TRANSNET PROPERTY

an Operating Division of **TRANSNET SOC LTD**

[hereinafter referred to as **Transnet]**

[Registration No. 1990/000900/30]

REQUEST FOR PROPOSAL [RFP] [GOODS/SERVICES]

FOR THE SUPPLY AND DELIVERY OF MATERIALS, SPARES AND CONSUMABLES ON AN "AS AND WHEN" BASIS AT VARIOUS TRANSNET PROPERTY SITES ACROSS THE COUNTRY FOR A PERIOD OF 2 YEARS

RFP NUMBER	**TP/2023/03/0002/24626/RFP**
ISSUE DATE:	**16 March 2023**
BRIEFING SESSION:	**22 March 2023**
CLOSING DATE:	**27 March 2023**
CLOSING TIME:	**12:00 PM**
BID VALIDITY PERIOD:	**180 Business Days from Closing Date**

Note to the bidders:

Bidders are required to ensure that electronic bid submissions are done at least a day before the closing date to prevent issues which they may encounter due to their internet speed, bandwidth or the size of the number of uploads they are submitting. Transnet will not be held liable for any challenges experienced by bidders as a result of the technical challenges. Please do not wait for the last hour to submit. A Bidder can upload 30mb per upload and multiple uploads are permitted.

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SECTION 1: SBD1 FORM

PART A
INVITATION TO BID

YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF TRANSNET PROPERTY, A DIVISION TRANSNET SOC LTD							
BID NUMBER:	TP/2023/03/0002/24626/RFP	ISSUE DATE:	**16 March 2023**	CLOSING DATE:	**27 March 2023**	CLOSING TIME:	**12:00 PM**
DESCRIPTION	SUPPLY AND DELIVERY OF MATERIALS, SPARES AND CONSUMABLES ON AN "AS AND WHEN" BASIS AT VARIOUS TRANSNET PROPERTY SITES ACROSS THE COUNTRY FOR A PERIOD OF 2 YEARS						

BID RESPONSE DOCUMENTS SUBMISSION

RESPONDENTS ARE TO UPLOAD THEIR BID RESPONSE PROPOSALS ONTO THE TRANSNET SYSTEM AGAINST EACH TENDER SELECTED (*please refer to section 2, paragraph 3 for a detailed process on how to upload submissions*)**:**

https://transnetetenders.azurewebsites.net

BIDDING PROCEDURE ENQUIRIES MAY BE DIRECTED TO		**TECHNICAL ENQUIRIES MAY BE DIRECTED TO:**	
CONTACT PERSON	Tebogo Madumo	CONTACT PERSON	
TELEPHONE NUMBER		TELEPHONE NUMBER	
FACSIMILE NUMBER		FACSIMILE NUMBER	
E-MAIL ADDRESS	**Tebogo.madumo@transnet.net**	E-MAIL ADDRESS	

SUPPLIER INFORMATION

NAME OF BIDDER				
POSTAL ADDRESS				
STREET ADDRESS				
TELEPHONE NUMBER	CODE		NUMBER	
CELLPHONE NUMBER				
FACSIMILE NUMBER	CODE		NUMBER	
E-MAIL ADDRESS				
VAT REGISTRATION NUMBER				
SUPPLIER COMPLIANCE STATUS	TAX COMPLIANCE SYSTEM PIN:		**OR** CENTRAL SUPPLIER DATABASE	UNIQUE REGISTRATION REFERENCE NUMBER: MAAA
B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE	TICK APPLICABLE BOX] ☐ Yes ☐ No		B-BBEE STATUS LEVEL SWORN AFFIDAVIT	[TICK APPLICABLE BOX] ☐ Yes ☐ No

[A B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE/ SWORN AFFIDAVIT (FOR EMES & QSEs) MUST BE SUBMITTED FOR PURPOSES OF COMPLIANCE WITH THE B-BBEE ACT]

1 ARE YOU THE ACCREDITED REPRESENTATIVE IN SOUTH AFRICA FOR THE GOODS /SERVICES /WORKS OFFERED?	☐Yes ☐No [IF YES ENCLOSE PROOF]	**2** ARE YOU A FOREIGN BASED SUPPLIER FOR **THE GOODS /SERVICES /WORKS OFFERED?**	☐Yes ☐No [IF YES, ANSWER QUESTIONAIRE BELOW]

QUESTIONNAIRE TO BIDDING FOREIGN SUPPLIERS

IS THE ENTITY A RESIDENT OF THE REPUBLIC OF SOUTH AFRICA (RSA)?	☐ YES ☐ NO
DOES THE ENTITY HAVE A BRANCH IN THE RSA?	☐ YES ☐ NO
DOES THE ENTITY HAVE A PERMANENT ESTABLISHMENT IN THE RSA?	☐ YES ☐ NO
DOES THE ENTITY HAVE ANY SOURCE OF INCOME IN THE RSA?	☐ YES ☐ NO
IS THE ENTITY LIABLE IN THE RSA FOR ANY FORM OF TAXATION?	☐ YES ☐ NO

IF THE ANSWER IS "NO" TO ALL OF THE ABOVE, THEN IT IS NOT A REQUIREMENT TO REGISTER FOR A TAX COMPLIANCE STATUS SYSTEM PIN CODE FROM THE SOUTH AFRICAN REVENUE SERVICE (SARS) AND IF NOT REGISTER AS PER 1.3 BELOW.

PART B
TERMS AND CONDITIONS FOR BIDDING

1. TAX COMPLIANCE REQUIREMENTS

1.1 BIDDERS MUST ENSURE COMPLIANCE WITH THEIR TAX OBLIGATIONS.

1.2 BIDDERS ARE REQUIRED TO SUBMIT THEIR UNIQUE PERSONAL IDENTIFICATION NUMBER (PIN) ISSUED BY SARS TO ENABLE THE ORGAN OF STATE TO VERIFY THE TAXPAYER'S PROFILE AND TAX STATUS.

1.3 APPLICATION FOR TAX COMPLIANCE STATUS (TCS) PIN MAY BE MADE VIA E-FILING THROUGH THE SARS WEBSITE WWW.SARS.GOV.ZA.

1.4 BIDDERS MAY ALSO SUBMIT A PRINTED TCS CERTIFICATE TOGETHER WITH THE BID.

1.5 IN BIDS WHERE UNINCORPORATED CONSORTIA / JOINT VENTURES / SUB-CONTRACTORS ARE INVOLVED, EACH PARTY MUST SUBMIT A SEPARATE TCS CERTIFICATE / PIN / CSD NUMBER.

1.6 WHERE NO TCS IS AVAILABLE BUT THE BIDDER IS REGISTERED ON THE CENTRAL SUPPLIER DATABASE (CSD), A CSD NUMBER MUST BE PROVIDED.

NB: FAILURE TO PROVIDE / OR COMPLY WITH ANY OF THE ABOVE PARTICULARS MAY RENDER THE BID INVALID.

SIGNATURE OF BIDDER: ……

CAPACITY UNDER WHICH THIS BID IS SIGNED: ……

(Proof of authority must be submitted e.g. company resolution)

DATE:_____

SECTION 2: NOTICE TO BIDDERS

1 INVITATION TO BID

Responses to this RFP [hereinafter referred to as a **Bid** or a **Proposal**] are requested from persons, companies, close corporations or enterprises [hereinafter referred to as an **entity**, **Respondent** or **Bidder**].

DESCRIPTION	SUPPLY AND DELIVERY OF MATERIALS, SPARES AND CONSUMABLES ON AN "AS AND WHEN" BASIS AT VARIOUS TRANSNET PROPERTY SITES ACROSS THE COUNTRY FOR A PERIOD OF 2 YEARS.
TENDER ADVERT	All Transnet tenders are advertised on the National Treasury's e-Tender Publication Portal and the Transnet website. Should one of these media (i.e. National Treasury's e-Tender Publication Portal or Transnet website) not be available, bidders are advised to check on the other media for advertised tenders.
RFP DOWNLOADING	This RFP may be downloaded directly from National Treasury's e-Tender Publication Portal at www.etenders.gov.za free of charge. To download RFP and Annexures: • Click on "Tender Opportunities"; • Select "Advertised Tenders"; • In the "Department" box, select Transnet SOC Ltd. Once the tender has been located in the list, click on the 'Tender documents" tab and process to download all uploaded documents. The RFP may also be downloaded from the Transnet Portal at https://transnetetenders.azurewebsites.net (please use **Google Chrome** to access Transnet link/site) free of charge *(refer to section 2, paragraph 3 below for detailed steps)*
COMMUNICATION	Transnet will publish the outcome of this RFP on the National Treasury e-tender portal and Transnet website with 10 days after the award has been finalised. All unsuccessful bidders have a right to request for reasons for their bid not being successful. This requested must be directed to the contact person stated in the SBD 1 form Any addenda to the RFP or clarifications will be published on the e-tender portal and Transnet website. Bidders are required to check the e-tender portal or Transnet website prior to finalising their bid submissions for any changes or clarifications to the RFP. Transnet will not be held liable if Bidders do not receive the latest information regarding this RFP with the possible consequence of either being disadvantaged or disqualified as a result thereof.
BRIEFING SESSION	Non-compulsory - **10:00 am on Wednesday, 22 March 2023** Bidders are required to confirm their attendance and to send their contact details including the number of representatives (where applicable) to the following address: **Tebogo.madumo@transnet.net** This is to ensure that Transnet may make the necessary arrangements for the briefing session. Refer to paragraph 2 for details.
CLOSING DATE	**12:00 pm on Monday, 27 March 2023** Bidders must ensure that bids are uploaded timeously onto the system. As a general rule, if a bid is late, it will not be accepted for consideration.

	Bidders are required to ensure that electronic bid submissions are done at least a day before the closing date to prevent issues which they may encounter due to their internet speed, bandwidth or the size of the number of uploads they are submitting. Transnet will not be held liable for any challenges experienced by bidders as a result of the technical challenges. Please do not wait for the last hour to submit. A Bidder can upload 30mb per upload and multiple uploads are permitted.
VALIDITY PERIOD	**180 Business Days from Closing Date** Bidders are to note that they may be requested to extend the validity period of their bid, at the same terms and conditions, if the internal evaluation process has not been finalised within the validity period. However, once the adjudication body has approved the process and award of the business to the successful bidder(s), the validity of the successful bidder(s)' bid will be deemed to remain valid until a final contract has been concluded. With regard to the validity period of next highest ranked bidders, please refer to Section 2, paragraph 11.12

Any additional information or clarification will be published on the e-Tender portal and Transnet website, if necessary.

2 FORMAL BRIEFING

A non-compulsory RFP briefing will be conducted virtually on MS Teams on **Wednesday, 22 March 2023,** at **10h00** a.m. for a period of ± 2hours. [Respondents to provide own transportation and accommodation]. The briefing session will start punctually, and information will not be repeated for the benefit of Respondents arriving late.

2.1 Despite the briefing session being non-compulsory, Transnet nevertheless encourages all Respondents to attend. Transnet will not be held responsible if any Respondent who did not attend the **non-compulsory** session subsequently feels disadvantaged as a result thereof.

2.2 Respondents are encouraged to bring a copy of the RFP to the RFP briefing.

3 PROPOSAL SUBMISSION

Transnet has implemented a new electronic tender submission system, the e-Tender Submission Portal, in line with the overall Transnet digitalization strategy where suppliers can view advertised tenders, register their information, log their intent to respond to bids and upload their bid proposals/responses on to the system.

a) The Transnet e-Tender Submission Portal can be accessed as follows:

- Log on to the Transnet eTenders management platform website/ Portal ((transnetetenders.azurewebsites.net) Please use **Google Chrome** to access Transnet link/site);
- Click on "ADVERTISED TENDERS" to view advertised tenders;
- Click on "SIGN IN/REGISTER – for bidder to register their information (must fill in all mandatory information);
- Click on "SIGN IN/REGISTER" - to sign in if already registered;
- Toggle (click to switch) the "Log an Intent" button to submit a bid;
- Submit bid documents by uploading them into the system against each tender selected.
- No late submissions will be accepted. The bidder guide can be found on the Transnet Portal transnetetenders.azurewebsites.net

4 RFP INSTRUCTIONS

4.1 Please sign documents [sign, stamp and date the bottom of each page] before uploading them on the system. The person or persons signing the submission must be legally authorised by the respondent to do so.

4.2 **All returnable documents tabled in the Proposal Form [Section 5] must be returned with proposals.**

4.3 Unless otherwise expressly stated, all Proposals furnished pursuant to this RFP shall be deemed to be offers. Any exceptions to this statement must be clearly and specifically indicated.

4.4 Any additional conditions must be embodied in an accompanying letter. Subject only to clause 15 [Alterations made by the Respondent to Bid Prices] of the General Bid Conditions, paragraph 12 below (Legal Review) and Section 6 of the RFP, alterations, additions or deletions must not be made by the Respondent to the actual RFP documents.

5 JOINT VENTURES OR CONSORTIUMS

Respondents who would wish to respond to this RFP as a Joint Venture [**JV**] or consortium with B-BBEE entities, must state their intention to do so in their RFP submission. Such Respondents must also submit a signed JV or consortium agreement between the parties clearly stating the percentage [%] split of business and the associated responsibilities of each party. If at the time of the bid submission such a JV or consortium agreement has not been concluded, the partners must submit confirmation in writing of their intention to enter into a JV or consortium agreement should they be awarded business by Transnet through this RFP process. This written confirmation must clearly indicate the percentage [%] split of business and the responsibilities of each party. In such cases, award of business will only take place once a signed copy of a JV or consortium agreement is submitted to Transnet.

Respondents are to note that for the purpose of Evaluation, a JV will be evaluated based on one consolidated B-BBEE score card (a consolidated B-BBEE Status Level verification certificate) as per the B-BBEE Preferential Procurement Regulations, 2022 preference point scoring.

6 COMMUNICATION

6.1 For specific queries relating to this RFP, an RFP Clarification Request Form should be submitted onto the system and to Tebogo.madumo@transnet.net before **15:00 pm on 24 March 2023**, substantially in the

6.2 form set out in Section 8 hereto. In the interest of fairness and transparency, Transnet's response to such a query will be published on the e-tender portal and Transnet website.

6.3 After the closing date of the RFP, a Respondent may only communicate with the name of delegated individual (BEC chairperson), via email Tebogo.madumo@transnet.net on any matter relating to its RFP Proposal.

6.4 Respondents are to note that changes to its submission will not be considered after the closing date.

6.5 It is prohibited for Respondents to attempt, either directly or indirectly, to canvass any officer or employee of Transnet in respect of this RFP between the closing date and the date of the award of the business.

6.6 Respondents found to be in collusion with one another will be automatically disqualified and restricted from doing business with organs of state for a specified period.

6.7 Transnet will publish the outcome of this RFP in the National Treasury e-tender portal and Transnet website with 10 days after the award has been finalised. Respondents are required to check the National Treasury e-tender Portal and Transnet website for the results of the tender process. All unsuccessful bidders have a

right to request Transnet to furnish individual reasons for their bid not being successful. This requested must be directed to the contact person stated in the SBD 1 form

7 CONFIDENTIALITY

All information related to this RFP is to be treated with strict confidence. In this regard Respondents are required to certify that they have acquainted themselves with the Non-Disclosure Agreement. All information related to a subsequent contract, both during and after completion thereof, will be treated with strict confidence. Should the need however arise to divulge any information related to this RFP or the subsequent contract, written approval must be obtained from Transnet.

8 COMPLIANCE

The successful Respondent [hereinafter referred to as the **Supplier** shall be in full and complete compliance with any and all applicable laws and regulations.

9 EMPLOYMENT EQUITY ACT

Respondents must comply with the requirements of the Employment Equity Act 55 of 1998 applicable to it including (but not limited to) Section 53 of the Employment Equity Act.

10 DISCLAIMERS

Respondents are hereby advised that Transnet is not committed to any course of action as a result of its issuance of this RFP and/or its receipt of Proposals. In particular, please note that Transnet reserves the right to:

10.1 modify the RFP's Goods/Services and request Respondents to re-bid on any such changes;

10.2 reject any Proposal which does not conform to instructions and specifications which are detailed herein;

10.3 disqualify Proposals submitted after the stated submission deadline [closing date];

10.4 award a contract in connection with this Proposal at any time after the RFP's closing date;

10.5 award a contract for only a portion of the proposed Goods/Services which are reflected in the scope of this RFP;

10.6 split the award of the contract between more than one Supplier/Service provider, should it at Transnet's discretion be more advantageous in terms of, amongst others, cost or developmental considerations;

10.7 cancel the bid process;

10.8 validate any information submitted by Respondents in response to this bid. This would include, but is not limited to, requesting the Respondents to provide supporting evidence. By submitting a bid, Respondents hereby irrevocably grant the necessary consent to Transnet to do so;

10.9 request audited financial statements or other documentation for the purposes of a due diligence exercise;

10.10 not accept any changes or purported changes by the Respondent to the bid rates after the closing date and/or after the award of the business, unless the contract specifically provided for it;

10.11 to cancel the contract and/request that National Treasury place the Respondent on its Database of Restricted Suppliers for a period not exceeding 10 years, on the basis that a contract was awarded on the strength of incorrect information furnished by the Respondent or on any other basis recognised in law;

10.12 to award the business to the next ranked bidder, provided that he/she is still prepared to provide the required Goods at the quoted price, should the preferred bidder fail to sign or commence with the contract within a reasonable period after being requested to do so. Under such circumstances, the validity of the bids of the next ranked bidder(s) will be deemed to remain valid, irrespective of whether the outcome of the tender has been published the outcome of the bid process on the National Treasury e-tender Portal and Transnet website. Bidders may therefore be requested to advise whether they would still be prepared to provide the required Goods at their quoted price.

Note that Transnet will not reimburse any Respondent for any preparatory costs or other work performed in connection with its Proposal, whether or not the Respondent is awarded a contract.

11 LEGAL REVIEW

A Proposal submitted by a Respondent will be subjected to review and acceptance or rejection of its proposed contractual terms and conditions by Transnet's Legal Counsel, prior to consideration for an award of business. A material deviation from the Standard terms or conditions could result in disqualification.

12 SECURITY CLEARANCE

Acceptance of this bid could be subject to the condition that the Successful Respondent, its personnel providing the Goods/Services and its subcontractor(s) must obtain security clearance from the appropriate authorities to the level of **CONFIDENTIAL/ SECRET/TOP SECRET**. Obtaining the required clearance is the responsibility of the Successful Respondent. Acceptance of the bid is also subject to the condition that the Successful Respondent will implement all such security measures as the safe performance of the contract may require.

13 NATIONAL TREASURY'S CENTRAL SUPPLIER DATABASE

Respondents are required to self-register on National Treasury's Central Supplier Database (CSD) which has been established to centrally administer supplier information for all organs of state and facilitate the verification of certain key supplier information. Respondents must register on the CSD prior to submitting their bids. Business may not be awarded to a Respondent who has failed to register on the CSD. Only foreign suppliers with no local registered entity need not register on the CSD.

For this purpose, the attached SBD 1 form must be completed and submitted as a mandatory returnable document by the closing date and time of the bid.

14 TAX COMPLIANCE

Respondents must be compliant when submitting a proposal to Transnet and remain compliant for the entire contract term with all applicable tax legislation, including but not limited to the Income Tax Act, 1962 (Act No. 58 of 1962) and Value Added Tax Act, 1991 (Act No. 89 of 1991).

It is a condition of this bid that the tax matters of the successful Respondents be in order, or that satisfactory arrangements have been made with South African Revenue Service (SARS) to meet the Respondents tax obligations.

The Tax Compliance status requirements are also applicable to foreign Respondents/ individuals who wish to submit bids.

Where Consortia / Joint Ventures / Sub-contractors are involved, each party must be registered on the Central Supplier Database and their tax compliance status will be verified through the Central Supplier Database.

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

SECTION 3: BACKGROUND, OVERVIEW AND SCOPE OF REQUIREMENTS

1 BACKGROUND

Transnet Property is responsible for the maintenance a large portfolio of properties with a book value of approximately R6.5 billion. Taking into consideration the already in motion merger between Transnet Property, Transnet Port Terminals Real Estate and Transnet Freight Rail Real Estate, the book value is expected to increase to over R35 billion. The portfolio is made up of vacant land, commercial (office, retail, warehouses, industrial parks, plant and production, stores, and workshops), residential (single unit houses and hostels) and hospitality/recreational.

Roving Maintenance Department is launching soon to start addressing the increasing need of building maintenance which has increased in frequency and sometimes causing emergency situations.

2 EXECUTIVE OVERVIEW

Whereas Transnet is seeking a partner(s) to provide solutions for its Transnet Property buildings nationally, it also seeks to improve its current processes for providing these Goods/Services to its end user community throughout its locations.

The selected Supplier/s must share in the mission and business objectives of Transnet. These mutual goals will be met by meeting contractual requirements and new challenges in an environment of teamwork, joint participation, flexibility, innovation and open communications. In this spirit of partnership, Transnet and its Supplier/s will study the current ways they do business to enhance current practices and support processes and systems. Such a partnership will allow Transnet to reach higher levels of quality, service and profitability.

Specifically, Transnet seeks to benefit from this partnership in the following ways:

2.1 Transnet must receive reduced cost of acquisition and improved service benefits resulting from the Supplier/s economies of scale and streamlined service processes.

2.2 Transnet must achieve appropriate availability that meets user needs while reducing costs for both Transnet and the chosen Supplier/Service provider(s).

2.3 Transnet must receive proactive improvements from the Supplier with respect to supply/provision of Goods/Services and related processes.

2.4 Transnet end users must be able to rely on the chosen Supplier's personnel for service enquiries, recommendations and substitutions.

3 SCOPE OF REQUIREMENTS

Transnet Property wishes to enter into a term supply contract with multiple Suppliers to supply the desired materials, spares and consumables on a "as and when" basis for building/property/site owned, managed or leased by the Employer within the Transnet Property for a period of 2 Years to ensure maintenance compliance with all applicable legislative requirements including those relating to the Occupational Health and Safety Act, 1993, (Act No 85 of 1993), and all applicable standards to materials supplied.

The Supplier shall supply the Employer with the tools, materials, and consumables as outlined on the Employer on the Bill of Quantities. Refer to **Annexure B** – Bill of Quantities.

4 GREEN ECONOMY / CARBON FOOTPRINT

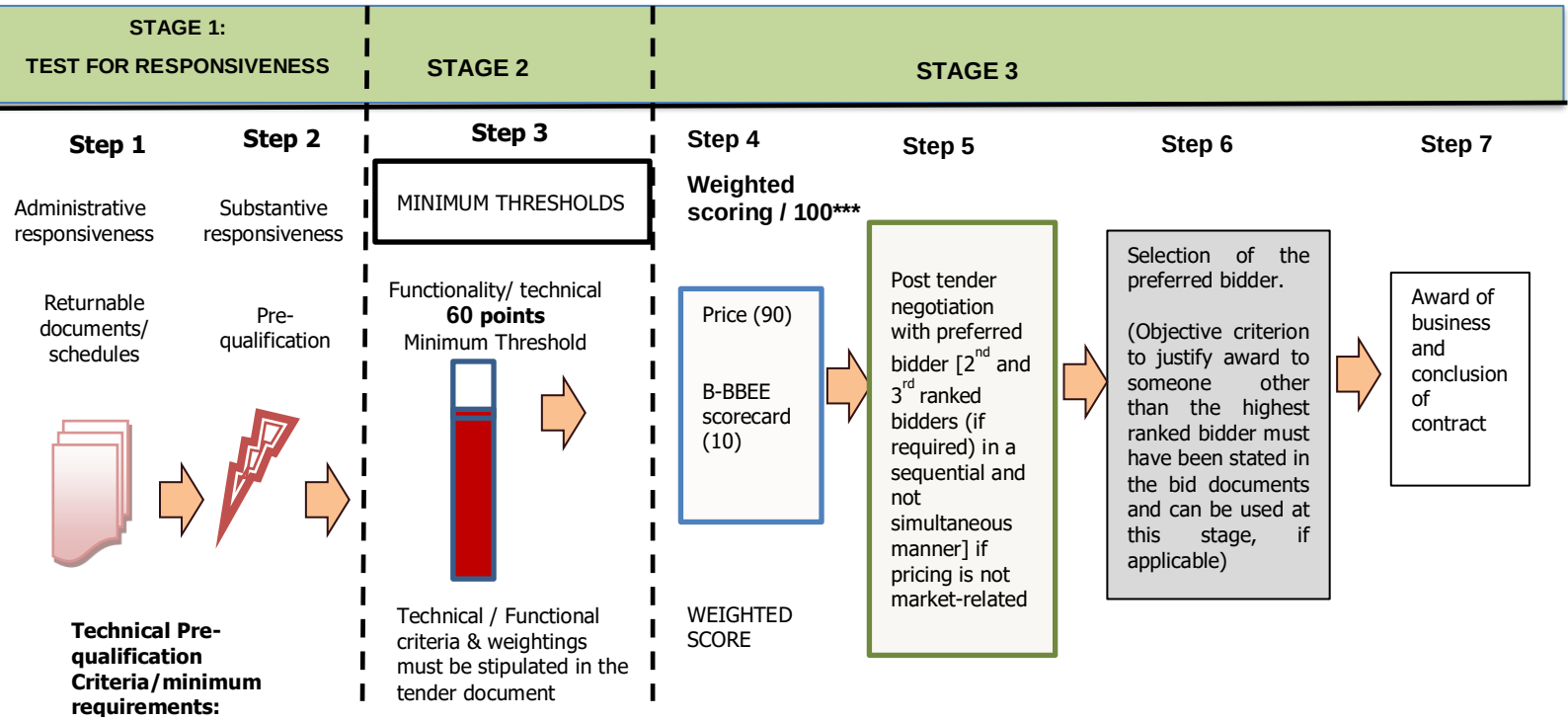
Transnet wishes to have an understanding of your company's position with regard to environmental commitments, including key environmental characteristics such as waste disposal, recycling and energy conservation. *Please submit details of your entity's policies in this regard.*

5 GENERAL SUPPLIER OBLIGATIONS

5.1 The Supplier(s) shall be fully responsible to Transnet for the acts and omissions of persons directly or indirectly employed by them.

5.2 The Supplier(s) must comply with the requirements stated in this RFP.

6 EVALUATION METHODOLOGY



NB: Evaluation of the various stages will normally take place in a sequential manner. However, in order to expedite the process, Transnet reserves the right to conduct the different steps of the evaluation process in parallel. In such instances the evaluation of bidders at any given stage must not be interpreted to mean that bidders have necessarily passed any previous stage(s).

6.1 **STEP ONE: Test for Administrative Responsiveness**

The test for administrative responsiveness will include the following:

Administrative responsiveness check	RFP Reference
• Whether the Bid has been lodged on time	*Section 1 paragraph 3*
• Whether all Returnable Documents and/or schedules [where applicable] were completed and returned by the closing date and time	*Section 5*
• Verify the validity of all returnable documents	*Section 5*
• Verify if the Bid document has been duly signed by the authorised respondent	*All sections*

The test for administrative responsiveness [Step One] must be passed for a Respondent's Proposal to progress to Step Two for further pre-qualification

6.2 **STEP TWO: Test for Substantive Responsiveness to RFP**

The test for substantive responsiveness to this RFP will include the following:

Check for substantive responsiveness	RFP Reference
• Whether any general and legislation qualification criteria set by Transnet, have been met	*All sections including: Section 2 paragraphs, 2.2, 6, 11.2, General Bid Conditions clause 20*
• Whether the Bid contains a priced offer as prescribed in the pricing and delivery schedule	*Section 4*
• Whether the Bid materially complies with the scope and/or specification given	*All Sections*

The test for substantive responsiveness [Step Two] must be passed for a Respondent's proposal to progress to Step Three for further evaluation

6.3 **STEP THREE: Minimum Threshold 60 points for Technical Criteria**

The test for the Technical and Functional threshold will include the following:

Technical Evaluation Criteria	Points Weightings	Scoring guideline
Warranty Policy	20	0,10,20
Supplier Catalogue	10	0,10
Company Previous Experience	30	0,5,10,15,20,25,30
Proximity of Supplier Store	40	0,10,20,30,40
Total Weighting:	**100**	
Minimum qualifying score required:	**60**	

Respondents must complete and submit ***Annexure C*** **which includes the Evaluation Criteria.** *A Respondent's compliance with the minimum functionality/technical threshold will be measured by their responses to Annexure C.*

Respondents are to note that Transnet will round off final technical scores to the nearest 2 (two) decimal places for the purposes of determining whether the technical threshold has been met.

The minimum threshold for technical/functionality [Step Three] must be met or exceeded for a Respondent's Proposal to progress to Step Four for final evaluation

6.4 **STEP FOUR: Evaluation and Final Weighted Scoring**

a) **Price** [Weighted score 90 points]:

Evaluation Criteria	RFP Reference
• Commercial offer	*Section 4*
• Commercial discounts[1] • Price adjustment conditions / factors • Exchange rate exposure • Disbursements	*Section 4*

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

$$PS = 90\left(1 - \frac{Pt - Pmin}{Pmin}\right)$$

Where:

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

b) **Broad-Based Black Economic Empowerment criteria** [Weighted score 10 points]

B-BBEE - current scorecard / B-BBEE Preference Points Claims Form

Preference points will be awarded to a bidder for attaining the B-BBEE status level of contribution in accordance with the table indicated in Section 4.1 of the B-BBEE Preference Points Claim Form.

