i>Solanum mauritianum</i>	Bug Weed	SC-BYD-NML-CN
<i>Tecoma stans</i>	Yellow bells	SC-BYD-NML
<i>Tithonia diversifolia</i>	Mexican Sunflower	SC-BYD-NML

### Section 3

#### STANDARD TERMS AND CONDITIONS FOR THE SUPPLY OF GOODS OR SERVICES TO TRANSNET

A Supplier/Service Provider shall be obliged to adhere to the Standard Terms and Conditions for the Supply of Goods and Services to Transnet as expressed hereunder. Should the Respondent find any condition(s) unacceptable, it should indicate which condition(s) is/are unacceptable and offer an alternative(s). A Quotation submitted by a Respondent will be subjected to review and acceptance or rejection of its proposed contractual terms and conditions by Transnet's Legal Counsel, prior to consideration for an award of business.

#### 1 SOLE AGREEMENT

Unless otherwise agreed in writing, these terms [Terms and each Term] and Transnet's purchase order(s) [Order or Orders] represent the only conditions upon which Transnet SOC Ltd [Transnet] procures goods or services specified in the Order [collectively, the Products] from the person to whom the Order is addressed [the Supplier/Service Provider]. Transnet does not accept any other conditions which the Supplier/Service Provider may specify, unless otherwise agreed to by Transnet in writing. In the event of any inconsistency between these Terms and any Order, these Terms shall take precedence.

#### 20 CONFORMITY WITH ORDER

Products/Services shall conform strictly with the Order. The Supplier/Service Provider shall not vary the quantities specified and/or the specification, if any, stipulated in the Order, without the prior written consent of Transnet. The Supplier/Service Provider warrants that the Products/Services shall be fit for their purpose and of satisfactory quality.

#### 21 DELIVERY AND TITLE

21.1 The delivery dates and addresses are those in the Order. Time shall be of the essence in respect of the Supplier's/Service Provider's obligations under the Order.

21.2 The Supplier/Service Provider will not be excused for delay in delivery or performance except due to circumstances outside its control and then only subject to the Supplier/Service Provider having notified Transnet in writing on becoming aware of such circumstances. Transnet may terminate an Order, in whole or in part, without incurring any liability to the Supplier/Service Provider if such a delay becomes, in Transnet's absolute opinion, significant.

#### 22 PRICE AND PAYMENT

22.1 Prices specified in an Order cannot be increased. Payment for the Products/Services shall be made by Transnet against an original undisputed invoice(s) [a Tax Invoice], supporting documentation and month-end statement from the Supplier/Service Provider. Tax Invoices plus supporting documentation shall be posted to the address shown in the Order.

22.2 Payment of the Supplier's/Service Provider's valid Tax Invoice(s) will be made by Transnet in the South African currency and on the terms stated in the Order, the standard payment terms being 30 [thirty] days from date of receipt by Transnet of a month-end statement, unless otherwise agreed to in writing. Transnet shall arrange for payment of such Tax Invoices and any pre-authorised additional expenses incurred, provided that the authorised expenses are supported by acceptable

documentary proof of expenditure incurred [where this is available]. Any amounts due in terms of these Terms shall be paid to the Supplier/Service Provider, taking into account any deduction or set-off and bank charges.

### **23 PROPRIETARY RIGHTS LIABILITY**

If any allegations should be made or any claim asserted against Transnet that ownership of, or any act or omission by Transnet in relation to Products/Services or any written material provided to Transnet relating to any Products/Services or pursuant to an Order being a violation or infringement of any third party's contractual, industrial, commercial or intellectual property rights including but not limited to any patent, registered design, design right, trade mark, copyright or service mark on any application thereof, the Supplier/Service Provider hereby indemnifies Transnet against and hold it harmless from any and all losses, liabilities, costs, claims, damages and expenses [including any legal fees] arising directly or indirectly from such allegation or claim provided that this indemnity shall not apply where the allegation or claim arises solely as a result of the Supplier/Service Provider following a design or process originated and furnished by Transnet. The Supplier/Service Provider shall either

- a) procure for Transnet the right to continue using the infringing Products; or
- b) modify or replace the Products/Services so that they become non-infringing,

provided that in both cases the Products/Services shall continue to meet Transnet's requirements and any specifications stipulated in the Order. Should neither option be possible, the Supplier/Service Provider may remove, with Transnet's prior written consent, such Products/Services and will pay to Transnet a sum equivalent to the purchase price. If Transnet refuses to give such consent, the Supplier/Service Provider shall have no liability in respect of any continued use of the infringing Products/Services after Supplier's/Service Provider's prior written request to remove the same.

### **24 PROPRIETARY INFORMATION**

All information which Transnet has divulged or may divulge to the Supplier/Service Provider and any information relating to Transnet's business which may have come into the Supplier's/Service Provider's possession whilst carrying out an Order, and the existence of the Order, shall be treated by the Supplier/Service Provider as confidential information and shall not, without Transnet's prior written consent, be disclosed to any third party, or be used or copied for any purposes other than to perform the Order. This clause does not apply to information which is public knowledge or available from other sources other than by breach of this Term. Upon request by Transnet, the Supplier/Service Provider shall return all materials issued pursuant to the Order and, pending this, shall protect Transnet's rights in any such materials. Such confidential information shall at all material times be the property of Transnet.

### **25 PUBLICITY**

The Supplier/Service Provider shall not name Transnet or use its trademarks, service marks [whether registered or not] or Products in connection with any publicity without Transnet's prior written consent.

### **26 TERMINATION OF ORDER**

- 26.1 Transnet may cancel an Order in whole or in part at any time upon at least 7 [seven] days' written notice to the Supplier/Service Provider, or when there is a change in control of the Supplier/Service Provider or the Supplier/Service Provider commits any serious breach or any repeated or continued

material breach of its obligations under these Terms and/or Order or shall have been guilty of conduct tending to bring itself into disrepute, on written notice to the Supplier/Service Provider when such work on the Order shall stop.

- 26.2 Transnet shall pay the Supplier/Service Provider a fair and reasonable price for justified work in progress, where such price reflects only those costs not otherwise recoverable by the Supplier/Service Provider, at the time of termination, and the Supplier/Service Provider shall give Transnet full assistance to check the extent of such work in progress. Payment of such price shall be in full and final satisfaction of any claims arising out of such termination and upon such payment the Supplier/Service Provider shall deliver to Transnet all work, including any materials, completed or in progress. The sum payable to the Supplier/Service Provider under this clause will not in any event exceed the total amount that would have been payable to the Supplier/Service Provider had the Order not been terminated.
- 26.3 In the event of termination the Supplier/Service Provider must submit all claims within 2 [two] months of termination after which time claims will only be met in what Transnet considers exceptional circumstances.
- 26.4 If the Products are not provided in accordance with an Order, the Order shall be deemed terminated and the Supplier/Service Provider shall compensate Transnet for any costs incurred in obtaining substitute Products or any damage caused due to the failure or delay in the delivery.

