

SECTION 7

RFQ NUMBER CR/CP/G/132

SUPPLY OF RADIO BASE STATION PRETORIA

GENERAL TENDER CONDITIONS - GOODS

Refer Form CSS5 attached hereto

PRIEVIEW COPY ONLY

Respondent's Signature

Date and Company Stamp

TRANSNET



GENERAL TENDER CONDITIONS - SERVICES

FORM CSS5

INDEX		
SUBJECT	CLAUSE NUMBER	PAGE NUMBER
GENERAL.....	1	2
LODGING OF TENDERS.....	2	2
USE OF TENDER FORMS.....	3	2
THE RAISING OF A CHARGE FOR PLANS, SPECIFICATIONS, AND TENDER FORMS	4	2
DEFAULTS BY RESPONDENTS.....	5	2
CURRENCY.....	6	4
EXCHANGE AND REMITTANCE.....	7	4
ACCEPTANCE OF TENDER OR QUOTATION.....	8	4
LAW GOVERNING CONTRACT.....	9	5
IDENTIFICATION.....	10	5
FORMAL NOTIFICATION REGARDING NAME OF SUCCESSFUL RESPONDENT.....	11	5
UNAUTHORISED COMMUNICATION ABOUT TENDERS.....	12	5
CONTRACT DOCUMENTS.....	13	6
SECURITIES.....	14	6
PRICES SUBJECT TO CONFIRMATION.....	15	6
DELETION OF SERVICES EXCLUDED FROM OFFER/BID.....	16	6
ALTERATIONS MADE BY THE RESPONDENT TO TENDERED PRICES.....	17	7
VALUE-ADDED TAX.....	18	7
TERMS AND CONDITIONS OF TENDER.....	19	7
IMPORTANT NOTICE TO RESPONDENTS REGARDING PAYMENT.....	20	7
PLANS, DRAWINGS, DIAGRAMS, SPECIFICATIONS AND DOCUMENTS..	21	8
VISITS TO FOREIGN COUNTRIES.....	22	8
TENDERS BY FOREIGN RESPONDENTS OR ON THEIR BEHALF.....	23	9

1. GENERAL

All tenders and subsequent contracts and orders shall be subject to the following procedures as laid down by Transnet Limited (hereinafter referred to as "Transnet") and are to be strictly adhered to by any person or enterprise or company responding to this tender (hereinafter referred to as "Respondents" or the "Respondent").

2. LODGING OF TENDER

2.1 Tenders shall be lodged with Transnet no later than the closing date and time specified for the receipt thereof, in accordance with the directions issued with tender documents.

2.2 Tenders shall be transmitted in a sealed envelope and placed in the Tender Box at a venue stipulated in the Request for Tender (RFT) or Request for Proposal (RFP) or Request for Quotation (RFQ) (collectively "Tender Documents"), with the tender number and subject endorsed on the left hand bottom corner of the envelope.

3. USE OF TENDER FORMS

Where special forms are issued by Transnet for the submission of tenders, Respondents are required to submit their tenders by completion of the appropriate sections on such official forms and not on office stationery bearing their own special conditions of tender; non-compliance with this conditions may result in the rejection of a tender.

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

4.1 A non-refundable charge may be raised for Tender Documents, depending on the nature, magnitude and value of technical information supplied.

4.2 If any of the drawings and specifications referred to in Tender Documents are the official publications of recognised standardising bodies, copies of such drawings and specifications shall be acquired by Respondents at their own expense.

5. DEFAULTS BY RESPONDENTS

5.1 If the Respondent, after it has been notified of the acceptance of its tender/quotation fails to:

- (a) enter into a formal contract when called upon to do so in terms of clause 13 (*Contract Documents*), within such period as Transnet may specify; or
- (b) accept an order in terms of the tender or quotation; or
- (c) when called upon to do so, furnish satisfactory security of the fulfilment of the contract in terms of clause 14 (*Securities*);

Transnet may, in any such case, without prejudice to any other legal remedy which it may have, proceed to accept any other tender or quotation or, if it is necessary to do so, call for

Respondent's Signature

Date & Company Stamp

tenders or quotations afresh, and may recover from the defaulting Respondent any additional expense incurred by it in calling for new offers or in accepting a higher offer.

5.2 If any Respondent, who has submitted a tender or quotation, concluded a contract with Transnet (hereinafter referred to as "the Supplier"), or in the capacity of agent or subcontractor has been associated with such tender or contract -

- (a) has withdrawn such tender/quotation after the advertised date and hour for the receipt of tenders; or
- (b) has, after having been notified of the acceptance of its tender or quotation, failed or refused to sign a contract when called upon to do so in terms of any condition forming part of the tender documents; or
- (c) has carried out any contract resulting from such tender or quotation in an unsatisfactory manner or has breached any condition of such contract; or
- (d) has offered, promised or given a bribe in relation to the obtaining or the execution of such contract; or
- (e) has acted in a fraudulent or improper manner or in bad faith towards Transnet or any government department or towards any public body, company or person; or
- (f) has made any incorrect statement in the affidavit or certificate referred to in clause 11 (*Formal Notification Regarding Name of Successful Respondent*) and is unable to prove to the satisfaction of Transnet that
 - (i) it made the statement in good faith honestly believing it to be correct; and
 - (ii) before making such statement, it took all reasonable steps to satisfy itself of its correctness; or
- (g) caused Transnet damage, or to incur costs in order to meet the Supplier's requirements which could not be recovered from the Supplier;

then a tender from any such Respondent shall be disqualified and the person, enterprise or company (including any directors) shall, subject to clause 5.3 below, be disqualified from tendering for any Transnet business.

5.3 Any person or enterprise or company against whom a decision has been given under the provisions of sub-clauses 5.2(b), 5.2(d) or 5.2(e) above, may make representations to the Chief Operating Officer of Transnet Group, whose decision shall be final.

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

Respondent's Signature

Date & Company Stamp

6. CURRENCY

Prices or fees must be quoted in the currency of the Republic of South Africa in respect of local Services. Prices or fees in any other currency may be rejected by Transnet save where such price is quoted by a foreign Respondent.

7. EXCHANGE AND REMITTANCE

The Respondent should note that where the whole or a portion of the contract or order value is to be remitted overseas, Transnet shall, if requested to do so by the Supplier, effect payment overseas directly to the foreign principal or service provider of such percentage of the contract or order value as may be stipulated by the Respondent in its Tender Documents and any variation in the amount to be so paid, which may arise as a result of fluctuations in the rate of exchange involved, will be for the account of the Supplier.

7.1 The Respondent who desires to avail itself of the aforementioned facility must at the time of tendering furnish the information called for in the clause "Exchange and Remittance" of the Tender Documents and also furnish full details of the principals or service providers to whom payment is to be made.

7.2 The Supplier shall at its own cost obtain forward exchange cover on foreign currency to protect itself against any currency rate fluctuation risks for the duration of any resulting contract or order. Transnet will NOT accept any fluctuations in the rate of exchange at the time when payments are made.

Transnet will not recognise any claim for adjustment of the order and/or contract price under clause 7.2 above, if the increase in price arises after the date on which the Services were to be delivered, as set out in the order and/or contract, or any subsequent agreement between the parties.

8. ACCEPTANCE OF TENDER OR QUOTATION

8.1 Transnet does not bind itself to accept the lowest or any tender or quotation nor will it give any reasons for the rejection of a tender or quotation. Transnet reserves the right to accept any tender in whole or in part.

8.2 Upon the acceptance of a tender or quotation by Transnet, the parties shall be bound by these General Tender Conditions and the Standard Terms and Conditions of Contract (Form US7 - Services).

8.3 Where the acceptance by Transnet of the Respondent's offer/bid is delivered by letter, the South African Post Office shall be regarded as the agent of Transnet and delivery of such notice of acceptance to the South African Post Office shall be considered as delivery to the Respondent.

Respondent's Signature

Date & Company Stamp

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

9. LAW GOVERNING CONTRACT

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

10. IDENTIFICATION

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

11. FORMAL NOTIFICATION REGARDING NAME OF SUCCESSFUL RESPONDENT

In the case of tenders submitted to the Secretary of a Divisional Acquisition Council, unsuccessful Respondents will be formally notified of the names of successful Respondent(s) as soon as possible after the closing date for receipt of the tender in question. In the case of tenders or quotations submitted to Transnet Acquisition Council, unsuccessful Respondents shall, upon application, be furnished with similar information.