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

6.5 **SUMMARY: Applicable Thresholds and Final Evaluated Weightings**

Thresholds	Minimum Threshold
Technical / functionality	**60**

Evaluation Criteria	Final Weighted Scores
Price	90
B-BBEE - Scorecard	10
TOTAL SCORE:	**100**

6.6 **STEP FIVE: Post Tender Negotiations (if applicable)**

- Respondents are to note that Transnet may not award a contract if the price offered is not market-related. In this regard, Transnet reserves the right to engage in PTN with the view to achieving a market-related price or to cancel the tender. Negotiations will be done in a sequential manner i.e.:
  - first negotiate with the highest ranked bidder or cancel the bid, should such negotiations fail,
  - negotiate with the 2nd and 3rd ranked bidders (if required) in a sequential manner.
- In the event of any Respondent being notified of such short-listed/preferred bidder status, his/her bid, as well as any subsequent negotiated best and final offers (BAFO), will automatically be deemed to remain valid during the negotiation period and until the ultimate award of business.
- Should Transnet conduct post tender negotiations, Respondents will be requested to provide their best and final offers to Transnet based on such negotiations. Where a market related price has been achieved through negotiation, the contract will be awarded to the successful Respondent(s).

6.7 **STEP SIX: Objective Criteria**

Transnet reserves the right to award the business to the highest scoring bidder/s unless objective criteria justify the award to another bidder. The objective criteria Transnet may apply in this bid process include:

- all Risks identified during a risk assessment exercise/probity check (which may be conducted by an authorised third party) that would be done to assess all risks, including but not limited to:
  - the financial stability of the bidder based on key ratio analysis, which would include, but not be limited to Efficiency, Profitability, Financial Risk, Liquidity, Acid Test, and Solvency;
  - a due diligence to assess functional capability and capacity. This could include a site visit;
  - A commercial relationship with a Domestic Prominent Influential Person (DPIP) or Foreign Prominent Public Official (FPPO) or an entity of which such person or official is the beneficial owner; and
  - Reputational and Brand risks

6.8 **STEP SEVEN: Award of business and conclusion of contract**

- Immediately after approval to award the contract has been received, the successful bidder(s) will be informed of the acceptance of his/their Bid by way of a Letter of Award. Thereafter the final contract will be concluded with the successful Respondent(s).

- A final contract will be concluded and entered into with the successful Bidder at the acceptance of a letter of award by the Respondent.

SECTION 4: PRICING AND DELIVERY SCHEDULE

Respondents are required to submit their bids in line with their region of choice as per the **Bill of Quantities – Annexure B** annexed to the document. Bidders can either choose one region or all the regions depending on bidder's level interest. Transnet will evaluate the bids and award to the highest ranked bidder per region.

Kindly indicate the region or regions of your interest by placing a mark on the appropriate column and thereafter ensure that the pricing schedule is fully completed, **Annexure B.**

Region	**Depot**	**Please tick**
KwaZulu-Natal	Durban	
KwaZulu-Natal	Pietermaritzburg	
KwaZulu-Natal	Ladysmith	
KwaZulu-Natal	Newcastle	
KwaZulu-Natal	Empangeni	
KwaZulu-Natal	Vryheid	
KwaZulu-Natal	Bellville	
Western Cape	Worcester	
Western Cape	Beaufort West	
Western Cape	Caledon	
Western Cape	Malmesbury	
Western Cape	Mossel bay	
Western Cape	Vredendal	
Western Cape	Half-Weg (Loeriesfontein)	
Western Cape	Saldanha	
Northern Region	Polokwane	
Northern Region	Nelspruit/Ermelo	
Inland Region	Pretoria	
Inland Region	Klerksdorp	
Eastern Cape	East London/Cambridge	
Eastern Cape	North-End	

Notes to Pricing:

a) Respondents are to note that if the price offered by the highest scoring bidder is not market-related, Transnet may not award the contract to that Respondent. Transnet may-

(i) negotiate a market-related price with the Respondent scoring the highest points or cancel the RFP;

(ii) if that Respondent does not agree to a market-related price, negotiate a market-related price with the Respondent scoring the second highest points or cancel the RFP;

(iii) if the Respondent scoring the second highest points does not agree to a market-related price, negotiate a market-related price with the Respondent scoring the third highest points or cancel the RFP.

If a market-related price is not agreed with the Respondent scoring the third highest points, Transnet must cancel the RFP.

b) Prices must be quoted in South African Rand inclusive of VAT.

c) Any disbursement not specifically priced for will not be considered/accepted by Transnet.

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

e) Quantities given are estimates only. Any orders resulting from this RFP will be on an "as and when required" basis.

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

g) Where a Respondent's price(s) includes imported goods/items, the rate of exchange to be used must be in South African Rands for purposes of determining whether the price is market related or not and must be the currency's rate published by the South African Reserve Bank on the date of the advertisement of the bid:

Currency rate of exchange utilised: US Dollar

h) Manufacturing and delivery lead time calculated from date of receipt of purchase order: 4 weeks.

i) Respondents, if awarded the contract, are required to indicate that their prices quoted would be kept firm and fixed for the contract duration. [Not to be confused with bid validity period Section 2, clause 1]

YES	

j) Respondents, if awarded the contract, are required to indicate that their prices quoted would be kept firm and fixed for a period of 12 months, subject thereafter to adjustment (i.e. after the initial period of 12 months), utilizing the following price index/indices/adjustment formula. [Not to be confused with bid validity period Section 2, clause 1]

Year 2 ……..

YES	

1. DISCLOSURE OF CONTRACT INFORMATION

PRICES TENDERED

Respondents are to note that, on award of business, Transnet is required to publish the tendered prices of the successful and unsuccessful Respondents *inter alia* on the National Treasury e-Tender Publication Portal, (www.etenders.gov.za), as required per National Treasury Instruction Note 01 of 2015/2016.

JOHANNESBURG STOCK EXCHANGE DEBT LISTING REQUIREMENTS

Transnet may also be required to disclose information relating to the subsequent contract i.e. the name of the company, goods/services provided by the company, the value and duration of the contract, etc. in compliance with the Johannesburg Stock Exchange (JSE) Debt Listing Requirements.

DOMESTIC PROMINENT INFLUENTIAL PERSONS (DPIP) OR FOREIGN PROMINENT PUBLIC OFFICIALS (FPPO)

Transnet is free to procure the services of any person within or outside the Republic of South Africa in accordance with applicable legislation. Transnet shall not conduct or conclude business transactions, with any Respondents without having:

- Considered relevant governance protocols;
- Determined the DPIP or FPPO status of that counterparty; and
- Conducted a risk assessment and due diligence to assess the potential risks that may be posed by the business relationship.

As per the Transnet Domestic Prominent Influential Persons (DPIP) and Foreign Prominent Public Officials (FPPO) and Related Individuals Policy available on Transnet website https://www.transnet.net/search/pages/results.aspx?k=FPIDP#k=DPIP, Respondents are required to disclose any commercial relationship with a DPIP or FPPO (as defined in the Policy) by completing the following section:

The below form contains personal information as defined in the Protection of Personal Information Act, 2013 (the "Act"). By completing the form, the signatory consents to the processing of her/his personal information in accordance with the requirements of the Act. Consent cannot unreasonably be withheld.

Is the Respondent *(Complete with a "Yes" or "No")*					
A DPIP/FPPO		**Closely Related to a DPIP/FPPO**		**Closely Associated to a DPIP/FPPO**	

List all known business interests, in which a DPIP/FPPO may have a direct/indirect interest or significant participation or involvement.

No	**Name of Entity / Business**	**Role in the Entity / Business** (Nature of interest/ Participation)	**Shareholding %**	**Registration Number**	**Status** (Mark the applicable option with an X)	
					Active	**Non-Active**
1						
2						
3						

Respondents declaring a commercial relationship with a DPIP or FPPO are to note that Transnet is required to annually publish on its website a list of all business contracts entered into with DPIP or FPPO. This list will include successful Respondents, if applicable.

2. **PRICE REVIEW**

The successful Respondent(s) [the Supplier/Service provider] will be obliged to submit to an annual price review. Transnet will be benchmarking this price offering(s) against the lowest price received as per a benchmarking exercise. If the Supplier/Service provider's price(s) is/are found to be higher than the benchmarked price(s), then the Supplier/Service provider shall match or better such price(s) within 30 [thirty] calendar days, failing which the contract may be terminated at Transnet's discretion or the particular item(s) or service(s) purchased outside the contract.

3. "AS AND WHEN REQUIRED" CONTRACTS

3.1 Purchase orders will be placed on the Supplier/Service provider(s) from time to time as and when Goods/Services are required.

3.2 Transnet reserves the right to place purchase orders until the last day of the contract for deliveries to be effected, within the delivery period / lead time specified, beyond the expiry date of the contract under the same terms and conditions as agreed upon.

3.3 Delivery requirements may be stipulated in purchase orders and scheduled deliveries may be called for. However, delivery periods and maximum monthly rates of delivery offered by the Respondents will be used as guidelines in establishing lead times and monthly delivery requirements with the Supplier.

3.4 Where scheduled deliveries are required, the delivery period(s) specified must be strictly complied with, unless otherwise requested by Transnet. Material supplied earlier than specified may not be paid for or may be returned by Transnet, with the Supplier being held liable for all expenses so incurred, e.g. handling and transport charges.

3.5 If the delivery period offered by the Respondents is subject to a maximum monthly production capacity, full particulars must be indicated in Section 4 *[Pricing and Delivery Schedule]*

3.6 The Respondent must state hereunder its annual holiday closedown period [if applicable] and whether this period has been included in the delivery lead time offered:

_____

3.7 Respondents are required to indicate below the action that the Respondent proposes to take to ensure continuity of supply during non-working days or holidays.

_____

4. RETURN OF SURPLUS GOODS

Respondents are required to indicate whether they have a return policy in place (if so attach a copy):

YES		**NO**	

Respondents are required to indicate a reasonable timeframe during which Transnet may return any surplus goods: _____

5. SERVICE LEVELS

5.1 An experienced national account representative(s) is required to work with Transnet's procurement department. [No sales representatives are needed for individual department or locations]. Additionally, there shall be a minimal number of people, fully informed and accountable for this agreement.

5.2 Transnet will have quarterly reviews with the Supplier/Service provider's account representative on an on-going basis.

5.3 Transnet reserves the right to request that any member of the Supplier/Service provider's team involved on the Transnet account be replaced if deemed not to be adding value for Transnet.

5.4 The Service provider guarantees that it will achieve a 95% [ninety-five per cent] service level on the following measures:

a) Random checks on compliance with quality/quantity/specifications

b) On-time delivery

If the Service provider does not achieve this level as an average over each quarter, Transnet will receive a 1.5% [one and a half per cent] rebate on quarterly sales payable in the next quarter

5.5 The Supplier must provide a telephone number for customer service calls.

5.6 Failure of the Supplier to comply with stated service level requirements will give Transnet the right to cancel the contract in whole, without penalty to Transnet, giving 30 [thirty] calendar days' notice to the Supplier/Service provider of its intention to do so.

Acceptance of Service Levels:

YES		**NO**	

6. TOTAL COST OF OWNERSHIP AND CONTINUOUS IMPROVEMENT INITIATIVES

6.1 Respondents shall indicate whether they would be committed, for the duration of any contract which may be awarded through this RFP process, to participate with Transnet in its continuous improvement initiatives to reduce the total cost of ownership [**TCO**], which will reduce the overall cost of transportation Goods/Services and related logistics provided by Transnet's operating divisions within South Africa to the ultimate benefit of all end-users.

Accepted:

YES		**NO**	

If "yes", please specify details in paragraph 6.2 below.

6.2 Respondents must briefly describe their commitment to TCO and continuous improvement initiatives and give examples of specific areas and strategies where cost reduction initiatives can be introduced. Specific areas and proposed potential savings percentages should be included. Additional information can be appended to the Respondent's Proposal if there is insufficient space available below.

_____

_____

7. RISK

Respondents must elaborate on the control measures put in place by their entity, which would mitigate the risk to Transnet pertaining to potential non-performance by the Respondent, in relation to:

7.1 **Quality and specification of Goods/Services delivered:**

_____

_____

7.2 **Continuity of supply**:

_____

_____

7.3 **Compliance with the Occupational Health and Safety Act, 85 of 1993:**

_____

_____

SIGNED at _____ on this _____ day of _____ 20___

SIGNATURE OF WITNESSES

1 _____

Name _____

2 _____

Name _____

ADDRESS OF WITNESSES

_____

_____

_____

_____

SIGNATURE OF RESPONDENT'S AUTHORISED REPRESENTATIVE: _____

NAME: _____

DESIGNATION: _____

SECTION 5: PROPOSAL FORM AND LIST OF RETURNABLE DOCUMENTS

I/We_____

[name of entity, company, close corporation or partnership] of *[full address]*

_____

_____

carrying on business trading/operating as

_____

represented by_____

in my capacity as _____

being duly authorised thereto by a Resolution of the Board of Directors or Members or Certificate of Partners, dated _____to enter into, sign execute and complete any documents relating to this proposal and any subsequent Agreement. The following list of persons are hereby authorised to negotiate on behalf of the abovementioned entity, should Transnet decide to enter into Post Tender Negotiations with highest ranked bidder(s).

FULL NAME(S)	CAPACITY	SIGNATURE
_____	_____	_____
_____	_____	_____
_____	_____	_____

I/We hereby offer to supply/provide the abovementioned Goods/Services at the prices quoted in the schedule of prices in accordance with the terms set forth in the documents listed in the accompanying schedule of RFP documents.

I/We agree to be bound by those conditions in Transnet's:

(i) Master Agreement (which may be subject to amendment at Transnet's discretion if applicable);

(ii) General Bid Conditions; and

(iii) any other standard or special conditions mentioned and/or embodied in this Request for Proposal.

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

Should Transnet decide that a formal contract should be signed and so inform me/us in a letter of award [the **Letter of Award**], this Proposal [and, if any, its covering letter and any subsequent exchange of correspondence] together with Transnet's Letter of Award, shall constitute a binding contract between Transnet and me/us until the formal contract is signed.

I/We further agree that if, after I/we have been notified of the acceptance of my/our Proposal, I/we fail to enter into a formal contract if called upon to do so, or fail to commence the supply/provision of Goods/Services within 2 [two] weeks

thereafter, Transnet may, without prejudice to any other legal remedy which it may have, recover from me/us any expense to which it may have been put in calling for Proposals afresh and/or having to accept any less favourable Proposal.

Furthermore, I/we agree to a penalty clause/s which will allow Transnet to invoke a penalty against us for non-compliance with material terms of this RFP including the delayed delivery of the Goods/Services due to non-performance by ourselves, etc.

I/we agree that non-compliance with any of the material terms of this RFP, including those mentioned above, will constitute a material breach of contract and provide Transnet with cause for cancellation.

ADDRESS FOR NOTICES

The law of the Republic of South Africa shall govern any contract created by the acceptance of this RFP. The *domicilium citandi et executandi* shall be a place in the Republic of South Africa to be specified by the Respondent hereunder, 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. Foreign Respondents shall, therefore, state hereunder the name of their authorised representative in the Republic of South Africa who has the power of attorney to sign any contract which may have to be entered into in the event of their Proposal being accepted and to act on their behalf in all matters relating to such contract.
Respondent to indicate the details of its *domicilium citandi et executandi* hereunder:
Name of Entity:

_____

Facsimile: _____

Address: _____

_____

NOTIFICATION OF AWARD OF RFP

As soon as possible after approval to award the contract(s), the successful Respondent [**the Supplier**] will be informed of the acceptance of its Proposal. Transnet will also publish the outcome of the tender, including successful and unsuccessful bidders, in the National Treasury e-tender portal. Any unsuccessful bidder has a right to request reasons for the bid not to be successful and Transnet has a duty to provide those reasons on receipt of the request from the bidder.

VALIDITY PERIOD

Transnet requires a validity period of 180 Business Days [28 March 2023] against this RFP, excluding the first day and including the last day.

NAME(S) AND ADDRESS / ADDRESSES OF DIRECTOR(S) OR MEMBER(S)

The Respondent must disclose hereunder the full name(s) and address(s) of the director(s) or members of the company or close corporation [**C.C.**] on whose behalf the RFP is submitted.

(i) Registration number of company / C.C. _____

(ii) Registered name of company / C.C. _____

(iii) Full name(s) of director/member(s) Address/Addresses ID Number(s)

_____

_____

_____

RETURNABLE DOCUMENTS

Returnable Documents means all the documents, Sections and Annexures, as listed in the tables below. There are three types of returnable documents as indicated below and Respondents are urged to ensure that these documents are returned with their bids based on the consequences of non-submission as indicated below:

Mandatory Returnable Documents	***Failure to provide all these Mandatory Returnable Documents at the Closing Date and time of this RFP <u>will</u> result in a Respondent's disqualification.***
Returnable Documents Used for Scoring	***Failure to provide all Returnable Documents used for purposes of scoring a bid, by the closing date and time of this bid will not result in a Respondent's disqualification. However, Bidders will receive an automatic score of zero for the applicable evaluation criterion.***
Essential Returnable Documents	***Failure to provide essential Returnable Documents <u>will</u> result in Transnet affording Respondents a further opportunity to submit by a set deadline. Should a Respondent thereafter fail to submit the requested documents, this may result in a Respondent's disqualification.***

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

a) Mandatory Returnable Documents

Respondents are required to submit with their bid submissions the following **<u>Mandatory Returnable Documents</u>,** and also to confirm submission of these documents by so indicating [Yes or No] in the tables below:

MANDATORY RETURNABLE DOCUMENTS	SUBMITTED [Yes/No]
Section 1: SBD1 Form	
ANNEXURE B: Bill of Quantities	
ANNEXURE C: Evaluation Criteria	

b) Returnable Documents Used for Scoring

In addition to the requirements of section (a) above, Respondents are further required to submit with their Proposals the following **<u>Returnable Documents Used for Scoring</u>** and also to confirm submission of these documents by so indicating [Yes or No] in the table below:

RETURNABLE DOCUMENTS USED FOR SCORING	**SUBMITTED [Yes or No]**
Valid proof of Respondent's compliance to B-BBEE requirements stipulated in Section 9 of this RFP (Valid B-BBEE certificate or Sworn Affidavit)	
ANNEXURE B: Bill of Quantities	
ANNEXURE C: Evaluation Criteria	

c) Essential Returnable Documents:

Over and the above the requirements of section (a) and (b) mentioned above, Respondents are further required to submit with their Proposals the following **Essential Returnable Documents** and also to confirm submission of these documents by so indicating [Yes or No] in the table below:

ESSENTIAL RETURNABLE DOCUMENTS & SCHEDULES	**SUBMITTED [Yes or No]**
In the case of Joint Ventures, a copy of the Joint Venture Agreement or written confirmation of the intention to enter into a Joint Venture Agreement	
SECTION 5: Proposal Form and List of Returnable documents	
SECTION 6: Certificate Of Acquaintance with RFP, Terms & Conditions & Applicable Documents	
SECTION 7: RFP Declaration and Breach of Law Form	
SECTION 8: RFP Clarification Request Form	
SECTION 9: B-BBEE Preference Claim Form	
SECTION 10: Certificate of attendance of non-compulsory RFP Briefing	
SECTION 11: Protection of Personal Information	
ANNEXURE E: MASTER AGREEMENT	
ANNEXURE F: TRANSNET'S GENERAL BID CONDITION	
ANNEXURE G: TRANSNET SUPPLIER INTEGRITY PACT	
ANNEXURE H: NON-DISCLOSURE AGREEMENT	

CONTINUED VALIDITY OF RETURNABLE DOCUMENTS

The successful Respondent will be required to ensure the validity of all returnable documents, including but not limited to its valid proof of B-BBEE status, for the duration of any contract emanating from this RFP. Should the Respondent be awarded the contract [**the Agreement]** and fail to present Transnet with such renewals as and when they become due, Transnet shall be entitled, in addition to any other rights and remedies that it may have in terms of the eventual Agreement, to terminate such Agreement immediately without any liability and without prejudice to any claims which Transnet may have for damages against the Respondent.

SIGNED at _____ on this _____ day of _____ 20___

SIGNATURE OF WITNESSES	ADDRESS OF WITNESSES
1 _____	_____
Name _____	_____
2 _____	_____
Name _____	_____

SIGNATURE OF RESPONDENT'S AUTHORISED REPRESENTATIVE: _____

NAME: _____

DESIGNATION: _____

SECTION 6: CERTIFICATE OF ACQUAINTANCE WITH RFP, MASTER AGREEMENT & APPLICABLE DOCUMENTS

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

1	Transnet's General Bid Conditions
2	Master Agreement
3	Transnet's Supplier Integrity Pact
4	Non-disclosure Agreement

Note: Should a Respondent be successful and awarded the bid, they will be required to complete a Supplier Declaration Form for registration as a vendor onto the Transnet vendor master database.

Should the Bidder find any terms or conditions stipulated in any of the relevant documents quoted in the RFP unacceptable, it should indicate which conditions are unacceptable and offer alternatives by written submission on its company letterhead, attached to its submitted Bid. Any such submission shall be subject to review by Transnet's Legal Counsel who shall determine whether the proposed alternative(s) are acceptable or otherwise, as the case may be. A material deviation from any term or condition may result in disqualification.

Bidders accept that an obligation rests on them to clarify any uncertainties regarding any bid to which they intend to respond on, before submitting the bid. **The Bidder agrees that he/she will have no claim or cause of action based on an allegation that any aspect of this RFP was unclear but in respect of which he/she failed to obtain clarity.**

The bidder understands that his/her Bid will be disqualified if the Certificate of Acquaintance with RFP documents included in the RFP as a returnable document, is found not to be true and complete in every respect.

SIGNED at _____ on this _____ day of _____ 20___

SIGNATURE OF WITNESSES

1 _____

Name _____

2 _____

Name _____

ADDRESS OF WITNESSES

_____

_____

_____

_____

SIGNATURE OF RESPONDENT'S AUTHORISED REPRESENTATIVE: _____

NAME: _____

DESIGNATION: _____

SECTION 7: RFP DECLARATION AND BREACH OF LAW FORM

NAME OF ENTITY: _____

We _____ do hereby certify that:

1. Transnet has supplied and we have received appropriate responses to any/all questions [as applicable] which were submitted by ourselves for RFP Clarification purposes;
2. We have received all information we deemed necessary for the completion of this Request for Proposal [**RFP**];
3. We have been provided with sufficient access to the existing Transnet facilities/sites and any and all relevant information relevant to the Goods/Services as well as Transnet information and Employees, and have had sufficient time in which to conduct and perform a thorough due diligence of Transnet's operations and business requirements and assets used by Transnet. Transnet will therefore not consider or permit any pre- or post-contract verification or any related adjustment to pricing, service levels or any other provisions/conditions based on any incorrect assumptions made by the Respondent in arriving at his Bid Price.
4. At no stage have we received additional information relating to the subject matter of this RFP from Transnet sources, other than information formally received from the designated Transnet contact(s) as nominated in the RFP documents;
5. We are satisfied, insofar as our entity is concerned, that the processes and procedures adopted by Transnet in issuing this RFP and the requirements requested from Bidders in responding to this RFP have been conducted in a fair and transparent manner;
6. We have complied with all obligations of the Bidder/Supplier as indicated in the Transnet Supplier Integrity which includes but are not limited to ensuring that we take all measures necessary to prevent corrupt practices, unfairness and illegal activities in order to secure or in furtherance to secure a contract with Transnet;
7. We declare that a family, business and/or social relationship **exists / does not exist** [delete as applicable] between an owner / member / director / partner / shareholder of our entity and an employee or board member of the Transnet Group including any person who may be involved in the evaluation and/or adjudication of this Bid;
8. We declare that an owner / member / director / partner / shareholder of our entity **is / is not** [delete as applicable] an employee or board member of Transnet;
9. In addition, we declare that an owner / member / director / partner / shareholder/employee of our entity **has / has not been** [delete as applicable] a former employee or board member of Transnet in the past 10 years. I further declare that if they were a former employee or board member of Transnet in the past 10 years that they **were/were not** involved in the bid preparation or had access to the information related to this RFP; and

10. If such a relationship as indicated in paragraph 7, 8 and/or 9 exists, the Respondent is to complete the following section:

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

    _____

    _____

    Indicate nature of relationship with Transnet:

    _____

    _____

[Failure to furnish complete and accurate information in this regard will lead to the disqualification of a response and may preclude a Respondent from doing future business with Transnet. Information provided in the declarations may be used by Transnet and/or its affiliates to verify the correctness of the information provided]

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

BIDDER'S DISCLOSURE (SBD4)

12 PURPOSE OF THE FORM

12.1 Any person (natural or juristic) may make an offer or offers in terms of this invitation to bid. In line with the principles of transparency, accountability, impartiality, and ethics as enshrined in the Constitution of the Republic of South Africa and further expressed in various pieces of legislation, it is required for the bidder to make this declaration in respect of the details required hereunder.

12.2 Where a person/s are listed in the Register for Tender Defaulters and / or the List of Restricted Suppliers, that person will automatically be disqualified from the bid process.

13 Bidder's declaration

13.1 Is the bidder, or any of its directors / trustees / shareholders / members / partners or any person having a controlling interest[2] in the enterprise, employed by the state? **YES/NO**

13.1.1. If so, furnish particulars of the names, individual identity numbers, and, if applicable, state employee numbers of sole proprietor/ directors / trustees / shareholders / members/ partners or any person having a controlling interest in the enterprise, in table below.

[2] the power, by one person or a group of persons holding the majority of the equity of an enterprise, alternatively, the person/s having the deciding vote or power to influence or to direct the course and decisions of the enterprise.

Full Name	Identity Number	Name of State institution

13.2 Do you, or any person connected with the bidder, have a relationship with any person who is employed by the procuring institution? **YES/NO**

13.2.1. If so, furnish particulars:

……

……

13.3 Does the bidder or any of its directors / trustees / shareholders / members / partners or any person having a controlling interest in the enterprise have any interest in any other related enterprise whether or not they are bidding for this contract? **YES/NO**

13.3.1. If so, furnish particulars:

……

……

14 DECLARATION

I, the undersigned, (name)…… in submitting the accompanying bid, do hereby make the following statements that I certify to be true and complete in every respect:

14.1 I have read and I understand the contents of this disclosure;

14.2 I understand that the accompanying bid will be disqualified if this disclosure is found not to be true and complete in every respect;

14.3 The bidder has arrived at the accompanying bid independently from, and without consultation, communication, agreement or arrangement with any competitor. However, communication between partners in a joint venture or consortium[3] will not be construed as collusive bidding.

14.4 In addition, there have been no consultations, communications, agreements or arrangements with any competitor regarding the quality, quantity, specifications, prices, including methods, factors or formulas used to calculate prices, market allocation, the intention or decision to submit or not to submit the bid, bidding with the intention not to win the bid and conditions or delivery particulars of the products or services to which this bid invitation relates.

14.5 The terms of the accompanying bid have not been, and will not be, disclosed by the bidder, directly or indirectly, to any competitor, prior to the date and time of the official bid opening or of the awarding of the contract.

14.6 There have been no consultations, communications, agreements or arrangements made by the bidder with any official of the procuring institution in relation to this procurement process prior to and during the bidding process except to provide clarification on the bid submitted where so required by the institution; and the bidder was not involved in the drafting of the specifications or terms of reference for this bid.

14.7 I am aware that, in addition and without prejudice to any other remedy provided to combat any restrictive practices related to bids and contracts, bids that are suspicious will be reported to the Competition Commission for investigation and possible imposition of administrative penalties in terms of section 59 of the Competition Act No 89 of 1998 and or may be reported to the National Prosecuting Authority (NPA) for criminal investigation and or may be restricted from conducting business with the public sector for a period not exceeding ten (10) years in terms of the Prevention and Combating of Corrupt Activities Act No 12 of 2004 or any other applicable legislation.

I CERTIFY THAT THE INFORMATION FURNISHED IN PARAGRAPHS 12, 13 and 14 ABOVE IS CORRECT.

I ACCEPT THAT THE STATE MAY REJECT THE BID OR ACT AGAINST ME IN TERMS OF PARAGRAPH 6 OF PFMA SCM INSTRUCTION 03 OF 2021/22 ON PREVENTING AND COMBATING ABUSE IN THE SUPPLY CHAIN MANAGEMENT SYSTEM SHOULD THIS DECLARATION PROVE TO BE FALSE.

BREACH OF LAW

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

[3] Joint venture or Consortium means an association of persons for the purpose of combining their expertise, property, capital, efforts, skill and knowledge in an activity for the execution of a contract.

NATURE OF BREACH:

_____

_____

DATE OF BREACH:_____

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

SIGNED at _____ on this _____ day of _____ 20___

For and on behalf of _____ duly authorised hereto	AS WITNESS:
Name:	Name:
Position:	Position:
Signature:	Signature:
Date:	Registration No of Company/CC
Place:	Registration Name of Company/CC

SECTION 8: RFP CLARIFICATION REQUEST FORM

RFP No:

RFP deadline for questions / RFP Clarifications: Before 12:00 pm on 23 March 2023.

TO:	Transnet SOC Ltd
ATTENTION:	Tebogo Madumo
EMAIL	Tebogo.madumo@transnet.net
DATE:	_____
FROM:	_____
	_____

RFP Clarification No *[to be inserted by Transnet]* .....

REQUEST FOR RFP CLARIFICATION

_____
_____
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SECTION 9: B-BBEE PREFERENCE POINTS CLAIM FORM

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

Transnet will award preference points to companies who provide valid proof of their B-BBEE status using either the latest version of the generic Codes of Good Practice or Sector Specific Codes (if applicable).

NB: BEFORE COMPLETING THIS FORM, BIDDERS MUST STUDY THE GENERAL CONDITIONS, DEFINITIONS AND DIRECTIVES APPLICABLE IN RESPECT OF B-BBEE, AS PRESCRIBED IN THE PREFERENTIAL PROCUREMENT REGULATIONS, 2022.