## **27 ACCESS**

The Supplier/Service Provider shall be liable for the acts, omissions and defaults of its personnel or agents who, for the purposes of the Order, shall be treated as if they are the Supplier's/Service Provider's employees. The Supplier/Service Provider shall ensure that any such personnel or agents, whilst on Transnet's premises, shall comply with Transnet's health and safety, security and system security rules and procedures as and where required.

## **28 INSOLVENCY**

If the Supplier/Service Provider shall have a receiver, manager, administrator, liquidator or like person appointed over all or any part of its assets or if the Supplier/Service Provider compounds with its creditors or passes a resolution for the winding up or administration of the Supplier/Service Provider, Transnet is at liberty to terminate the Order or Orders forthwith, or at its option, to seek performance by any such appointed person.

## **29 ASSIGNMENT**

The Supplier/Service Provider shall not assign its obligations under an Order without Transnet's prior written consent, which consent shall not be unreasonably withheld or delayed.

## **30 NOTICES**

Notices under these Terms shall be delivered by hand to the relevant addresses of the parties in the Order or may be served by facsimile or by email, in which event notice shall be deemed served on acknowledgement of receipt by the recipient.

**31 LAW**

Orders shall be governed by and interpreted in accordance with South African law and any disputes arising herein shall be subject to South African arbitration under the rules of the Arbitration Foundation of South Africa, which rules are deemed incorporated by reference in this clause. The reference to arbitration shall not prevent Transnet referring the matter to any South African courts, having jurisdiction, to which the Supplier/Service Provider hereby irrevocably submits but without prejudice to Transnet's right to take proceedings against the Supplier/Service Provider in other jurisdictions and/or obtaining interim relief on an urgent basis from a court of competent jurisdiction pending the decision in other courts or from instituting in any court of competent jurisdiction any proceedings for an interdict or any other injunctive relief. If the Supplier/Service Provider does not have a registered office in the South Africa it will at all times maintain an agent for service of process in South Africa and shall give Transnet the name and address of such agent as such may be amended, in writing, from time to time.

**32 GENERAL**

Completion or termination of an Order shall be without prejudice to any Term herein which by its nature would be deemed to continue after completion or termination, including but not limited to clauses 23, 24, **Error! Reference source not found.**, 25 and **Error! Reference source not found.** Headings are included herein for convenience only. If any Term herein be held illegal or unenforceable, the validity or enforceability of the remaining Terms shall not be affected. No failure or delay by Transnet to enforce any rights under these Terms will operate as a waiver thereof by Transnet. All rights and remedies available to either party under these Terms shall be in addition to, not to the exclusion of, rights otherwise available at law.

**33 COUNTERPARTS**

These Terms and conditions 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 this agreement by signing any such counterpart.

By signing this RFQ document, the Respondent is deemed to acknowledge that he/she has made himself/herself thoroughly familiar with all the conditions governing this RFQ, including those contained in any printed form stated to form part hereof and Transnet SOC Ltd will recognise no claim for relief based on an allegation that the Respondent overlooked any such condition or failed to properly take it into account for the purpose of calculating quoted prices or otherwise.

SIGNED at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

.....  
SIGNATURE OF RESPONDENT'S AUTHORISED REPRESENTATIVE

NAME: \_\_\_\_\_

DESIGNATION: \_\_\_\_\_

REGISTERED NAME OF COMPANY: \_\_\_\_\_

PHYSICAL ADDRESS: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Respondent's contact person:** *[Please complete]*

Name	:	
Designation	:	
Telephone	:	
Cell Phone	:	
Facsimile	:	
Email	:	
Website	:	

**Transnet urges its clients, suppliers and the general public  
to report any fraud or corruption to  
TIP-OFFS ANONYMOUS : 0800 003 056**





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

FORM ST&C - SERVICES [March 2012]

“PREVIEW COPY ONLY”

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## 1 INTRODUCTION

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

## 2 DEFINITIONS

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

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

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

- 2.12 **Foreground Intellectual Property** means all Intellectual Property developed by either Party pursuant to the Agreement;
- 2.13 **Intellectual Property** means Patents, Designs, Know-How, Copyright and Trade Marks and all rights having equivalent or similar effect which may exist anywhere in the world and includes all future additions and improvements to the Intellectual Property;
- 2.14 **Know-How** means all Confidential Information of whatever nature relating to the Intellectual Property and its exploitation as well as all other Confidential Information generally relating to Transnet's field of technology, including technical information, processing or manufacturing techniques, Designs, specifications, formulae, systems, processes, information concerning materials and marketing and business information in general;
- 2.15 **Materials** means the Deliverables, the Service Provider Materials and the Third Party Materials;
- 2.16 **Parties** mean the Parties to the Agreement together with their subsidiaries, divisions, business units, successors-in-title and their assigns;
- 2.17 **Party** means either one of these Parties;
- 2.18 **Patents** mean registered Patents and Patent applications, once the latter have proceeded to grant, and includes a right granted for any inventions, products or processes in all fields of technology;
- 2.19 **Permitted Purpose** means any activity or process to be undertaken or supervised by Personnel or employees of one Party during the term of the Agreement, for which purpose authorised disclosure of the other Party's Confidential Information or Intellectual Property is a prerequisite in order to enable such activity or process to be accomplished;
- 2.20 **Personnel** means any partner, employee, agent, consultant, independent associate or supplier, Subcontractor and the staff of such Subcontractor, or other authorised representative of either Party;
- 2.21 **Purchase Order(s)** means official orders issued by an operating division of Transnet to the Service Provider for the provision of Services;
- 2.22 **Service(s)** means [●], the Service(s) provided to Transnet by the Service Provider, pursuant to the Work Order(s) in terms of the Agreement;
- 2.23 **Service Level Agreement or SLA** means the processes, deliverables, key performance indicators and performance standards relating to the Services to be provided by the Service Provider;
- 2.24 **Subcontract** means any contract or agreement or proposed contract or agreement between the Service Provider and any third party whereby that third party agrees to provide to the Service Provider the Services or any part thereof;
- 2.25 **Subcontractor** means the third party with whom the Service Provider enters into a Subcontract;
- 2.26 **Service Provider Materials** means all works of authorship, products and materials [including, but not limited to, data, diagrams, charts, reports, specifications, studies, inventions, software, software development tools, methodologies, ideas, methods, processes, concepts and techniques] owned by, or licensed to, the Service Provider prior to the Commencement Date or independently developed by the Service Provider outside the scope of the Agreement at no expense to Transnet, and used by the Service Provider in the performance of the Services;