12. UNAUTHORISED COMMUNICATION ABOUT TENDERS

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

Respondent's Signature

Date & Company Stamp

13. CONTRACT DOCUMENTS

The contract documents will comprise these General Tender Conditions and the Standard Terms and Conditions of Contract (Form US7 - Services) which will constitute the contract between the parties upon receipt by the Respondent of Transnet's letter of acceptance / intent, subject to all additional amendments and/or special conditions thereto as agreed to by the parties.

14. SECURITIES

- 14.1 The successful Respondent, when called upon to do so, shall provide security to the satisfaction of Transnet for the due fulfilment of a contract or order. Such security shall be in the form of a deed of suretyship furnished by an approved bank, building society, insurance or guarantee corporation carrying on business in South Africa.
- 14.2 The security may be applied in whole or part at the discretion of Transnet to make good any loss or damage which Transnet may incur in consequence of a breach of the contract or any part thereof.
- 14.3 Such security, if required, shall be an amount which will be stipulated in the Tender Documents.
- 14.4 For the purpose of clause 14.1 above, Transnet will supply "Deed of Suretyship" forms to the successful Respondent for completion and no guarantee in any other form will be accepted. Copies of such forms will be supplied to Respondents on request. For this purpose "Deed of Suretyship" forms will be provided which shall be completed and returned to Transnet or a designated official by the successful Respondent within 30 (thirty) days from the date of the letter of acceptance. No payment will be made until the forms, duly completed, are delivered to Transnet. Failure to return the Deed of Suretyship within the prescribed time shall, save where prior extension has been granted, entitle Transnet without notice to the Supplier to cancel the contract with immediate effect.
- 14.5 Additional costs incurred by Transnet necessitated by reason of default on the part of the Supplier in relation to the conditions of this clause 14 will be for the account of the Supplier.

15. PRICES SUBJECT TO CONFIRMATION

- 15.1 A tender or quotation with prices which are subject to confirmation will not be considered.
- 15.2 Tenders where firm prices are quoted for the duration of any resulting order and/or contract will receive precedence over prices which are subject to adjustment.

16. DELETION OF SERVICES EXCLUDED FROM OFFER/BID

The Respondent must delete Services for which it has not tendered or for which the price or fee has been included elsewhere in the tender.

Respondent's Signature

Date & Company Stamp

17. ALTERATIONS MADE BY THE RESPONDENT TO TENDERED PRICES

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

18. VALUE-ADDED TAX

18.1 In respect of local Services, i.e. Services to be provided by a South African company, the prices or fees quoted by the Respondent are to be exclusive of Value-Added Tax (VAT) which must be shown separately at the standard rate on the Supplier's Tax Invoice.

18.2 In respect of Services to be provided by a foreign principal -

- (a) The invoicing by a local Supplier on behalf of its foreign principal represents a Service rendered by the principal, which is not subject to VAT.
- (b) The Supplier's Tax Invoice(s) for the local portion only (i.e. the "commission" for the Services rendered locally) must show the Value-Added Tax (VAT) separately at zero percent if the Services are in compliance with Section 11(2) of the VAT Act, 89 of 1991.

19. TERMS AND CONDITIONS OF TENDER

The Supplier shall adhere to the Standard Terms and Conditions of Contract as set out in Form US7 - Services), a copy of which is attached hereto. Should the Respondent find any conditions unacceptable, it should indicate which conditions are unacceptable and offer an alternative. Please note that any alternative offered shall be compared with acceptance of the Form US7 conditions or alternatives offered by other Respondents.

20. IMPORTANT NOTICE TO RESPONDENTS REGARDING PAYMENT

20.1 Method of Payment

- (a) The attention of the Respondent is directed to clause 10 (*Invoicing and Payment*) of Form US7 – Services, which sets out the conditions of payment on which tender price(s) shall be based.
- (b) However, in addition to the foregoing the Respondent is invited to submit offers based on alternative methods of payment and/or financing proposals.
- (c) The Respondent is required to give full particulars of the terms that will be applicable to its alternative offer(s) and the financial merits thereof will be evaluated and taken into consideration when the tender is adjudicated.

Respondent's Signature

Date & Company Stamp

- (d) The Respondent must, therefore, in the first instance, tender strictly in accordance with sub-clause 20.1(a) above. Failure to comply with sub-clause 20.1(a) above may preclude a tender from further consideration.

NOTE: The successful Respondent (the Supplier) shall, where applicable, be required to furnish a guarantee covering any advance payments.

20.2 Conditional Discount

Respondents offering prices which are subject to a conditional discount applicable for payment within a specific period are to note that the conditional period will be calculated as from the date of receipt by Transnet of the Supplier's month-end statement reflecting the relevant Tax Invoice(s) for payment purposes, provided the conditions of the order or contract have been fulfilled and the Tax Invoice is correct in all respects as referred to in the contract or order. Incomplete and/or incorrect Tax Invoices shall be returned and the conditional period will be recalculated from the date of receipt of the correct documents.

21. PLANS, DRAWINGS, DIAGRAMS, SPECIFICATIONS AND DOCUMENTS

Copyright in plans, drawings, diagrams, specifications and documents compiled by the Supplier for the purpose of contract work shall be governed by the terms and conditions detailed in clause 12 of Form US7 - Services (*Intellectual Property Rights*).

22. VISITS TO FOREIGN COUNTRIES

22.1 Respondents must furnish details in a covering letter if it is considered necessary that employees of Transnet should carry out inspection and/or review any operational Services at the premises of the successful Respondent (the Supplier) or its subcontractors overseas for the purpose of a product demonstration and/or final acceptance or for any other reason.

22.2 If the Respondent considers overseas visits to be necessary it must provide the following information in a covering letter in respect of each visit -

- (a) countries and places to be visited;
- (b) number of employees and disciplines involved;
- (c) number of man-days involved; and
- (d) motivation for the visit.

22.3 Transnet will make all arrangements with regard to booking of air journeys, hotel reservations, transport to and from airports, places of inspection or demonstration, etc. and all expenses will be for the account of Transnet.

22.4 Before a visit is undertaken, such as envisaged in this clause 22, Transnet and the Supplier will agree in writing on the number of employees of Transnet that should undertake the visit and the number of man-days involved in the visit.

Respondent's Signature

Date & Company Stamp

23. TENDERS BY FOREIGN RESPONDENTS OR ON THEIR BEHALF

- 23.1 Tenders submitted by foreign principals may be forwarded direct by the principals to the Secretary of the Acquisition Council or to a designated official of Transnet according to whichever officer is specified in the Tender Documents, or may be so forwarded on the principal's behalf by its South African representative and/or agent provided that written proof is submitted that such representative / agent has been duly authorised to act in that capacity by the principal. Failure to submit such authorisation by the representative / agent shall disqualify the tender.
- 23.2 When legally authorised to prepare and submit tenders on behalf of their principals not domiciled in the Republic of South Africa, representatives and/or agents must compile the tenders in the names of such principals and sign them on behalf of the latter.
- 23.3 South African representatives and/or agents of successful foreign Respondents must when so required enter into a formal contract in the name of their principals and must sign such contracts on behalf of the latter. In every such case a legal Power of Attorney from their principals must be furnished to Transnet by the South African representative and/or agents authorising them to enter into and sign such contracts.
- (a) Such Powers of Attorney must comply with Government Notice No. 1160 of 27 June 1930 (and any amendments thereto) - "Rules of the Supreme Court of South Africa for the authentication of documents executed outside the Republic for use within the Republic."
 - (b) The Powers of Attorney must be signed by principals under the same title as used in the Tender Documents.
 - (c) On arrival within the Republic of South Africa these Powers of Attorney are to be completed in terms of Section 8(2) of the Stamp Duties Act No. 77 of 1968, or any amendment thereof.
 - (d) If a Power of Attorney held by the South African representative or agent includes matters of a general nature besides provision for the entering into and signing of contracts with Transnet, a notarially certified copy thereof should be furnished.
 - (e) The Power of Attorney must authorise the South African representative or agent to choose the *domicilium citandi et executandi* as provided for in clause 26 (*Addresses for Notices*) of the Standard Conditions of Contract, Form US7 - Services.
- 23.4 If payment is to be made in South Africa, the foreign Supplier (i.e. the principal, or its South African agents or representatives), must notify Transnet in writing whether -
- (a) For payment by cheque -

Respondent's Signature

Date & Company Stamp

- (i) cheques are to be drawn for payment to the credit of the foreign Supplier's account at a bank in South Africa, in which case the name and branch of such bank shall be furnished; or
 - (ii) cheques are to be made out in favour of the foreign Supplier and forwarded to its South African agent or representative, in which case such agent or representative must be duly authorised to sign the receipt of the cheque and discharge it on behalf of its principal.
- (b) For payment by electronic funds transfer (EFT) –
- (i) funds are to be transferred to the credit of the foreign Supplier's account at a bank in South Africa, in which case the name and branch of such bank shall be furnished; or
 - (ii) funds are to be transferred to the credit of its South African agent or representative, in which case the name and branch of such bank shall be furnished

23.5 The attention of the Respondent is directed to clause 14 above (*Securities*) regarding the provision of security for the fulfilment of contracts and orders and the manner and form in which such security is to be furnished.

oooo00oooo

Respondent's Signature

Date & Company Stamp



SECTION 8

RFQ NUMBER CR/CP/G/132

SUPPLY OF RADIO BASE STATION AT PRETORIA

STANDARD TERMS AND CONDITIONS OF CONTRACT

FOR THE SUPPLY OF GOODS TO TRANSNET

Refer Form US7 attached hereto.