1. GENERAL CONDITIONS

1.1 The following preference point systems are applicable to all bids:

- the 80/20 system for requirements with a Rand value of up to R50 000 000 (all applicable taxes included); and
- the 90/10 system for requirements with a Rand value above R50 000 000 (all applicable taxes included).

1.2 The value of this bid is estimated to exceed R50 000 000 (all applicable taxes included) and therefore the 90/10 preference point system shall be applicable. Despite the stipulated preference point system, Transnet shall use the lowest acceptable bid to determine the applicable preference point system in a situation where all received acceptable bids are received outside the stated preference point system.

1.3 Preference points for this bid shall be awarded for:

(a) Price; and

(b) B-BBEE Status Level of Contribution.

1.4 The maximum points for this bid are allocated as follows:

	POINTS
PRICE	**90**
B-BBEE STATUS LEVEL OF CONTRIBUTION	**10**
Total points for Price and B-BBEE must not exceed	**100**

1.5 Failure on the part of a bidder to submit proof of B-BBEE status level of contributor together with the bid will be interpreted to mean that preference points for B-BBEE status level of contribution are not claimed.

1.6 The purchaser reserves the right to require of a bidder, either before a bid is adjudicated or at any time subsequently, to substantiate any claim in regard to preferences, in any manner required by the purchaser.

2. DEFINITIONS

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

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

(c) "**B-BBEE status level of contributor"** means the B-BBEE status received by a measured entity based on its overall performance using the relevant scorecard contained in the Codes of Good Practice on Black

Economic Empowerment, issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act;

(d) **"bid"** means a written offer in a prescribed or stipulated form in response to an invitation by an organ of state for the supply/provision of services, works or goods, through price quotations, advertised competitive bidding processes or proposals;

(e) **"Broad-Based Black Economic Empowerment Act"** means the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);

(f) **"EME"** means an Exempted Micro Enterprise as defines by Codes of Good Practice under section 9 (1) of the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);

(g) **"functionality"** means the ability of a bidder to provide goods or services in accordance with specification as set out in the bid documents

(h) **"Price"** includes all applicable taxes less all unconditional discounts.

(i) **"Proof of B-BBEE Status Level of Contributor"**

i) the B-BBBEE status level certificate issued by an authorised body or person;

ii) a sworn affidavit as prescribed by the B-BBEE Codes of Good Practice; or

iii) any other requirement prescribed in terms of the B-BBEE Act.

(j) **"QSE"** means a Qualifying Small EEnterprise as defines by Codes of Good Practice under section 9 (1) of the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);

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

3. POINTS AWARDED FOR PRICE

3.1 THE 90/10 PREFERENCE POINT SYSTEMS

A maximum of 90 points is allocated for price on the following basis:

$$Ps = 90\left(1 - \frac{Pt - P\min}{P\min}\right)$$

Where

Ps = Points scored for comparative price of bid under consideration

Pt = Comparative price of bid under consideration

Pmin = Comparative price of lowest acceptable bid

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

4.1 In terms of Transnet SCM Policy on preferential procurement and Procurement Manuals, preference points must be awarded to a bidder for attaining the B-BBEE status level of contribution in accordance with the table below:

B-BBEE Status Level of Contributor	Number of points (90/10 system)	Number of points (80/20 system)
1	10	20
2	9	18
3	6	14
4	5	12
5	4	8
6	3	6
7	2	4
8	1	2
Non-compliant contributor	0	0

4.2 The table below indicates the required proof of B-BBEE status depending on the category of enterprises:

Enterprise	B-BBEE Certificate & Sworn Affidavit
Large	Certificate issued by SANAS accredited verification agency
QSE	Certificate issued by SANAS accredited verification agency Sworn Affidavit signed by the authorised QSE representative and attested by a Commissioner of Oaths confirming annual turnover and black ownership (only black-owned QSEs - 51% to 100% Black owned) [Sworn affidavits must substantially comply with the format that can be obtained on the DTI's website at www.dti.gov.za/economic_empowerment/bee_codes.jsp.]
EME[4]	Sworn Affidavit signed by the authorised EME representative and attested by a Commissioner of Oaths confirming annual turnover and black ownership Certificate issued by CIPC (formerly CIPRO) confirming annual turnover and black ownership Certificate issued by SANAS accredited verification agency only if the EME is being measured on the QSE scorecard

4.3 A trust, consortium or joint venture (including unincorporated consortia and joint ventures) must submit a consolidated B-BBEE Status Level verification certificate for every separate bid.

4.4 Tertiary Institutions and Public Entities will be required to submit their B-BBEE status level certificates in terms of the specialized scorecard contained in the B-BBEE Codes of Good Practice.

4.5 A person will not be awarded points for B-BBEE status level if it is indicated in the bid documents that such a bidder intends sub-contracting more than 25% of the value of the contract to any other enterprise that does not qualify for at least the points that such a bidder qualifies for, unless the intended sub-contractor is an EME that has the capability and ability to execute the sub-contract.

4.6 A person awarded a contract may not sub-contract more than 25% of the value of the contract to any other enterprise that does not have an equal or higher B-BBEE status level than the person concerned, unless the contract is sub-contracted to an EME that has the capability and ability to execute the sub-contract.

4.7 Bidders are to note that the rules pertaining to B-BBEE verification and other B-BBEE requirements may be changed from time to time by regulatory bodies such as National Treasury or the DTI. It is the Bidder's

responsibility to ensure that his/her bid complies fully with all B-BBEE requirements at the time of the submission of the bid.

5. BID DECLARATION

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

6. B-BBEE STATUS LEVEL OF CONTRIBUTION CLAIMED IN TERMS OF PARAGRAPHS 1.4 AND 6.1

6.1 B-BBEE Status Level of Contribution: . = ……(maximum of 10 points)

(Points claimed in respect of paragraph 6.1 must be in accordance with the table reflected in paragraph 4.1 and must be substantiated by relevant proof of B-BBEE status level of contributor.

7. SUB-CONTRACTING

7.1 Will any portion of the contract be sub-contracted?

(***Tick applicable box***)

YES		NO	

7.1.1 If yes, indicate:

i) What percentage of the contract will be subcontracted.....%
ii) The name of the sub-contractor……..
iii) The B-BBEE status level of the sub-contractor.....
iv) Whether the sub-contractor is an EME or QSE.
(Tick applicable box)

YES		NO	

v) Specify, by ticking the appropriate box, if subcontracting with any of the following enterprises:

Designated Group: An EME or QSE which is at last 51% owned by:	EME √	QSE √
Black people		
Black people who are youth		
Black people who are women		
Black people with disabilities		
Black people living in rural or underdeveloped areas or townships		
Cooperative owned by black people		
Black people who are military veterans		
OR		
Any EME		
Any QSE		

8. **DECLARATION WITH REGARD TO COMPANY/FIRM**

8.1 Name of company/firm:……

8.2 VAT registration number:……

8.3 Company registration number:……

8.4 TYPE OF COMPANY/ FIRM

- Partnership/Joint Venture / Consortium
- One person business/sole propriety
- Close corporation
- Company

☐ (Pty) Limited

[TICK APPLICABLE BOX]

8.5 DESCRIBE PRINCIPAL BUSINESS ACTIVITIES

.....

.....

8.6 COMPANY CLASSIFICATION

☐ Manufacturer
☐ Supplier
☐ Professional Supplier/Service provider
☐ Other Suppliers/Service providers, e.g. transporter, etc.

[*TICK APPLICABLE BOX*]

8.7 Total number of years the company/firm has been in business:.....

8.8 I/we, the undersigned, who is / are duly authorised to do so on behalf of the company/firm, certify that the points claimed, based on the B-BBE status level of contribution indicated in paragraphs 1.4 and 6.1 of the foregoing certificate, qualifies the company/ firm for the preference(s) shown and I / we acknowledge that:

i) The information furnished is true and correct;

ii) The preference points claimed are in accordance with the General Conditions as indicated in paragraph 1 of this form;

iii) In the event of a contract being awarded as a result of points claimed as shown in paragraph 1.4 and 6.1, the contractor may be required to furnish documentary proof to the satisfaction of the purchaser that the claims are correct;

iv) If a bidder submitted false information regarding its B-BBEE status level of contributor or any other matter required in terms of the Preferential Procurement Regulations, 2022 which will affect or has affected the evaluation of a bid the purchaser may, in addition to any other remedy it may have

(a) disqualify the person from the bidding process;

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

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

(d) if the successful bidder subcontracted a portion of the bid to another person without disclosing it, Transnet reserves the right to penalise the bidder up to 10 percent of the value of the contract;

(e) recommend that the bidder or contractor, its shareholders and directors, or only the shareholders and directors who acted on a fraudulent basis, be restricted by the National Treasury from obtaining business from any organ of state for a period not exceeding 10 years, after the audi alteram partem (hear the other side) rule has been applied; and

(f) forward the matter for criminal prosecution.

WITNESSES 1. …….. 2. ……..	…… SIGNATURE(S) OF BIDDERS(S) DATE: …….. ADDRESS……..

SECTION 10: CERTIFICATE OF ATTENDANCE OF NON-COMPULSORY RFP BRIEFING

It is hereby certified that –

1. _____

2. _____

Representative(s) of _____ *[name of entity]*
attended the RFP briefing in respect of the proposed Goods/Services to be rendered in terms of this RFP on _____20___

_____	_____
TRANSNET'S REPRESENTATIVE	RESPONDENT'S REPRESENTATIVE
DATE _____	DATE _____
	EMAIL _____

NOTE:
This certificate of attendance must be filled in duplicate, one copy to be kept by Transnet and the other copy to be kept by the bidder.

SECTION 10: JOB-CREATION SCHEDULE

(Please ensure that you return this schedule with your bid submission)

The Government has identified State Owned Enterprises sourcing activities as a key enabler to achieve the National Development Plan (NDP) objective of reducing unemployment from the current baseline of 28% to 6%. In order to give effect to these job creation objectives, Respondents are required to provide the following undertaking of new jobs that will be created (either by them or by their subcontractors) should they be awarded this bid.

Note that this undertaking is not required if a NIPP obligation is applicable. **Respondents are required to indicate below whether the NIPP obligation is applicable to their bid:**

YES		**NO**	

(a) Please indicate total number of new jobs that will be created over the term of the contract:

Total number and value of new jobs created	**Total number of new jobs**	**Total rand value of new jobs created**

(b) Of the total number of new jobs created, please indicate the number and value of new jobs to be created for the following designated groups:

	Total number of new jobs	**Total rand value of new jobs**
Black men		
Black women		
Black Youth		
Black people living in rural or underdeveloped areas or townships		
Black People with Disabilities		

(c) Of the total number of new jobs created, please indicate the number of skilled, semi-skilled and unskilled new jobs that will be created over the term of the contract:

	Total number of Skilled jobs	**Total number of Semi-skilled jobs**	**Total number of Unskilled jobs**
Black men			
Black women			
Black Youth			
Black people living in rural or underdeveloped areas or townships			
Black People with Disabilities			
Other			

(d) Please indicate the number of new jobs to be created, broken down per quarter over the term of the contract. **Insert additional tables for each year of the contract period**:

Year 1	**Q1**	**Q2**	**Q3**	**Q4**
Total number of new jobs				
Number of new jobs for Black men				
Number of new jobs for black women				
Number of new jobs for black youth				
Number of new jobs for black people living in rural or underdeveloped areas or townships				
Number of new jobs for black People with Disabilities				
Number of new jobs for other categories				
Number of new skilled jobs				
Number of new semi-skilled jobs				
Number of new unskilled jobs				

SECTION 11 : PROTECTION OF PERSONAL INFORMATION

1. The following terms shall bear the same meaning as contemplated in Section 1 of the Protection of Person information act, No.4 of 2013.("POPIA"):

   consent; data subject; electronic communication; information officer; operator; person; personal information; processing; record; Regulator; responsible party; special information; as well as any terms derived from these terms.

2. Transnet will process all information by the Respondent in terms of the requirements contemplated in Section 4(1) of the POPIA:

   Accountability; Processing limitation; Purpose specification; Further processing limitation; Information quality; Openness; Security safeguards and Data subject participation.

3. The Parties acknowledge and agree that, in relation to personal information that will be processed pursuant to this RFP, the Responsible party is "Transnet" and the Data subject is the "Respondent". Transnet will process personal information only with the knowledge and authorisation of the Respondent and will treat personal information which comes to its knowledge as confidential and will not disclose it, unless so required by law or subject to the exceptions contained in the POPIA.

4. Transnet reserves all the rights afforded to it by the POPIA in the processing of any of its information as contained in this RFP and the Respondent is required to comply with all prescripts as detailed in the POPIA relating to all information concerning Transnet.

5. In responding to this bid, Transnet acknowledges that it will obtain and have access to personal information of the Respondent. Transnet agrees that it shall only process the information disclosed by Respondent in their response to this bid for the purpose of evaluating and subsequent award of business and in accordance with any applicable law.

6. Transnet further agrees that in submitting any information or documentation requested in this RFP, the Respondent is consenting to the further processing of their personal information for the purpose of, but not limited to, risk assessment, assurances, contract award, contract management, auditing, legal opinions/litigations, investigations (if applicable), document storage for the legislatively required period, destruction, de-identification and publishing of personal information by Transnet and/or its authorised appointed third parties.

7. Furthermore, Transnet will not otherwise modify, amend or alter any personal data submitted by the Respondent or disclose or permit the disclosure of any personal data to any third party without the prior written consent from the Respondent. Similarly, Transnet requires the Respondent to process any personal information disclosed by Transnet in the bidding process in the same manner.

8. Transnet shall, at all times, ensure compliance with any applicable laws put in place and maintain sufficient measures, policies and systems to manage and secure against all forms of risks to any information that may be shared or accessed pursuant to this RFP (physically, through a computer or any other form of electronic communication).

9. Transnet shall notify the Respondent in writing of any unauthorised access to information, cybercrimes or suspected cybercrimes, in its knowledge and report such crimes or suspected crimes to the relevant authorities in accordance

with applicable laws, after becoming aware of such crimes or suspected crime. The Respondent must take all necessary remedial steps to mitigate the extent of the loss or compromise of personal information and to restore the integrity of the affected personal information as quickly as is possible.

10. The Respondent may, in writing, request Transnet to confirm and/or make available any personal information in its possession in relation to the Respondent and if such personal information has been accessed by third parties and the identity thereof in terms of the POPIA. The Respondent may further request that Transnet correct (excluding critical/mandatory or evaluation information), delete, destroy, withdraw consent or object to the processing of any personal information relating to the Respondent in Transnet's possession in terms of the provision of the POPIA and utilizing Form 2 of the POPIA Regulations.

11. In submitting any information or documentation requested in this RFP, the Respondent is hereby consenting to the processing of their personal information for the purpose of this RFP and further confirming that they are aware of their rights in terms of Section 5 of POPIA

Respondents are required to provide consent below:

YES		**NO**	

12. Further, the Respondent declares that they have obtained all consents pertaining to other data subject's personal information included in its submission and thereby indemnifying Transnet against any civil or criminal action, administrative fines or other penalty or loss that may arise as a result of the processing of any personal information that the Respondent submitted.

13. The Respondent declares that the personal information submitted for the purpose of this RFP is complete, accurate, not misleading, is up to date and may be updated where applicable.

Signature of Respondent's authorised representative: _____

Should a Respondent have any complaints or objections to processing of its personal information, by Transnet, the Respondent can submit a complaint to the Information Regulator on https://www.justice.gov.za/inforeg/, click on contact us, click on complaints.IR@justice.gov.za

RFP ANNEXURES:

ANNEXURE A: SCOPE OF WORK

Definitions:

In this Scope of Work:-

1. "**acts**" means – all legislation which governs any aspect of this Agreement including without limitation the Agricultural Remedies and Stock Remedies Act 36 of 1947 (as amended), the Environmental Conservation Act 73 of 1989 (as amended), the Hazardous Substance Act 15 of 1973 (as amended).

2. "**existing equipment**" means all existing equipment supplied to or made available by Transnet Property to the Supplier within or on the Premises;

3. "**high risk areas**" refers to toilets and ablution facilities, all kitchens and mess facilities, all electricity distribution boxes and ducts, all cable ducts and trays, all air-conditioning ducts, all service ducts, garbage areas and garbage storage areas; waste facility areas, reception lobby, service passages, basement passages, basement storage areas, cafeteria / canteen area, pause areas, bulk filing areas.

4. "**normal working-hours**" means the hours from **07:30 to 17:00**;

5. **"person"** includes, a natural person, a partnership, a business trust, a foundation, any company or close corporation incorporated or registered in terms of any law, and other body of persons corporate or unincorporated;

6. "**premises**" means any site, place regardless of whether it is or form part of any temporary or permanent structure, building which is the property of, or is occupied or used by, or is under the control and / or management of Transnet Property and where the Service shall be provided.

7. "**property**" means any movable, immovable or intellectual property or any right to such property;

8. "**services**" means the work, functions, tasks, services, and / or goods to be performed, rendered and or supplied by the Supplier, including any subsequent variations or changes to such work, functions, tasks, services, or goods as may be agreed in terms of this Schedule of Requirements (Deliverables);

9. "**service equipment**" means all tools, appliances, machinery and equipment or any other protective equipment required, which the Service provider is obliged to procure at his own cost and which he is required to utilise or deploy in performing, rendering or supplying the Services;

10. "**service manager**" means a person appointed by the *Employer* in accordance to NEC TSC standard, responsible for issuing instructions to the *Contractor*, management of the *Contractor* and Service provided by the Contractor in terms of this scope of works;

11. "**sensitive security area**" refers to computer centres, personnel records, cashiers, archives, top management office areas and all other areas indicated to the Supplier;

12. "**site**" means any Transnet site, place regardless of whether it is or form part of any temporary or permanent structure, building which is the property of, or is occupied or used by, or is under the control and / or management of Transnet Property;

13. "**specifications**" means method and standards applicable to the rendering of the Service, as well as the materials to be provided and used, are described;

14. "**supplier**" means the successful tenderer that has been awarded the Service for the period stipulated;

15. "**third party**" means any person other than the Supplier or Transnet Property;

16. "**tenant**" means any Person with his staff, client's and service providers with whom Transnet Property has entered into a lease agreement for the whole or a portion of the Premises;

17. "**Transnet Property**" means – a specialist unit of Transnet SOC Ltd, a public company duly incorporated in accordance with the laws of South Africa with registration number 1990/000900/30, duly represented herein by the Chief Executive Officer, Transnet Property and or his duly appointed delegate, who warrants that he is duly authorised hereto;

18. "**visitor**" a person who visits a tenant, staff member on the Premises or who attends a meeting on the Premises;

19. clause headings are inserted for convenience and shall not be used in its interpretation;

20. where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail;

21. expressions defined in this Contract shall bear the same meanings in the specifications, schedule or annexure to this Agreement which do not themselves contain their own definitions;

1. *Contractor*'s objectives

1.1. The *Employer's* objective is to enter into a term *Service* contract with the *Contractor* to **supply and deliver the desired materials, spares and consumables** on a "as and when" basis for building/property/site owned, managed or leased by the Employer within **the Transnet Properties** for a period of **2 Years** to ensure maintenance compliance with all applicable legislative requirements including those relating to the Occupational Health and Safety Act, 1993, (Act No 85 of 1993), and all applicable standards to materials supplied.

1.2. The supplier MUST have a physical store / hardware that supplies material used in the civil and electrical trade, including tools.

1.3. The hardware must preferably be within the district municipality, city or town and a driving distance not more than 45 minutes to the major Transnet depots listed in this bid.

1.4. The supplier must have real time inventory and be able to supply material required on demand.

1.5. The supplier should be able to have controls that will prevent fraud and be able to demonstrate how the process will work when material is ordered and delivered.

1.6. The supplier must be willing to sign a supplier agreement with Transnet Property for the purpose of supply and delivery of material.

1.7. The Supplier's procedures for the procurement, storage, handling, transporting, application, and general use of materials, spares, and consumables shall comply with all relevant regulations and standards through the conclusion of this Term Service Contract with the Contractor.

1.8. Requests for materials, spares and consumables for all affected properties shall be provided for on Task Order/"As and when basis".

2. Executive overview

2.1. Transnet Property is responsible for the maintenance a large portfolio of properties with a book value of approximately R6.5 billion. Taking into consideration the already in motion merger between Transnet Property, Transnet Port Terminals Real Estate and Transnet Freight Rail Real Estate, the book value is expected to increase to over R35 billion.

2.2. The portfolio is made up of vacant land, commercial (office, retail, warehouses, industrial parks, plant and production, stores, and workshops), residential (single unit houses and hostels) and hospitality/recreational.

3. Description of the Services

3.1. The Service Provider shall supply the Employer with the tools, materials, and consumables as outlined on the Employer on the Bill of Quantities.

3.2. The Contractor shall:

3.3. Ensure that he/she has adequate equipment to carry-out the activities as specified on the bill of quantities.

3.4. Submit copies of the log sheets/task orders received and service sheets monthly to the Employer or his representative for approval.

3.5. Be responsible for overall management and supervision of the contracted personnel performing duties in accordance with the provisions of this Contract.

3.6. Exercise adequate care and diligence in the rendering of the services and the performance of its obligations to the Employer.

3.7. Take adequate precaution against damage to the equipment and workmen of the Employer and all other persons, from injury or damage during the Service. The Contractor or any of its employees, sub-contractors or agents will be held responsible for any damage to equipment and materials or the contents thereof or for indirect loss, caused by him, either because of his actions or failure to act, whether it was done during the normal performance of their duties or not, and a claim for damages may be instituted against the Contractor accordingly.

3.8. It shall be considered that the Service Provider has considered all aspects relating to the health and safety of their workforce when operating within the contract area. Should the Service Provider have any Occupational Health and Safety concerns, these should be brought to the attention of the Service Manager.

3.9. The Service Provider must furnish details of any equipment that may be brought to the site upon inspection. The Employer reserves the right to inspect such equipment at any point during the contract.

3.10. The quality of the level of service to be rendered must be in accordance with the acceptable standard of the employer and of the trade concerned and a competitive rate.

3.11. It is the responsibility of the Service Provider to ensure that personnel in his/her service and especially those delivering goods for the Employer meet the requirements (and always enter into a section 37.2 agreement of the Occupational Health & Safety Act 85 of 1993).

3.12. All possible steps shall be taken by the Service Provider to ensure:

3.12.1. The protection of the employer's staff from injury, death, or any other offences, including offences referred to in all Schedules of the Criminal Procedure Act, 1977 (Act 51 of 1977),

3.12.2. The protection of employer's property at the intended sites and the protection of said property against damage, vandalism, or theft,

3.12.3. The protection of information, and

3.12.4. That there is no interruption of the Transnet business process

3.13. The Service Provider shall ensure that all goods wherever possible is in accordance with the appropriate SANS/ISO requirements. Without limiting the foregoing, the Service Provider shall be deemed to be fully familiar with and to comply with all the statutory Regulations or by-laws or any industry standards or Codes of Practice or manufacture's recommendations as applicable to all parts of the work and shall indemnify Transnet against any legal proceedings, claims or losses arising from breach of or failure to comply with same. But without limitation, the Service Provider shall observe:

3.13.1. Occupational Health and Safety Act 85 of 1993 and any amendments thereto,

3.13.2. The regulations appertaining to the Control of Substances Hazardous to Health, and

3.13.3. South Africa National Standards (SANS)/ISO standards.

3.14. Transnet reserves the right to inspect the service rendered by the bidder at any time, to ensure that the service is rendered in accordance with the conditions of the contract and the tender specification.

3.15. The Service Provider shall not erect or display any sign, printed matter, painting, name plates, advertisement and article or object of any nature whatsoever in or to Employer's buildings or sites or any part thereof without written consent.

3.16. Emergency Call Out Service

3.16.1. The Contractor shall for the period of this Contract provide services on as and when basis and emergency call-out service being called upon by the Service Manager.

3.16.2. Emergency service may be executed without receipt of an official order number and solely on the request from the Employer. The Contractor must however ensure that the official from the Employer signs the job card. The Contractor must also ensure that he obtains an official order number from the Employer the following working day.

3.16.3. Only breakdowns which affect public health and safety or the operation and safety of sensitive equipment, shall be treated as emergency repairs. Breakdowns involving personal comfort shall not be considered as emergency repairs unless authorized by the Employer.

3.16.4. The response time for call-outs (i.e., from the Contractor's receipt of an official request to his attendance on Site shall be as follow:

3.16.5. Emergency call-outs shall not exceed:

3.16.5.1. One (1) hour within the twenty-five (25) kilometre radius from the Employer's office,

3.16.5.2. Two (2) hours within a fifty (50) kilometres radius from the Employer's office,

3.16.5.3. Three (3) hours further than fifty (50) kilometres from the Employer's office.

4. Management structures

4.1. Performances Measures

4.1.1. Should Contractor fail to meet the key performance areas set out in this Scope of work and further fail to remedy the Non-Performance in accordance with the remedy period indicated in a target key performance, it shall be liable to the Client for a Deduction only in respect of the Critical Items detailed in performance indicator in Table 1 hereto and determined in accordance with the table below. Such Deduction shall be assessed daily and set off against any payments due by the Client to Contractor.

4.1.2. The Deduction shall be as indicated in the penalties set out in the performance indicators Table 1 below.

Key Performance Area	Key Performance Indicator	Key Performance Target	Penalties
Ordering and delivery experience	Delivery/collection of orders within 2 hours of Transnet submission of an official Purchase Order	100%	• 5 % of the monthly invoice, amount payable the following month • 3 consecutive non-conformances will result in termination of contract
Statutory Inspection Compliance	Maintaining statutory (OHS Act and other Regulations) compliance of the *Premises* and meeting the requirements	100%	• No non-compliances will be tolerated. • Immediate termination of contract for any non-compliance
Safety	Life Threatening Incidents	<0: Hours without LTI	• No non-compliances will be tolerated. • Immediate termination of contract for any non-compliance
Time to Quote	Average number of business days to get a quote to be approved by *Contractor*.	1 day (Dependant on nature and extent of works).	• 5 % of the monthly invoice, amount payable the following month • 2 days (Dependant on nature and extent of works).
Manpower/resources for the services	No failure to provide adequate experienced personnel with proper delivery equipment	95%	• No non-compliances will be tolerated. • Immediate termination of contract for any non-compliance
Quality	Material must meet the SABS and all applicable codes standards in terms of build and functional performance and Safety.	100	• No non-compliances will be tolerated. • Immediate termination of contract for any non-compliance

Table 1: Performance Index

4.2. **Management meetings**

4.2.1. The *Contractor* or its duly authorised representative on the Site/Affected Property shall be required to attend monthly (as needed) Co-ordination/Risk Reduction meetings with the *Employer* or his delegate at the Site/Affected Property to discuss the provision of *Service*s, and the *Contractor* warrants that any representative who attends such Co-ordination/Risk Reduction meetings on its behalf shall be duly authorised to do and to bind the *Contractor* vis-a-vis all decisions taken and agreements reached. Minutes and records of such Co-ordination/Risk Reduction meetings shall be the responsibility of the *Employer*. Minutes will be made available to the *Contractor* within seven (7) working days.

4.2.2. The *Contractor* must present a monthly written report on the *Service*s rendered by it, in respect of the Site/Affected Property. Unless the *Employer* prescribes otherwise, this report shall include the following:

4.2.2.1. Name, address, and telephone number of the *Contractor*.
4.2.2.2. Date of report and reporting period.
4.2.2.3. Incidents/events.
4.2.2.4. Problems, including administrative problems with the *Employer* experienced during reporting period.
4.2.2.5. Any factors that affect, or may affect, the safety of the Site / Affected Property or people and equipment.

4.2.3. The *Employer* may request supplementary and interim written reports from the *Contractor*.

4.3. ***Contractor*'s Management, Supervision and Key People**

4.3.1. The *Contractor* shall appoint on the Site / Affected Property a "competent" person in charge. Any instruction to him / her by the *Employer* shall be deemed to have been issued to the *Contractor*. Whenever the representative (supervisor) is absent from the Site / Affected Property, a suitable person shall be appointed to act as his / her deputy.

4.3.2. The *Contractor* shall always ensure that there is sufficient suitably qualified and experienced personal to provide the *Service*. The *Service* covered in this Contract must be executed under direct of a qualified supervision.

4.3.3. All employees provided by the *Contractor* in terms of this Contract shall always be neat and properly clothed to the satisfaction of the *Employer*, the *Employer* reserves the right to request such employees to wear a uniform or overall, of a type, cut and design approved by the *Employer* and purchased by the *Contractor*. Employees must be identifiable as employees of the *Contractor* by means of their uniforms:

4.3.4. The *Contractor*, or any agent or employee of his, must wear protective clothing where necessary. The *Contractor* must supply the relevant protective clothing at his own cost and included in the pricing of the *Service*.

4.3.5. Personal hygiene must be always maintained by the Contractor's employees and agents.

4.3.6. The *Contractor* and its employees will maintain acceptable noise levels within the employer's premises or sites.
4.3.7. The salaries or wages paid by the *Contractor* to his employees must always comply with the applicable statutory requirements in respect of minimum wages.

4.3.8. All training and evaluation costs as provided for in terms of this Contract shall be borne by the *Contractor*.
4.3.9. It is the intention of both Parties that employees provided in terms hereof shall, as far as practically possible, not fail to carry out their duties as a result of any form of intimidation. Should intimidation of employees be suspected, the *Contractor* shall take prompt action in conjunction with the South African Police *Service* to remedy the situation.

4.3.9.1. Such action shall, if deemed necessary by the *Employer*, include immediate replacement of the employees involved.