- 2.27 **Tax Invoice** means the document as required by Section 20 of the Value-Added Tax Act, 89 of 1991, as may be amended from time to time;
- 2.28 **Third Party Material** means software, software development tools, methodologies, ideas, methods, processes, concepts and techniques owned by, or licensed to a third party and used by the Service Provider in the performance of the Services;
- 2.29 **Trade Marks** mean registered Trade Marks and trade mark applications and includes any sign or logo, or combination of signs and/or logos capable of distinguishing the goods or services of one undertaking from those of another undertaking;
- 2.30 **VAT** means Value-Added Tax chargeable in terms of the Value-Added Tax Act, 89 of 1991, as may be amended from time to time; and
- 2.31 **Work Order(s)** means a detailed scope of work for a Service required by Transnet, including timeframes, Deliverable, Fees and costs for the supply of the Service to Transnet, which may be appended to the Agreement from time to time.

### 3 INTERPRETATION

- 3.1 Clause headings in the Agreement are included for ease of reference only and do not form part of the Agreement for the purposes of interpretation or for any other purpose. No provision shall be construed against or interpreted to the disadvantage of either Party hereto by reason of such Party having or being deemed to have structured or drafted such provision.
- 3.2 Any term, word, acronym or phrase used in the Agreement, other than those defined under the clause heading "Definitions" shall be given its plain English meaning, and those terms, words, acronyms, and phrases used in the Agreement will be interpreted in accordance with the generally accepted meanings accorded thereto.
- 3.3 A reference to the singular incorporates a reference to the plural and *vice versa*.
- 3.4 A reference to natural persons incorporates a reference to legal persons and *vice versa*.
- 3.5 A reference to a particular gender incorporates a reference to the other gender.

### 4 NATURE AND SCOPE

- 4.1 The Agreement is an agreement under the terms and conditions of which the Service Provider will arrange for the provision to Transnet of the Services which meet the requirements of Transnet, the delivery of which Services is controlled by means of Purchase Orders to be issued by Transnet and executed by the Service Provider, in accordance with the Agreement.
- 4.2 Such Purchase Orders shall be agreed between the Parties from time to time, subject to the terms of the relevant Work Order(s).
- 4.3 Each properly executed Purchase Order forms an inseparable part of the Agreement as if it were fully incorporated into the body of the Agreement.
- 4.4 During the period of the Agreement, both Parties can make written suggestions for amendments to the Work Order(s), in accordance with procedures set out in clause 28 [*Amendment and Change Control*] below. A Party will advise the other Party within 14 [fourteen] Business Days, or such other period as mutually agreed, whether the amendment is acceptable.
- 4.5 Insofar as any term, provision or condition in the Work Order(s) conflicts with a like term, provision or condition in the Agreement and/or a Purchase Order, or where the Agreement is

silent on the matter, the term, provision or condition in this Master Agreement shall prevail, unless such term or provision or condition in this Master Agreement has been specifically revoked or amended by mutual written agreement between the Parties.

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

## 5 AUTHORITY OF PARTIES

- 5.1 Nothing in the Agreement will constitute or be deemed to constitute a partnership between the Parties, or constitute or be deemed to constitute the Parties as agents or employees of one another for any purpose or in any form whatsoever.
- 5.2 Neither Party shall be entitled to, or have the power or authority to enter into an agreement in the name of the other; or give any warranty, representation or undertaking on the other's behalf; or create any liability against the other or bind the other's credit in any way or for any purpose whatsoever.

## 6 WARRANTIES

- 6.1 The Service Provider warrants to Transnet that:
- a) it has full capacity and authority to enter into and to perform the Agreement and that the Agreement is executed by a duly authorised representatives of the Service Provider;
  - b) it will discharge its obligations under the Agreement and any annexure, appendix or schedule hereto with all due skill, care and diligence;
  - c) it will be solely responsible for the payment of remuneration and associated benefits, if any, of its Personnel and for withholding and remitting income tax for its Personnel in conformance with any applicable laws and regulations;
  - d) it will procure licences for Transnet in respect of all Third Party Material detailed in the Work Order(s), and will procure the right for Transnet to take such copies [in whole or in part] of such Third Party Materials as it may reasonably require for the purposes of back-up for archiving and disaster recovery; and
  - e) the use or possession by Transnet of any Materials will not subject Transnet to any claim for infringement of any Intellectual Property Rights of any third party.
- 6.2 The Service Provider warrants that it will perform its obligations under the Agreement in accordance with the Service Levels as defined in the relevant schedule. Transnet may at its discretion audit compliance with the Service Levels, provided that any such audit is carried out with reasonable prior notice and in a reasonable way so as not to have an adverse effect on the performance of the Services. Without prejudice to clause 6.3 below, in the event that the Service Provider fails to meet the Service Levels, Transnet may claim appropriate service credits or invoke a retention of Fees as detailed in the relevant schedule and/or Work Order.



- 6.3 The Service Provider warrants that for a period of 90 [ninety] days from Acceptance of the Deliverables they will, if properly used, conform in all material respects with the requirements set out in the relevant schedule. The Service Provider will at its expense remedy any such non-conformance as soon as possible but in any event within 30 [thirty] days of notification by Transnet. In the event that the Service Provider fails or is unable to remedy such non-conformance within such time-scale, Transnet will be entitled to employ a third party to do so in place of the Service Provider and any excess charges or costs incurred by Transnet as a result shall be paid by the Service Provider.
- 6.4 The Service Provider will remedy any defect within 30 [thirty] days of being notified of that defect by Transnet in writing.
- 6.5 The Service Provider will not be liable to remedy any problem arising from or caused by any modification made by Transnet to the Deliverables, or any part thereof, without the prior approval of the Service Provider.
- 6.6 The Service Provider shall advise Transnet of the effects of any steps proposed by Transnet pursuant to clause 6.5 above, including but not limited to any cost implications or any disruption or delay in the performance of the Services. The Parties agree that any changes to the Services, including the charges for the Services or any timetables for delivery of the Services, will be agreed in accordance with the change control procedure, as set out in clause 28 [Amendment and Change Control].
- 6.7 The Service Provider warrants that:
- a) it has, using the most up-to-date software available, tested for [and deleted] all commonly known viruses in the Materials and for all viruses known by the Service Provider at the date of the relevant Work Order; and
  - b) at the time of delivery to Transnet, the Materials do not contain any trojan horse, worm, logic bomb, time bomb, back door, trap door, keys or other harmful components.
- The Service Provider agrees that, in the event that a virus is found, it will at its own expense use its best endeavours to assist Transnet in reducing the effect of the virus and, particularly in the event that a virus causes loss of operational efficiency or loss of data, to assist Transnet to the same extent to mitigate such losses and to restore Transnet to its original operating efficiency.
- 6.8 The Service Provider undertakes to comply with South Africa's general privacy protection in terms of the Bill of Rights [Section 14] in connection with the Agreement and shall procure that its Personnel shall observe the provisions of Section 14 [as applicable] or any amendments and re-enactments thereof and any regulations made pursuant thereto.
- 6.9 The Service Provider warrants that it has taken all reasonable precautions to ensure that, in the event of a disaster, the impact of such disaster on the ability of the Service Provider to comply with its obligations under the Agreement will be reduced to the greatest extent possible, and that the Service Provider shall ensure that it has appropriate, tested and documented recovery arrangements in place.
- 6.10 In compliance with the National Railway Safety Regulator Act, 16 of 2002, the Service Provider shall ensure that the Services, to be supplied to Transnet under the terms and conditions of the Agreement, comply fully with the specifications as set forth in Schedule 1 hereto, and shall thereby adhere [as applicable] to railway safety requirements and/or regulations. Permission for