Respondents should note the obligations as set out in Clause 24 of the General Tender Conditions (Section 7) which reads as follows:

"The Supplier shall adhere to the Standard Terms and Conditions of Contract as set out in Form US7 – Goods, a copy of which is attached hereto.

Should the Respondent find any conditions unacceptable, it should indicate which conditions are unacceptable and offer an alternative. Please note that any alternative offered shall be compared with acceptance of the Form US7 conditions or alternatives offered by other Respondents, except penalties for late deliveries, the exclusion of which may disqualify the RFQ, save where indicated otherwise by Transnet."

Respondent's Signature

29

Date and Company Stamp

TRANSNET



STANDARD TERMS AND CONDITIONS OF CONTRACT

FOR THE PROVISION OF SERVICES TO TRANSNET

FORM US7 – SERVICES

PREVIEW COPY ONLY

TABLE OF CONTENTS

1.....	INTRODUCTION	3
2.....	DEFINITIONS	3
3.....	INTERPRETATION	7
4.....	NATURE AND SCOPE	8
5.....	AUTHORITY OF PARTIES	8
6.....	WARRANTIES.....	9
7.....	TRANSNET'S OBLIGATIONS.....	11
8.....	GENERAL OBLIGATIONS OF THE SUPPLIER.....	11
9.....	FEES AND EXPENSES	13
10.....	INVOICING AND PAYMENT	13
11.....	FEE ADJUSTMENTS.....	14
12.....	INTELLECTUAL PROPERTY RIGHTS.....	14
13.....	SUPPLIER'S PERSONNEL.....	17
14.....	LIMITATION OF LIABILITY	18
15.....	INSURANCES	19
16.....	CONFIDENTIALITY.....	19
17.....	TOTAL OR PARTIAL FAILURE TO PERFORM THE SCOPE OF SERVICES	22
18.....	TERM AND TERMINATION.....	22
19.....	CONSEQUENCE OF TERMINATION.....	23
20.....	ASSIGNMENT	24
21.....	FORCE MAJEURE.....	24
22.....	EQUALITY AND DIVERSITY	25
23.....	NON-WAIVER	25
24.....	PARTIAL INVALIDITY	25
25.....	DISPUTE RESOLUTION	25
26.....	ADDRESSES FOR NOTICES	26
27.....	WHOLE AND ONLY AGREEMENT	26
28.....	AMENDMENT AND CHANGE CONTROL	27
29.....	GOVERNING LAW.....	27
30.....	COUNTERPARTS.....	27

SCHEDULE 1 - ADDRESSES FOR NOTICES

SCHEDULE 2 - SCHEDULE OF REQUIREMENTS and / or WORK ORDER/S

SCHEDULE 3 - NON-DISCLOSURE AGREEMENT

1. INTRODUCTION

When an Agreement is entered into between Transnet and the Supplier of Services to Transnet, these Standard Terms and Conditions of Contract, the General Tender Conditions, a Schedule of Requirements and/or Work Order(s) including such special conditions as applicable, and any terms in the associated tender documents, exclusively govern the provision of Services by the Supplier to Transnet.

2. DEFINITIONS

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

- 2.1. **"AFSA"** means the Arbitration Foundation of South Africa;
- 2.2. **"Agreement"** means the Agreement and its associated schedules and/or annexures and/or appendices, including the Schedule of Requirements and/or 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 Supplier (as agreed between the Parties), which collectively and exclusively govern the provision of Services by the Supplier 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;
- 2.5. **"Commencement Date"** means the effective date at which time the Supplier's provision of Services to Transnet in terms of the Agreement shall commence, as detailed in Schedule 2 hereto (SCHEDULE OF REQUIREMENTS / WORK ORDER);
- 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

Respondent's Signature

Date & Company Stamp

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

Respondent's Signature

Date & Company Stamp

- (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 Supplier 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 Supplier by Transnet, as detailed in the Schedule of Requirements or Work Order(s), issued in accordance with the Agreement, as amended by mutual agreement between the Parties and in accordance with the 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

Respondent's Signature

Date & Company Stamp

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 Supplier 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 Supplier for the provision of Services;
- 2.22. **"Schedule of Requirements"** means Schedule 2 hereto, unless substituted by a Work Order or Work Orders, as defined;
- 2.23. **"Service(s)"** means the Service(s) provided to Transnet by the Supplier, pursuant to the Schedule of Requirements or Work Order(s) in terms of the Agreement;
- 2.24. **"Service Level Agreement" or "SLA"** means the processes, deliverables, key performance indicators and performance standards relating to the Services to be provided by the Supplier;
- 2.25. **"Subcontract"** means any contract or agreement or proposed contract or agreement between the Supplier and any third party whereby that third party agrees to provide to the Supplier the Services or any part thereof;
- 2.26. **"Subcontractor"** means the third party with whom the Supplier enters into a Subcontract;

Respondent's Signature

Date & Company Stamp

- 2.27. **"Supplier Materials"** means all works of authorship, products and materials (including, but not limited to, data, diagrams, charts, reports, specifications, studies, inventions, software, software development tools, methodologies, ideas, methods, processes, concepts and techniques) owned by, or licensed to, the Supplier prior to the Commencement Date or independently developed by the Supplier outside the scope of the Agreement at no expense to Transnet, and used by the Supplier in the performance of the Services;
- 2.28. **"Tax Invoice"** means the document as required by Section 20 of the Value-Added Tax Act, 89 of 1991;
- 2.29. **"Third Party Material"** means software, software development tools, methodologies, ideas, methods, processes, concepts and techniques owned by, or licensed to a third party and used by the Supplier in the performance of the Services;
- 2.30. **"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;
- 2.31. **"VAT"** means Value-Added Tax in terms of the Value-Added Tax Act, 89 of 1991; and
- 2.32. **"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 genders.

Respondent's Signature

Date & Company Stamp

4. NATURE AND SCOPE

- 4.1. The Agreement is an agreement under the terms and conditions of which the Supplier will arrange for the provision to Transnet of the 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 Supplier, 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 Schedule of Requirements and / or relevant Work Order(s).
- 4.3. Each properly executed Purchase Order forms an inseparable part of the Agreement as if it were fully incorporated into the body of the Agreement.
- 4.4. During the period of the Agreement, both Parties can make written suggestions for amendments to the Schedule of Requirements or Work Orders, in accordance with procedures set out in clause 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 Schedule of Requirements and/or Work Order(s) conflicts with a like term, provision or condition in the Agreement and/or a Purchase Order, or where the Agreement is silent on the matter, the term, provision or condition in the Schedule of Requirements and/or Work Order(s) shall prevail.
- 4.6. Time will be of the essence and the Supplier will perform its obligations under the Agreement in accordance with the timeframe(s) (if any) set out in the relevant schedule, save that the Supplier will not be liable under this clause if it is unable to meet such obligation within the time required as a direct result of any act or omission by Transnet and it has used its best endeavours to advise Transnet of such act or omission. In the event of such delay, any time deadlines detailed in the relevant schedule shall be extended by a period equal to the period of that delay.

5. AUTHORITY OF PARTIES

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

Respondent's Signature

Date & Company Stamp

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 Supplier 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 Supplier;
- (b) it will discharge its obligations under the Agreement and any annexure 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 Supplier 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 sub-clause 6.3 below, in the event that the Supplier fails to meet the Service Levels, Transnet may claim appropriate service credits or invoke a retention of Fees as detailed in the relevant schedule and/or Work Order.