4.3.9.2. The *Contractor* shall forthwith notify the *Service Manager* of any form of intimidation its employees may be subjected to.

4.3.10. The employees of the *Contractor* may use rest-room facilities that have been pointed out to the *Contractor.*

4.3.11. The *Contractor* shall further ensure that all workmen are fully aware of the conditions and requirements of this Contract and shall furnish all workmen with copies of all relevant Standard Specifications and Regulations.

4.4. **Documentation Control**

4.4.1. During the progress of the *Service*s/Task and prior to their completion, the *Contractor* will submit to the *Employer* any Documentation as requiring submission to the *Employer* prior to completion of the Contract/Task.

4.4.2. If it is agreed between the *Employer* and the *Contractor* that modifications to any such Documentation are necessary, then such modifications shall be incorporated in the relevant Documentation by the *Contractor* and the Documentation, thus modified will be re-submitted to the *Employer* prior to the completion of the Contract/Task.

4.4.3. Where applicable, the Documentation to be supplied to the *Employer* in terms of this Contract will include updated copies of the Documentation, duly modified where necessary to cover the *Contractor*'s *Service*s.

4.4.4. The *Employer* may from time to time during the progress of the Contract instruct the *Contractor* to submit for approval, perusal or prior to the completion of the Contract/Task such additional Documentation as the *Employer* may require.

4.4.5. The times for submission of the Documentation shall be as stipulated in the Scope of Works or where not so stipulated, then on dates to be mutually agreed between the *Employer* and the *Contractor*, but generally as soon as possible after such Documentation is completed by the *Contractor*.

4.4.6. The *Contractor* will maintain an up-to-date schedule of all Documentation showing the date of all such Documentation, which schedule shall be supplied to the *Employer* by the *Contractor* at agreed intervals.

4.4.7. The *Employer* will have the right at all reasonable times to inspect the Documentation of the *Contractor* or any Sub-*Contractor*.

4.4.8. All Documentation shall become and remain the property of the *Employer*. Title to all information, know how, inventions and improvements disclosed to the *Employer* by the *Contractor* under the Contract will become the property of the *Employer*.

Approval given by the *Employer* shall not relieve the *Contractor* from responsibility for due performance of this Contract and adherence to Technical Information provided by the *Employer*. The *Contractor* shall protect and

4.4.9. If the *Employer* requires any information regarding any of the employees of the *Contractor* who are involved in the rendering of the *Service* in terms of this Contract, the *Contractor* will furnish such available information immediately.

4.5. **Deliverables**

4.5.1. The *Service Contractor*s shall submit the following reports, attached to all invoices:

4.5.1.1. Report on services delivered/performed.

4.5.1.2. Service delivered performance.
4.5.1.3. Completed checklist where applicable.
4.5.1.4. Ad hoc services requested where applicable.
4.5.1.5. All staff and labour issues that can affect service delivery to Transnet.
4.5.1.6. Incident report summary as compiled.

4.5.2. save harmless the *Employer* and *Employer*'s employees against all losses, expenses, demands, errors, or omissions detailing of the *Contractor*, its sub-*Contractor*s, agents or employees in the provision of any Documentation under the terms of the Contract. To this end, it shall be the *Contractor*'s responsibility to arrange professional indemnity cover through an insurance company acceptable to the *Employer*, the limits of such cover to be determined by the *Employer* in relation to the *Service*.

4.5.3. The *Contractor* shall monthly provide the *Employer* with all records related to this Contract/*Service*.

4.6. **Invoicing and Payment**

4.6.1. When making a claim for payment, the *Contractor* shall submit to the *Service Manager* or appointed *Employer* representative a complete and correct pro-forma invoice with all relevant *Service* reports / sheets, log sheets, invoices, time sheets for any authorised additional work, schedules and reports properly complete setting out details of *Service*s / Tasks carried out and recommendations for any additional work required for scrutiny and verification of the correctness.

4.6.2. Thereafter, inspections will be carried out by the *Service Manager* or appointed *Employer* representative, to affect quality assurance. If the *Service* has been completed to his satisfaction, only upon agreement being reached on the amount to be included in the payment certificate shall the *Contractor* provide the *Employer* with a VAT invoice.

4.6.3. The following information shall be reflected on the pro-forma invoices and or VAT invoices:

4.6.3.1. Full description of *Service* / Task performed. (In respect of emergency call-outs, the time and date and name of the person who called the *Contractor* must be indicated).

4.6.3.2. Fixed monthly contracted *Service*s performed.

4.6.3.3. Detailed list of materials / spare parts used to show unit prices, *Contractor*'s mark-up, and sub-total.

4.6.3.4. Copies of all applicable invoices with the applicable inventory number (invoices without order numbers will not be processed for payment).

4.6.3.5. V.A.T.

4.6.3.6. Grand Total.

4.6.4. Supporting documentation must be furnished in respect of all materials / Consumables and sub-contract *Service* bought out in the form of copies of supplier/s invoices or copies of priced delivery notes.

4.6.5. Notwithstanding the foregoing, the *Service Manager* or appointed *Employer* representative shall have the right to call for invoices rendered by suppliers to the *Contractor* in respect of materials purchased and shall be entitled to withhold the issuing of the payment certificate to the *Contractor* until such information / documentation have been furnished to the *Employer*, provided that, in respect of additional documentation required by the *Employer*, the *Employer*'s instruction shall have been given to the *Contractor* in sufficient time before any such payments certificate became due.

4.6.6. No payment for the labour portion of this contract will be considered without supporting documentation verifying the activity schedule.

4.6.7. Payment will be made thirty (30) days from the date of receipt of the *Contractor*'s signed invoice and credit notes.

4.6.8. If any emergency *Service* / work / task order or overtime is provided at the *Employer*s request and subsequent inspection does not reveal any defect for which the *Contractor* is responsible, the *Contractor* reserves the right to charge the *Employer*, in accordance with the agreed day work rates plus all travelling.

4.7. **Management of Work Done by Task Order**

4.7.1. The *Contractor* shall in the event of the *Employer* requesting *Service*s other than those described in this Scope of Work, submit a detailed estimate for such work to the *Service Manager* and obtain approval from the *Employer* before attending to the work.

4.7.2. No work other than that described in the Scope of Work will be done by the *Contractor* without a Task Order (official order number) issued to the *Contractor* by the *Service Manager*. This Task Order (order number) will refer to a complaint number and details regarding the work that must be attended to by the *Contractor* in writing.

4.7.3. Should the *Contractor* in the course of performance of the *Service* become aware of the necessity for any emergency work, such emergency will forthwith be reported to the *Service Manager* for further instructions, provided that nothing herein contained will preclude the *Contractor* or relieve the *Contractor* from the obligation of taking all such immediate and reasonable steps as may in the circumstances be necessary for the proper maintenance and upkeep of the Installations and the safety of the user(s). The *Contractor* shall always, follow and implement the specified and mandatory safety procedures.

4.7.4. The *Contractor* will not be entitled to preferential consideration in respect of new work in the site/ Affected Property. The *Employer* reserves the right to employ other *Contractor*s on an open tender basis where works are done on a project basis and not be a Term *Service* Contract.

4.7.5. The *Employer* reserves the right to execute any work covered under this Contract with his own employees.

4.7.6. Should it be required from the *Contractor* to affect additional work not priced in this Contract such additional work will be identified and cost in terms of the Price List / Labour Rates as per this Contract.

4.7.7. Any additional work required beyond the scope of this Contract is to be noted as a quotation. Quotations for the additional work are to be received by the *Employer* within 7 days.

4.7.8. Where the Price (material or labour, or material and labour) is not stipulated in the Price List/Rates or is not of a similar nature the cost will be based on a fixed labour price as per Price List / Rates (during normal working hours) plus material content (excluding that in the Equipment clause) based on proven cost (Supplier/s quotations with deductions for all discounts, rebates and taxes which can be recovered) plus an agreed percentage Fee. Refer to Price List / Rates.

4.7.9. The *Contractor* must provide his job cards specifying detail of works, this Task Order (official order number(s)) and breakdown of cost into labour and material (for non-Activity Schedule work) and signed off by the *Service Manager*. In addition to the original completed job card submitted with his account / invoice, the *Contractor* must submit a copy of the job card to the *Service Manager* for audit purposes and retain a third copy for his official records.

5. Health and Safety, Environment and Quality Assurance

5.1. Health and safety, Risk, Environmental Constraints and Management

5.1.1. The *Contractor* must, for the duration of this Contract, comply with the terms of any Act of Parliament and with the regulations and rules of any local or other authority about the *Service*, and he must at all times notify such an authority when notice is required and pay all fees to the authority that are payable

regarding the *Service*. The *Contractor* undertakes to indemnify the *Employer* against all losses, costs, damage, or expenses caused by the *Contractor*'s failure to comply with the requirements of any such local legislation or Act of Parliament, regulations, and rules. Should such fees not be paid by the *Contractor*, the *Employer* may, although it is not obliged to do so, directly make the payment. Such payment and any expenses incurred by directly making the payment and arrangements with regard thereto shall be deducted from the payment due to the *Contractor*, or it shall be recovered from him.

5.1.2. The *Contractor* shall comply with the Occupational Injuries and Diseases Act. (Act 130 of 1993) and any amendments thereof: The *Contractor* shall produce proof of his registration and good standing with the Compensation Commissioner in terms of the Act.

5.1.3. The *Contractor* shall comply with the Occupational Health and Safety Act (Act No. 85 of 1993). The *Contractor* is, in terms of section 37(2) of the Act deemed to be an *Employer* in his own right with duties as prescribed in the Act and agrees to ensure that all work will be performed or machinery or plant will be used in accordance with the provisions of the Act, that all persons in his employ, other persons at the place of any work performed by him and under his control and other persons who may be directly affected by his activities are not exposed to hazards to their health and safety, with particular reference to both the performance of the *Service* and the safety of the Installation maintained in terms of this Contract. This Contract and all documents attached or referred to, form an integral part of this Contract and procedures mentioned in the aforementioned section of the Act.

5.1.4. The *Contractor* shall at his own costs at all times comply with the provisions of all such Laws, Provincial Ordinances, Local Authority Bylaws, and all relevant Regulations framed there under which are applicable to the *Service* to be undertaken.

5.2. **Quality assurance requirements**

5.2.1. All work must be executed in accordance with prevailing industry norms and standards relating to quality. In this regard, the *Contractor* will be expected to draft quality plans for the *Service Manager* from time to time. Emphasis must be on improving system reliability and on ensuring that rostered maintenance work is indeed performed as and when required.

6. Procurement

6.1. ***Service*** **Equipment**

6.1.1. The Supplier shall always bear the risk of loss, damage, destruction, or theft of any or all Service Equipment and shall have no claim based on enrichment or for compensation, or reimbursement or of any other nature whatsoever, against the Employer, irrespective of the cause or the circumstances which give rise to such loss, damage, destruction, or theft.

6.1.2. The Supplier shall, insure his Service Equipment against all risks in terms of an insurance policy.

6.1.3. The Supplier acknowledges that it is vital for the Supplier to be able to provide, render, perform and supply the Services, to acquire and use the Service Equipment that is appropriate and suited for the provisions of the Services and that such equipment is maintained in good order and repair.

6.1.4. The equipment used by the Supplier must, where applicable, in all respects conform to The Occupational Health and Safety Act, 85 of 1993.

6.1.5. Equipment that is used during a process must in all respects conform to the necessary requirements.

6.1.6. The Supplier will always ensure that the Equipment supplied is of high quality standards acceptable to the employer.

6.2. **Existing Equipment**

6.2.1. The Existing Equipment shall always remain the sole property of the Employer.

6.2.2. The Supplier shall only use the Existing Equipment for purposes of providing, performing, rendering, or supplying the Services in terms of this Agreement.

6.3. **Correction of defects**

6.3.1. If the *Employer* decide that any work done by the *Contractor* or any sub-*Contractor* is defective or not in accordance with the Contract or does not fulfil the requirements of the Contract and as soon as reasonably practicable give to the *Contractor* notice in writing of such decision giving particulars of the alleged defect, the *Contractor* shall with all speed make good the defects so specified.

6.3.2. Should the *Contractor* fail to fulfil any of its obligations in terms of this Contract or should such *Service* not be completed with due diligence and in a proper and workmanlike manner to the satisfaction of the *Employer* and should the *Contractor* fail to remedy such breach within the timeframe from the date of written notice from the *Employer* calling upon to do so, the *Employer* shall have the right without prejudice in terms of this Contract or at law, without further notice to the *Contractor*:

6.3.2.1. Appoint another person other than the *Contractor* to complete the *Service* in question and to recover from the *Contractor* all cost to complete the work in question plus an administration cost of twenty five (25) percent (%) of the price the other *Contractor* charge the *Employer* to complete the *Service*, or

6.3.2.2. Terminate this Contract and recover from the *Contractor* any damages that it may suffer because of such termination and / or breach.

7. Working on Affected Property

7.1. ***Employer*'s site entry and security control, permits, and site regulations**

7.1.1. The *Contractor* shall always ensure that its employees, agents, representatives, specialist-, sub-*Contractor*s and suppliers:

7.1.1.1. Comply with all security measures and directives imposed by the *Employer*, or his delegate, tasked with managing the *Service*s in or on the Site / Affected Property.

7.1.1.2. Keep the access gates / doors locked at all times. If any security problems are noticed, the *Contractor* shall immediately notify the *Service Manager*.

7.1.1.3. if at all possible, be a member of the local community;

7.1.1.4. in a physical fit condition; and

7.1.1.5. be a South African Citizen or be in possession of a valid SA work permit.

7.1.1.6. Shall in terms of this Scope of Work when on duty (unless the *Employer* should decide otherwise), wear an identity disc, tag or other device as agreed upon between the Parties. For the purposes of this Scope of Work, an identity disc, tag or other device prescribed by the *Employer* shall at least contain the following information in respect of the *Contractor*'s personnel:

7.1.1.6.1. a colour photograph of the relevant member
7.1.1.6.2. full names and surname
7.1.1.6.3. identity number

7.1.1.7. The identity disc shall always be visibly displayed on the employee's person while he/she is on the Site / Affected Property. The necessary control must be exercised over such identity discs to prevent them from falling into unauthorised hands. The *Contractor* will be liable for the replacement cost of lost identity disc.

7.1.1.8. All employees of the *Contractor* will be subject to the requirements set out in section 2(2) of the Control of Access to Public *Premises* and Vehicles Act, 53 of 1985.

7.1.1.9. A list of names of employees that will be working on the Site / Affected Property during a given time must be made available to the *Service Manager*. Should any exchange of personnel take place, the *Service Manager* must be informed accordingly in writing. Unidentified employees, and employees whose names do not appear on the list, will not be allowed to enter the Site / Affected Property.

7.1.1.10. Employees of the *Contractor* may not walk about without any purpose on the Site / Affected Property and may not use chairs and seats in public areas for purposes of relaxation.

7.1.1.11. Employees of the *Contractor* have, subject to the terms of this Scope of Work, admission to all areas to perform their duties subject to approval by the *Employer* / Tenant. If a *Service* does not have to be performed at a specific stage in a specific area, no admission is permitted. The *Contractor* must make provision in his costing for access delays in security areas.

7.1.1.12. Any disruptions which are deemed to be beyond the *Contractor*'s control, and which result in the *Contractor*'s workmen having to leave the Site / Affected Property shall be logged in the applicable report book.

7.1.1.13. Within seven (7) days of the Contract Date and before such employee enters the Site / Affected Property to perform the *Service*, the *Contractor* shall furnish the *Service Manager* with the full names, identity numbers, residential addresses, two recent passport photographs and such other items of information as may be required by *Service Manager*, in respect of all persons who will be employed by the *Contractor* to undertake work at the Site / Affected Property in terms of this Contract.

7.2. **People restrictions, hours of work, conduct and records**

7.2.1. *Service* operations will be performed during Transnet "Office hours only". The times are Monday to Friday from 07h30 to 17h00 excluding public holidays. *Service* operating hours outside of these must be explicitly arranged by the Transnet authorised representative.
7.2.2. The *Contractor* shall at all-time render *Service* that enhance and maintain at minimum the corporate image of *Transnet Property*.
7.2.3. The *Contractor* shall at all-time render *Service* that is in line with *Transnet Property*'s values and ethics.
7.2.4. The *Contractor* must exercise the highest possible standards of conduct in performing their duties in accordance with this Agreement.
7.2.5. The *Contractor* shall, upon receipt of written request from *Transnet Property*, provide *Transnet Property* with copies of all the *Service* Provider's operating procedures and processes relating to the *Service*s.
7.2.6. The *Contractor* is responsible for overall management and supervision of the contracted staff performing duties at the *Premises* in accordance with the provisions of this Agreement.
7.2.7. The *Contractor* must ensure that a competent site manager is appointed as required ensuring deliverables and quality of *Service* delivery.
7.2.8. The *Contractor* shall immediately inform *Transnet Property* in writing if any contracted staff is found guilty of improper conduct.
7.2.9. It is expected from the *Contractor* to ensure that all duties and tasks to be performed on site are adhered to.

7.2.10. The *Contractor* must exercise reasonable skill, care, and diligence in the rendering of the *Service*s and the performance of its obligations to *Transnet Property*.
7.2.11. The *Contractor* shall provide written reports on progress made in the rendering of the *Service*s to *Transnet Property* at such intervals and in such format as may be determined at the sole discretion of *Transnet Property*.
7.2.12. *Transnet Property* shall be entitled to request additional information pertaining to any matters or issues raised in or relevant matters or issues omitted from a progress report.
7.2.13. In the event of an unusual occurrence, the *Contractor* shall submit an Incident Report to Transnet authorised representative within twenty four (24) hours.
7.2.14. All reports prepared during the term of this contract shall become the property of *Transnet Property*.
7.2.15. Where *Service*s are deteriorating a *Service* improvement plan can be requested on how *Service*s will be improved.
7.2.16. The *Contractor* shall ensure that all necessary equipment, *Service*s, or material as required are kept in the condition as required by law, regulations, and procedures and readily available for *Transnet Property* to inspect and test without prior notice.
7.2.17. The *Contractor* shall, in the provision of the *Service*s, have due regard to the operational requirements of *Transnet Property* and the *Premises* and other parties occupying or operating from the *Premises* and shall not do, or permit to be done, anything which may negatively impact on such parties' operational requirements.
7.2.18. The *Contractor* shall ensure that it and its contracted staff and site manager shall always comply fully with any safety, fire, emergency and security procedures and policies applicable at the *Premises*
7.2.19. Should *Transnet Property* at any time believe that any of the *Service* Provider's personnel is failing to comply with any such procedures or policies, *Transnet Property* shall be entitled to deny such person access to the relevant *Premises* and require the *Contractor* to replace such person without delay.

7.3. **Personnel Standards**

7.3.1. *Contractor* staff must be:
7.3.1.1. able to communicate the official language of Transnet which is English.
7.3.1.2. physically fit to perform the tasked duties as required.
7.3.1.3. presentable, clean, neat and always portray a professional image whilst conducting their duties in a professional manner.

7.3.2. Contracted staff must always be alert, vigilant and professional in their approach, bearing and actions and the following deviations will be regarded as extremely serious and may be regarded as sufficient reason to ask the *Contractor* to remove a particular contracted staff(s) from the *Premises* permanently:

7.3.2.1. Absence without proper notification.
7.3.2.2. Accepting any gifts or bribes in the line of duty.
7.3.2.3. Conduct unbecoming of a contracted staff or prejudicial to discipline, either on or off duty.
7.3.2.4. Drinking intoxicating liquor or using intoxicating substances while on duty or reporting for duty in an intoxicated condition.
7.3.2.5. Enabling any person to secure stolen property from the *Premises*.
7.3.2.6. False reporting.
7.3.2.7. Negligence in the application of Transnet instructions, after being duly informed thereof.
7.3.2.8. Sleeping on duty or neglecting his/her duty;
7.3.2.9. Using or carrying a weapon;
7.3.2.10. Unnecessarily harsh or violent conduct or using profane language while performing his / her duties in accordance with this Agreement;
7.3.2.11. Wilful disobedience of instructions, orders of a superior or a reasonable request by *Transnet Property*;
7.3.2.12. Failing to report any security incident or safety hazard either observed by the contracted staff or brought to his/her attention by another person;
7.3.2.13. Failing to wear the prescribed clothing or identification when on duty.
7.3.2.14. Failing to present an acceptable image or an upright position, or to deal with any person in a respectful manner. This implies that a contracted staff shall not sit when he/she should be standing and shall not

lounge about, smoke, eat, drink, read or occupy him/herself with any distracting activity while attending to any person in the performance of his / her duties.

7.3.3. *Contractor* staff may be subject to breathalyser testing by Transnet or Representative *Contractor*s prior to the granting of permission onto its Site.

7.4. **Health and safety facilities on the Affected Property**

7.4.1. The *Contractor* undertakes to comply with the *Employer*'s safety and emergency measures and procedures the Site / Affected Property.

7.4.2. The *Contractor*'s procedures for the procurement, storage, handling, transporting, application and general use of chemicals shall comply with all applicable legislation, Codes of Practice and Local, Regional or Provincial Authorities.

7.4.3. The *Contractor* shall not use or keep any poisonous or highly flammable materials on the Site / Affected Property without the approval of the *Service Manager*, for the rendering of the *Service* or for whatever purpose.

7.4.4. The obligation to take care of and protect the *Service* and everything connected therewith shall rest solely with the *Contractor* who shall take all necessary precautions to protect Others, the property of the Others, the property and personnel of the *Employer* from damage or injury, and to protect adjoining properties from trespass or damage during the *Service*.

7.4.5. The *Contractor* shall inform the *Employer* verbally and in writing and act immediately on any potentially hazard or undesirable situation which may cause harm to persons or which may damage or reduce the life expectancy of the Installation, even if the hazardous or undesirable situation does not form part of the *Contractor*'s responsibilities.

7.4.6. The *Contractor* may not do or leave or permit anything on the Site / Affected Property that, in the opinion of *Service Manager*, might cause any damage to the property or that might be a nuisance or burden or danger or possible nuisance or burden or danger to any person on / in the Site / Affected Property.

7.4.7. The *Contractor* shall be obliged to display neat warning signs of which the size and design are of such a nature they are easily visible, at all places where the *Service*s are undertaken by the *Contractor*, and where the rendering of the *Service*s might cause injuries to any person, in order to focus the attention of such person on the *Service*s that are undertaken in that area.

7.4.8. Special condition: It is hereby specially stipulated that, during the period of this Contract, the *Contractor* will be obliged to do everything that might be necessary and practically feasible in order to ensure that all signs, printing, notices or documents that are displayed on / in the Site / Affected Property, will appear in English plus at least one other official language.

7.5. **Records of *Contractor*'s Equipment**

7.5.1. The *Contractor* shall have all their Tools and Special Equipment, necessary for the execution of the works, either on site or readily available at their *Premises* and shall be recorded and certified.

7.5.2. The *Contractor* shall complete or generate an inventory list of their equipment and update inventory lists systems on a continuing basis (equipment type and location).

7.5.3. Shall at the termination of this Contract for whatsoever reason, reinstate any such facility to the same condition in which it was when handed to the *Contractor*)

7.5.4. Provided by the *Contractor*

7.5.4.1. The *Contractor* shall make his own arrangements in respect of the installation and provision of telephones at the Site/Affected Property at his own cost, should the *Contractor* deem it necessary.

7.6. **Tests and inspections**

7.6.1. The *Employer* or its duly appointed representative shall retain the right to witness and/or verify the performance of any *Service* by the *Contractor* at any time.

7.6.2. Independent inspections: the *Employer* shall have the right to authorize the inspection of individual equipment inspections shall be promptly communicated in writing to the *Contractor*. Should any defects or remedial work be required in terms of this Contract, the *Contractor* shall expeditiously undertake it within a mutually agreed time period the corrective work. When the *Contractor*'s work has been completed satisfactorily, the *Employer* or its duly appointed inspector shall be notified in writing. A further follow-up inspection by the *Employer* or its inspector may be conducted.

7.6.2.1. Should the follow-up inspection show that the work as agreed and undertaken by the *Contractor* has not been satisfactorily carried out; the procedure shall be repeated until the established standard of cleaning has been attained. The cost for the follow-up inspection shall be borne by the *Contractor*

7.6.2.2. Notwithstanding the *Employer*'s rights in terms of this Contract, the *Contractor* shall refund the *Employer* its costs associated with the reapplication where the *Contractor* has not completed work satisfactorily as agreed.

7.6.2.3. The independent inspections shall in no way limit the *Contractor*'s responsibility with respect to any obligation or liabilities in terms of this Contract.

8. Early Termination

8.1. Transnet Property reserves the right to withdraw any part(s) of a Premise or the Premises as a whole from the Supplier by giving the Supplier one calendar month written notice of such a decision. However, this can only be done if the relevant part(s) are going to be vacated, no new tenant are going to rent that part(s), or as a result of safety measures or the Tenant cancel the Service provided by Transnet Property. The contract amount shall in such a case be reduced by the applicable amount from the date of withdrawal. This amount will be calculated in terms of the diminished area against the already tendered, applicable unit price(s) in Annexure B – Bill of Quantities.

8.2. If the Premises or any part thereof in respect of which the Service is rendered, are damaged or destroyed as a result of a fire or any other cause beyond the control of Transnet Property, Transnet Property shall have the discretion to terminate this Contract or to keep it in operation in respect of the undamaged part or parts, and neither Party shall have any claim against the other as a result thereof. If Transnet Property, in its discretion, decides to proceed with this Contract in respect of a part of the Premises, this Contract shall remain valid in respect of such part only and the amount payable to the Supplier will be reduced according to the remaining area, calculated at the applicable unit price per square metre as tendered.

9. List of Drawings

9.1. Drawings issued by the *Employer*

Not Applicable.