the engagement of a Subcontractor by the Service Provider [as applicable] shall be subject to a review of the capability of the proposed Subcontractor to comply with the specified railway safety requirements and/or regulations. The Service Provider and/or its Subcontractor shall grant Transnet access, during the term of the Agreement, to review any safety-related activities, including the coordination of such activities across all parts of its organisation.

## **7 TRANSNET'S OBLIGATIONS**

- 7.1 Transnet undertakes to promptly comply with any reasonable request by the Service Provider for information, including information concerning Transnet's operations and activities, that relates to the Services as may be necessary for the Service Provider to perform the Services, but for no other purpose. However, Transnet's compliance with any request for information is subject to any internal security rules and requirements and subject to the observance by the Service Provider of its confidentiality obligations under the Agreement.
- 7.2 The Service Provider shall give Transnet reasonable notice of any information it requires in accordance with clause 7.1 above.
- 7.3 Subject to clause 13 [*Service Provider's Personnel*], Transnet agrees to provide the Service Provider or its Personnel such access to and use of its facilities as is necessary to allow the Service Provider to perform its obligations under the Agreement.

## **8 GENERAL OBLIGATIONS OF THE SERVICE PROVIDER**

- 8.1 The Service Provider shall:
  - a) respond promptly to all complaints and enquiries from Transnet;
  - b) inform Transnet immediately of any dispute or complaint arising in relation to the provision of the Services;
  - c) conduct its business in a professional manner that will reflect positively upon the Service Provider and the Service Provider's Services;
  - d) keep full records clearly indicating all transactions concluded by the Service Provider relating to the performance of the Services and keep such records for at least 5 [five] years from the date of each such transaction;
  - e) obtain, and at all times maintain in full force and effect, any and all licences, permits and the like required under applicable laws for the provision of the Services and the conduct of the business and activities of the Service Provider;
  - f) observe and ensure compliance with all requirements and obligations as set out in the labour and related legislation of South Africa, including the Occupational Health and Safety Act, 85 of 1993;
  - g) comply with all applicable environmental legislation and regulations, and demonstrate sound environmental policies, management and performance; and
  - h) ensure the validity of all renewable certifications, including but not limited to its Tax Clearance Certificate and B-BBEE Accreditation Certificate, for the duration of the Agreement. Should the Service Provider fail to present Transnet with such renewals as they become due, Transnet shall be entitled, in addition to any other rights and remedies that it may have in terms of the Agreement, to terminate the Agreement forthwith without any

liability and without prejudice to any claims which Transnet may have for damages against the Service Provider.

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

- a) render the Services and perform all its duties with honesty and integrity;
- b) communicate openly and honestly with Transnet and demonstrate a commitment to performing the Services timeously, efficiently and to the required standards;
- c) endeavour to provide the highest possible standards of service and professionalism, with a reasonable degree of care and diligence;
- d) use its best endeavours and make every diligent effort to meet agreed deadlines;
- e) treat its own Personnel, as well as all Transnet's officers, employees, agents and consultants, with fairness and courtesy and respect for their human rights;
- f) practice and promote its own internal policies aimed at prohibiting and preventing unfair discrimination [as further referred to in clause 22 – *Equality and Diversity*];
- g) treat all enquiries from Transnet in connection with the Services with courtesy and respond to all enquiries promptly and efficiently. Where the Service Provider is unable to comply with the provisions of this clause, the Service Provider will advise Transnet of the delay and the reasons therefor and will keep Transnet informed of progress made regarding the enquiry;
- h) when requested by Transnet, provide clear and accurate information regarding the Service Provider's own policies and procedures, excluding Know-How and other Confidential Information, except where a non-disclosure undertaking has been entered into between the Parties;
- i) not allow a conflict of interest to develop between its own interests [or the interests of any of its other customers] and the interests of Transnet;
- j) not accept or offer, nor allow, induce or promote the acceptance or offering of any gratuity, enticement, incentive or gift that could reasonably be regarded as bribery or an attempt to otherwise exert undue influence over the recipient;
- k) not mislead Transnet or its officers, employees and stakeholders, whether by act or omission;
- l) not otherwise act in an unethical manner or do anything which could reasonably be expected to damage or tarnish Transnet's reputation or business image; and
- m) immediately report to Transnet any unethical, fraudulent or otherwise unlawful conduct of which it becomes aware in connection with Transnet or the provision of Services.

9 FEES AND EXPENSES

- 9.1 In consideration of the provision of the Services, Transnet will pay to the Service Provider the Fees detailed in the relevant schedule or Work Order.
- 9.2 Transnet will not be invoiced for materials used in the provision of the Services save for those materials [if any] set out in the Work Order and accepted by Transnet or in any relevant Work Order [which will be invoiced to Transnet at cost].

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

- a) are agreed by Transnet in advance;
- b) are incurred in accordance with Transnet's standard travel and expenses policies;
- c) are passed on to Transnet at cost with no administration fee; and
- d) will only be reimbursed if supported by relevant receipts.

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

## 10 INVOICING AND PAYMENT

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

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

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

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

10.5 Where the payment of any Tax Invoice, or any part thereof which is not in dispute, is not made in accordance with this clause 10, the Service Provider shall be entitled to charge interest on the outstanding amount, at The Standard Bank of South Africa's prime rate of interest in force, for the period from the due date of payment until the outstanding amount is paid.