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

Respondent's Signature

Date & Company Stamp

- 6.4. The Supplier will remedy any defect within 14 (fourteen) days of being notified of that defect by Transnet in writing.
- 6.5. The Supplier will not be liable to remedy any problem arising from or caused by any modification made by Transnet to the Deliverables, or any part thereof, without the prior approval of the Supplier.
- 6.6. The Supplier shall advise Transnet of the effects of any steps proposed by Transnet pursuant to sub-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 Supplier 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 Supplier 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 Supplier agrees that, in the event that a virus is found, it will at its own expense use its best endeavours to assist Transnet in reducing the effect of the virus and, particularly in the event that a virus causes loss of operational efficiency or loss of data, to assist Transnet to the same extent to mitigate such losses and to restore Transnet to its original operating efficiency.
- 6.8. The Supplier undertakes to comply with South Africa's general privacy protection in terms of the Bill of Rights (Section 14) in connection with the Agreement and shall procure that its Personnel shall observe the provisions of such Act (as applicable) or any amendments and re-enactments thereof and any regulations made pursuant thereto.
- 6.9. The Supplier warrants that it has taken all reasonable precautions to ensure that, in the event of a disaster, the impact of such disaster on the ability of the Supplier to comply with its obligations under the Agreement will be reduced to the greatest extent possible, and that the Supplier shall ensure that it has appropriate, tested and documented recovery arrangements in place.
- 6.10. In compliance with the National Railway Safety Regulator Act, 16 of 2002, the Supplier shall ensure that the Services, to be supplied to Transnet under the terms and conditions of the

Respondent's Signature

Date & Company Stamp

Agreement, comply fully with the Specifications as set forth in Schedule 2 hereto, and shall thereby adhere to railway safety requirements and/or regulations. Permission for the engagement of a Subcontractor by the Supplier, 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 Supplier 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 Supplier for information, including information concerning Transnet's operations and activities, that relates to the Services as may be necessary for the Supplier to perform the Services, but for no other purpose. However, Transnet's compliance with any request for information is subject to any internal security rules and requirements and subject to the observance by the Supplier of its confidentiality obligations under the Agreement.
- 7.2. The Supplier shall give Transnet reasonable notice of any information it requires in accordance with sub-clause 7.1 above.
- 7.3. Subject to clause 13 (SUPPLIER'S PERSONNEL), Transnet agrees to provide the Supplier or its Personnel such access to and use of its facilities as is necessary to allow the Supplier to perform its obligations under the Agreement.

8. GENERAL OBLIGATIONS OF THE SUPPLIER

- 8.1. The Supplier shall -
 - (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 Supplier and the Supplier's Services;
 - (d) keep full records clearly indicating all transactions concluded by the Supplier relating to the performance of the Services and keep such records for at least 5 (five) years from the date of each such transaction;

Respondent's Signature

Date & Company Stamp

- (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 Supplier;
- (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; and
- (g) comply with all applicable environmental legislation and regulations, and demonstrate sound environmental policies, management and performance.

8.2. The Supplier 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 Supplier is unable to comply with the provisions of this sub-clause, the Supplier 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 Supplier'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;

Respondent's Signature

Date & Company Stamp

- (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 Supplier 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 Supplier 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 Supplier the amounts stipulated in the relevant schedule or Work Order, subject to the terms and conditions of the Agreement.

Respondent's Signature

Date & Company Stamp

- 10.2. Transnet shall pay such amounts to the Supplier, upon receipt of a correct and undisputed Tax Invoice together with the supporting documentation as specified in the Schedule of Requirements or 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 Supplier for the provision of the Services, in terms of sub-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 Schedule of Requirements or 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 Supplier 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 Schedule of Requirements or Work Orders annexed hereto from time to time.
- 11.2. No less than 2 (two) months prior to any proposed Fee 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 Supplier fail to reach an agreement on Fees for the successive period, either Party shall be entitled to terminate the Agreement and/or the relevant Work Order after giving 30 (thirty) days written notice to the other.
- 11.4. Neither Party shall have any claim against the other of whatsoever nature by reason of such cancellation as envisaged in sub-clause 11.3 above.

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 Supplier acknowledges that it has no claim of

Respondent's Signature

Date & Company Stamp

any nature in and to the Confidential Information and Background Intellectual Property that is proprietary to Transnet. For the avoidance of doubt, all the Supplier's Background Intellectual Property shall remain vested in the Supplier.

- (b) Transnet shall grant to the Supplier an irrevocable royalty free non-exclusive licence to use Transnet's Background Intellectual Property only for the Permitted Purpose. This licence shall not permit the Supplier to sub-license to other parties.
- (c) The Supplier shall grant to Transnet an irrevocable, royalty free, non-exclusive licence to use the Supplier's Background Intellectual Property for the Permitted Purpose. This licence shall not permit Transnet to sub-license to other parties.
- (d) The Supplier shall grant Transnet access to the Supplier'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 Supplier, its researchers, agents and employees shall vest in Transnet and the Supplier acknowledges that it has no claim of any nature in and to the Foreground Intellectual Property. The Supplier 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 Supplier shall reasonably assist Transnet in attaining and maintaining protection of the Foreground Intellectual Property.
- (c) Where the Foreground Intellectual Property was created by the Supplier 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 Supplier 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.

Respondent's Signature

Date & Company Stamp

- (d) No consideration shall be paid by Transnet to the Supplier for the assignment of any Foreground Intellectual Property from the Supplier to Transnet, over and above the sums payable in terms of the Agreement. The Supplier undertakes to sign all documents and do all things as may be necessary to effect, record and perfect the assignment of the Foreground Intellectual Property to Transnet.
- (e) Subject to anything contrary contained in the Agreement and/or the prior written consent of Transnet (which consent shall not be unreasonably withheld), the Supplier 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 Supplier shall disclose promptly to Transnet all such improvements, developments, adaptations and/or modifications, inventions or discoveries. The Supplier 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 Supplier 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 Supplier 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 Supplier agrees to notify Transnet in writing of any conflicting uses of, and applications of registrations of Patents, Designs and Trade Marks or any act of infringement, unfair competition or passing off involving the Intellectual Property of Transnet of which the Supplier acquires knowledge and Transnet shall have the right, as its own option, to proceed against any party infringing its Intellectual Property.

Respondent's Signature

Date & Company Stamp

- (b) It shall be within the discretion of Transnet to determine what steps shall be taken against the infringer and the Supplier 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 Supplier 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. SUPPLIER'S PERSONNEL

- 13.1. The Supplier's Personnel shall be regarded at all times as employees, agents or Subcontractors of the Supplier and no relationship of employer and employee shall arise between Transnet and any Supplier Personnel under any circumstances regardless of the degree of supervision that may be exercised over the Personnel by Transnet.
- 13.2. The Supplier 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 Supplier will ensure that its Personnel comply with all reasonable requirements made known to the Supplier by Transnet concerning conduct at any Transnet premises or any other premises upon which the Services are to be performed (including but not limited to security regulations, policy standards and codes of practice and health and safety requirements). The Supplier will ensure that such Personnel at all times act in a lawful and proper manner in accordance with these requirements.
- 13.4. Transnet reserves the right to refuse to admit or to remove from any premises occupied by or on behalf of it, any Supplier 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 Supplier of any such refusal (with reasons why). The reasonable exclusion of any such individual from such premises shall not relieve the Supplier from the performance of its obligations under the Agreement.

Respondent's Signature

Date & Company Stamp

13.5. The Supplier agrees to use all reasonable endeavours to ensure the continuity of its Personnel assigned to perform the Services. If any re-assignment by the Supplier 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 Supplier will promptly supply a replacement of equivalent calibre and experience, and any such replacement shall be approved by Transnet prior to commencing provision of the Services, such approval not to be unreasonably withheld.

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 Supplier shall indemnify and keep Transnet indemnified from and against liability for damage to any Transnet property (whether tangible or intangible) or any other loss, costs or damage suffered by Transnet to the extent that it results from any act of or omission by the Supplier or its Personnel in connection with the Agreement. The Supplier's liability arising out of this sub-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 sub-clauses 14.1 and 14.2 above, the liability of either the Supplier or Transnet under or in connection with the Agreement, whether for negligence, misrepresentation, breach of contract or otherwise, for direct loss or damage arising out of each Default or series of related Defaults shall not exceed 100% (one hundred percent) of the Fees paid under the schedule or Work Order to which the Default(s) relates.