ANNEXURE B: BILL OF QUANTITIES

Price Schedule

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

Item	Description: Civil maintenance Material list	Estimate Quantity	Material group per unit	Rate	Total
Cm1.	Pop Rivets 4 x 20 Quantity 100	1	Packet	R	R
Cm2.	Raw Bolts 8 x 50	1	each	R	R
Cm3.	15mm Plastic holder bat	1	each	R	R
Cm4.	22mm Plastic holder bat	1	each	R	R
Cm5.	15mm Brass CXC Straight Coupler	1	each	R	R
Cm6.	22mm Brass CXC Straight Coupler	1	each	R	R
Cm7.	22mm to 15mm Brass CXC Straight Coupler	1	each	R	R
Cm8.	15mm Brass 90 Degree Elbow C X C	1	each	R	R
Cm9.	20mm Brass 90 Degree Elbow C X C	1	each	R	R
Cm10.	15mm Brass wall plate 90-degree Elbow Copper to Female	1	each	R	R
Cm11.	15mm Brass straight coupler copper to male	1	each	R	R
Cm12.	22mm Brass straight coupler copper to male	1	each	R	R
Cm13.	15mm Brass straight coupler copper to Female	1	each	R	R
Cm14.	22mm Brass straight coupler copper to Female	1	each	R	R

Cm15.	15 x 15mm Brass Equal Tee Piece C X C	1	each	R	R
Cm16.	22 x 22mm Brass Equal Tee Piece C X C	1	each	R	R
Cm17.	15 x 22mm Brass Tee reducing C X C	1	each	R	R
Cm18.	15mm Brass Stop end	1	each	R	R
Cm19.	22mm Brass Stop end	1	each	R	R
Cm20.	15mm Brass Compression Rings	1	each	R	R
Cm21.	22mm Brass Compression Rings	1	each	R	R
Cm22.	15mm Copper Tubing Class 2 / 5.5 Full	1	each	R	R
Cm23.	22mm Copper Tubing Class 2 / 5.5 Full	50	each	R	R
Cm24.	15mm Polycop pipe	P/M	Per meter	R	R
Cm25.	22mm Polycop pipe	P/M	Per meter	R	R
Cm26.	15mm Brass Gate valve C X C	1	each	R	R
Cm27.	22mm Brass Gate valve C X C	1	each	R	R
Cm28.	22mm Gate wheel valve Brass	1	each	R	R
Cm29.	15mm Johnson junior coupling steel	1	each	R	R
Cm30.	20mm Johnson junior coupling steel	1	each	R	R
Cm31.	28mm Johnson junior coupling steel	1	each	R	R
Cm32.	15mm Bib tap H Pattern CP Aquila	1	each	R	R
Cm33.	22mm Bib tap H Pattern CP Aquila	1	each	R	R
Cm34.	15mm Pillar tap H Pattern CP Aquila	1	each	R	R
Cm35.	22mm Pillar tap H Pattern CP Aquila	1	each	R	R
Cm36.	Sink wall type Carina 266/041/10 Chrome	1	each	R	R
Cm37.	Sink Pillar type Carina 171/041 Chrome	1	each	R	R

Cm38.	Basin single hole 191 Chrome	1	each	R	R
Cm39.	Waste fitting with plug CP 32mm	1	each	R	R
Cm40.	Waste fitting Brass chrome plated for basin 32mm	1	each	R	R
Cm41.	Float valve plastic 15mm	1	each	R	R
Cm42.	Float valve plastic bottom inlet 15mm	1	each	R	R
Cm43.	Kwikot high pressure geyser 150L	1	each	R	R
Cm44.	Kwikot high pressure geyser 200L	1	each	R	R
Cm45.	22mm 400kpa safety valve	1	each	R	R
Cm46.	22mm 600kpa safety valve	1	each	R	R
Cm47.	22mm Vacuum Breaker	1	each	R	R
Cm48.	Beta valve complete Plastic	1	each	R	R
Cm49.	15mm Cascade clamp Steel	1	each	R	R
Cm50.	22mm Cascade clamp Steel	1	each	R	R
Cm51.	28mm Cascade clamp Steel	1	each	R	R
Cm52.	40mm Cascade clamp Steel	1	each	R	R
Cm53.	50mm Cascade clamp Steel	1	each	R	R
Cm54.	75mm Cascade clamp Steel	1	each	R	R
Cm55.	100mm Cascade clamp Steel	1	Each	R	R
Cm56.	150mm Cascade clamp Steel	1	Each	R	R
Cm57.	Union door lock SABS Approved Type Chrome	1	each	R	R
Cm58.	Wax pan seal	1	each	R	R
Cm59.	15mm Tap washers	1	each	R	R
Cm60.	22mm Tap washers	1	each	R	R
Cm61.	40mm Rubber flash pipe connector	1	each	R	R
Cm62.	110 x 50mm Strap on Boss connector	1	each	R	R

Cm63.	15 x 50mm Shower rose CP Chrome	1	each	R	R
Cm64.	110mm Kwik pan connector	1	each	R	R
Cm65.	500ml pvc glue	/g	each	R	R
Cm66.	Cistern Mechanism complete set	1	each	R	R
Cm67.	50mm x 95 pvc SV PI bend	1	each	R	R
Cm68.	50mm pvc elbow plain	1	each	R	R
Cm69.	50mm PVC pipe Tee	1	each	R	R
Cm70.	50mm PVC pipe Tee	1	each	R	R
Cm71.	50mm pvc straight adaptor	1	each	R	R
Cm72.	15mm Galvanised nipple steel	1	each	R	R
Cm73.	20mm Galvanised nipple steel	1	each	R	R
Cm74.	15mm Galvanised plug steel	1	each	R	R
Cm75.	20mm Galvanised plug steel	1	each	R	R
Cm76.	28mm Galvanised plug steel	1	each	R	R
Cm77.	Flush Master kid push button	1	each	R	R
Cm78.	Bottom inlet ball valve toilet with ball complete	1	Each	R	R
Cm79.	Flush Master complete set	1	Each	R	R
Cm80.	Percentage mark up on omitted item	%	%	R	R
Cm81.	50mm PVC pipe full length on 6m	1	Each	R	R
Cm82.	110mm PVC pipe full length on 6m	1	Each	R	R
Cm83.	15mm copper pipe full length on 6m	1	Each	R	R
Cm84.	22mm copper pipe full length on 6m	1	Each	R	R
Cm85.	Basin pp 500x410mm	1	Each	R	R
Cm86.	Urinal 400x300	1	Each	R	R
Cm87.	Vacuum relief valve 22mm	1	Each	R	R
Cm88.	Kwikot khn3-214 400kpa cxc	1	Each	R	R

Cm89.	Top flush mechanism universal	1	Each	R	R
Cm90.	Ball valve cxc dzr 22mm	1	Each	R	R
Cm91.	50mm Gate valve	1	Each	R	R
Cm92.	32mm Gate valve	1	Each	R	R
Cm93.	PVC sv bend 50x87	1	Each	R	R
Cm94.	Heavy Duty Drain rod cleaner	1	Each	R	R
Cm95.	Junction 50x87	1	Each	R	R
Cm96.	Toilet seats	1	Each	R	R
Cm97.	Basin star taps	1	Each	R	R
Cm98.	Pan sealer	1	Each	R	R
Cm99.	HDPE Class 16/180mm x 6m	1	Each	R	R
Cm100.	Ceiling rhino board 900 mm x 2,700 m x 6,4 mm	1	Each	R	R
Cm101.	Nutec cement ceiling board 1200mm x 3.00m x 4mm	1	Each	R	R
Cm102.	Cornish rhino cove 76mm	1	Each	R	R
Cm103.	Cornish rhino cove 125mm	1	Each	R	R
ELECTRICAL					
Cm104.	C/BREAKER SINGLE POLE	1	Each	R	R
Cm105.	10AMP 2,5KA C/BREAKER SINGLE POLE	1	Each	R	R
Cm106.	15AMP 2,5KA C/BREAKER SINGLE POLE	1	Each	R	R
Cm107.	20AMP 2,5KA C/BREAKER SINGLE POLE	1	Each	R	R
Cm108.	30AMP 2,5KA C/BREAKER SINGLE POLE	1	Each	R	R

Cm109.	40AMP 2,5KA C/BREAKER SINGLE POLE	1	Each	R	R
Cm110.	50AMP 2,5KA C/BREAKER SINGLE POLE	1	Each	R	R
Cm111.	60AMP 2,5KA C/BREAKER SINGLE POLE	1	Each	R	R
Cm112.	70AMP 2,5KA C/BREAKER SINGLE POLE	1	Each	R	R
Cm113.	80AMP 2,5KA C/BREAKER SINGLE POLE	1	Each	R	R
Cm114.	100AMP 2,5KA C/BREAKER SINGLE POLE	1	Each	R	R
Cm115.	20AMP 2,5KA C/BREAKER DOUBLE POLE	1	Each	R	R
Cm116.	40AMP 2,5KA C/BREAKER DOUBLE POLE	1	Each	R	R
Cm117.	60AMP 2,5KA C/BREAKER DOUBLE POLE	1	Each	R	R
Cm118.	100AMP 2,5KA C/BREAKER DOUBLE POLE	1	Each	R	R
Cm119.	30AMP 2,5KA C/BREAKER TRIPLE POLE	1	Each	R	R
Cm120.	50AMP 2,5KA C/BREAKER TRIPLE POLE	1	Each	R	R
Cm121.	60AMP 6KA C/BREAKER TRIPLE POLE	1	Each	R	R
Cm122.	100AMP 6KA C/BREAKERTRIPLE POLE	1	Each	R	R
Cm123.	125AMP 25KA C/BREAKER TRIPLE POLE	1	Each	R	R
Cm124.	150AMP 25KA C/BREAKER TRIPLE POLE	1	Each	R	R

Cm125.	200AMP 25KA C/BREAKER TRIPLE POLE	1	Each	R	R
Cm126.	300AMP 25KA C/BREAKER TRIPLE POLE	1	Each	R	R
Cm127.	800 AMP 25KA C/BREAKER TRIPLE POLE	1	Each	R	R
Cm128.	63AMP 2,5KA DIN RAIL SINGLE PHASE EARTH LEAKAGE	1	Each	R	R
Cm129.	63AMP 2,5KA EARTH LEAKAGE SINGLE PHASE WITH OVERLOAD PROTECTION	1	Each	R	R
Cm130.	63AMP 2,5KA EARTH LEAKAGE TRIPLE PHASE WITH OVERLOAD PROTECTION	1	Each	R	R
Cm131.	11W T0 14W ENERGY SAVER LAMP ES	1	Each	R	R
Cm132.	11W T0 14W ENERGY SAVER LAMP BC	1	Each	R	R
Cm133.	1,2M LED TUBE ONE END A/C INPUT (ONE SIDED POWER)	1	Each	R	R
Cm134.	1,2M LED TUBE ONE END A/C INPUT T6 TYPE (ONE SIDED POWER)	1	Each	R	R
Cm135.	400W HPS LAMP	1	Each	R	R
Cm136.	400W HPS IGNITOR	1	Each	R	R
Cm137.	400W HPS CHOKE	1	Each	R	R
Cm138.	50W LED FLOOD LIGHT	1	Each	R	R
Cm139.	30W LED FLOOD LIGHT	1	Each	R	R
Cm140.	1,2M LED FITTING DOUBLE TUBE OPEN CHANNEL	1	Each	R	R
Cm141.	1,2M LED FITTING DOUBLE TUBE IP65 WEATHERPROOF	1	Each	R	R

Cm142.	1,5M LED FITTING DOUBLE TUBE OPEN CHANNEL	1	Each	R	R
Cm143.	1,5M LED FITTING DOUBLE TUBE IP65 WEATHERPROOF	1	Each	R	R
Cm144.	16W LED BULKHEAD CLEAR FITTING	1	Each	R	R
Cm145.	1,2M LED 3XLIGHT REFLECTOR FLUSH FITTING	1	Each	R	R
Cm146.	1,2M LED 2XLIGHT REFLECTOR SURFACE MOUNT FITTING	1	Each	R	R
Cm147.	85W ENERGY SAVER FLOOD FITTING IP65	1	Each	R	R
Cm148.	50MM LED DOWN LIGHT FITTING (COLOUR WHITE)	1	Each	R	R
Cm149.	4X4 SOCKET-OUTLET + COVER SINGLE	1	Each	R	R
Cm150.	4X2 SOCKET-OULET+ COVER FOR TRUNKING	1	Each	R	R
Cm151.	4X2 LIGHT SWITCH SINGLE LEVER + COVER	1	Each	R	R
Cm152.	4X2 LIGHT SWITCH DOUBLE LEVER + COVER	1	Each	R	R
Cm153.	4X2 LIGHT SWITCH THREE LEVER + COVER	1	Each	R	R
Cm154.	4X2 DOUBLE POLE INDUSTRIAL ISOLATOR 30AMP	1	Each	R	R
Cm155.	5m-FLOAT SWITCH FOR PUMPS	1	Each	R	R
Cm156.	WATER PRESSURE PUMP 0.75KW	1	Each	R	R
Cm157.	WATER PRESSURE PUMP 2.2KW	1	Each	R	R
Cm158.	3KW GEYSER ELEMENT THREADED	1	Each	R	R

Cm159.	3KW GEYSER ELEMENT SPIRAL	1	Each	R	R
Cm160.	3 PHASE 9KW GEYSER ELEMENT	1	Each	R	R
Cm161.	NK11 GEYSER THERMOSTAT	1	Each	R	R
Cm162.	GEYSER THERMOSTAT	1	Each	R	R
Cm163.	1.5KW HYDROBOIL ELEMENT	1	Each	R	R
Cm164.	GEYSER ELEMENT GASKET	1	Each	R	R
Cm165.	220V 4 POLE CONTACTOR X 25A	1	Each	R	R
Cm166.	220V 4 POLE CONTACTOR X 80A	1	Each	R	R
Cm167.	16AMP DAYLIGHT SWITCH	1	Each	R	R
Cm168.	180MM BY 65MM PVC TRUNKING	1	Each	R	R
Cm169.	4X4 EXTENTION STEEL	1	Each	R	R
Cm170.	2X4 EXTENTION STEEL	1	Each	R	R
Cm171.	4X4 COVER STEEL	1	Each	R	R
Cm172.	E40mm-SCREW PORCELAIN HIGH PRESSURE LAMP HOLDER	1	Each	R	R
Cm173.	4mmx30mm-SELF TAPPING SCREWS	1	Each	R	R
Cm174.	6,4mm - PUSH-IN LUGS BRASS	1	Each	R	R
Cm175.	5mmx60mm-BUTTERFLY SCREWS	1	Each	R	R
Cm176.	10MM FERRULES	1	PER BOX OF 100	R	R
Cm177.	16MM FERRULES	1	PER BOX OF 100	R	R
Cm178.	35MM FERRULES	1	PER BOX OF 100	R	R
Cm179.	50MM FERRULES	1	PER BOX OF 100	R	R
Cm180.	70MM FERRULES	1	PER BOX OF 100	R	R

Cm181.	16MMX10MM LUG	1	PER BOX OF 100	R	R
Cm182.	25MM X12MM LUG	1	PER BOX OF 100	R	R
Cm183.	35MMX10MM LUG	1	PER BOX OF 100	R	R
Cm184.	70MM X 12MM LUG	1	PER BOX OF 100	R	R
Cm185.	6MMX5.0 EASY NAIL OR ANCHOR WALL SCREW	1	PER BOX OF 100	R	R
Cm186.	19mm x0,2mmx20m-INSULATION TAPE ROLL	1	EACH	R	R
Cm187.	12mmx6,5mm - PVC DB BOX BLANK	1	EACH	R	R
Cm188.	READY BOARD WITH LIGHT 12WAY	1	EACH	R	R
Cm189.	1METRE - PULL SWITCH	1	EACH	R	R
Cm190.	15AMP PVC CONNECTOR BLOCK	1	PER STRIP OF 12	R	R
Cm191.	30AMP PVC CONNECTOR BLOCK	1	PER STRIP OF 12	R	R
Cm192.	1,5MM ROUND SURFIX PORLLY SADDLES	1	Each	R	R
Cm193.	2.,5MM ROUND SURFIX PORLLY SADDLES	1	Each	R	R
Cm194.	100ml-SILICON TUBE	1	Each	R	R
Cm195.	312g - ELECTRIC LUBRICANT SPRAY TIN	1	Each	R	R
Cm196.	6MM CONCRETE DRILL BIT	1	Each	R	R

Cm197.	2MM STEEL DRILL BIT	1	Each	R	R
Cm198.	4.7mm x 305mm - CABLE TIES	1	Each	R	R
Cm199.	J3 CABLE JOINT KIT	1	Each	R	R
Cm200.	J4 CABLE JOINT KIT	1	Each	R	R
Cm201.	J5 CABLE JOINT KIT	1	Each	R	R
Cm202.	20MM PVC GLAND	1	Each	R	R
Cm203.	25mm - CABLE SHROUD No.2	1	Each	R	R
Cm204.	25mm - MECHANICAL GLAND No.2	1	Each	R	R
Cm205.	1,5MM 3CORE CABTRYE	1	LENGTH PER METER	R	R
Cm206.	2,5MM 3 CORE CABTYRE	1	LENGTH PER METER	R	R
Cm207.	1,2MM ROUND SURFIX 2+E	1	LENGTH PER METER	R	R
Cm208.	2,5MM ROUND SURFIX 2+E	1	LENGTH PER METER	R	R
Cm209.	6MM ROUND SURFIX 2+E	1	LENGTH PER METER	R	R
Cm210.	10MM ARMOURED 4CORE CABLE	1	LENGTH PER METER	R	R
Cm211.	16MM ARMOURED 4CORE CABLE	1	LENGTH PER METER	R	R

Cm212.	25MM ARMOURED 4CORE CABLE	1	LENGTH PER METER	R	R
Cm213.	35MM ARMOURED 4CORE CABLE	1	LENGTH PER METER	R	R
Cm214.	50MM ARMOURED 4CORE CABLE	1	LENGTH PER METER	R	R
Cm215.	70MM ARMOURED 4CORE CABLE	1	LENGTH PER METER	R	R
Cm216.	**Technician Tool set**	1	Each	R	R
Cm217.	Side Cutter 8316-200JC				
Cm218.	Combination Plier 8250-200JC				
Cm219.	Long Nose Plier 8132-200JC				
Cm220.	Universal Plier 145/250				
Cm221.	150mm Shifting Spanner				
Cm222.	250mm Shifting Spanner				
Cm223.	Elect Screwdriver Set VDE ELS/PH				
Cm224.	250mm Vice Grip 137/250				
Cm225.	Allen Key set 42SCL-7M				
Cm226.	Tool Trunk 1440-70 Replaced by P/N1460-70				
Cm227.	450g Ball Pein Hammer HDP0316				
Cm228.	560G Steel Claw Hammer HDS0316				
Cm229.	Stanley Rect Knife				
Cm230.	CTR156 220mm Hex Crimper				

Cm231.	CTR0525 350mm Crimping Tool			
Cm232.	Junior Hacksaw			
Cm233.	Tubular Hacksaw			
Cm234.	Wire Stripper SP1006			
Cm235.	HSS Drill bit set 1-13-05			
Cm236.	Voltage Tester MT472			
Cm237.	Voltage Detector MT400			
Cm238.	4.6mm Terminal Driver TSD0610			
Cm239.	6mm Terminal Driver TSD0407			
Cm240.	SL280 LED Worklight			
Cm241.	240mm Ratchet Cable Shear			
Cm242.	half inch socket set (8 - 20mm)			
Cm243.	half inch socket ratchet driver			
Cm244.	Digital Multimeter			
MV Test instruments	**Toolbox**	1	R	R
Cm245.	TDR/surge generator			
Cm246.	Acoustic listening device incl. earphones			
Cm247.	VLF Tester			
Cm248.	Cable ID system			
Cm249.	Cable Tracer			
Cm250.	Spiking gun			
Cm251.	Oil test device			
Cm252.	Link stick			
Cm253.	Phase Comparator(Live line tester)			
Cm254.	Phase Comparator 90º adaptor			

Cm255.	Phase Comparator proving unit				
Cm256.	H.V Detector non-contact				
Cm257.	**Plumbing Tools List:**			R	R
Cm258.	Pipe bender	1	each	R	R
Cm259.	Pipe wrench	1	each	R	R
Cm260.	Pipe cutter	1	each	R	R
Cm261.	15m Guides	1	each	R	R
Cm262.	22mm Guides	1	each	R	R
Cm263.	150mm Shifting spanner	1	each	R	R
Cm264.	200mm Shifting spanner	1	each	R	R
Cm265.	250mm Shifting spanner	1	each	R	R
Cm266.	300mm Shifting spanner	1	each	R	R
Cm267.	Basin spanner	1	each	R	R
Cm268.	"Geodore" or similar approved toolbox set that includes spanner set, socket set and ratchet, screw driver set, water pump plier, plier, long nose pliers, 5m tape measure etc.	1	each	R	R
Cm269.	Carpenter saw	1	each	R	R
Cm270.	Hacksaw	1	each	R	R
Cm271.	Claw hammer	1	each	R	R
Cm272.	Ball pin hammer	1	each	R	R
Cm273.	4 Pound hammer	1	each	R	R
Cm274.	10 Pound hammer	1	each	R	R
Cm275.	Carpenter hammer	1	each	R	R
Cm276.	Chisel set	1	each	R	R

Cm277.	Gauging trowel	1	each	R	R
Cm278.	Building trowel	1	each	R	R
Cm279.	Mortar board	1	each	R	R
Cm280.	Float	1	each	R	R
Cm281.	800mm Spirit level	1	each	R	R
Cm282.	Guard line	1	each	R	R
Cm283.	Gas torch	1	each	R	R
Cm284.	LED re-chargeable torch	1	each	R	R
Cm285.	LED head torch	1	each	R	R
Cm286.	Drain rods set with plunger and pig tail etc.	1	each	R	R
Cm287.	File set	1	each	R	R
Cm288.	Hole saw kit	1	each	R	R
Cm289.	Plunger	1	each	R	R
Cm290.	Allen key set	1	each	R	R
Cm291.	Tap reseating tool	1	each	R	R
Cm292.	Plumbers touch	1	each	R	R
Cm293.	Wheel barrow	1	each	R	R
Cm294.	Spade	1	each	R	R
Cm295.	Shovel	1	each	R	R
Cm296.	Picks	1	each	R	R
Cm297.	6ft Step Ladder	1	each	R	R
Cm298.	8ft Step Ladder	1	each	R	R
Cm299.	12ft Step Ladder	1	each	R	R
Cm300.	Extension Ladder	1	each	R	R
Cm301.	Safety harness	1	each	R	R

Cm302.	115mm Angle grinder "Bosch" or similar SANS approved grinder	1	each	R	R
Cm303.	230mm Angle grinder "Bosch" or similar SANS approved grinder	1	each	R	R
Cm304.	"Hilti" or similar approved impact drill	1	each	R	R
Cm305.	6mm – 16mm Masonry and concrete drill bits	1	each	R	R
Cm306.	"Hilti" or similar approved breaker	1	each	R	R
Cm307.	Breaker moils	1	each	R	R
Cm308.	Water pump	1	each	R	R
Cm309.	Petrol Generator 5,5 KVA	1	each	R	R
Cm310.	**Garden tools & Machinery accessories**				
Cm311.	Garden steel rake	1	each	R	R
Cm312.	Garden Rubber rake	1	each	R	R
Cm313.	Garden Plastic rake	1	each	R	R
Cm314.	Garden fork	1	each	R	R
Cm315.	Hedge shear	1	each	R	R
Cm316.	1000 liter refuse bag	1	each	R	R
Cm317.	Helmet for brushcutter visors	1	each	R	R
Cm318.	Elbow size plastic gloves	1	each	R	R
Cm319.	16L knapsack complete	1	each	R	R
Cm320.	122HD60 Hedge Petrol trimmer	1	each	R	R
Cm321.	Ryobi 500w Eletric Trimmer	1	each	R	R
Cm322.	8 foot aluminium ladder	1	each	R	R

Cm323.	12 foot aluminium ladder	1	each	R	R
Cm324.	Sweeping broom	1	each	R	R
Cm325.	Builders wheel barrows	1	each	R	R
Cm326.	Fire fighting spray gun+lances	1	each	R	R
Cm327.	Stihl FS280 brushcutters	1	each	R	R
Cm328.	4stroke Utility mower 196cc	1	each	R	R
Cm329.	Garden spade	1	each	R	R
Cm330.	Padlokcs(Viro)	1	each	R	R
Cm331.	STIHL 381 Chainsaw 72cc	1	each	R	R
Cm332.	Husquarvarna chainsaw 72cc	1	each	R	R
				Total	

NB: PLEASE NOTE THAT THIS IS NOT A FINITE LIST. TRANSNET WILL SEEK QUOTATIONS FOR OTHER RELATED ITEMS NOT LISTED THAT WILL BE REQUIRED FROM TIME TO TIME.

TRANSNET RESERVES THE RIGHT TO COMPARE QUOTED PRICES TO ENSURE MARKET RELATEDNESS.

IN THE MAIN WE WILL COLLECT UPON DELIVERY

All Rates must be excluding VAT.

1. Travelling costs outside a distance of 50KM R……../ km

ANNEXURE C: EVALUATION CRITERIA

All Certified Copies Must Not Be Older Than 3 Months from The Closing Date Of This Tender

Technical Evaluation Criteria	Sub-Criteria	Sub-scoring	Maximum Threshold
Warranty Policy: 1. *Warranty policy (to clearly outline the prescripts of the supplier's warranty for defective items of material)* 2. *Point of order system (that can demonstrate record keeping)* ***NB.*** *Bidder to submit warranty policy, Proof that point of order system clearly demonstrates record keeping. This information will be verified pre-award.*	No Warranty Policy nor Point of order system that is presented or is not for the tendered works	0	**20**
	Either Warranty Policy or point of order system.	10	
	Both Warranty Policy and Point of order system	20	
Supplier's Catalogue: Detailed List of all products on offer.	No catalogue submitted	0	**10**
	A Supplier's catalogue submitted	10	
Company's Previous Experience: Bidder's experience in supplying similar goods. **NB.** *Bidders must submit proof of supply agreements e.g. Signed contract or Purchase order showing client's contact details, contact name on client letterhead not supplier's letterhead.*	No evidence provided	0	**30**
	Bidder experience in supplying similar goods One (1) Reference – Proof of supply agreements	5	
	Bidder experience in supplying similar goods Two (2) References – Proof of supply agreements	10	
	Bidder experience in supplying similar goods Three (3) References – Proof of supply agreements	15	
	Bidder experience in supplying similar goods Four (4) References – Proof of supply agreements	20	
	Bidder experience in supplying similar goods Five (5) References – Proof of supply agreements.	25	
	Bidder experience in supplying similar goods More than Five (>5) References – Proof of supply agreements.	30	
Proximity of Supplier Store *A certified copy of proof of trading address, in the form of a municipal*	No evidence provided.	0	
	Supplier store for selected depot is within **76km and above** radius of the depot	10	
	Supplier store for selected depot is within	20	

bill or similar, not older than three (3) months in the registered name of the company which is submitting the tender. The supplier to clearly demonstrate its regional/national footprint. **NB.** *The above proof will be verified by a physical store visit before a contract is entered into with a Bidder* ***GPS Co-ordinates or equivalent will be shared at the Briefing Session***	**51 - 75km** of the depot		**40**
	Supplier store for selected depot is within **26 - 50km** radius of the depot	30	
	Supplier store for selected depot is within **1 – 25 km** radius of the depot	40	
Maximum possible score for quality			**100**

The minimum qualifying score of technical evaluation points is 60 points.

ANNEXURE D: DEPOTS

Region	**Corridor**	**Depots**
KwaZulu Natal	Container corridor	Durban
KwaZulu Natal	Container corridor	Pietermaritzburg
KwaZulu Natal	Container corridor	Ladysmith
KwaZulu Natal	Container corridor	Newcastle
KwaZulu Natal	Northern corridor	Empangeni
KwaZulu Natal	Northern corridor	Vryheid
Western Cape	Northern Corridor	Bellville
Western Cape	Northern Corridor	Worcester
Western Cape	Northern Corridor	Beaufort West
Western Cape	Northern Corridor	Caledon
Western Cape	Northern Corridor	Malmesbury
Western Cape	Northern Corridor	Mossel bay
Western Cape	Iron Ore Corridor	Vredendal
Western Cape	Iron Ore Corridor	Half-Weg (Loeriesfontein)
Western Cape	Iron Ore Corridor	Saldanha
Northern Region	North-east corridor	Polokwane
Northern Region	North-east corridor	Nelspruit / Ermelo
Inland Region	Central corridor	Klerksdorp
Inland Region	Northern corridor / central corridor	Pretoria
Eastern Cape	Iron Ore Corridor	East London / Cambridge
Eastern Cape	Iron Ore Corridor	North-End

ANNEXURE E: MASTER AGREEMENT

MASTER AGREEMENT

entered into by and between

TRANSNET SOC LTD

and

.....

FOR THE SUPPLY/PROVISION OF :

.....

Agreement Number	**.....**
Commencement Date	**.....**
Expiry Date	**.....**

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SCHEDULE 1 – WORK ORDER / SCHEDULE OF REQUIREMENTS

7 INTRODUCTION

This Agreement is entered into by and between:

Transnet SOC Ltd [Registration Number 1990/000900/30] whose registered address is **.....** , Republic of South Africa [**Transnet**]

and

..... [Registration Number ……] whose registered address is …… [**the Supplier/Service Provider**].

NOW THEREFORE, IT IS AGREED:

7.1 Transnet hereby appoints the Supplier/Service Provider to provide, and Transnet undertakes to accept the supply of Goods / provision of Services provided for herein, as formally agreed between the Parties and in accordance with the Schedule of Requirements / Work Orders issued as a schedule to this Agreement; and

7.2 the Supplier/Service Provider hereby undertakes to provide the Goods/Services provided for herein, as formally agreed between the Parties and in accordance with the Schedule of Requirements issued as a schedule to this Agreement.

8 DEFINITIONS

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

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

8.2 **Agreement** means this Agreement and its associated schedules and/or annexures and/or appendices, and/or schedules, including the Schedule of Requirements/Work Orders, the technical specifications for the Goods/Services and such special conditions as shall apply to this Agreement, together with the General Tender Conditions and any additional provisions in the associated bid documents tendered by the Supplier/Service Provider [as agreed, in writing, between the Parties], which collectively and exclusively govern the supply of Goods / provision of Services and provision of ancillary Services by the Supplier/Service Provider to Transnet;

8.3 **Assignment** refers to the transfer of rights and obligations in a contract from an assigner to an assignee.

8.4 **Background Intellectual Property** means all Intellectual Property introduced and required by either Party to give effect to their obligations under this 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 this Agreement;

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

8.6 **Cession** refers to the transfer of only the rights a service provider has in terms of a contract from it to a third party.

8.7 **Commencement Date** means ……, notwithstanding the signature date of this Agreement;

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

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

b) the contents of this Agreement;

c) private and personal details of employees or clients of the disclosing Party or any other person where an onus rests on the disclosing Party to maintain the confidentiality of such information;

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

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

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

g) information relating to the business activities, business relationships, products, services, customers, clients and Subcontractors of the disclosing Party where an onus rests on the disclosing Party to maintain the confidentiality of such information;

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

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

j) Copyright works;

k) commercial, financial and marketing information;

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

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

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

o) information concerning the charges, fees and/or costs of the disclosing Party or its authorised Subcontractors, or their methods, practices or service performance levels actually achieved;

8.9 **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;

8.10 **Data** means all data, databases, documents, information, graphics, text or other material in an electronic or tangible medium which the Parties to this Agreement generate, collect, process, store or transmit in relation to their business;

8.11 **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;

8.12 **Expiry Date** means …… ;

8.13 **Foreground Intellectual Property** means all Intellectual Property developed by either Party pursuant to this Agreement;

8.14 **Goods** means …… , the material / products specified in the Schedule of Requirements appended as Schedule 1 hereto; **[Delete if goods are not being procured]**

8.15 **ICC Incoterms** means the the latest version of commercial trade terms as published by the International Chamber of Commerce, Paris [ICC], which are otherwise referred to as purchase terms and which define precisely the responsibilities, costs and risks of the buyer [**Transnet**] and the seller [**the Supplier].** Incoterms are only applicable to contracts involving the import or export of Goods from one country to another and for the purpose of this Agreement, if applicable, shall mean the designated Incoterm as stipulated in Schedule 1 hereto. Further details of the Incoterm [purchase terms] for this Agreement, if applicable, can be viewed at the International Business Training website - http://www.i-b-t.net/incoterms.html;

8.16 **Imported content** means that portion of the bid price represented by the cost of components, parts or materials which have been or are still to be imported (whether by the supplier or its subcontractors) and which costs are inclusive of the costs abroad (this includes labour or intellectual property costs), plus freight and other direct importation costs, such as landing costs, dock duties, import duty, sales duty or other similar tax or duty at the South African port of entry;

8.17 **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;

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

8.19 **Local content** means that portion of the bid price which is not included in the imported content, provided that local manufacture does take place;

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

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

8.22 **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;

8.23 **Permitted Purpose** means any activity or process to be undertaken or supervised by a Staff member of one Party during the term of this 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;

8.24 **Price(s)** means the agreed Price(s) for the Goods/Services to be purchased from the Supplier/Service Provider by Transnet, as detailed in the Schedule of Requirements, issued in accordance with this Agreement, as amended by mutual agreement between the Parties and in accordance with the terms and conditions in this Agreement from time to time;

8.25 **Purchase Order(s)** means official orders issued by an operating division of Transnet to the Supplier/Service Provider for the supply of Goods or Services;

8.26 **Service(s)** means…… , the Service(s) provided to Transnet by the Service Provider, pursuant to the Work Order(s) in terms of this Agreement

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

8.28 **Service Provider Materials** means all works of authorship, products and materials [including, but not limited to, data, diagrams, charts, reports, specifications, studies, inventions, software, software development tools, methodologies, ideas, methods, processes, concepts and techniques] owned by, or licensed to, the Service Provider prior to the Commencement Date or independently developed by the Service Provider outside the scope of this Agreement at no expense to Transnet, and used by the Service Provider in the performance of the Services;

8.29 **Staff** means any partner, employee, agent, consultant, independent associate or contractor, Subcontractor and the staff of such Subcontractor, or other authorised representative of either Party;

8.30 **Schedule of Requirements** means Schedule 1 hereto;

8.31 **Subcontract** means any contract or agreement or proposed contract or agreement between the Supplier/Service Provider and any third party whereby that third party agrees to provide to the Supplier the Goods or related Services or any part thereof or material used in the manufacture of the Goods or any part thereof;

8.32 **Subcontractor** means the third party with whom the Supplier/Service Provider enters into a Subcontract;

8.33 **Tax Invoice** means the document as required by Section 20 of the VAT Act, as may be amended from time to time;

8.34 **Trade Marks** mean registered Trade Marks and Trade Mark applications and include 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;

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

8.36 **VAT Act** means the Value Added Tax Act, No 89 of 1991, as may be amended from time to time.