## 11 FEE ADJUSTMENTS

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

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

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

## 12 INTELLECTUAL PROPERTY RIGHTS

### 12.1 Title to Confidential Information

- a) Transnet will retain all right, title and interest in and to its Confidential Information and Background Intellectual Property and the Service Provider acknowledges that it has no claim of any nature in and to the Confidential Information and Background Intellectual Property that is proprietary to Transnet. For the avoidance of doubt, all the Service Provider's Background Intellectual Property shall remain vested in the Service Provider.
- b) Transnet shall grant to the Service Provider an irrevocable, royalty free, non-exclusive licence to use Transnet's Background Intellectual Property only for the Permitted Purpose. This license shall not permit the Service Provider to sub-license to other parties.
- c) The Service Provider shall grant to Transnet an irrevocable, royalty free, non-exclusive licence to use the Service Provider's Background Intellectual Property for the Permitted Purpose. This licence shall not permit Transnet to sub-license to other parties.
- d) The Service Provider shall grant Transnet access to the Service Provider's Background Intellectual Property on terms which shall be *bona fide* negotiated between the Parties for the purpose of commercially exploiting the Foreground Intellectual Property, to the extent that such access is required.

### 12.2 Title to Intellectual Property

- a) All right, title and interest in and to Foreground Intellectual Property prepared, conceived or developed by the Service Provider, its researchers, agents and employees shall vest in Transnet and the Service Provider acknowledges that it has no claim of any nature in and to the Foreground Intellectual Property. The Service Provider shall not at any time during or after the termination or cancellation of the Agreement dispute the validity or enforceability of such Foreground Intellectual Property, or cause to be done any act or anything contesting or in any way impairing or tending to impair any part of that right, title and interest to any of the Foreground Intellectual Property and shall not counsel or assist any person to do so.
- b) Transnet shall be entitled to seek protection in respect of the Foreground Intellectual Property anywhere in the world as it shall decide in its own absolute discretion and the Service Provider shall reasonably assist Transnet in attaining and maintaining protection of the Foreground Intellectual Property.
- c) Where the Foreground Intellectual Property was created by the Service Provider or its researchers, agents and employees and where Transnet elects not to exercise its option to seek protection or decides to discontinue the financial support of the prosecution or maintenance of any such protection, Transnet shall notify the Service Provider who shall have the right of first refusal to file or continue prosecution or maintain any such applications and to maintain any protection issuing on the Foreground Intellectual Property.
- d) No consideration shall be paid by Transnet to the Service Provider for the assignment of any Foreground Intellectual Property from the Service Provider to Transnet, over and above the sums payable in terms of the Agreement. The Service Provider undertakes to

sign all documents and do all things as may be necessary to effect, record and perfect the assignment of the Foreground Intellectual Property to Transnet.

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

#### 12.3 Title to Improvements

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

#### 12.4 Unauthorised Use of Confidential Information

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

#### 12.5 Unauthorised Use of Intellectual Property

- a) The Service Provider agrees to notify Transnet in writing of any conflicting uses of, and applications or registrations of Patents, Designs and Trade Marks or any act of infringement, unfair competition or passing off involving the Intellectual Property of Transnet of which the Service Provider acquires knowledge and Transnet shall have the right, as its own option, to proceed against any party infringing its Intellectual Property.
- b) It shall be within the sole and absolute discretion of Transnet to determine what steps shall be taken against the infringer and the Service Provider shall co-operate fully with Transnet, at Transnet's cost, in whatever measure including legal action to bring any infringement of illegal use to an end.
- c) The Service Provider shall cooperate to provide Transnet promptly with all relevant ascertainable facts.
- d) If proceedings are commenced by Transnet alone, Transnet shall be responsible for all expenses but shall be entitled to all damages or other award arising out of such proceedings. If proceedings are commenced by both Parties, both Parties will be responsible for the expenses and both Parties shall be entitled to damages or other award arising out of proceedings.



### 13 SERVICE PROVIDER'S PERSONNEL

- 13.1 The Service Provider's Personnel shall be regarded at all times as employees, agents or Subcontractors of the Service Provider and no relationship of employer and employee shall arise between Transnet and any Service Provider Personnel under any circumstances regardless of the degree of supervision that may be exercised over the Personnel by Transnet.
- 13.2 The Service Provider warrants that all its Personnel will be entitled to work in South Africa or any other country in which the Services are to be performed.
- 13.3 The Service Provider will ensure that its Personnel comply with all reasonable requirements made known to the Service Provider by Transnet concerning conduct at any Transnet premises or any other premises upon which the Services are to be performed [including but not limited to security regulations, policy standards and codes of practice and health and safety requirements]. The Service Provider will ensure that such Personnel at all times act in a lawful and proper manner in accordance with these requirements.
- 13.4 Transnet reserves the right to refuse to admit or to remove from any premises occupied by or on behalf of it, any Service Provider Personnel whose admission or presence would, in the reasonable opinion of Transnet, be undesirable or who represents a threat to confidentiality or security or whose presence would be in breach of any rules and regulations governing Transnet's Personnel, provided that Transnet notifies the Service Provider of any such refusal [with reasons why]. The reasonable exclusion of any such individual from such premises shall not relieve the Service Provider from the performance of its obligations under the Agreement.
- 13.5 The Service Provider agrees to use all reasonable endeavours to ensure the continuity of its Personnel assigned to perform the Services. If any re-assignment by the Service Provider of those Personnel is necessary, or if Transnet advises that any such Personnel assigned are in any respect unsatisfactory, including where any such Personnel are, or are expected to be or have been absent for any period, then the Service Provider will promptly supply a replacement of equivalent calibre and experience, and any such replacement shall be approved by Transnet prior to commencing provision of the Services, such approval not to be unreasonably withheld or delayed.

### 14 LIMITATION OF LIABILITY

- 14.1 Neither Party excludes or limits liability to the other Party for:
- a) death or personal injury due to negligence; or
  - b) fraud.
- 14.2 The Service Provider shall indemnify and keep Transnet indemnified from and against liability for damage to any Transnet property [whether tangible or intangible] or any other loss, costs or damage suffered by Transnet to the extent that it results from any act of or omission by the Service Provider or its Personnel in connection with the Agreement. The Service Provider's liability arising out of this clause 14.2 shall be limited to a maximum amount payable in respect of any one occurrence or a series of related occurrences in a single calendar year, such amount to be agreed in writing by the Parties.
- 14.3 Subject always to clauses 14.1 and 14.2 above, the liability of either the Service Provider or Transnet under or in connection with the Agreement, whether for negligence, misrepresentation, breach of contract or otherwise, for direct loss or damage arising out of each Default or series of



related Defaults shall not exceed 100% [one hundred per cent] of the Fees paid under the schedule or Work Order to which the Default(s) relates.