14.4. Subject to sub-clause 14.1 above, and except as provided in sub-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 sub-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 sub-clause 14.3 above.

Respondent's Signature

Date & Company Stamp

14.6. Nothing in this clause 14 shall be taken as limiting the liability of the Supplier in respect of clause 12 (INTELLECTUAL PROPERTY RIGHTS) or clause 16 (CONFIDENTIALITY).

15. INSURANCES

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

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

15.3. Subject to sub-clause 15.4 below, if the Supplier fails to effect adequate insurance under this clause 15, it shall notify Transnet in writing as soon as it becomes aware of the reduction or inadequate cover and Transnet may arrange or purchase such insurance. The Supplier shall promptly reimburse Transnet for any premiums paid provided such insurance protects the Supplier's liability. Transnet assumes no responsibility for such insurance being adequate to protect all of the Supplier's liability.

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

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

Respondent's Signature

Date & Company Stamp

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

Respondent's Signature

Date & Company Stamp

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 Supplier 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.

Respondent's Signature

Date & Company Stamp

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

Should the Supplier fail or neglect to execute the work or to deliver any portion of the Service, as required by the terms of the Agreement 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. The Agreement shall commence on the Commencement Date, as specified in the schedules or Work Orders hereto, and shall continue subject to termination in accordance with the provisions of the Agreement or otherwise in accordance with law or equity.
- 18.2. Transnet may terminate the Agreement without cause by giving the Supplier 30 (thirty) days' notice in writing.
- 18.3. 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.
- 18.4. Either Party may terminate the Agreement forthwith by notice in writing to the other Party when the other Party is unable to pay its debts as they fall due or commits any act or omission which would be an act of insolvency in terms of the Insolvency Act, 1936 (as amended), or if any action, application or proceeding is made with regard to it for -
- (a) a voluntary arrangement or composition or reconstruction of its debts;
 - (b) the presentation of an administrative petition;
 - (c) its winding-up or dissolution;
 - (d) the appointment of a liquidator, trustee, receiver, administrative receiver or similar officer; or
 - (e) any similar action, application or proceeding in any jurisdiction to which it is subject.
- 18.5. Transnet may terminate the Agreement at any time within 2 (two) months of becoming aware of a change of control of the Supplier by notice in writing to the Supplier. For the 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.

Respondent's Signature

Date & Company Stamp

18.6. Transnet may cancel any schedule hereto or Work Order at any time on giving the Supplier 30 (thirty) days' notice.

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

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

19.4. In the event that the Agreement is terminated by the Supplier under sub-clause 18.3 (TERM AND TERMINATION), or in the event that a Work Order is terminated by Transnet under sub-clause 18.6 (TERM AND TERMINATION), Transnet will pay to the Supplier all outstanding Fees (apportioned on a pro rata basis) relating to the work undertaken by the Supplier up until the date of such termination. Transnet will also pay the costs of any goods and materials ordered by the Supplier in relation to the such work for which the Supplier has paid or is legally obliged to pay, in which case, on delivery of such goods or materials, the Supplier will promptly deliver such goods and materials to Transnet or as it may direct.

19.5. The provisions of clauses 2 (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

Respondent's Signature

Date & Company Stamp

liability and without prejudice to any claims which the Aggrieved Party may have for damages against the Defaulting Party.

19.7. Should -

- (a) the Supplier 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, 1936 (as amended);

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 Supplier agrees that it shall not unreasonably withhold or delay its consent to such assignment or novation and that it shall only be entitled to recover from Transnet any reasonable legal costs incurred by it as a direct result of such assignment or novation.

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

Respondent's Signature

Date & Company Stamp

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 Supplier will not victimise, harass or discriminate against any employee of either Party to the Agreement or any applicant for employment with either Party to the Agreement due to their gender, race, disability, age, religious belief, sexual orientation or part-time status. This provision applies, but is not limited to employment, upgrading, work environment, demotion, transfer, recruitment, recruitment advertising, termination of employment, rates of pay or other forms of compensation 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.
- 25.3. Such dispute shall be finally resolved in accordance with the rules of AFSA by an arbitrator or arbitrators appointed by AFSA.

Respondent's Signature

Date & Company Stamp

- 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 ("fax") numbers, detailed in Schedule 1 hereto, as their respective addresses for giving or sending any notice provided for or required in terms of the Agreement, provided that either Party shall be entitled to substitute such other address or fax number, as may be, by written notice to the other.
- 26.2. Any notice addressed to a Party at its physical or postal address shall be sent by prepaid registered post, or delivered by hand, or sent by fax.
- 26.3. Any notice shall be deemed to have been given -
- (a) if posted by prepaid registered post, 10 (ten) days after the date of posting thereof;
 - (b) if hand delivered, on the day of delivery; 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, schedules or Work Order(s) appended hereto.

Respondent's Signature

Date & Company Stamp

28. AMENDMENT AND CHANGE CONTROL

- 28.1. Any requirement for an amendment or change to the Agreement or to the Schedule of Requirements 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 Supplier 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.

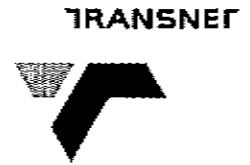
30. COUNTERPARTS

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

Respondent's Signature

Date & Company Stamp



SECTION 09

RFQ NUMBER CR/CP/G/132

SUPPLY OF RADIO BASE STATION AT PRETORIA

SPECIFICATIONS AND DRAWINGS

REFER TO SPECIFICATION

1. NO BBD5577 VERSION 01
2. SPC- 01321 MAY 2008

PRIEVIEW COPY ONLY

Respondent's Signature

30

Date and Company Stamp



CAPITAL PROGRAM (TELECOMMUNICATIONS)

SPECIFICATION

KOPANO RADIO BASE STATION

Author: Technologist: Project Manager Phehello Makoa

Capital Program (Telecoms)

Authorised: Senior Technologist Nick Breytenbach

Capital Program (Telecoms)

Date: 04 May 2009

Circulation Restricted To:

Transnet Freight Rail
Transnet and Relevant Third Parties
Unrestricted

© This document as a whole is protected by copyright. The information herein is the sole property of Transnet Ltd. It may not be used, disclosed or reproduced in part or in whole in any manner whatsoever, except with the written permission of and in a manner permitted by the proprietors.

CONTENTS

I. Document Authorisation	3
II. Distribution	3
III. Document Change History	3
IV. Changes Since Last Revision	3
V. List of Abbreviations	4
1. Introduction	5
2. Background Information	5
3. Scope of Work	7
4. Compliance	7
5. Radio Base Station Requirements	7
5.1 Radio Base Housing Unit (RBHU)	8
5.2 Remote Control Unit (RCU)	10
5.3 Handset	11
5.4 Desktop Microphone	11
5.5 Headset	12
5.6 PTT Footswitch	12
5.7 E & M Signalling (4 wire)	13
5.8 Audio	13
5.9 Main Power Supply	14
5.10 DC Power Supply	14
6. General	15

Appendices

Appendix A: Specification: Combined Trunked and Open Channel UHF Mobile Radio.	16
Appendix B: Schedule of Requirements and Tender Pricing	17

I Document Authorisation

FUNCTION	NAME	TITLE & DIVISION	SIGNATURE	DATE
Compiled By:	<i>Phehello Makoa</i>	Technologist Capital Program	<i>Signed</i>	11/05/2009
Reviewed By:	<i>Nick Breytenbach</i>	Senior Technologist Capital Program	<i>Signed</i>	12/05/2009
Reviewed By:	<i>Michael Nuttall</i>	Manager Engineering Transport Telecoms	<i>Signed</i>	12/05/2009
Reviewed By:	<i>Graeme Daly</i>	Manager Access Transport Telecoms	<i>Signed</i>	12/05/2009
Reviewed By:	<i>Anton Dreyer</i>	Manager Projects Transport Telecoms	<i>Signed</i>	12/05/2009
Reviewed By:	<i>Freddie Visser</i>	Frequency Management Transport Telecoms	<i>Signed</i>	12/05/2009
Reviewed By:	<i>Pierre du Plessis</i>	Manager Quality Assurance Transport Telecoms	<i>Signed</i>	12/05/2009
Authorised By:	<i>Nick Breytenbach</i>	Senior Technologist Capital Program	<i>Signed</i>	12/05/2009

II Distribution

Once updated, a copy of the latest revision will be published on the document management system, "Project Wise".