8.37 **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 this Agreement from time to time.

9 INTERPRETATION

9.1 Clause headings in this Agreement are included for ease of reference only and do not form part of this 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.

9.2 Any term, word or phrase used in this 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 this Agreement will be interpreted in accordance with the generally accepted meanings accorded thereto.

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

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

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

10 NATURE AND SCOPE

10.1 This Agreement is an agreement under the terms and conditions of which the Supplier/Service Provider will arrange for the supply/provision to Transnet of the Goods/Services which meet the requirements and specifications of Transnet, the delivery of which is controlled by means of Purchase Orders to be issued by Transnet and executed by the Supplier/Service Provider in accordance with this Agreement.

10.2 Such Purchase Orders and deliveries to Transnet shall be agreed between the Parties from time to time, subject to the terms of the Schedule of Requirements/Work Order.

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

10.4 During the period of this Agreement, both Parties can make written suggestions for amendments to the Schedule of Requirements/Work Orders in accordance with procedures set out in clause 482 *[Amendment and Change Control]*. A Party will advise the other Party within 14 [fourteen] Business Days, or such other period as mutually agreed, whether the amendment is acceptable.

10.5 Insofar as any term, provision or condition in the Schedule of Requirements/Work Order conflicts with a like term, provision or condition in this Agreement and/or a Purchase Order, the term or provision or condition in this Master Agreement shall prevail, unless such term or provision or condition in this Master Agreement has been specifically revoked or amended by mutual written agreement between the Parties.

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

11 AUTHORITY OF PARTIES

11.1 Nothing in this 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.

11.2 Neither Party shall be entitled to, or have the power or authority to:

a) enter into an agreement in the name of the other; or

b) give any warranty, representation or undertaking on the other's behalf; or

c) create any liability against the other or bind the other's credit in any way or for any purpose whatsoever.

12 DURATION/TERM AND CANCELLATION

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

a) this Agreement is terminated by either Party in accordance with the provisions incorporated herein or in any schedules or annexures appended hereto, or otherwise in accordance with law or equity; or

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

12.2 Notwithstanding clause 359 *[Breach and Termination]*, either Party may cancel this Agreement without cause by giving 30 [thirty] calendar days prior written notice thereof to the other Party, provided that in such instance, this Agreement will nevertheless be applicable in respect of all Purchase Orders which have been placed prior to the date of such cancellation.

13 RISK MANAGEMENT

13.1 Where Transnet determines appropriate, within 2 weeks from the date of contract signature, the Parties are to meet to prepare and maintain a contract Risk Register. The Risk Register shall include a description of the risks and a description of the actions which are to be taken to avoid or reduce these risks which both Parties shall jointly determne.

13.2 Contract progress meetings shall be held monthly, or unless otherwise agreed between the Parties in writing. The purposes of these progress meetings shall be to capture the number of late deliverables against agreed milestones, actual costs against payment plans, performance issues or concerns, contract requirements not achieved, the status of previous corrective actions and risk management. Minutes of meetings shall be maintained and signed off between the Parties throughout the contract period

14 TRANSNET'S OBLIGATIONS

14.1 Transnet undertakes to promptly comply with any reasonable request by the Supplier/Service Provider for information, including information concerning Transnet's operations and activities, that relates to the Goods/Services as may be necessary for the Supplier/Service Provider to provide the Goods/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/Service Provider of its confidentiality obligations under this Agreement.

14.2 The Supplier/Service Provider shall give Transnet reasonable notice of any information it requires.

14.3 Transnet agrees to provide the Supplier/Service Provider or its Personnel such access to and use of its facilities as is necessary to allow the Supplier/Service Provider to perform its obligations under this Agreement.

15 GENERAL OBLIGATIONS OF THE SUPPLIER/SERVICE PROVIDER

15.1 The Supplier/Service Provider shall:

a) respond promptly to all complaints and enquiries from Transnet;

b) inform Transnet immediately of any dispute or complaint arising in relation to the storage or delivery of the Goods;

c) conduct its business in a professional manner which will reflect positively upon the Supplier/Service Provider and the Supplier's/Service Provider's products/services;

d) keep full records clearly indicating all transactions concluded by the Supplier/Service Provider relating to the delivery of the Goods/Services and keep such records for at least 5 [five] years from the date of each such transaction;

e) obtain, and at all times maintain in full force and effect, any and all licences, permits and the like required under applicable laws for the provision of the Goods/Services and ancillary Services and the conduct of the business and activities of the Supplier/Service Provider;

f) observe and ensure compliance with all requirements and obligations as set out in the labour and related legislation of South Africa, including the Occupational Health and Safety Act, 85 of 1993, as may be amended from time to time;

g) observe and ensure compliance with all requirements and objectives of the Transnet Supplier Integrity Pact as agreed to in response to the RFP. The general purpose of the Supplier Integrity Pact is to agree to avoid all forms of dishonesty, fraud and corruption by following a system that is fair, transparent and free from any undue influence prior to, during and subsequent to the currency of the procurement event leading to this Agreement and this Agreement itself;

h) comply with all applicable environmental legislation and regulations, demonstrate sound environmental performance and have an environmental management policy which ensures that its products, including the Goods/Services or ancillary Services are procured, produced, packaged, delivered and are capable of being used and ultimately disposed of in a way that is environmentally appropriate; and

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

15.2 The Supplier/Service Provider acknowledges and agrees that it shall at all times:

a) render the supply of the Goods/Services and ancillary Services (if applicable) and perform all its duties with honesty and integrity;

b) communicate openly and honestly with Transnet regarding the supply and performance of the Goods/Services and demonstrate a commitment to effecting the supply and performing ancillary Services timeously, efficiently and at least to the required standards;

c) endeavour to provide the highest possible standards of service and workmanship, 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 Staff, as well as all Transnet's Staff, 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;

g) treat all enquiries from Transnet in connection with the supply of the Goods/Services and/or ancillary Services with courtesy and respond to all enquiries promptly and efficiently. Where the Supplier/Service Provider is unable to comply with the provisions of this clause, the Supplier/Service Provider will advise Transnet of the delay and the reasons therefor and will keep Transnet informed of progress made regarding the enquiry;

h) when requested by Transnet, provide clear and accurate information regarding the Supplier's/Service Provider's own policies and procedures, excluding Know-How and other Confidential Information, except where a non-disclosure undertaking has been entered into between the Parties;

i) not allow a conflict of interest to develop between its own interests [or the interests of any of its other customers] and the interests of Transnet;

j) not accept or offer, nor allow, induce or promote the acceptance or offering of any gratuity, enticement, incentive or gift that could reasonably be regarded as bribery or an attempt to otherwise exert undue influence over the recipient;

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

l) not otherwise act in an unethical manner or do anything which could reasonably be expected to damage or tarnish Transnet's reputation or business image;

m) immediately report to Transnet any unethical, fraudulent or otherwise unlawful conduct of which it becomes aware in connection with Transnet or the supply of Goods/Services or ancillary Services to Transnet;

n) ensure that at all times, during the currency of this Agreement, it complies with all obligations and commitments in terms of the provisions of the Income Tax Act, No 58 of 1962, the VAT Act or any other tax legislation relating to their liability for Income Tax, VAT, Pay as You Earn or any other tax. The Supplier/Service Provider shall further ensure Tax Clearance Compliance, for the duration of this Agreement;

o) not victimise, harass or discriminate against any employee of either Party to this Agreement or any applicant for employment with either Party to this 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.

p) shall ensure that its employees, agents and Subcontractors will not breach any applicable discrimination legislation and any amendments and re-enactments thereof.

15.3 In compliance with the National Railway Safety Regulator Act, 16 of 2002, as may be amended from time to time, the Supplier shall ensure that the Goods/Services and ancillary Services, to be supplied to Transnet under the terms and conditions of this Agreement, comply fully with the Specifications as set forth in Schedule 1 hereto, and shall thereby adhere [as applicable] to railway safety requirements and/or regulations. Permission for the engagement of a Subcontractor by the 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 this Agreement, to review any safety-related activities, including the coordination of such activities across all parts of its organisation.

16 SERVICE PROVIDER'S PERSONNEL

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

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

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

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

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

17 SUBCONTRACTING

17.1 The Supplier/Service Provider may only enter into a subcontracting arrangement or replace a subcontractor with the approval of Transnet.

17.2 If the Supplier/Service Provider subcontracts a portion of the contract to another person without declaring it to Transnet reserves the right to penalise the Supplier/Service Provider up to 10% of the value of the contract.

17.3 Where the Supplier/Service Provider seeks to replace a subcontractor Transnet shall be entitled to obtain representations or input from the initial subcontractor who was part of the tender process whose credentials were used in the Supplier/Service Provider's tender submission. Transnet shall consider input from all parties concerned, in order to take a decision on the proposed replacement of the subcontractor. The subcontracting arrangement or contract remains between the Supplier/Service Provider (main contractor) and the subcontractor.

17.4 Should Transnet approve the Supplier's/Service Provider's subcontracting arrangement, the Supplier/Service Provider and not the Sub-contractor will at all times be held liable for performance in terms of its contractual obligations.

17.5 The Supplier/Service Provider may not subcontract in such a manner that the the overall value of the contract is reduced to below the stipulated minimum threshold.

17.6 The Supplier/Service Provider may not subcontract more than 25% of the value of the contract to any other enterprise that does not have an equal or higher B-BBEE status level of contributor than the Supplier/Service Provider, unless the contract is subcontracted to an Exempted Micro Enterprise (EME) that has the capability and ability to execute the Subcontract.

18 PAYMENT TO SUB-CONTRACTORS

18.1 Transnet reserves the right, in its sole discretion, to make payment directly to the sub-contractor of the Supplier/Service Provider, subject to the following conditions:

a) Receipt of an undisputed invoice from the sub-contractor; and

b) Receipt of written confirmation from the Supplier/Service Provider that the amounts claimed by the sub-contractor are correct and that the services for which the sub-contractor has requested payment were rendered to the satisfaction of the Supplier/Service Provider, against the required standards.

18.2 Nothing contained in this clause must be interpreted as bestowing on any sub-contractor a right or legitimate expectation to be paid directly by Transnet. Furthermore, this clause does not bestow any right or legitimate expectation on the Supplier/Service provider to demand that Transnet pay its sub-contractor directly. The decision to pay any sub-contractor directly, remains that of Transnet alone.

18.3 The Supplier/Service Provider remains liable for its contractual obligations under the Agreement, including all services rendered by the sub-contractor.

18.4 This clause does not establish any contractual relationship between Transnet and any sub-contractor of the Supplier/Service Provider, whatsoever.

19 B-BBEE AND SOCIO-ECONOMIC OBLIGATIONS

19.1 B-BBEE Scorecard

a) Transnet fully endorses and supports the Broad-Based Black Economic Empowerment Programme and is strongly of the opinion that all South African business enterprises have an equal obligation to redress the imbalances of the past.

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

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

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

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

d) Notwithstanding any other reporting requirement in terms hereof, the Supplier Service Provider undertakes to provide any B-BBEE data (underlying data relating to the Supplier /Service Provider which has been relied upon or utilised by a verification agency or auditor for the purposes of issuing a verification certificate in respect of the Supplier/Service Provider B-BBEE status) which

Transnet may request on written notice within 30 (thirty) calendar days of such request. A failure to provide such data shall constitute a Supplier/ Service Provider Default and may be dealt with in accordance with the provisions of clause 359.

e) In the event there is a change in the Supplier's/ Service Provider's B-BBEE status, then the provisions of clause 359 shall apply.

19.2 **Green Economy/Carbon Footprint**

a) The Supplier/Service Provider has in its bid provided Transnet with an understanding of the Supplier's/Service Provider's position with regard to issues such as waste disposal, recycling and energy conservation.

19.3 **Reporting**

a) The Supplier/Service Provider shall monitor, audit, and record in an auditable manner, its own implementation and compliance with its Local Content obligations (if applicable) and provide the Contract Manager with such information as the Contract Manager may reasonably request concerning its Local Content obligations.

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

20 LOCAL CONTENT OBLIGATIONS

20.1 In terms of Annexure A (SBD 6.2) and Annexure C of the RFP, the Supplier has undertaken to implement the local content and production requirements set by National Treasury for the ..... designated sector ("local content undertaking"). It is recorded that the local content undertaking was a prequalification criterion of the RFP and it is therefore mandatory for the Supplier to comply with Annexures A and C in order for it to fulfil its local content obligations.

20.2 The Supplier is required to note that Transnet, the Department of Trade, Industry and Competition [DTIC] and/or the body appointed by the DTIC as the verification authority for local content may conduct compliance audits with regard to the local content requirements as prescribed in Regulation 9 of the Preferential Procurement Regulations, 2011 issued in terms of the Preferential Procurement Policy Framework Act.

20.3 The Supplier is required to continuously update Declarations C, D and E of the Local Content Declaration templates with the actual local content values for the duration of the contract.

20.4 Breach of Local Content obligations also provides Transnet cause to terminate the contract in certain cases where material non compliance with Local Content requirements are not achieved.

21 THE NATIONAL INDUSTRIAL PARTICIPATION PROGRAMME (NIPP)

21.1 In terms of SBD 5, the Supplier has undertaken to enter into a NIPP obligation agreement with the DTIC. In consultation with the DTIC, Transnet may monitor compliance to the NIPP obligation agreement and in the event of non-compliance by the Supplier, penalties will be applied as per paragraph 8.3 of the NIPP Guidelines as issued by the DTIC.

22 JOB-CREATION

22.1 In terms of Section ..... of the RFP, the Supplier has undertaken to create new jobs (either by them or their subcontractor).

23 PENALTIES

23.1 **Penalties for Non-compliance to Service Level Agreement**

Where the Supplier/Service Provider fails to deliver the Goods/Services within the agreed and accepted milestone timelines and provided that the cause of the delay was not due to a fault of Transnet, penalties shall be imposed at ..... .

23.2 **Non-compliance Penalties for Local Content**:

a) The Parties have agreed on the following milestone targets ("the Local Content Plan"): .....

b) If for any reason the Supplier is unable to achieve any milestone target indicated in the Local Content Plan **OR** the local content undertaking , the Supplier must approach the Department of Trade and Industry ("DTI") to obtain exemption in order to supply the goods at a lower local content threshold. The Supplier is obliged to approach DTI for exemption within 10 (ten) days of determining that it is unable to achieve any milestone target or local content threshold.

c) Should the DTI provide exemption, the Supplier shall be entitled to provide the goods at the lower local content threshold set by DTI. In such event, the Parties shall in good faith renegotiate the milestone targets or local content undertaking to ensure that the lowered local content thresholds are achieved.

d) Should DTI not provide the necessary exemption, the Supplier shall be obliged to meet each milestone target as stated in the Local Content Plan or the local content undertaking.

e) Should the Supplier fail to meet any milestone target or the local content undertaking, the following remedies shall apply without limiting any of Transnet's other rights in law:

i. Transnet shall afford the Supplier a period of thirty (30) days to remedy its non-compliance.

ii. Should the Supplier fail to meet its obligations within the further 30 day period, the Supplier shall pay a Non-Compliance penalty ("Non-compliance Penalty") to Transnet in respect of such Non-compliance as set out in clause iv below. The penalties shall be imposed per milestone measurement for non-delivery of committed values in the case of a Local Content Plan or shall be imposed against the non-delivery of committed values where local content undertakings must be met immediately.

iii. To the extent that the Actual Local Content Spend[5] is lower than the Required Local Content Spend[6] (or the Adjusted Required Local Content Spend[7], as the case may be), the Supplier shall be liable for Penalties which is the difference in value between the Actual Local Content

[5] Actual Local Content Spend means the monetary value of local content initiatives actually delivered by the Supplier during the period under review.

[6] Required Local Content Spend means the monetary value of local content obligations that the Supplier has agreed to deliver during the period under review.

[7] Adjusted Required Local Content Spend means any adjustment to the Required Local Content Spend as prescribed by DTCI through the process of exemption referred to in clause c) above and as agreed to between the parties, reduced to writing and signed by the parties.

Spend and the Required Local Content Spend (or the Adjusted Required Local Content Spend, as the case may be) plus an additional percentage of such difference. Such Non-compliance Penalties shall be calculated and levied at the relevant milestones as stipulated in the Local Content Plan or shall be imposed against the non-delivery of committed values where local content undertakings must be met immediately, in accordance with clause iv below.

iv. Non-compliance penalties shall apply at the following rate: the difference in value between the Required Local Content Spend and the Actual Local Content Spend, plus 5% of such difference.

v. In order to guarantee that the Supplier meets its obligations in terms of the Local Content Plan or its committed local content undertaking, Transnet shall be entitled to retain a Non-compliance Penalty at the rate of 2% of every monthly payment due by Transnet to the Supplier over the contract period ("the Local Content Retention Amount"). The Local Content Retention Amount shall be set off against any penalties payable by the Supplier at any milestone assessment.

f) Should no penalties be imposed during the duration of the contract, Transnet shall refund the full value of the Local Content Retention Amount to the Supplier at the end of the contract period.

g) Should any unpaid penalties remain at the end of the contract period, then without limiting other rights that Transnet may have in law, the Supplier shall forfeit the Local Content Retention Amount and shall have no further claim against Transnet for the repayment of such amount.

Non-compliance Penalty Certificate:

h) If any Non-compliance Penalty arises, the Supplier Development Manager shall issue a Non-compliance Penalty Certificate on the last day of each month during such Non-compliance indicating the Non-compliance Penalties which have accrued during that period.

i) A Non-compliance Penalty Certificate shall be prima facie proof of the matters to which it relates. If the Supplier disputes any of the amounts set out in a Non-compliance Penalty Certificate:

- the dispute shall be resolved in accordance with the provisions of the Agreement; and
- if pursuant to that referral, it is determined that the Supplier owes any amount to Transnet pursuant to the Non-compliance Penalty Certificate, then the Supplier shall pay such amount to Transnet within 10 (ten) Business Days of the determination made pursuant to such determination and an accompanying valid Tax Invoice.

Payment of Non-compliance Penalties:

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

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

l) It is agreed that Transnet, the DTI, the South African Bureau of Standards and/or any of their appointed agents shall be entitled to monitor, evaluate and audit the Contractor's compliance

with its obligations under the Local Content Plan. To this end, the Contractor shall provide its full cooperation to the respective bodies referred to in this clause to ensure that effective monitoring, evaluation and auditing takes place.

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

23.3 **Non-compliance penalties for subcontracting**

a) Breach of subcontracting obligations provides Transnet cause to terminate the contract in certain cases where there is a material Non-compliance.

b) If the Supplier/Service Provider fails to achieve its subcontracting commitments as per their bid submission ("a **Non-Compliance**"), the Supplier/Service Provider shall pay a Non-Compliance penalty ("Non-compliance Penalty") to Transnet in respect of such Non-compliance.

c) Such penalty shall be calculated based on the difference in value between the committed and delivered subcontracting value (i.e. 100% of the undelivered subcontracting value) plus an additional 10% (ten per cent) of such difference.

Non-compliance Penalty Certificate:

d) If any Non-compliance Penalty arises, the Supplier Development Manager shall issue a Non-compliance Penalty Certificate 90 business days before the expiry of the contract indicating the Non-compliance Penalties which have accrued during that period.

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

- the dispute shall be resolved in accordance with the provisions of the Agreement; and
- if pursuant to that referral, it is determined that the Supplier/Service Provider owes any amount to Transnet pursuant to the Non-compliance Penalty Certificate, then the Supplier/Service Provider shall pay such amount to Transnet within 10 (ten) Business Days of the determination made pursuant to such determination and an accompanying valid Tax Invoice.

Payment of Non-compliance Penalties:

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

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

h) Should the Supplier/Service Provider fail to pay any Non Compliance Penalties within the time indicated above (as applicable), Transnet shall be entitled to deduct (set off) the amount not paid

by the Supplier/Service Provider from the account of the Supplier/Service Provider in the ensuing month.

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

23.4 **Non-compliance penalties for Job Creation**

a) Breach of job creation obligations provides Transnet cause to terminate the contract in certain cases where there is a material Non-compliance.

b) If the Supplier/Service Provider fails to achieve its job creation commitments as per their bid submission ("a **Non-Compliance**"), the Supplier/Service Provider shall pay a Non-Compliance penalty ("Non-compliance Penalty") to Transnet in respect of such Non-compliance.

c) Such penalty shall be calculated based on the difference between the committed and delivered jobs. For every job not created, a penalty of 2% of the contract value will be applied.

Non-compliance Penalty Certificate:

d) If any Non-compliance Penalty arises, the Supplier Development Manager shall issue a Non-compliance Penalty Certificate 90 business days before the expiry of the contract indicating the Non-compliance Penalties which have accrued during that period.

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

- the dispute shall be resolved in accordance with the provisions of the Agreement; and
- if pursuant to that referral, it is determined that the Supplier/Service Provider owes any amount to Transnet pursuant to the Non-compliance Penalty Certificate, then the Supplier/Service Provider shall pay such amount to Transnet within 10 (ten) Business Days of the determination made pursuant to such determination and an accompanying valid Tax Invoice.

Payment of Non-compliance Penalties:

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

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

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

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

24 FEES AND EXPENSES RELATING TO SERVICES

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

24.2 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].

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

a) are agreed by Transnet in advance;

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

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

d) will only be reimbursed if supported by relevant receipts.

24.4 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.

25 INVOICES AND PAYMENT

25.1 Transnet shall pay the Supplier/Service Provider the amounts stipulated in each Purchase Order/Work Order, subject to the terms and conditions of this Agreement.

25.2 Transnet shall pay such amounts to the Supplier/Service Provider upon receipt of a valid and undisputed Tax Invoice together with the supporting documentation, as specified in the Schedule of Requirements appended hereto, once the valid and undisputed Tax Invoices or such portions of the Tax Invoices which are valid and undisputed become due and payable to the Supplier/Service Provider for the delivery of the Goods/Services ordered, in terms of clause 25.5 below.

25.3 Transnet may, pending an investigation, withhold any payments to the Supplier/Service Provider, in the case where irregular expenditure has been identified in the particular contract and that there is reasonable suspicion that the Supplier/Service Provider is involved or was aware that the contract transgressed any legislation.

25.4 All Prices set out in this Agreement and the Schedule of Requirements hereto are to be indicated inclusive and exclusive of VAT, which will be payable at the applicable rate in ZAR.

25.5 Unless otherwise provided for in the Schedule of Requirements appended to this Agreement, Tax Invoices shall be submitted together with a month-end statement. Payment against such month-end statement shall be made by Transnet within 30 [thirty] calendar days after date of receipt by Transnet of the Supplier's/Service Provider's statement together with the relevant valid and undisputed Tax Invoice(s) and supporting documentation.

25.6 Where the payment of any Tax Invoice, or any part of a Tax Invoice which is not in dispute, is not made in accordance with this clause, the Supplier/Service Provider shall be entitled to charge interest

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

25.7 The Supplier/Service Provider shall remain the owner of all plant, material, machinery, equipment and the like [collectively, **the Supplier's Goods**] provided to Transnet until Transnet has paid in full for the Supplier's Goods, it being specifically agreed that Transnet shall acquire no rights [including liens] of whatsoever nature in such Supplier's Goods until date of final payment by Transnet. Subject to the aforegoing, all risk and benefit to the Supplier's Goods shall pass from the Supplier to Transnet on delivery of the Supplier's Goods by the Supplier to Transnet.

26 PRICE ADJUSTMENTS

26.1 Prices for Goods supplied in terms of this Agreement shall be fixed and firm for the duration of the Agreement.

27 WARRANTIES APPLICABLE TO GOODS

The Supplier warrants that:

27.1 pursuant to clause 15.3 [General Obligations of the Supplier], the Goods will be manufactured in accordance with the specifications appended hereto at Schedule 1, or the manufacturer's specifications, as agreed in writing by both Parties;

27.2 the execution and performance of this Agreement by the Supplier does not infringe any rights of a third party or breach any obligation of the Supplier to any third party; and

27.3 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 this 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.

28 WARRANTIES APPLICABLE TO SERVICES

28.1 The Service Provider warrants to Transnet that:

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

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

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

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

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

28.2 The Service Provider warrants that it will perform its obligations under this Agreement in accordance with the Service Levels as defined in the relevant schedule. Transnet may at its discretion audit compliance with the Service Levels, provided that any such audit is carried out with reasonable prior

notice and in a reasonable way so as not to have an adverse effect on the performance of the Services. Without prejudice to clause 28.3 below, in the event that the Service Provider fails to meet the Service Levels, Transnet may claim appropriate service credits or invoke a retention of Fees as detailed in the relevant schedule and/or Work Order.

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

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

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

28.6 The Service Provider shall advise Transnet of the effects of any steps proposed by Transnet pursuant to clause 28.5 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 482 *[Amendment and Change Control].*

28.7 The Service Provider warrants that:

a) it has, using the most up-to-date software available, tested for [and deleted] all commonly known viruses in the Materials and for all viruses known by the Service Provider at the date of the relevant Work Order; and

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

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

28.8 The Service Provider undertakes to comply with South Africa's general privacy protection in terms of Section 14 of the Bill of Rights in connection with this Agreement and shall procure that its Personnel shall observe the provisions of Section 14 [as applicable] or any amendments and re-enactments thereof and any regulations made pursuant thereto.

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

28.10 In compliance with the National Railway Safety Regulator Act, 16 of 2002, the Service Provider shall ensure that the Services, to be supplied to Transnet under the terms and conditions of this Agreement, comply fully with the specifications as set forth in Schedule 1 hereto, and shall thereby adhere [as

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

29 THIRD PARTY INDEMNITY

The Supplier/Service Provider hereby indemnifies and shall hold Transnet harmless against any direct damages suffered by or claims arising against Transnet in respect of clause 27.2 above.

30 INSPECTION APPLICABLE TO GOODS

30.1 Transnet reserves the right to arrange for the inspection of all Goods forming the subject of any Purchase Order, at any stage before final acceptance and by any means it may think fit, and when such inspection is to be carried out, the relevant Purchase Order(s) shall be endorsed accordingly.

30.2 When inspection at the Supplier's works or warehouse is specified, Transnet's authorised inspector shall have free access to the premises of the Supplier at all times during working hours on a Business Day; shall have liberty to inspect work which is the subject of the Purchase Order at any stage of manufacture, and may reject any Goods which are found to be incomplete, defective or in any way not in conformity with the terms and specifications of this Agreement; and the Supplier shall afford all reasonable facilities for such access and inspection.

30.3 The Supplier shall provide inspection gauges, measuring and test equipment to ensure that the requirements of this Agreement are satisfied. All gauges, templates, tools and other equipment required to check the accuracy of the work shall be calibrated at regular and reasonable intervals by a laboratory which has been approved in writing by Transnet. This certificate shall not be more than 12 [twelve] months old.

30.4 The Supplier shall prepare and supply, without charge to Transnet, all test pieces, samples and specimens; shall provide all labour and apparatus for carrying out tests and analyses in accordance with the terms of this Agreement or Purchase Order, and render all reasonable assistance in making such tests and analyses.

30.5 All special rules governing gauging, testing, analysis and other inspection procedures shall be adhered to strictly in accordance with the terms of this Agreement or Purchase Order and the conditions of any specifications and drawings quoted therein.

30.6 Inspection will be arranged by the Staff of Transnet, as indicated in the Purchase Order(s).

30.7 When Goods are ready for inspection, the Supplier shall apply promptly to the appropriate authority for instructions regarding such inspection. All applications for inspection shall quote Transnet's Agreement or Purchase Order number. 7 [seven] Business Days' notice of readiness from the Supplier shall be given to the authorised inspector appointed by Transnet to carry out such inspection.

30.8 Transnet shall have the right to recover from the Supplier the cost of inspection of any Goods that have been rejected by its authorised inspector in terms of this clause 304.

31 DEFECTIVE GOODS

31.1 Notwithstanding any certificate and/or receipt that may have been issued by or on behalf of Transnet either in South Africa or overseas, Goods will be accepted at the place of delivery or at the port of shipment, as specified in this Agreement, only as regards outward condition of packages and Transnet retains the right to reject the Goods supplied, on or after arrival at the place to which they are consigned, or after they have been placed in use in South Africa, should they be found defective.