- 14.4 Subject to clause 14.1 above, and except as provided in clauses 14.2 and 14.3 above, in no event shall either Party be liable to the other for indirect or consequential loss or damage or including indirect or consequential loss of profits, business, revenue, goodwill or anticipated savings of an indirect nature or loss or damage incurred by the other Party as a result of third party claims.
- 14.5 If for any reason the exclusion of liability in clause 14.4 above is void or unenforceable, either Party's total liability for all loss or damage under the Agreement shall be as provided in clause 14.3 above.
- 14.6 Nothing in this clause 14 shall be taken as limiting the liability of the Service Provider in respect of clause 12 [*Intellectual Property Rights*] or clause 16 [*Confidentiality*].

## 15 INSURANCES

- 15.1 Without limiting the liability of the Service Provider under the Agreement, the Service Provider shall take out insurance in respect of all risks for which it is prudent for the Service Provider to insure against, including any liability it may have as a result of its activities under the Agreement for theft, destruction, death or injury to any person and damage to property. The level of insurance will be kept under review by Transnet, on an annual basis, to ensure its adequacy, provided that any variation to the level of such insurance shall be entirely at the discretion of the Service Provider.
- 15.2 The Service Provider shall arrange insurance with reputable insurers and will produce to Transnet evidence of the existence of the policies on an annual basis within 30 [thirty] days after date of policy renewals.

## 16 CONFIDENTIALITY

- 16.1 The Parties hereby undertake the following, with regard to Confidential Information:
- a) not to divulge or disclose to any person whomsoever in any form or manner whatsoever, either directly or indirectly, any Confidential Information of the other, without the prior written consent of such other Party, other than when called upon to do so in accordance with a statute, or by a court having jurisdiction, or by any other duly authorised and empowered authority or official, in which event the Party concerned shall do what is reasonably possible to inform the other of such a demand and each shall assist the other in seeking appropriate relief or the instituting of a defensive action to protect the Confidential Information concerned;
  - b) not to use, exploit, permit the use of, directly or indirectly, or in any other manner whatsoever apply the Confidential Information, disclosed to it as a result of the Agreement, for any purpose whatsoever other than for the purpose for which it is disclosed or otherwise than in strict compliance with the provisions in the Agreement;
  - c) not to make any notes, sketches, drawings, photographs or copies of any kind of any part of the disclosed Confidential Information, without the prior written consent of such other Party, except when reasonably necessary for the purpose of the Agreement, in which case such copies shall be regarded as Confidential Information;

- d) not to de-compile, disassemble or reverse engineer any composition, compilation, concept application, item, component de-compilation, including software or hardware disclosed and shall not analyse any sample provided by Transnet, or otherwise determine the composition or structure or cause to permit these tasks to be carried out except in the performance of its obligations pursuant to the Agreement;
- e) not to exercise less care to safeguard Transnet Confidential Information than the Party exercises in safeguarding its own competitive, sensitive or Confidential Information;
- f) Confidential Information disclosed by either Party to the other or by either Party to any other party used by such Party in the performance of the Agreement, shall be dealt with as "restricted" or shall be dealt with according to any other appropriate level of confidentiality relevant to the nature of the information concerned, agreed between the Parties concerned and stipulated in writing for such information in such cases;
- g) the Parties shall not make or permit to be made by any other person subject to their control, any public statements or issue press releases or disclose Confidential Information with regard to any matter related to the Agreement, unless written authorisation to do so has first been obtained from the Party first disclosing such information;
- h) each Party shall be entitled to disclose such aspects of Confidential Information as may be relevant to one or more technically qualified employees or consultants of the Party who are required in the course of their duties to receive the Confidential Information for the Permitted Purpose provided that the employee or consultant concerned has a legitimate interest therein, and then only to the extent necessary for the Permitted Purpose, and is informed by the Party of the confidential nature of the Confidential Information and the obligations of the confidentiality to which such disclosure is subject and the Party shall ensure such employees or consultants honour such obligations;
- i) each Party shall notify the other Party of the name of each person or entity to whom any Confidential Information has been disclosed as soon as practicable after such disclosure;
- j) each Party shall ensure that any person or entity to which it discloses Confidential Information shall observe and perform all of the covenants the Party has accepted in the Agreement as if such person or entity has signed the Agreement. The Party disclosing the Confidential Information shall be responsible for any breach of the provisions of the Agreement by the person or entity; and
- k) each Party may by written notice to the other Party specify which of the Party's employees, officers or agents are required to sign a non-disclosure undertaking.

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

- a) a Party can demonstrate that such information is already in the public domain or becomes available to the public through no breach of the Agreement by that Party, or its Personnel; or
- b) was rightfully in a Party's possession prior to receipt from the other Party, as proven by the first-mentioned Party's written records, without an infringement of an obligation or duty of confidentiality; or

- c) can be proved to have been rightfully received by a Party from a third party without a breach of a duty or obligation of confidentiality; or
- d) is independently developed by a Party as proven by its written records.

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

#### 17 TOTAL OR PARTIAL FAILURE TO PERFORM THE SCOPE OF SERVICES

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

#### 18 TERM AND TERMINATION

18.1 Notwithstanding the date of signature hereof, the Commencement Date if the Agreement is [●] and the duration shall be for a 12 [twelve] month period, expiring on [●], unless:

- a) the Agreement is terminated by either Party in accordance with the provisions incorporated herein or in any schedules or annexures appended hereto, or otherwise in accordance with law or equity; or
- b) the Agreement is extended at Transnet's option for a further period to be agreed by the Parties.

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

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

- a) a voluntary arrangement or composition or reconstruction of its debts;
- b) its winding-up or dissolution;
- c) the appointment of a liquidator, trustee, receiver, administrative receiver or similar officer; or
- d) any similar action, application or proceeding in any jurisdiction to which it is subject.

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

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

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

## 19 CONSEQUENCE OF TERMINATION

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

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

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

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

19.5 The provisions of clauses 0 [*Definitions*], 6 [*Warranties*], 12 [*Intellectual Property Rights*], 14 [*Limitation of Liability*], 16 [*Confidentiality*], 19 [*Consequence of Termination*], 25 [*Dispute Resolution*] and 29 [*Governing Law*] shall survive termination or expiry of the Agreement.