III Document Change History

ISSUE NO.	DATE ISSUED	ISSUED BY	HISTORY DESCRIPTION
1.00	May 2009	Phehello Makoa	New Document

IV Changes Since Last Revision

CLAUSES	DESCRIPTION

V List of Abbreviations

ABBREVIATIONS	DESCRIPTION
AC	Alternating Current
Ah	Ampere hour
dBm	Decibel relative to 1 milliwatt
LED	Light Emitting Diode
m	Metre
mm	Millimetre
PTT	Press-to-Talk
RBHU	Radio Base Housing Unit
RCU	Remote Control Unit
RF	Radio Frequency
RTO	Radio Train Order
Rx	Receive
TCO	Train Control Officer
TFR	Transnet Freight Rail
THD	Total Harmonic Distortion
Tx	Transmit
UHF	Ultra High Frequency
V	Volt
W	Watt

DEFINITIONS	DESCRIPTION
Works	A desktop radio base station with power supply, metal housing, handset, footswitch, goose neck and headset, which is remotely controlled and can operate a 4 wire E&M line.

1. Introduction

- 1.1 This specification covers the supply of a desktop radio base station that is remotely controlled and that can operate 4 wire E&M line. The radio base station must operate in the Transnet Freight Rail (TFR) Ultra High Frequency (UHF) band, both in Open Channel and Trunk mode.
- 1.2 The radio base station, power supply, metal housing and the remote control unit are herein referred to as the "Works", and any other related work arising out of or incidental to the above, or required of the Contractor for proper completion of the "Works" in accordance with the true meaning and intent of the contract.

2. Background Information

- 2.1 Transnet Freight Rail (TFR) is a business unit of Transnet Limited, and it has a broad range of telecommunications services. These services include amongst others, radio communications for the safe operation of trains.
- 2.2 The Tender calls for the supply of a desktop radio base station described herein, as the "Works".
- 2.3 The radio base station will be used by the Train Control Officer (TCO) for communication with the train driver, the crew and the maintenance personnel.
- 2.4 The "Works" called for in this document have an impact on the safe operations of trains by TFR. The level of workmanship, the quality and durability of the equipment and adherence to safety rules and regulations is of the utmost importance.
- 2.5 Tenderers should be prepared to demonstrate the functionality of the radio base station set at no cost to TFR.
- 2.6 TFR reserves the right to modify or request any alteration to the supplied radio base station set before issuing the final approval.

- 2.7 The successful Tenderer will be required to supply one complete set to TFR as a prototype for approval. Once approval has been granted, the Tenderer shall be authorised to start with the production for the entire order. No production shall commence prior to the sign-off of the prototype.
- 2.8 TFR representatives may conduct site visits on the premises of the prospective Tenderers for inspection of the equipment concerned.

PREVIEW COPY ONLY

3. Scope of Work

- 3.1 This specification covers the supply of a desktop radio base station that is remotely controlled and that can operate 4 wire E&M line. The radio base station must operate in the TFR, UHF band, both in Open Channel and Trunk mode.
- 3.2 The Schedule of Requirements and Tender Pricing (Appendix B) contains the quantities of the equipment to be supplied.

4. Compliance

- 4.1 The radio offer submitted by the Tenderers shall comply to the "Specification for Combined Trunked and Open Channel UHF Mobile Radio with Data Capability", SPC-01321, May 2008 Revision 1.00 (Appendix A).
- 4.2 Tenderers can use a TFR type approved radio, the "Tait TM 8255 mobile radio" or any other radio that complies with the specification referred to in clause 4.1. The Tait handset "TM 8200" was also approved together with the radio. The supplier for the radio and the handset is Emcom Africa.
- 4.3 The Tenders shall also read the entire Clause 8 "Base Stations" of Appendix A in conjunction with the RADIO BASE STATION REQUIREMENTS in this specification.

5. Radio Base Station Requirements

The radio base station set, shall comprise of the Radio Base Housing Unit (RBHU) and the Remote Control Unit (RCU).

5.1 Radio Base Housing Unit (RBHU)

- 5.1.1 The RBHU shall be used in conjunction with the RCU. All the functionality of the RBHU shall be available on the RCU.
- 5.1.2 The RBHU shall be supplied with a standard black screened multi-core cable (2.5m or 20m) terminated with a 15 pin D-type male connector. Only one cable shall be used at a time to connect the RBHU to the RCU.
- 5.1.3 There shall be a RS232, 9-pin D-type female connector on the rear panel for programming the radio.
- 5.1.4 The metal casing shall be powder coated in hamertone black and must be mountable in a 19" (inch) rack. The rack mounting plates must be removable. The casing shall have rubber feet underneath.
- 5.1.5 The RBHU shall contain a forward facing speaker and shall contain a two way switch for enabling or muting the speaker. This functionality shall not affect the volume operation of the RCU when it is connected.
- 5.1.6 The volume for the speaker shall be controlled via the handset.
- 5.1.7 There shall be a 3-pin XLR socket mounted on the front side of the RBHU for the headset.
- 5.1.8 The RBHU shall have a 2-pin male connector mounted on the rear panel for the Press-to-Talk (PTT) footswitch.
- 5.1.9 The RBHU shall have a 4-pin XLR socket mounted on the rear panel for the gooseneck desktop microphone.
- 5.1.10 The RBHU shall operate normally while the mains continuously charge the battery. When the mains fail, the RBHU shall operate from the battery without a noticeable mains failure.

- 5.1.11 The RBHU shall have a robust connector or the RJ45 mounted at the back for the handset.
- 5.1.12 The RBHU shall include a 600 ohm balanced audio line output via a 2-pin (RJ9) connector for voice logging. Both Transmit (Tx) and Receive (Rx) audio shall be available.
- 5.1.13 The RBHU shall have a 9-pin D-type male connector data port for Tx and Rx purposes.
- 5.1.14 The RBHU shall have Light Emitting Diode (LED) indications. The indications will show Green for the charging condition and Red for charger failure.
- 5.1.15 The RBHU shall have a battery backup of a 7.5 Ah sealed lead acid battery with a 1.0 Ampere (A) charger having an over voltage protection circuitry.
- 5.1.16 The unit shall incorporate a load shedding circuitry that operates when the battery voltage reaches 11.0 Volt (V), for a 12 V system.
- 5.1.17 The RBHU shall be mounted with a 3-pin mains connector for Alternating Current (AC) power on the rear panel.
- 5.1.18 The RBHU shall be supplied with a 1.5m black cord for 220 V mains AC. The cord must be supplied with a matching plug (refer to clause 5.1.17) and a standard 15 A, 3-pin mains plug.
- 5.1.19 The RBHU shall have a facility that will switch the battery supply circuit off for storage purposes.
- 5.1.20 The RBHU shall have a metal hook mounted on the front side of the unit, for the handset to clip onto.
- 5.1.21 The RBHU shall have the Transnet Freight Rail Logo on the front panel, in colour (45mmx45mm), and shall be inscribed with the following words underneath the logo "Kopano Radio Base Station".

5.2 Remote Control Unit (RCU)

- 5.2.1 The RCU shall have a rugged metal casing which is aesthetically pleasing to be placed on top of the desk. The casing shall be powder coated in hamertone black and shall have rubber feet underneath.
- 5.2.2 There shall be a 15 pin D-type female connector on the rear panel for connecting the RCU to the RBHU.
- 5.2.3 The RCU shall contain a forward facing speaker.
- 5.2.4 The volume for the speaker shall be controlled via the handset.
- 5.2.5 The RCU shall have a 2 way "Hi/ Low"-speaker switch in front. Position 1 for normal operation (high volume, depending on the handset setting) and position 2 for low volume operation. The low volume for position 2 must be soft but not completely muted.
- 5.2.6 The power for the RCU shall be supplied from the RBHU power supply unit. When the cable is connected (refer to clause 5.1.2), the RCU shall be powered up.
- 5.2.7 There shall be two LED's in front. The Green LED for "POWER ON", showing that the RCU is in a ready and functional state. The Red LED for "Tx", and will become active when the PTT is pressed.
- 5.2.8 There shall be a 3-pin XLR socket mounted on the front of the RCU for the headset.
- 5.2.9 The RCU shall have a 2-pin male connector mounted at the back for the PTT footswitch.
- 5.2.10 The RCU shall have a 4-pin XLR socket mounted at the back for the gooseneck desktop microphone.