31.2 If Goods are rejected owing to latent defects becoming apparent during machining operations or other preparation necessary on the part of Transnet before they can be put into use, the Supplier shall bear all expenses incurred by Transnet in carrying out such necessary operations.

31.3 If such Goods are rejected, the Supplier will pay the following costs:

a) for Goods purchased in South Africa on an ex works basis, the cost of transport from the Supplier's works in South Africa to the named destination where the Goods have been rejected by Transnet, plus handling charges and storage, if leviable; or

b) for Goods manufactured overseas, the Supplier shall pay all replacement costs including the overseas inland transport cost, freight and insurance charges incurred plus railage or other inland transport costs from the South African port to the place where the Goods have been rejected by Transnet, including handling charges, storage, landing charges, customs duty and surcharges, if leviable.

31.4 If Transnet requires rejected Goods to be replaced, the Supplier shall, when called upon to do so, arrange prompt replacement of the Goods within the prescribed manufacturing lead times for such Goods, as indicated in Schedule 1.

31.5 If Goods are found to be defective but the defects are, in the opinion of Transnet, not of so serious a nature as to warrant total rejection of the Goods, the Supplier shall, when called upon to do so, remedy or make good such defects at its own cost, or Transnet may remedy or make good such defects at the request of the Supplier and recover from the Supplier all costs or expenses reasonably incurred by it in doing so.

31.6 Should the Supplier fail, when called upon to remedy or make good such defects within a reasonable time or to request Transnet to do so, Transnet may proceed to remedy or make good such defects and thereafter recover from the Supplier all such costs and expenses as aforementioned.

31.7 Any amount recoverable from the Supplier in terms of this clause may, without prejudice to any other legal remedies available to Transnet, be deducted in whole or in part from any monies in the hands of Transnet which are due for payment to the Supplier.

32 TOTAL OR PARTIAL FAILURE TO PERFORM

32.1 In the case of Goods to be specially manufactured for it, if Transnet at any time ascertains that:

a) no manufacturing of the Goods specified in a Purchase Order has commenced and there is little or no prospect, in Transnet's opinion, that manufacturing will commence within a reasonable time; or

b) delivery of any of the Goods is being or is likely to be delayed beyond the promised delivery date(s), and there is little or no prospect of the Purchase Order(s) being carried out within reasonable adherence to the promised delivery rate(s) or time(s),

then Transnet may, irrespective of the cause of the delay, by notice to the Supplier, cancel as from a future date specified in such notice the whole or any part of this Agreement or Purchase Order in respect of which the Goods to be supplied have not been completed by that date, without incurring any liability by reason of such cancellation except as provided in this clause.

32.2 The Supplier/Service Provider shall thereupon, as soon as possible after such date, deliver to Transnet the Goods/Services [if any] already completed, and payment for the part performance shall be made on a pro rata basis, provided the uncompleted part is not an integral or essential part of the completed Goods/Services. Where an integral or essential part of the work has not been completed, the amount to be paid to the Supplier/Service Provider will be calculated on the basis of Transnet's enrichment. The Supplier/Service Provider shall, wherever practicable, supply Transnet with the necessary drawings and/or specifications to enable it to complete the work.

32.3 Whenever, in any case not covered by clause 32.1 above, the Supplier fails or neglects to execute the work or to deliver any portion of the Goods/Services as required by the terms of this Agreement or Purchase Order, or if any Goods/Services are rejected on any of the grounds mentioned in clause 315 [Defective Goods], Transnet may cancel this Agreement or Purchase Order in so far as it relates to the unexecuted work or the undelivered or rejected portion of the Goods/Services, and in such event, the supply of the remaining portion shall remain subject in all respects to these conditions.

33 NON CONFORMANCE OF GOODS/SERVICES PROCURED

33.1 In the case of Goods/services manufactured for and procured by Transnet from the Supplier/Service Provider in terms of this Agreement, being found not to conform to the Transnet standards, specifications and requirements, Transnet at any time may be entitled to raise a Non Conformance Report (NCR) against a Supplier/Service Provider whose Goods/ Services do not conform to Transnet standards, specifications and requirements directing the Supplier/Service Provider to investigate and remedy the non-conformance within the stipulated time frame as may be determined by Transnet at its discretion.

33.2 Failure by the Supplier/Service Provider to fully comply with NCR within the period stated in sub-clause 26.1 above, shall entitle Transnet to further conditions to which the Supplier/ Service Provider must discharge in order to close the NCR or to terminate the order without giving the Supplier/Service Provider written notice of termination in terms of this Agreement.

34 RIGHTS ON CANCELLATION

34.1 If this Agreement or Purchase Order is cancelled in whole or in part in terms of clause 326 *[Total or Partial Failure to Perform]*, Transnet may execute or complete this Agreement with any other entity and do so on such terms as it may deem proper, or may procure other comparable Goods/Services in substitution for those neglected to be manufactured or supplied or rejected as aforesaid, and may recover from the Supplier the difference between the cost of such Goods/Services and the Price [if the latter was lower] as well as any costs and expenses [including any additional transport costs] which Transnet may have had to incur in consequence of the Supplier's/Service Provider's default.

34.2 Any amount which may be recoverable from the Supplier/Service Provider in terms of clause 34.1 above, without prejudice to any other legal remedies available to Transnet, may be deducted in whole or in part from any monies in the hands of Transnet and due for payment to the Supplier/Service Provider.

35 BREACH AND TERMINATION

35.1 Termination in accordance with clause 12 [Term and Cancellation] 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 this Agreement or impliedly do so shall remain in force and in effect.

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

35.3 To the extent that any of the Deliverables and property referred to in clause 35.2 above are in electronic form and contained on non-detachable storage devices, the Service Provider will provide Transnet with unencrypted copies of the same on magnetic media and will irretrievably destroy and delete copies so held.

35.4 In the event that this Agreement is terminated by the Service Provider under clause **Error! Reference source not found.** [Term and Cancellation], or in the event that a Work Order is terminated by Transnet under clause **Error! Reference source not found.**9 [Breach and Consequences of Termination], Transnet will pay to the Service Provider all outstanding Fees [apportioned on a pro rata basis] relating to the work undertaken by the Service Provider up until the date of such termination. Transnet will also pay the costs of any goods and materials ordered by the Service Provider in relation to the such work for which the Service Provider has paid or is legally obliged to pay, in which case, on delivery of such goods or materials, the Service Provider will promptly deliver such goods and materials to Transnet or as it may direct.

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

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

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

b) its winding-up or dissolution;

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

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

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

35.8 Notwithstanding this clause 359, Transnet may cancel this Agreementwithout cause by giving 30 [thirty] calendar days prior written notice thereof to the Supplier/Service Provider, or

35.9 The provisions of clauses 8 *[Definitions]*, 26.12 *[Warranties]*, 348 *[Rights on Cancellation]*, 383 *[Confidentiality]*, 415 *[Limitation of Liability]*, 36 *[Intellectual Property Rights]*, 459 *[Dispute Resolution]* and 49.1 *[Governing Law]* shall survive termination or expiry of this Agreement.

36 CESSIONS AND ASSIGNMENTS AS PER NT INSTRUCTION NOTE 08 OF 2022/2023

36.1 The Supplier/Service Provider is not allowed to cede its rights for payment in terms of this Agreement without prior written approval from Transnet. Cession shall only be applicable as follows:

a) Cession must only be applicable to the transfer of right to payment for goods/services delivered/rendered by a Supplier/Service Provider to an FSP or State Institutions;

b) The written request for cession must be by the Supplier/Service Provider and not a third party; and

c) The written request by the Supplier/Service Provider must be accompanied by the cession agreement.

36.2 The Supplier/Service Provider is prohibited from transferring its rights and obligations to perform under this contract. Assignments are against the principles of section 217 of the Constitution mainly, fairness, transparency and competitiveness.

37 FORCE MAJEURE

37.1 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 this Agreement caused by an act of force majeure such as acts of God, fire, flood, war, lockout, government action, laws or regulations, terrorism or civil disturbance, defaults or other circumstances or factors beyond the reasonable control of either Party, and to the extent that the performance of obligations of either Party hereunder is delayed by virtue of the aforegoing, any period stipulated for any such performance shall be reasonably extended. Transnet may however rely on strikes, industrial dispute and riots as a ground of force majeure.

37.2 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 this Agreement in order to accommodate the new circumstances caused by the act of *force majeure*. If a Party fails to agree with such modifications proposed by the other Party within 90 [ninety] calendar days of the act of *force majeure* first occurring, either Party may thereafter terminate this Agreement with immediate notice.

38 PROTECTION OF PERSONAL INFORMATION

a) The following terms shall bear the same meaning as contemplated in Section 1 of the Protection of Personal Information Act 4 of 2013 ("POPIA"):

consent; person; personal information; processing; record; Regulator as well as any terms derived from these terms of the POPIA

b) Transnet will process all information by the Respondent in terms of the requirements contemplated in Section 4(1) of the POPIA:

Accountability; Processing limitation; Purpose specification; Further processing limitation; Information quality; Openness; Security safeguards and Data subject participation.

c) Transnet agrees that in submitting any information or documentation requested in the RFP and in this Agreement, the Supplier/Service Provider consents to the processing of their personal information for the

purpose of, but not limited to, risk assessment, contract award, contract management, auditing, legal opinions/litigation, investigations (if applicable), document storage for the legislatively required period, destruction, de-identification and publishing of personal information by Transnet and/or its authorised appointed third parties.

d) The Parties agree that they may obtain and have access to personal information for the fulfilment of the rights and obligations contained herein. In performing the obligations as set out in this Agreement, the Parties shall at all times ensure that:

i. they process personal information only for the express purpose for which it was obtained;

ii. once processed for the purposes for which it was obtained, all personal information will be destroyed to an extent that it cannot be reconstructed to its original form, subject to any legal retention requirements;

iii. Personal information is provided only to authorised personnel who strictly require the personal information to carry out the Parties' respective obligations under this Agreement;

iv. they do not disclose personal information of the other Party, other than in terms of this Agreement;

v. they have all reasonable technical and organisational measures in place to protect all personal information from unauthorised access and/or use;

vi. they have appropriate technical and organisational measures in place to safeguard the security, integrity and authenticity of all information in their possession or under their control in terms of this Agreement;

vii. they identify all reasonably foreseeable internal and external risks to personal information in their possession or under their control; establish and maintain appropriate safeguards against the risks identified; regularly verify that the safeguards are effectively implemented; and ensure that the safeguards are continually updated in response to new risks or deficiencies in previously implemented safeguards;

viii. such personal information is protected against unauthorised or unlawful processing, accidental loss, destruction or damage, alteration, disclosure or access.

38.1 The Parties agree that if personal information will be processed for additional purposes beyond the original purpose for which it was obtained, explicit consent must be obtained beforehand from those persons whose information will be subject to such processing.

38.2 Should it be necessary for either Party to disclose or otherwise make available the personal information to any third party (including sub-contractors and employees) that is not already consented to, it may do so only with the prior written consent of the other Party. The Party requiring such consent shall require of all such third parties, appropriate written undertakings to be provided, containing similar terms to that set forth in this clause, and dealing with that third party's obligations in respect of its processing of the personal information. Following approval by the other Party, the Party requiring consent agrees that the provisions of this clause shall *mutatis mutandis* apply to all authorised third parties who process personal information.

38.3 The Parties shall ensure that any persons authorized to process information on their behalf (including employees and third parties) will safeguard the security, integrity and authenticity of all information. Where necessary to meet this requirement, the Parties shall keep all personal information and any

analyses, profiles, or documents derived therefrom logically separated from all other information and documentation held by it.

38.4 The Parties shall carry out regular assessments to identify all reasonably foreseeable internal and external risks to the personal information in its possession or under its control. The Parties shall implement and maintain appropriate safeguards against the risks which it identifies and shall also regularly verify that the safeguards which it has in place have been effectively implemented.

38.5 The Parties agree that they will promptly return, destroy or de-identify any personal information in their possession or control which belongs to the other Party once it no longer serves the purpose for which it was collected in relation to this Agreement, subject to any legal retention requirements. This may be at the request of the other Party and includes circumstances where a person has requested the Parties to delete all instances of their personal information. The information will be destroyed or de-identified in such a manner that it cannot be reconstructed to its original form, linking it to any particular individual or organisation.

38.6 Personal Information security breach:

a) Each Party shall notify the other party in writing as soon as possible after it becomes aware of or suspects any loss, unauthorised access or unlawful use of any personal information and shall, at its own cost, take all necessary remedial steps to mitigate the extent of the loss or compromise of personal information and to restore the integrity of the affected personal information as quickly as is possible. The Parties shall also be required to provide each other with details of the persons affected by the compromise and the nature and extent of the compromise, including details of the identity of the unauthorised person who may have accessed or acquired the personal information.

b) The Parties shall provide on-going updates on the progress in resolving the compromise at reasonable intervals until such time as the compromise is resolved.

c) Where required, the Parties must notify the South African Police Service; and/or the State Security Agency and the Information Regulator and the affected persons of the security breach. Any such notification shall always include sufficient information to allow the persons to take protective measures against the potential consequences of the compromise.

d) The Parties undertake to co-operate in any investigations relating to security which is carried out by or on behalf of the other including providing any information or material in its possession or control and implementing new security measures.

39 CONFIDENTIALITY

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

a) not to divulge or disclose to any person whomsoever in any form or manner whatsoever, either directly or indirectly, any Confidential Information of the other without the prior written consent of such other Party, other than when called upon to do so in accordance with a statute, or by a court having jurisdiction, or by any other duly authorised and empowered authority or official, in which event the Party concerned shall do what is reasonably possible to inform the other of such a demand and each shall assist the other in seeking appropriate relief or the instituting of a defensive action to protect the Confidential Information concerned;

b) not to use, exploit, permit the use of, directly or indirectly, or in any other manner whatsoever apply the Confidential Information disclosed to it as a result of this 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 this 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 this 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 this 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 this 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 this Agreement, unless written authorisation to do so has first been obtained from the Party first disclosing such information;

h) each Party shall be entitled to disclose such aspects of Confidential Information as may be relevant to one or more technically qualified employees or consultants of the Party who are required in the course of their duties to receive the Confidential Information for the Permitted Purpose provided that the employee or consultant concerned has a legitimate interest therein, and then only to the extent necessary for the Permitted Purpose, and is informed by the Party of the confidential nature of the Confidential Information and the obligations of the confidentiality to which such disclosure is subject and the Party shall ensure such employees or consultants honour such obligations;

i) each Party shall notify the other Party of the name of each person or entity to whom any Confidential Information has been disclosed as soon as practicable after such disclosure;

j) each Party shall ensure that any person or entity to which it discloses Confidential Information shall observe and perform all of the covenants the Party has accepted in this Agreement as if such person or entity has signed this Agreement. The Party disclosing the Confidential Information shall be responsible for any breach of the provisions of this Agreement by such 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.

39.2 The duties and obligations with regard to Confidential Information in this clause 393 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 this Agreement by that Party, or its Staff; 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.

39.3 This clause 393 shall survive termination for any reason of this Agreement and shall remain in force and effect from the Commencement Date of this Agreement and 5 [five] years after the termination of this Agreement. Upon termination of this Agreement, all documentation furnished to the Supplier/Service Provider by Transnet pursuant to this Agreement shall be returned to Transnet including, without limitation, all corporate identity equipment including dyes, blocks, labels, advertising matter, printing matter and the like.

40 INSURANCES

40.1 Without limiting the liability of the Supplier/Service Provider under this Agreement, the Supplier/Service Provider shall take out insurance in respect of all risks for which it is prudent for the Supplier/Service Provider to insure against, including any liability it may have as a result of its activities under this 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/Service Provider.

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

40.3 Subject to clause 40.4 below, if the Supplier/Service Provider fails to effect adequate insurance under this clause 404, 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 on behalf of the Supplier/Service Provider. The Supplier/Service Provider shall promptly reimburse Transnet for any premiums paid provided such insurance protects the Supplier/Service Provider's liability. Transnet assumes no responsibility for such insurance being adequate to protect all of the Supplier/Service Provider's liability.

40.4 In the event that the Supplier/Service Provider receives written notice from its insurers advising of the termination of its insurance cover referred to in clause 40.1 above or if the insurance ceases to be available upon commercially reasonable terms, the Supplier/Service Provider shall immediately notify Transnet in writing of such termination and/or unavailability, whereafter either the Supplier/Service Provider or Transnet may terminate this Agreement on giving the other Party not less than 30 [thirty] calendar days prior written notice to that effect.

41 LIMITATION OF LIABILITY

41.1 The Supplier/Service Provider's liability under this clause 415 shall be in addition to any warranty or condition of any kind, express or implied by law or otherwise, relating to the Goods/Services or ancillary Services, including the quality of the Goods/Services or ancillary Services or any materials delivered pursuant to this Agreement.

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

a) death or personal injury caused by its negligence, [including its employees', agents' or Subcontractors' negligence]; or

b) fraud or theft.

41.3 The Supplier/Service Provider shall indemnify and keep Transnet indemnified from and against liability for damage to any Transnet property [whether tangible or intangible] or any other loss, costs or damage suffered by Transnet to the extent that it results from any act of or omission by the Supplier/Service Provider or its Personnel in connection with this Agreement. The Supplier/Service Provider's liability arising out of this clause 41.3 shall be limited to direct damages.

41.4 Subject always to clauses 41.1 and 41.2 above, the liability of either the Supplier/Service Provider or Transnet under or in connection with this Agreement, whether for negligence, misrepresentation, breach of contract or otherwise, for direct loss or damage arising out of each Default or series of related Defaults shall not exceed 100% [one hundred per cent] of the Fees paid under the schedule or Work Order to which the Default(s) relates.

41.5 Subject to clauses 41.1 to 41.4 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.

41.6 If for any reason the exclusion of liability in clause 41.5 above is void or unenforceable, either Party's total liability for all loss or damage under this Agreement shall be as provided in clause 41.3 above.

41.7 Nothing in this clause 415 shall be taken as limiting the liability of the Parties in respect of clauses 383 *[Confidentiality]* and 426 *[Intellectual Property Rights]*.

42 INTELLECTUAL PROPERTY RIGHTS

42.1 **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/Service Provider acknowledges that it has no claim of any nature in and to the Confidential Information and Background Intellectual Property that is proprietary to Transnet. For the avoidance of doubt all the Supplier/Service Provider's Background Intellectual Property shall remain vested in the Supplier/Service Provider.

b) Transnet shall grant to the Supplier/Service Provider 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/Service Provider to sub-license to other parties.

c) The Supplier/Service Provider shall grant to Transnet an irrevocable, royalty free, non-exclusive licence to use the Supplier/Service Provider's Background Intellectual Property for the Permitted Purpose. This licence shall not permit Transnet to sub-license to other parties.

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

e) The above shall not pertain to any software licenses procured by the Supplier/Service Provider from third parties and used in the supply of the Goods/Services.

42.2 **Title to Intellectual Property**

a) All right, title and interest in and to Foreground Intellectual Property prepared, conceived or developed by the Supplier/Service Provider, its researchers, agents and employees shall vest in Transnet and the Supplier/Service Provider acknowledges that it has no claim of any nature in and to the Foreground Intellectual Property. The Supplier/Service Provider shall not at any time during or after the termination or cancellation of this 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/Service Provider shall reasonably assist Transnet in attaining and maintaining protection of the Foreground Intellectual Property.

c) Where the Foreground Intellectual Property was created by the Supplier/Service Provider or its researchers, agents and employees and where Transnet elects not to exercise its option to seek protection or decides to discontinue the financial support of the prosecution or maintenance of any such protection, Transnet shall notify the Supplier/Service Provider who shall have the right of first refusal to file or continue prosecution or maintain any such applications and to maintain any protection issuing on the Foreground Intellectual Property.

d) No consideration shall be paid by Transnet to the Supplier/Service Provider for the assignment of any Foreground Intellectual Property from the Supplier/Service Provider to Transnet, over and above the sums payable in terms of this Agreement. The Supplier/Service Provider undertakes to sign all documents and do all things as may be necessary to effect, record and perfect the assignment of the Foreground Intellectual Property to Transnet.

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

42.3 **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/Service Provider shall disclose promptly to Transnet all such improvements, developments, adaptations and/or modifications, inventions or discoveries. The Supplier/Service Provider hereby undertakes to sign all documents and do all things as may be necessary to effect, record and perfect the assignment of such improvements, developments, adaptations and/or modifications, inventions or discoveries to Transnet and the Supplier/Service Provider shall reasonably assist Transnet in attaining,

maintaining or documenting ownership and/or protection of the improved Foreground Intellectual Property.

42.4 **Unauthorised Use of Confidential Information**

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

42.5 **Unauthorised Use of Intellectual Property**

a) The Supplier/Service Provider agrees to notify Transnet in writing of any conflicting uses of, and applications of registrations of Patents, Designs and Trade Marks or any act of infringement, unfair competition or passing off involving the Intellectual Property of Transnet of which the Supplier/Service Provider acquires knowledge and Transnet shall have the right, as its own option, to proceed against any party infringing its Intellectual Property.

b) It shall be within the sole and absolute discretion of Transnet to determine what steps shall be taken against the infringer and the Supplier/Service Provider shall co-operate fully with Transnet, at Transnet's cost, in whatever measure including legal action to bring any infringement of illegal use to an end.

c) The Supplier/Service Provider shall cooperate to provide Transnet promptly with all relevant ascertainable facts.

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

43 NON-WAIVER

43.1 Failure or neglect by either Party, at any time, to enforce any of the provisions of this 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 this Agreement.

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

44 PARTIAL INVALIDITY

If any provision of this 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.

45 DISPUTE RESOLUTION

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

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

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

45.4 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 45.

45.5 This clause 459 is severable from the rest of this Agreement and shall remain in effect even if this Agreement is terminated for any reason.

45.6 This clause 459 shall not preclude either Party from seeking urgent relief in a court of appropriate jurisdiction, where grounds for urgency exist.

46 ADDRESSES FOR NOTICES

46.1 The Parties to this Agreement select the physical addresses and fax numbers, as detailed hereafter, as their respective addresses for giving or sending any notice provided for or required in terms of this 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:

a) **Transnet**

(i) For legal notices: .....

.....

.....

Fax No. .....

Attention: Group Legal Department

(ii) For commercial notices: .....

.....

.....

Fax No. .....

Attention: .....

b) **The Supplier/Service Provider**

(i) For legal notices: .....

.....

.....

Fax No. .....

Attention: .....

(ii) For commercial notices: .....

.....

.....

Fax No. .....

Attention: .....

46.2 Any notice shall be addressed to a Party at its physical address, or delivered by hand, or sent by fax or email.

46.3 Any notice shall be deemed to have been given:

a) if hand delivered, on the day of delivery;

b) 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; or

c) if sent by email, on the date and time received, provided that such notice shall be confirmed by prepaid registered post on the date of dispatch of such email, or, should no postal facilities be available on that date, on the next Business Day.

47 WHOLE AND ONLY AGREEMENT

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

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

48 AMENDMENT AND CHANGE CONTROL

48.1 Any amendment or change of any nature made to this Agreement and the Schedule of Requirements thereof shall only be valid if it is in writing, signed by both Parties and added to this Agreement as an addendum hereto. In this regard a Change Notice must first be defined and issued by the requesting Party. A Change Notice Response must then be issued by responding Party. A formal approval of the Change Request will then trigger the issue of the addendum to this Agreement.

48.2 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 459 *[Dispute Resolution*].

49 GENERAL

49.1 **Governing Law**

This 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.

49.2 **Change of Law**

In this 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 this Agreement as may be appropriate in the circumstances. If, within a reasonable period of time, the Supplier/Service Provider and Transnet cannot reach agreement on the nature of the changes required or on modification of Prices, delivery schedules, warranties, or other terms and conditions, either Party may seek to have the matter determined in accordance with clause 459 [*Dispute Resolution*] above.

49.3 **Counterparts**

This 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 this Agreement by signing any such counterpart.

50 DATABASE OF RESTRICTED SUPPLIER

The process of restriction is used to exclude a company/person from conducting future business with Transnet and other organs of state for a specified period. No Bid shall be awarded to a Bidder whose name (or any of its members, directors, partners or trustees) appear on the Register of Tender Defaulters kept by National Treasury, or who have been placed on National Treasury's List of Restricted Suppliers. Transnet reserves the right to withdraw an award, or cancel a contract concluded with a Bidder should it be established, at any time, that a bidder has been restricted with National Treasury by another government institution.

Thus signed by the Parties and witnessed on the following dates and at the following places:

For and on behalf of **TRANSNET SOC LTD** duly authorised hereto	For and on behalf of **……** duly authorised hereto
Name:	Name:
Position:	Position:
Signature:	Signature:
Date:	Date:
Place:	Place:

AS WITNESS: Name:	**AS WITNESS:** Name:
Signature:	Signature:

AS WITNESS: Name:	**AS WITNESS:** Name:
Signature:	Signature:

GENERAL BID CONDITIONS

[June 2022]

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51 DEFINITIONS

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

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

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

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

51.4 **Goods** shall mean the goods required by Transnet as specified in its Bid Document;

51.5 **Parties** shall mean Transnet and the Respondents to a Bid Document;

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

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

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

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

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

51.11 **Service Provider or Supplier** shall mean the successful Respondent;

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

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

51.14 **VAT** shall mean Value-Added Tax in terms of the Value-Added Tax Act, 89 of 1991, as may be amended from time to time.

52 GENERAL

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

53 SUBMITTING OF BID DOCUMENTS

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

53.2 The Bid Documents must be completed in their entirety and Respondents are required to complete and submit their Bid submissions by uploading them into the system against each tender selected. The bidder guide can be found on the Transnet Portal transnetetenders.azurewebsites.net.

54 USE OF BID FORMS

54.1 Where special forms and/or formats are issued by Transnet for the submission of Bids, Respondents are required to submit their Bids by completion of the appropriate sections on such official forms and/or formats and not in other forms and/or formats or documents bearing their own terms and conditions of contract. Non-compliance with this condition may result in the rejection of a Bid.

54.2 Respondents must note that the original Bid forms and/or formats must be completed for submission.

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

55 BID FEES

A bid fee is not applicable. The Bid Documents may be downloaded directly from National Treasury's e-Tender Publication Portal at www.etenders.gov.za and may also be downloaded from the Transnet website at www.transnet.net free of charge.

56 VALIDITY PERIOD

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

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

57 SITE VISITS / BRIEFING SESSIONS

Respondents may be requested to attend a site visit or briefing session where it is necessary to view the site in order to prepare their Bids, or where Transnet deems it necessary to provide Respondents with further information to allow them to complete their Bids properly. Where such visits or sessions are indicated as compulsory in the RFX Document, Respondents are obliged to attend these meetings as failure to do so will result in their disqualification.

58 CLARIFICATION BEFORE THE CLOSING DATE

Should clarification be required on any aspect of the Bid before the closing date, the Respondent must upload questions onto the Transnet e-Tender Submission Portal or direct such queries to the contact person listed in the RFX Document in the stipulated manner.

59 COMMUNICATION AFTER THE CLOSING DATE

After the closing date of a Bid (i.e. during the evaluation period) the Respondent may only communicate with the contact person listed in the RFX Document.

60 UNAUTHORISED COMMUNICATION ABOUT BIDS

Respondents may at any time communicate with the contact person listed in the RFX Document on any matter relating to its Bid but, in the absence of written authority from the delegated individual (BEC chairperson), no communication on a question affecting the subject of a Bid shall take place between Respondents or other potential service providers or any member of the Bid Adjudication Committee or official of Transnet during the period between the closing date for the receipt of the Bid and the date of the notification of the successful Respondent(s). A Bid, in respect of which any such unauthorised communication has occurred, may be disqualified.

61 RETURNABLE DOCUMENTS

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

62 DEFAULTS BY RESPONDENTS

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

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

62.2 accept an order in terms of the Bid;

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

62.4 comply with any condition imposed by Transnet,

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

63 CURRENCY

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

64 PRICES SUBJECT TO CONFIRMATION

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

65 ALTERATIONS MADE BY THE RESPONDENT TO BID PRICES

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

66 EXCHANGE AND REMITTANCE

66.1 The Respondent should note that where the whole or a portion of the contract or order value is to be remitted overseas, Transnet shall, if requested to do so by the Supplier/Service Provider, effect payment overseas directly to the foreign principal or manufacturer of such percentage of the contract or order value as may be stipulated by the Respondent in its Bid Documents.

66.2 It is Transnet's preference to enter into Rand-based agreements. Transnet would request, therefore, that the Respondent give favourable consideration to obtaining forward exchange cover on the foreign currency portion of the Agreement at a cost that is acceptable to Transnet to protect itself against any currency rate fluctuation risks for the duration of any resulting contract or order.

66.3 The Respondent who desires to avail itself of the aforementioned facility must at the time of bidding furnish the information called for in the Exchange and Remittance section of the Bid Documents and also furnish full details of the principals or manufacturer to whom payment is to be made.

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

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

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

67 ACCEPTANCE OF BID

67.1 Upon the acceptance of a Bid by Transnet, the parties shall be bound by these General Bid Conditions and any contractual terms and/or any schedule of "Special Conditions" or otherwise which form part of the Bid Documents.

67.2 Where the Respondent has been informed by Transnet of the acceptance of its Bid, an email communication that has been successfully sent to the Respondent shall be regarded as proof of delivery to the Respondent 1 day after the date of submission.