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

19.7 Should:

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

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

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

## 20 ASSIGNMENT

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

## 21 FORCE MAJEURE

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

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

## 22 EQUALITY AND DIVERSITY

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

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

## 23 NON-WAIVER

- 23.1 Failure or neglect by either Party, at any time, to enforce any of the provisions of the Agreement, shall not, in any manner, be construed to be a waiver of any of that Party's rights in that regard and in terms of the Agreement.
- 23.2 Such failure or neglect shall not, in any manner, affect the continued, unaltered validity of the Agreement, or prejudice the right of that Party to institute subsequent action.

## 24 PARTIAL INVALIDITY

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

## 25 DISPUTE RESOLUTION

- 25.1 Should any dispute of whatsoever nature arise between the Parties concerning the Agreement, the Parties shall try to resolve the dispute by negotiation within 10 [ten] Business Days of such dispute arising.
- 25.2 If the dispute has not been resolved by such negotiation, either of the Parties may refer the dispute to AFSA and notify the other Party accordingly, which proceedings shall be held in Johannesburg.
- 25.3 Such dispute shall be finally resolved in accordance with the rules of AFSA by an arbitrator or arbitrators appointed by AFSA.
- 25.4 This clause constitutes an irrevocable consent by the Parties to any proceedings in terms hereof, and neither of the Parties shall be entitled to withdraw from the provisions of this clause or claim at any such proceedings that it is not bound by this clause 25.
- 25.5 This clause 25 is severable from the rest of the Agreement and shall remain in effect even if the Agreement is terminated for any reason.
- 25.6 This clause 25 shall not preclude either Party from seeking urgent relief in a court of appropriate jurisdiction, where grounds for urgency exist.

## 26 ADDRESSES FOR NOTICES

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

a) **Transnet**

(i) For legal notices: [●]

Fax No. [●]

Attention: Legal Department

- (ii) For commercial notices: [●]  
Fax No. [●]  
Attention: [●]

**b) The Service Provider**

- (i) For legal notices: [●]  
Fax No. [●]  
Attention: [●]
- (ii) For commercial notices: [●]  
Fax No. [●]  
Attention: [●]

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

26.3 Any notice shall be deemed to have been given:

- a) if hand delivered, on the day of delivery; or  
b) if posted by prepaid registered post, 10 [ten] days after the date of posting thereof; or  
c) if faxed, on the date and time of sending of such fax, as evidenced by a fax confirmation printout, provided that such notice shall be confirmed by prepaid registered post on the date of dispatch of such fax, or, should no postal facilities be available on that date, on the next Business Day.

**27 WHOLE AND ONLY AGREEMENT**

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

**28 AMENDMENT AND CHANGE CONTROL**

- 28.1 Any requirement for an amendment or change to the Agreement or to a Work Order shall only be valid if it is in writing, signed by both Parties and added to the Agreement as an addendum hereto.
- 28.2 In the event the Parties cannot agree upon changes, the Parties shall in good faith seek to agree any proposed changes using the dispute resolution procedures in clause 25 [Dispute Resolution].



## 29 GOVERNING LAW

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

### 29.1 Change of Law

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

## 30 COUNTERPARTS

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

oooOOOooo

## Section 4

### 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							Code
Physical Address							

			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	

**Section 5****CERTIFICATE OF ATTENDANCE OF INFORMATION BRIEFING SESSION**

It is hereby certified that -

1. ....

2. ....

Representative(s) of .....  
(name of company)

attended the information briefing session in respect of the proposed Service to be rendered in terms of this RFQ on .....2013.

.....  
TRANSNET'S REPRESENTATIVE

DATE.....

.....  
RESPONDENT'S REPRESENTATIVE

DATE.....



## NON-DISCLOSURE AGREEMENT

entered into by and between

**TRANSNET SOC LTD**

Registration Number 1990/000900/30

and

\_\_\_\_\_  
Registration Number \_\_\_\_\_

RFQ Number DNR P13-10/10408

“PREVIEW COPY ONLY”

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“PREVIEW COPY ONLY”

**THIS AGREEMENT is made between**

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

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

**and**

\_\_\_\_\_ [the Company] [Registration No \_\_\_\_\_]

whose registered office is at \_\_\_\_\_

**WHEREAS**

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

**IT IS HEREBY AGREED**

**1 INTERPRETATION**

In this Agreement:

- 1.1 **Agents** mean directors, officers, employees, agents, professional advisers, contractors or sub-contractors, or any Group member;
- 1.2 **Bid or Bid Document** means Transnet's Request for Information [RFI] Request for Proposal [RFP] or Request for Quotation [RFQ], as the case may be;
- 1.3 **Confidential Information** means any information or other data relating to one party (the **Disclosing Party**) and/or the business carried on or proposed or intended to be carried on by that party and which is made available for the purposes of the Bid to the other party (the **Receiving Party**) or its Agents by the Disclosing Party or its Agents or recorded in agreed minutes following oral disclosure and any other information otherwise made available by the Disclosing Party or its Agents to the Receiving Party or its Agents, whether before, on or after the date of this Agreement, and whether in writing or otherwise, including any information, analysis or specifications derived from, containing or reflecting such information but excluding information which:
  - a) is publicly available at the time of its disclosure or becomes publicly available (other than as a result of disclosure by the Receiving Party or any of its Agents contrary to the terms of this Agreement); or



- b) was lawfully in the possession of the Receiving Party or its Agents (as can be demonstrated by its written records or other reasonable evidence) free of any restriction as to its use or disclosure prior to its being so disclosed; or
  - c) following such disclosure, becomes available to the Receiving Party or its Agents (as can be demonstrated by its written records or other reasonable evidence) from a source other than the Disclosing Party or its Agents, which source is not bound by any duty of confidentiality owed, directly or indirectly, to the Disclosing Party in relation to such information;
- 1.4 **Group** means any subsidiary, any holding company and any subsidiary of any holding company of either party; and
- 1.5 **Information** means all information in whatever form including, without limitation, any information relating to systems, operations, plans, intentions, market opportunities, know-how, trade secrets and business affairs whether in writing, conveyed orally or by machine-readable medium.

## 2 CONFIDENTIAL INFORMATION

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

any rights or remedies of the Disclosing Party, the Receiving Party shall as soon as practicable notify the Disclosing Party of such event and if requested take such steps (including the institution of legal proceedings) as shall be necessary to remedy (if capable of remedy) the default and/or to prevent further unauthorised copying, disclosure or use.

- 2.6 All Confidential Information shall remain the property of the Disclosing Party and its disclosure shall not confer on the Receiving Party any rights, including intellectual property rights over the Confidential Information whatsoever, beyond those contained in this Agreement.