- 5.2.11 The RCU shall have a robust connector or the RJ45 mounted at the back for the handset.
- 5.2.12 The RCU shall have a metal hook mounted on the front side of the unit, for the handset to clip onto.
- 5.2.13 The RCU shall have the Transnet Freight Rail Logo on the front, in colour (25mmx25mm), and shall be inscribed with the following words underneath the logo "Kopano Radio Base Station".

5.3 Handset

- 5.3.1 The handset shall have a keypad, microphone, PTT and a volume control.
- 5.3.2 The handset shall have a 2m fully stretched black curly cord and shall work up to 5m via a black extension cable.
- 5.3.3 The handset shall be terminated with a robust connector or the RJ45.
- 5.3.4 The handset shall be able to connect directly to the RBHU and the RCU.

5.4 Desktop Microphone

- 5.4.1 A rugged high quality flexible goose neck desktop microphone with a PTT shall be supplied.
- 5.4.2 The desktop microphone shall be supplied with a 2m fully stretched black curly cord cable.
- 5.4.3 The desktop microphone shall be terminated with a 4-pin XLR connector.
- 5.4.4 The desktop-microphone shall have an internal amplifier to provide the necessary gain.
- 5.4.5 The desktop microphone shall be able to connect directly to the RBHU and the RCU.

5.5 Headset

- 5.5.1 A rugged single ear headset with a PTT and a flexible boom microphone shall be supplied (black colour).
- 5.5.2 The headset shall either be wireless or supplied with a black 3m cable.
- 5.5.3 The wireless headset shall operate in a 10m radius and shall operate seamlessly without any interference where other wireless headsets have been deployed or in operation in the same radius.
- 5.5.4 The headset shall be terminated with a 3-pin XLR connector.
- 5.5.5 When the headset is plugged in, it shall default the external speaker to the low volume operation.
- 5.5.6 The headset microphone shall have an internal amplifier to provide the necessary gain.
- 5.5.7 The headset shall be able to connect directly to the RBHU and the RCU.

5.6 PTT Footswitch

- 5.6.1 A rugged PTT footswitch shall be supplied.
- 5.6.2 The footswitch shall come with a 3m black cable.
- 5.6.3 The footswitch shall be terminated to a 2-pin female connector.
- 5.6.4 The PTT footswitch shall be a common PTT for the headset and the gooseneck desktop microphones.
- 5.6.5 The footswitch shall be able to connect directly to the RBHU and the RCU.

5.7 E & M Signalling (4 wire)

- 5.7.1 Inputs "E" Lead: 12 to 50 V DC not exceeding 10 A
(isolated contacts - *Two wire & polarity free*).
- 5.7.2 Output "M" Lead: Voltage free contact - 50 Vdc 1 A
(isolated contacts - *Two wire*)

5.8 Audio

- 5.8.1 The voice logging audio output level shall be 0 dBm, adjustable ± 3 dB, with a Radio Frequency (RF) signal modulation of 1.5 kHz, and a modulating signal of 1.0 kHz. The Tx and Rx audio levels shall be equal.
- 5.8.2 An audio mixer circuitry with level adjustments shall be provided to ensure an equal level from all the different microphones.
- 5.8.3 The audio lines between the RBHU and RCU shall be 600 ohm balanced lines. The return loss shall be ≤ -25 dB.
- 5.8.4 The audio output levels between the RBHU and RCU shall be -10 dBm adjustable ± 3 dB.
- 5.8.5 The audio frequency response 300 Hz to 3000 Hz shall be ± 0.5 dB with reference to 1.0 kHz.
- 5.8.6 The THD shall be ≤ 0.5 %
- 5.8.7 The signal to hum and noise ratio shall be ≥ 40 dB.
- 5.8.8 The audio power to the loudspeaker shall not be less than 2.0 W at a THD of ≤ 2.0 %.
- 5.8.9 All the audio lines shall be protected against induced power surges.

5.9 Mains Power Supply

- 5.9.1 The mains supply shall be 220 V AC \pm 10 %; 50 Hz \pm 5 %.
- 5.9.2 Primary fuse protection is required. The value shall be as low as possible without the maximum current drain causing it to blow.
- 5.9.3 Mains surge suppression is required to protect the power supply unit.
- 5.9.4 An ON/OFF switch shall be provided at the rear of the RBHU. The MAINS ON indication shall be provided on the front panel of the RBHU.

5.10 DC Power Supply

- 5.10.1 The output voltage variation shall not be greater than 5 % at full load. Battery charging included.
- 5.10.2 The output voltage ripple and noise level shall not exceed 30 mV peak-to-peak (for a 12 V system and measured with a resistive load). The battery shall not be used in, or be part of the smoothing circuitry.
- 5.10.3 Fuse protection is required at the output of the DC power supply. The value shall be as low as possible without the maximum current drain causing it to blow.

6. General

- 6.1.1 The speakers of the RBHU and the RCU shall be quiet during an idle state and no induction noises shall be heard.
- 6.1.2 The RBHU and the RCU shall fully mute when transmitting or receiving data.
- 6.1.3 The data port shall only be on the RBHU.
- 6.1.4 The RBHU shall have a provision for connecting multiple RCUs (up to five). RCUs connected shall function simultaneously without any interference or degrading audio quality. User will specify this option when placing an order.
- 6.1.5 All connectors on the RBHU and the RCU shall be labelled or engraved accordingly.
- 6.1.6 All the connectors shall be of the latching/locking type.
- 6.1.7 Technical handbooks must be professionally printed in English and a copy must be submitted on compact disc (CD).
- 6.1.8 All the requirements for clause 11 of Appendix A concerning documentation must be complied with.

Appendix A

Specification for Combined Trunked and Open Channel UHF Mobile Radio with Data Capability

SPC-01321-May 2008

Revision 1.00

PREVIEW COPY ONLY

- 9.28 No printed circuit board must have terminations to points other than the edge of the printed circuit board.
- 9.29 No termination must have more than one conductor per solder joint.
- 9.30 Soldering direct to the chassis of any equipment must not be permitted. All chassis terminations must be made with soldering tags.
- 9.31 All components must be clearly marked and must be capable of easy reference to circuit diagrams and handbooks to be supplied with the equipment.
- 9.32 The functions of all controls, switches, etc. must be clearly engraved or otherwise permanently marked by means of approved symbols in English.
- 9.33 All pre-set variable controls must be clearly marked and readily identified in the equipment.
- 9.34 All subassemblies and printed circuit boards must be permanently marked with an identification code.
- 9.35 All wiring and terminations between subassemblies must be identified.
- 9.36 Test pins must be provided on all units, subunits and printed circuit boards for the measurement of all important circuit characteristics without the unsoldering of wires. Such test points must be clearly marked and identified in the equipment.
- 9.37 Equipment using plug-in modules must be fitted with guides for the insertion of modules. It must not be possible, to incorrectly insert a module.
- 9.38 The module pins and its locating/guide pins must be ruggedly constructed and must not easily bend, warp or break.
- 9.39 The equipment must be built in such a manner that faulty modules can be easily and quickly detected, removed and replaced, but steps must be taken to minimise unnecessary movements of plug-in modules on a trial and error basis when locating faults.
- 9.40 The equipment layout must be planned to facilitate fault clearance and maintenance.

10. CONNECTORS

The connectors required must be suitable for use with communications circuits and power feed circuits.

10.1 Electrical Characteristics

- 10.1.1 The contacts must withstand a breakdown voltage of 2 000 volts RMS .
- 10.1.2 The contacts must be silver plated, 1,5 mm in diameter and rated for 11 amperes continuously.
- 10.1.3 The contact resistance must be equal or smaller than 1,5 milli-ohm.

10.2 Mechanical Characteristics

- 10.2.1 The insulator must be a neoprene elastomer material.
- 10.2.2 The contacts must be silver plated and must be suitable for at least 500 mating/unmating operations.

10.3 Climatic Conditions

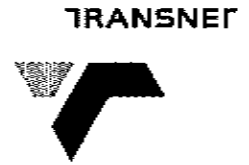
- 10.3.1 The connector must operate from -40 °C to +85 °C .
- 10.3.2 The connector must seal as per NFC.20010-IP61.
- 10.3.3 The connector must be spray resistant as per NFC.20611.

11. TECHNICAL HANDBOOKS

- 11.1 Technical handbooks must be clearly printed in English. Photostat copies will not be acceptable.
- 11.2 Each set of handbooks must include the following :
 - 11.2.1 Operating instructions.
 - 11.2.2 Complete maintenance instructions.
 - 11.2.3 Complete and detailed alignment procedures.
 - 11.2.4 A detailed technical description of the equipment.
 - 11.2.5 Complete circuit diagrams, drawings and photographs of the equipment. The photographs and drawing must clearly indicate component/module location on printed circuit boards etc. All component numbers must be clearly shown.
 - 11.2.6 A list of parts giving the values of all components, i.e. resistors, capacitors, integrated circuit numbers etc., for each schematic drawing.

- 11.2.7 Detailed printed circuit board wiring diagrams of all layers showing component numbers and positions must be provided. Panel and or unit wiring diagrams must also be provided.
- 11.2.8 Voltage levels, current values, test points etc., must be clearly indicated on all circuit diagrams.
- 11.2.9 Complete circuit diagrams of individual modules must be included.
- 11.2.10 A block schematic of the complete system, indicating all test points as well as the level readings which should be obtained at these points.
- 11.2.11 All indicated levels in the equipment and in the instruction books must be given in power levels (0 dB = 1 milliwatt into 600 ohms).
- 11.2.12 All symbols and notations used on drawings and circuit diagrams must preferably comply with the requirements laid down in BS 3939. Where symbols and notations do not comply with these requirements each drawing must be accompanied by a legend clearly detailing BS 3939 equivalents.
- 11.2.13 Transnet reserves the right to reproduce in whole or in part, by any means whatsoever, any technical handbook or instruction manual supplied by the successful contractor. Any such reproductions will be for the sole use of Transnet.
- 11.2.14 To enable the personnel of Transnet to become acquainted with the circuitry and design details of the equipment ordered, the successful tenderer must deliver one complete set of handbooks to each centre mentioned in the Schedule of Requirements, delivery to be effected at least one month prior to the commencement of the delivery of the equipment.

END OF DOCUMENT



SECTION 10

RFQ NUMBER CR/CP/G/132

SUPPLY OF RADIO BASE STATION AT PRETORIA

NON-DISCLOSURE AGREEMENT (“NDA”)

Complete and sign NDA attached hereto

PREVIEW COPY ONLY

Respondent's Signature

Date and Company Stamp



NON-DISCLOSURE AGREEMENT

THIS AGREEMENT is made the day of 2009

BETWEEN:

- (1) **Transnet Limited** ("Transnet") (Registration Number 1990/000900/06) whose registered office is at 49th Floor, Carlton Centre, 150 Commissioner Street, Johannesburg 2001, and
- (2) [.....] ("the Company") (Registration Number) 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 Proposal.

IT IS HEREBY AGREED

1. Interpretation

1.1 In this Agreement:-

"Agents" means directors, officers, employees, agents, professional advisers, contractors or sub-contractors, or any Group member;

"Confidential Information" means Information 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 Proposal 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:-

- (i) is publicly available at the time of its disclosure or becomes publicly available (other than as result of disclosure by the Receiving Party or any of its Agents contrary to the terms of this letter); or
- (ii) 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
- (iii) 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;



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

"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;

"Proposal" means the aggregation of Transnet's Request for Information (RFI) and Request for Proposal (RFP).

2. Confidential Information

- 2.1 The Receiving Party will treat and keep all Confidential Information 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 Proposal or for the subsequent performance of any contract between the parties in relation to the Proposal.
- 2.3 Notwithstanding clause 2.1, the Receiving Party may disclose Confidential Information:
- (i) To those of its Agents who strictly need to know the Confidential Information for the sole purpose set out in clause 2.2 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
 - (ii) to the extent required by law or the rules of any applicable regulatory authority, subject to clause 2.4 below.
- 2.4 In the event that the Receiving Party is required to disclose any Confidential Information in accordance with clause 2.3 (ii) 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 to at least the same standard as the Receiving Party keeps its own Confidential Information. The Receiving Party shall not make any copies or reproduce in any form any Confidential Information except for the purpose of disclosure as permitted in accordance with this Agreement.
- 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 Receiving Party shall, within seven days of receipt of a written demand from the Disclosing Party or of its ceasing to be interested in the Proposal:
- (i) Return all written Confidential Information (including all copies); and
 - (ii) 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 Receiving Party or on its behalf (including by any person to whom disclosure has been made as permitted under clause 2.3(i) above).

The obligations in this clause 3.3 shall not apply to the extent that (but only for so long as) it is necessary to retain copies for the purpose of providing information to any regulatory authority in accordance with clause 2.3 (ii) above.

- 3.4 The Receiving Party shall on request supply a certificate signed by a director as to its full compliance with the requirements of clause 3.3 (ii) above.

4. Announcements

- 4.1 Neither party will make or permit to be made any announcement or disclosure of its prospective interest in the Proposal 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 [be continuing and shall survive the termination of any discussions or negotiations between the parties regarding the Proposal continue for a period of 3 (three) 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 Proposal and in complying with the terms of this Agreement.



7. Representations

- 7.1 Each party agrees that any Information made available to the Receiving Party or its Agents for the purpose of negotiations or discussions in relation to the Proposal will not form the basis of, or any representation in relation to, any contract, nor constitute an offer or invitation by the Disclosing Party.
- 7.2 Except in the case of fraudulent misrepresentation, the Disclosing Party accepts no responsibility for nor makes any representation or warranty, express or implied, with respect to the accuracy, reliability or completeness of any Information made available to the Receiving Party or its Agents.

8. Adequacy of damages

- 8.1 Without prejudice to any other rights or remedies of the Disclosing Party, the Receiving Party acknowledges and agrees that damages would not be an adequate remedy for any breach by it of the provisions of this Agreement and that the Disclosing Party shall be entitled to seek the remedies of injunction, specific performance and other equitable relief for any threatened or actual breach of any such provision by the Receiving Party or its Agents, and no proof of special damages shall be necessary for the enforcement of the rights under this Agreement.
- 8.2 Nothing contained in this Agreement shall be construed as prohibiting the Disclosing Party from pursuing any other remedies available by 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.

9. Data Protection

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

10. General

- 10.1 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.
- 10.2 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.
- 10.3 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.
- 10.4 This Agreement may only be modified by a written agreement duly signed by persons authorised on behalf of each party.



- 10.5 Nothing in this Agreement shall constitute the creation of a partnership, joint venture or agency between the parties.
- 10.6 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.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective duly authorised representatives.

TRANSNET LIMITED:

By:
(Signature)

Print name: _____

Title: _____

Date: _____

[Insert company name]:

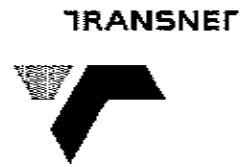
By:
(Signature)

Print name: _____

Title: _____

Date: _____

PRIEVIEW COPY ONLY



SECTION 11

RFQ NUMBER CR/CP/G/132

SUPPLY OF RADIO BASE STATION AT PRETORIA

SUPPLIERS CODE OF CONDUCT

PREVIEW COPY ONLY

Respondent's Signature

Date and Company Stamp

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.

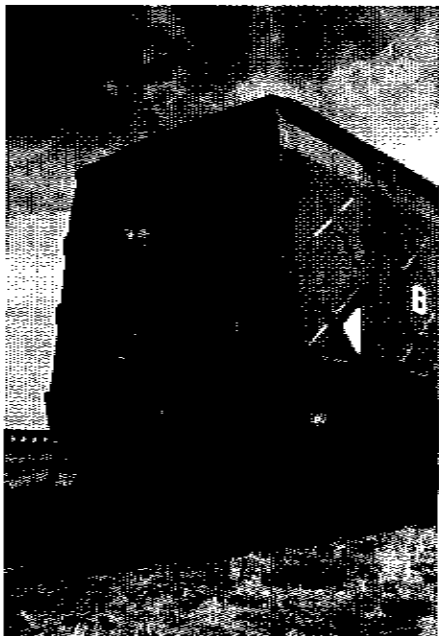
>> There may be times when a supplier is confronted with fraudulent or corrupt behaviour of Transnet employees. We expect our suppliers to use our "Tip-offs Anonymous" Hotline to report these acts - 0800 003 056.

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).

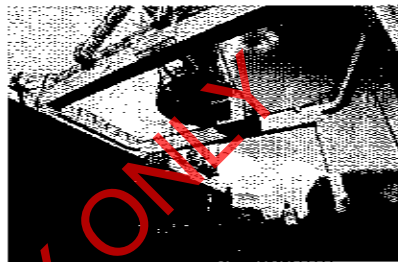
Transnet's relationship with suppliers requires us to clearly define requirements, to exchange information and share mutual benefits.

>> 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 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