### **3 RECORDS AND RETURN OF INFORMATION**

- 3.1 The Receiving Party agrees to ensure proper and secure storage of all Information and any copies thereof.
- 3.2 The Receiving Party shall keep a written record, to be supplied to the Disclosing Party upon request, of the Confidential Information provided and any copies made thereof and, so far as is reasonably practicable, of the location of such Confidential Information and any copies thereof.
- 3.3 The Company shall, within 7 (seven) days of receipt of a written demand from Transnet:
- a) return all written Confidential Information (including all copies); and
  - b) expunge or destroy any Confidential Information from any computer, word processor or other device whatsoever into which it was copied, read or programmed by the Company or on its behalf.
- 3.4 The Company shall on request supply a certificate signed by a director as to its full compliance with the requirements of clause 3.3b) above.

### **4 ANNOUNCEMENTS**

- 4.1 Neither party will make or permit to be made any announcement or disclosure of its prospective interest in the Bid without the prior written consent of the other party.
- 4.2 Neither party shall make use of the other party's name or any information acquired through its dealings with the other party for publicity or marketing purposes without the prior written consent of the other party.

### **5 DURATION**

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

### **6 PRINCIPAL**

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

## **7 ADEQUACY OF DAMAGES**

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

## **8 PRIVACY AND DATA PROTECTION**

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

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

## **9 GENERAL**

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

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

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

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

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

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

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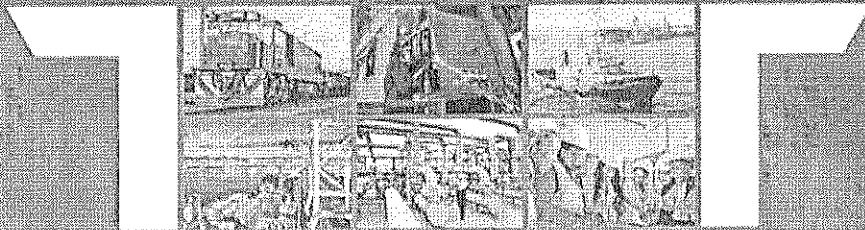
TRANSNET



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.

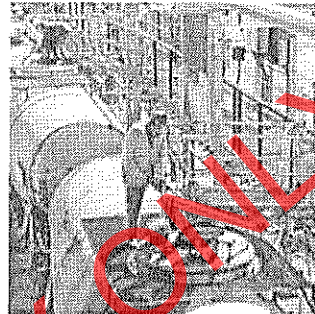
This code of conduct has been compiled to formally apprise Transnet Suppliers of Transnet's expectations regarding behaviour and conduct of its Suppliers.

### 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.





- » Employees must not accept or request money or anything of value, directly or indirectly, from suppliers.

Employees may not receive anything that is calculated to:

- Illegally influence their judgement or conduct or to influence the outcome of a sourcing activity;
- Win or retain business or to influence any act or decision of any person involved in sourcing decisions; gain an improper advantage.

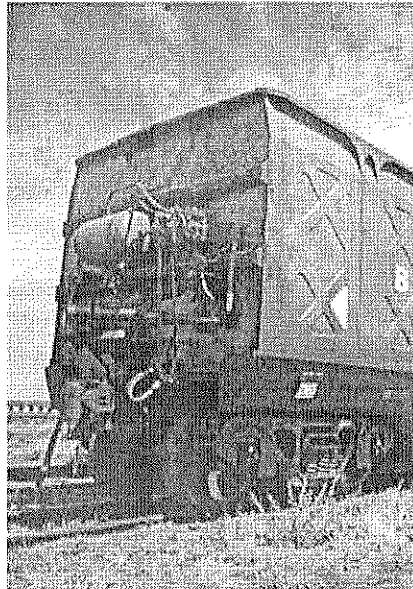
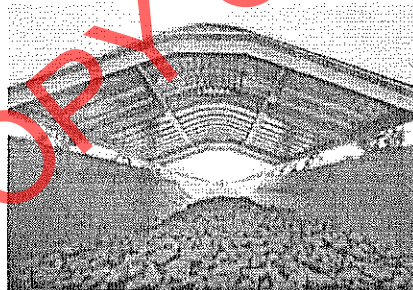
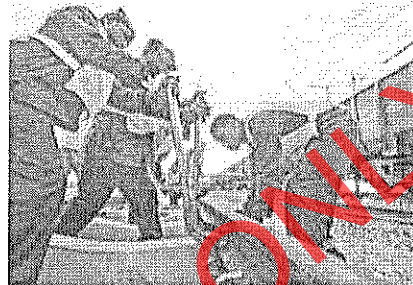
- » There may be times when a supplier is confronted with fraudulent or corrupt behaviour of Transnet employees. We expect our suppliers to use our "Tip-offs Anonymous" Hotline to report these acts: 0800 003 056.

**Transnet is firmly committed to free and competitive enterprise.**

- » Suppliers are expected to comply with all applicable laws and regulations regarding fair competition and antitrust practices
- » Transnet does not engage non-value adding agents or representatives solely for the purpose of increasing BBBEE spend (fronting).

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

- » Generally, suppliers have their own business standards and regulations. Although Transnet cannot control the actions of our suppliers, we will not tolerate any illegal activities.

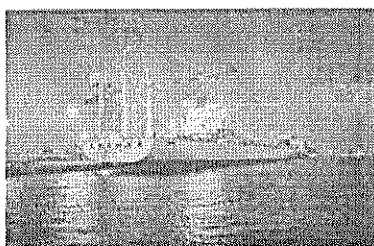
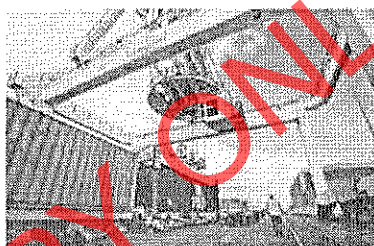
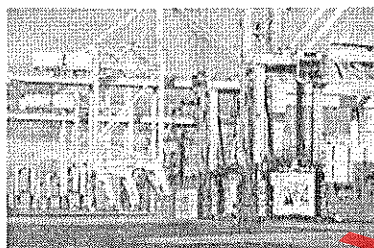


These include, but are not limited to:

- Misrepresentation of their product (origin of manufacture, specifications, intellectual property rights, etc);
- Collusion;
- Failure to disclose accurate information required during the sourcing activity (ownership financial situation, BBBEE status, etc.);
- Corrupt activities listed above; and harassment, intimidation or other aggressive actions towards Transnet employees.

» Suppliers must be evaluated and approved before any materials, components, products or services are purchased from them. Rigorous due diligence 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**