68 NOTICE TO UNSUCCESSFUL RESPONDENTS

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

69 TERMS AND CONDITIONS OF CONTRACT

69.1 The Supplier/Service Provider shall adhere to the Terms and Conditions of Contract issued with the Bid Documents, together with any schedule of "Special Conditions" or otherwise which form part of the Bid Documents.

69.2 Should the Respondent find any conditions unacceptable, it should indicate which conditions are unacceptable and offer amendments/ alternatives by written submission on a company letterhead. Any such submission shall be subject to review by Transnet's Legal Counsel who shall determine whether the proposed amendments /alternative(s) are acceptable or otherwise, as the case may be. Respondents will be afforded an opportunity to withdraw an unacceptable deviation, failing which the respondent will be disqualified.

70 CONTRACT DOCUMENTS

70.1 The contract documents will comprise these General Bid Conditions, the Terms and Conditions of Contract and any schedule of "Special Conditions" which form part of the Bid Documents.

70.2 The abovementioned documents together with the Respondent's Bid response will constitute the contract between the parties upon receipt by the Respondent of Transnet's letter of acceptance, subject to all additional amendments and/or special conditions thereto as agreed to by the parties.

70.3 Should Transnet inform the Respondent that a formal contract will be signed, the abovementioned documents together with the Respondent's Bid response [and, if any, its covering letter and any subsequent exchange of correspondence] as well as Transnet's Letter of Acceptance, shall constitute a binding contract until the final contract is signed.

71 LAW GOVERNING CONTRACT

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

72 IDENTIFICATION

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

73 RESPONDENT'S SAMPLES

73.1 If samples are required from Respondents, such samples shall be suitably marked with the Respondent's name and address, the Bid number and the Bid item number and must be despatched in time to reach the addressee as stipulated in the Bid Documents on or before the closing date of the Bid. Failure to submit samples by the due date may result in the rejection of a Bid.

73.2 Transnet reserves the right to retain samples furnished by Respondents in compliance with Bid conditions.

73.3 Payment will not be made for a successful Respondent's samples that may be retained by Transnet for the purpose of checking the quality and workmanship of Goods/Services delivered in execution of a contract.

73.4 If Transnet does not wish to retain unsuccessful Respondents' samples and the Respondents require their return, such samples may be collected by the Respondents at their own risk and cost.

74 SECURITIES

74.1 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 [Deed of Suretyship] furnished by an approved bank, building society, insurance or guarantee corporation carrying on business in South Africa.

74.2 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.

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

74.4 For the purpose of clause 74.174.1 above, Transnet will supply a Deed of Suretyship form to the successful Respondent for completion and no guarantee in any other form will be accepted. A copy of such form will be supplied to Respondents on request. For this purpose a Deed of Suretyship form will be provided which shall be completed and returned to Transnet or a designated official by the successful Respondent within 30 [thirty] calendar days from the date of the letter of acceptance. No payment will be made until the form, duly completed, is 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/Service Provider to cancel the contract with immediate effect.

74.5 Additional costs incurred by Transnet necessitated by reason of default on the part of the Supplier/Service Provider in relation to the conditions of this clause 744 will be for the account of the Supplier/Service Provider.

75 PRICE AND DELIVERY BASIS FOR GOODS

75.1 Unless otherwise specified in the Bid Documents, the prices quoted for Goods must be on a Delivered Duty Paid [latest ICC Incoterms] price basis in accordance with the terms and at the delivery point or points specified in Transnet's Bid Documents. Bids for supply on any other basis of delivery are liable to disqualification. The lead time for delivery stated by the Respondent must be inclusive of all non-working

days or holidays, and of periods occupied in stocktaking or in effecting repairs to or overhauling plant, which would ordinarily occur within the delivery period given by the Respondent.

75.2 Respondents must furnish their Bid prices in the Price Schedule of the Bid Documents on the following basis:

a) Local Supplies - Prices for Goods to be manufactured, produced or assembled in the Republic of South Africa, or imported supplies held in South Africa, to be quoted on a Delivered RSA named destination basis.

b) Imported Supplies - Prices for Goods to be imported from all sources to be quoted on a Delivered Duty Paid [latest ICC Incoterms] basis, to end destination in South Africa, unless otherwise specified in the Bid Price Schedule.

76 EXPORT LICENCE

The award of a Bid for Goods to be imported may be subject to the issue of an export licence in the country of origin or supply. If required, the Supplier/Service Provider's manufacturer or forwarding agent shall be required to apply for such licence.

77 QUALITY OF MATERIAL

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

78 DELETION OF ITEMS EXCLUDED FROM BID

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

79 VALUE-ADDED TAX

79.1 In respect of local supplies, i.e. Goods to be manufactured, produced or assembled in the Republic of South Africa, or imported supplies held or already in transit to South Africa, the prices quoted by the Respondent are to be inclusive of VAT which must be shown separately at the standard rate on the Tax Invoice.

79.2 In respect of foreign Services rendered:

a) the invoicing by a South African Service Provider on behalf of its foreign principal rendering such Service represents a Service rendered by the principal; and

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

80 IMPORTANT NOTICE TO RESPONDENTS REGARDING PAYMENT

80.1 Method of Payment

a) The attention of the Respondent is directed to the Terms and Conditions of Contract which set out the conditions of payment on which Bid price(s) shall be based.

b) However, in addition to the aforegoing 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 Bid is adjudicated.

d) The Respondent must, therefore, in the first instance, tender strictly in accordance with clause 80.1 (a) above. Failure to comply with clause 80.1 (a) above may preclude a Bid from further consideration.

NOTE: The successful Respondent [the **Supplier/Service Provider**] shall, where applicable, be required to furnish a guarantee covering any advance payments.

80.2 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/Service Provider's month-end statement reflecting the relevant Tax Invoice(s) for payment purposes, provided the conditions of the order or contract have been fulfilled and the Tax Invoice is correct in all respects 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 documentation.

81 CONTRACT QUANTITIES AND DELIVERY REQUIREMENTS

81.1 Contract Quantities

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

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

c) The estimated planned quantities likely to be ordered by Transnet per annum are furnished in relevant section of the Bid Documents. For avoidance of doubt the estimated quantities are estimates and Transnet reserves the right to order only those quantities sufficient for its operational requirements.

81.2 Delivery Period

a) Period Contracts and Fixed Quantity Requirements

It will be a condition of any resulting contract/order that the delivery period embodied therein will be governed by the provisions of the Terms and Conditions of Contract.

b) Progress Reports

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

c) Emergency Demands as and when required

If, due to unforeseen circumstances, supplies of the Goods/Services covered by the Bid are required at short notice for immediate delivery, the Supplier/Service Provider will be given first right of refusal for such business. If it is unable to meet the desired critical delivery period, Transnet reserves the right to purchase such supplies as may be required to meet the emergency outside the contract if immediate delivery can be offered from any other source. The *Total or*

Partial Failure to Perform the Scope of Supply section in the Terms and Conditions of Contract will not be applicable in these circumstances.

82 PLANS, DRAWINGS, DIAGRAMS, SPECIFICATIONS AND DOCUMENTS

82.1 Copyright

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

82.2 Drawings and specifications

In addition to what may be stated in any Bid Document, the Respondent should note that, unless notified to the contrary by Transnet or a designated official by means of an official amendment to the Bid Documents, it is required to tender for Goods/Services strictly in accordance with the drawings and/or specifications supplied by Transnet, notwithstanding that it may be aware that alterations or amendments to such drawings or specifications are contemplated by Transnet.

82.3 Respondent's drawings

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

82.4 Foreign specifications

The Respondent quoting for Goods/Services in accordance with foreign specifications, other than British and American standards, is to submit translated copies of such specifications with the Bid. In the event of any departures or variations between the foreign specification(s) quoted in the Bid Documents, full details regarding such departures or variations must be furnished by the Respondent in a covering letter attached to the Bid. Non-compliance with this condition may result in disqualification.

83 BIDS BY OR ON BEHALF OF FOREIGN RESPONDENTS

83.1 Bids submitted by foreign principals may be forwarded directly by the principals or by its South African representative or agent to the designated official of Transnet according to whichever officer is specified in the Bid Documents.

83.2 In the case of a representative or agent, written proof must be submitted to the effect that such representative or agent has been duly authorised to act in that capacity by the principal. Failure to submit such authorisation by the representative or agent shall disqualify the Bid.

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

83.4 South African representatives or agents of a successful foreign Respondent must when so required enter into a formal contract in the name of their principals and must sign such contract on behalf of the latter. In every such case a legal Power of Attorney from their principals must be furnished to Transnet by the South African representative or agents authorising them to enter into and sign such contract.

a) Such Power of Attorney must comply with Rule 63 (Authentication of documents executed outside the Republic for use within the Republic) of the Uniform Rules of Court: Rules regulating the conduct of the proceedings of the several provincial and local divisions of the Supreme Court of South Africa.

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

c) If a Power of Attorney held by the South African representative or agent includes matters of a general nature besides provision for the entering into and signing of a contract with Transnet, a certified copy thereof should be furnished.

d) The Power of Attorney must authorise the South African representative or agent to choose the *domicilium citandi et executandi.*

83.5 If payment is to be made in South Africa, the foreign Supplier/Service Provider [i.e. the principal, or its South African agent or representative], must notify Transnet in writing whether, for payment by electronic funds transfer [EFT]:

a) funds are to be transferred to the credit of the foreign Supplier/Service Provider's account at a bank in South Africa, in which case the name and branch of such bank shall be furnished; or

b) 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.

83.6 The attention of the Respondent is directed to clause 74 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.

84 DATABASE OF RESTRICTED SUPPLIERS

The process of restriction is used to exclude a company/person from conducting future business with Transnet and other organs of state for a specified period. No Bid shall be awarded to a Bidder whose name (or any of its members, directors, partners or trustees) appear on the Register of Tender Defaulters kept by National Treasury, or who have been placed on National Treasury's List of Restricted Suppliers. Transnet reserves the right to withdraw an award, or cancel a contract concluded with a Bidder should it be established, at any time, that a bidder has been restricted with National Treasury by another government institution.

85 CONFLICT WITH ISSUED RFX DOCUMENT

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

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ANNEXURE G: TRANSNET SUPPLIER INTEGRITY

Important Note: All potential bidders must read this document and certify in the RFX Declaration Form that they have acquainted themselves with, and agree with the content. The contract with the successful bidder will automatically incorporate this Integrity Pact as part of the final concluded contract.

INTEGRITY PACT

Between

TRANSNET SOC LTD

Registration Number: 1990/000900/30

("Transnet")

And The Bidder / Supplier/ Service Provider / Contractor (hereinafter referred to as the "Bidder / Supplier")

PREAMBLE

Transnet values full compliance with all relevant laws and regulations, ethical standards and the principles of economical use of resources, fairness and transparency in its relations with its Bidders / Suppliers.

In order to achieve these goals, Transnet and the Bidder / Supplier hereby enter into this agreement hereinafter referred to as the "Integrity Pact" which will form part of the Bidder's / Supplier's application for registration with Transnet as a vendor.

The general purpose of this Integrity Pact is to agree on avoiding all forms of dishonesty, fraud and corruption by following a system that is fair, transparent and free from any undue influence prior to, during and subsequent to the currency of any procurement and / or reverse logistics event and any further contract to be entered into between the Parties, relating to such event.

All Bidders / Suppliers will be required to sign and comply with undertakings contained in this Integrity Pact, should they want to be registered as a Transnet vendor.

15 OBJECTIVES

15.1 Transnet and the Bidder / Supplier agree to enter into this Integrity Pact, to avoid all forms of dishonesty, fraud and corruption including practices that are anti-competitive in nature, negotiations made in bad faith and under-pricing by following a system that is fair, transparent and free from any influence / unprejudiced dealings prior to, during and subsequent to the currency of the contract to be entered into with a view to:

a) Enable Transnet to obtain the desired contract at a reasonable and competitive price in conformity to the defined specifications of the works, goods and services; and

b) Enable Bidders / Suppliers to abstain from bribing or participating in any corrupt practice in order to secure the contract.

16 COMMITMENTS OF TRANSNET

Transnet commits to take all measures necessary to prevent dishonesty, fraud and corruption and to observe the following principles:

16.1 Transnet hereby undertakes that no employee of Transnet connected directly or indirectly with the sourcing event and ensuing contract, will demand, take a promise for or accept directly or through intermediaries any bribe, consideration, gift, reward, favour or any material or immaterial benefit or any other advantage from the Bidder, either for themselves or for any person, organisation or third party related to the contract in exchange for an advantage in the bidding process, bid evaluation, contracting or implementation process related to any contract.

16.2 Transnet will, during the registration and bidding process treat all Bidders / Suppliers with equity, transparency and fairness. Transnet will in particular, before and during the registration process, provide to all Bidders / Suppliers the same information and will not provide to any Bidders / Suppliers confidential / additional information through which the Bidders / Suppliers could obtain an advantage in relation to any bidding process.

16.3 Transnet further confirms that its employees will not favour any prospective bidder in any form that could afford an undue advantage to a particular bidder during the tendering stage, and will further treat all Bidders / Supplier participating in the bidding process in a fair manner.

16.4 Transnet will exclude from the bidding process such employees who have any personal interest in the Bidders / Suppliers participating in the bidding process.

17 OBLIGATIONS OF THE BIDDER / SUPPLIER

17.1 Transnet has a '**Zero Gifts**' Policy. No employee is allowed to accept gifts, favours or benefits.

a) Transnet officials and employees **shall not** solicit, give or accept, or from agreeing to solicit, give, accept or receive directly or indirectly, any gift, gratuity, favour, entertainment, loan, or anything of monetary value, from any person or juridical entities in the course of official duties or in connection with any operation being managed by, or any transaction which may be affected by the functions of their office.

b) Transnet officials and employees **shall not** solicit or accept gifts of any kind, from vendors, suppliers, customers, potential employees, potential vendors, and suppliers, or any other individual or organisation irrespective of the value.

c) Under **no circumstances** should gifts, business courtesies or hospitality packages be accepted from or given to prospective suppliers participating in a tender process at the respective employee's Operating Division, regardless of retail value.

d) Gratuities, bribes or kickbacks of any kind must never be solicited, accepted or offered, either directly or indirectly. This includes money, loans, equity, special privileges, personal favours, benefit or services. Such favours will be considered to constitute corruption.

17.2 The Bidder / Supplier commits itself to take all measures necessary to prevent corrupt practices, unfair means and illegal activities during any stage of its bid or during any ensuing contract stage in order to secure the contract or in furtherance to secure it and in particular the Bidder / Supplier commits to the following:

a) The Bidder / Supplier will not, directly or through any other person or firm, offer, promise or give to Transnet or to any of Transnet's employees involved in the bidding process or to any third person any material or other benefit or payment, in order to obtain in exchange an advantage during the bidding process; and

b) The Bidder / Supplier will not offer, directly or through intermediaries, any bribe, gift, consideration, reward, favour, any material or immaterial benefit or other advantage, commission, fees, brokerage or inducement to any employee of Transnet, connected directly or indirectly with the bidding process, or to any person, organisation or third party related to the contract in exchange for any advantage in the bidding, evaluation, contracting and implementation of the contract.

17.3 The Bidder / Supplier will not collude with other parties interested in the contract to preclude a competitive bid price, impair the transparency, fairness and progress of the bidding process, bid evaluation, contracting and implementation of the contract. The Bidder / Supplier further commits itself to delivering against all agreed upon conditions as stipulated within the contract.

17.4 The Bidder / Supplier will not enter into any illegal or dishonest agreement or understanding, whether formal or informal with other Bidders / Suppliers. This applies in particular to certifications, submissions or non-submission of documents or actions that are restrictive or to introduce cartels into the bidding process.

17.5 The Bidder / Supplier will not commit any criminal offence under the relevant anti-corruption laws of South Africa or any other country. Furthermore, the Bidder /Supplier will not use for illegitimate purposes or for restrictive purposes or personal gain, or pass on to others, any information provided by Transnet as part of the business relationship, regarding plans, technical proposals and business details, including information contained or transmitted electronically.

17.6 A Bidder / Supplier of foreign origin shall disclose the name and address of its agents or representatives in South Africa, if any, involved directly or indirectly in the registration or bidding process. Similarly, the Bidder / Supplier of South African nationality shall furnish the name and address of the foreign principals, if any, involved directly or indirectly in the registration or bidding process.

17.7 The Bidder / Supplier will not misrepresent facts or furnish false or forged documents or information in order to influence the bidding process to the advantage of the Bidder / Supplier or detriment of Transnet or other competitors.

17.8 Transnet may require the Bidder / Supplier to furnish Transnet with a copy of its code of conduct. Such code of conduct must address the compliance programme for the implementation of the code of conduct and reject the use of bribes and other dishonest and unethical conduct.

17.9 The Bidder / Supplier will not instigate third persons to commit offences outlined above or be an accessory to such offences.

17.10 The Bidder/Supplier confirms that they will uphold the ten principles of the United Nations Global Compact (UNGC) in the fields of Human Rights, Labour, Anti-Corruption and the Environment when undertaking business with Transnet as follows:

a) Human Rights
- Principle 1: Businesses should support and respect the protection of internationally proclaimed human rights; and
- Principle 2: make sure that they are not complicit in human rights abuses.

b) Labour
- Principle 3: Businesses should uphold the freedom of association and the effective recognition of the right to collective bargaining;
- Principle 4: the elimination of all forms of forced and compulsory labour;
- Principle 5: the effective abolition of child labour; and
- Principle 6: the elimination of discrimination in respect of employment and occupation.

c) Environment
- Principle 7: Businesses should support a precautionary approach to environmental challenges;
- Principle 8: undertake initiatives to promote greater environmental responsibility; and
- Principle 9: encourage the development and diffusion of environmentally friendly technologies.

d) Anti-Corruption
- Principle 10: Businesses should work against corruption in all its forms, including extortion and bribery.

18 INDEPENDENT BIDDING

18.1 For the purposes of this undertaking in relation to any submitted Bid, the Bidder declares to fully understand that the word "competitor" shall include any individual or organisation, other than the Bidder, whether or not affiliated with the Bidder, who:

a) has been requested to submit a Bid in response to this Bid invitation;

b) could potentially submit a Bid in response to this Bid invitation, based on their qualifications, abilities or experience; and

c) provides the same Goods and Services as the Bidder and/or is in the same line of business as the Bidder.

18.2 The Bidder has arrived at his submitted Bid independently from, and without consultation, communication, agreement or arrangement with any competitor. However communication between partners in a joint venture or consortium will not be construed as collusive bidding.

18.3 In particular, without limiting the generality of paragraph 4.2 above, there has been no consultation, communication, agreement or arrangement with any competitor regarding:

a) prices;

b) geographical area where Goods or Services will be rendered [market allocation];

c) methods, factors or formulas used to calculate prices;

d) the intention or decision to submit or not to submit, a Bid;

e) the submission of a Bid which does not meet the specifications and conditions of the RFP; or

f) bidding with the intention of not winning the Bid.

18.4 In addition, there have been no consultations, communications, agreements or arrangements with any competitor regarding the quality, quantity, specifications and conditions or delivery particulars of the Goods or Services to which his/her Bid relates.

18.5 The terms of the Bid as submitted have not been, and will not be, disclosed by the Bidder, directly or indirectly, to any competitor, prior to the date and time of the official Bid opening or of the awarding of the contract.

18.6 Bidders are aware that, in addition and without prejudice to any other remedy provided to combat any restrictive practices related to bids and contracts, Bids that are suspicious will be reported to the Competition Commission for investigation and possible imposition of administrative penalties in terms of section 59 of the Competition Act No 89 of 1998 and/or may be reported to the National Prosecuting Authority [**NPA**] for criminal investigation and/or may be restricted from conducting business with the public sector for a period not exceeding 10 [ten] years in terms of the Prevention and Combating of Corrupt Activities Act No 12 of 2004 or any other applicable legislation.

19 DISQUALIFICATION FROM BIDDING PROCESS

19.1 If the Bidder / Supplier has committed a transgression through a violation of paragraph 3 of this Integrity Pact or in any other form such as to put its reliability or credibility as a Bidder / Supplier into question, Transnet may reject the Bidder's / Supplier's application from the registration or bidding process and remove the Bidder / Supplier from its database, if already registered.

19.2 If the Bidder / Supplier has committed a transgression through a violation of paragraph 3, or any material violation, such as to put its reliability or credibility into question, Transnet may after following due procedures and at its own discretion also exclude the Bidder / Supplier from future bidding processes. The imposition and duration of the exclusion will be determined by the severity of the transgression. The severity will be determined by the circumstances of the case, which will include amongst others the number of transgressions, the position of the transgressors within the company hierarchy of the Bidder / Supplier and the amount of the damage. The exclusion will be imposed for up to a maximum of 10 (ten) years. However, Transnet reserves the right to impose a longer period of exclusion, depending on the gravity of the misconduct.

19.3 If the Bidder / Supplier can prove that it has restored the damage caused by it and has installed a suitable corruption prevention system, or taken other remedial measures as the circumstances of the case may require, Transnet may at its own discretion revoke the exclusion or suspend the imposed penalty.

20 DATABASE OF RESTRICTED SUPPLIERS

20.1 The process of restriction is used to exclude a company/person from conducting future business with Transnet and other organs of state for a specified period. No Bid shall be awarded to a Bidder whose name (or any of its members, directors, partners or trustees) appear on the Register of Tender Defaulters kept by National Treasury, or who have been placed on National Treasury's List of Restricted Suppliers. Transnet reserves the right to withdraw an award, or cancel a contract concluded with a Bidder should it be established, at any time, that a bidder has been restricted with National Treasury by another government institution.

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

20.3 On completion of the restriction procedure, Transnet will submit the restricted entity's details (including the identity number of the individuals and registration number of the entity) to National Treasury for

placement on National Treasury's Database of Restricted Suppliers for the specified period of exclusion. National Treasury will make the final decision on whether to restrict an entity from doing business with any organ of state for a period not exceeding 10 years and place the entity concerned on the Database of Restricted Suppliers published on its official website.

20.4 The decision to restrict is based on one of the grounds for restriction. The standard of proof to commence the restriction process is whether a "*prima facie*" (i.e. on the face of it) case has been established.

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

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

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

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

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

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

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

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

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

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

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

g) has submitted false information regarding any other matter required in terms of the Preferential Procurement Regulations, 2017 issued in terms of the Preferential Procurement Policy Framework Act which will affect the evaluation of a Bid or where a Bidder has failed to declare any subcontracting arrangements;

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

i) has litigated against Transnet in bad faith.

21 PREVIOUS TRANSGRESSIONS

21.1 The Bidder / Supplier hereby declares that no previous transgressions resulting in a serious breach of any law, including but not limited to, corruption, fraud, theft, extortion and contraventions of the Competition Act 89 of 1998, which occurred in the last 5 (five) years with any other public sector undertaking, government department or private sector company that could justify its exclusion from its registration on the Bidder's / Supplier's database or any bidding process.

21.2 If it is found to be that the Bidder / Supplier made an incorrect statement on this subject, the Bidder / Supplier can be rejected from the registration process or removed from the Bidder / Supplier database, if already registered, for such reason (refer to the Breach of Law Form contained in the applicable RFX document.)

22 SANCTIONS FOR VIOLATIONS

22.1 Transnet shall also take all or any one of the following actions, wherever required to:

a) Immediately exclude the Bidder / Supplier from the bidding process or call off the pre-contract negotiations without giving any compensation to the Bidder / Supplier. However, the proceedings with the other Bidders / Suppliers may continue;

b) Immediately cancel the contract, if already awarded or signed, without giving any compensation to the Bidder / Supplier;

c) Recover all sums already paid by Transnet;

d) Encash the advance bank guarantee and performance bond or warranty bond, if furnished by the Bidder / Supplier, in order to recover the payments, already made by Transnet, along with interest;

e) Cancel all or any other contracts with the Bidder / Supplier;

f) Exclude the Bidder / Supplier from entering into any bid with Transnet and other organs of state in future for a specified period; and

g) If the Supplier subcontracted a portion of the bid to another person without declaring it to Transnet, Transnet must penalise the Supplier up to 10% of the value of the contract.

23 CONFLICTS OF INTEREST

23.1 A conflict of interest includes, inter alia, a situation in which:

a) A Transnet employee has a personal financial interest in a bidding / supplying entity; and

b) A Transnet employee has private interests or personal considerations or has an affiliation or a relationship which affects, or may affect, or may be perceived to affect his / her judgment in action in the best interest of Transnet, or could affect the employee's motivations for acting in a particular manner, or which could result in, or be perceived as favouritism or nepotism.

23.2 A Transnet employee uses his / her position, or privileges or information obtained while acting in the capacity as an employee for:

a) Private gain or advancement; or

b) The expectation of private gain, or advancement, or any other advantage accruing to the employee must be declared in a prescribed form.

Thus, conflicts of interest of any bid committee member or any person involved in the sourcing process must be declared in a prescribed form.

23.3 If a Bidder / Supplier has or becomes aware of a conflict of interest i.e. a family, business and / or social relationship between its owner(s) / member(s) / director(s) / partner(s) / shareholder(s) and a Transnet employee / member of Transnet's Board of Directors in respect of a bid which will be considered for the bid process, the Bidder / Supplier:

a) must disclose the interest and its general nature, in the Request for Proposal ("RFX") declaration form; or

b) must notify Transnet immediately in writing once the circumstances has arisen.

23.4 The Bidder / Supplier shall not lend to or borrow any money from or enter into any monetary dealings or transactions, directly or indirectly, with any committee member or any person involved in the sourcing process, where this is done, Transnet shall be entitled forthwith to rescind the contract and all other contracts with the Bidder / Supplier.

24 DISPUTE RESOLUTION

24.1 Transnet recognises that trust and good faith are pivotal to its relationship with its Bidders / Suppliers. When a dispute arises between Transnet and its Bidder / Supplier, the parties should use their best endeavours to resolve the dispute in an amicable manner, whenever possible. Litigation in bad faith negates the principles of trust and good faith on which commercial relationships are based. Accordingly, following a restriction process as mentioned in paragraph 20 above, Transnet will not do business with a company that litigates against it in bad faith or is involved in any action that reflects bad faith on its part. Litigation in bad faith includes, but is not limited to the following instances:

a) **Vexatious proceedings**: these are frivolous proceedings which have been instituted without proper grounds;

b) **Perjury:** where a supplier make a false statement either in giving evidence or on an affidavit;

c) **Scurrilous allegations:** where a supplier makes allegations regarding a senior Transnet employee which are without proper foundation, scandalous, abusive or defamatory; and

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

25 GENERAL

25.1 This Integrity Pact is governed by and interpreted in accordance with the laws of the Republic of South Africa.

25.2 The actions stipulated in this Integrity Pact are without prejudice to any other legal action that may follow in accordance with the provisions of the law relating to any civil or criminal proceedings.

25.3 The validity of this Integrity Pact shall cover all the bidding processes and will be valid for an indefinite period unless cancelled by either Party.

25.4 Should one or several provisions of this Integrity Pact turn out to be invalid the remainder of this Integrity Pact remains valid.

25.5 Should a Bidder / Supplier be confronted with dishonest, fraudulent or corruptive behaviour of one or more Transnet employees, Transnet expects its Bidders / Suppliers to report this behaviour directly to a senior Transnet official / employee or alternatively by using Transnet's "Tip-Off Anonymous" hotline number 0800 003 056, whereby your confidentiality is guaranteed.

The Parties hereby declare that each of them has read and understood the clauses of this Integrity Pact and shall abide by it. To the best of the Parties' knowledge and belief, the information provided in this Integrity Pact is true and correct.

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NON-DISCLOSURE AGREEMENT

[April 2020]

THIS AGREEMENT is made between

Transnet SOC Ltd [**Transnet**] [Registration No. 1990/000900/30]
whose registered office is at 49th Floor, Carlton Centre, 150 Commissioner Street, Johannesburg 2001,

and

the Company as indicated in the RFP bid response hereto

WHEREAS

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

IT IS HEREBY AGREED

1. INTERPRETATION

In this Agreement:

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

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

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

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

1.3.2 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

1.3.3 following such disclosure, becomes available to the Receiving Party or its Agents [as can be demonstrated by its written records or other reasonable evidence] from a source other than the

Disclosing Party or its Agents, which source is not bound by any duty of confidentiality owed, directly or indirectly, to the Disclosing Party in relation to such information;

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

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

2. CONFIDENTIAL INFORMATION

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

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

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

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

2.3.2 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 2.3.2 above, it shall promptly notify the Disclosing Party and cooperate with the Disclosing Party regarding the form, nature, content and purpose of such disclosure or any action which the Disclosing Party may reasonably take to challenge the validity of such requirement.

2.5 In the event that any Confidential Information shall be copied, disclosed or used otherwise than as permitted under this Agreement then, upon becoming aware of the same, without prejudice to any rights or remedies of the Disclosing Party, the Receiving Party shall as soon as practicable notify the Disclosing Party of such event and if requested take such steps [including the institution of legal proceedings] as shall be necessary to remedy [if capable of remedy] the default and/or to prevent further unauthorised copying, disclosure or use.

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

3. RECORDS AND RETURN OF INFORMATION

3.1 The Receiving Party agrees to ensure proper and secure storage of all Information and any copies thereof.

3.2 The Receiving Party shall keep a written record, to be supplied to the Disclosing Party upon request, of the Confidential Information provided and any copies made thereof and, so far as is reasonably practicable, of the location of such Confidential Information and any copies thereof.

3.3 The Company shall, within 7 [seven] days of receipt of a written demand from Transnet:

3.3.1 return all written Confidential Information [including all copies]; and

3.3.2 expunge or destroy any Confidential Information from any computer, word processor or other device whatsoever into which it was copied, read or programmed by the Company or on its behalf.

3.4 The Company shall on request supply a certificate signed by a director as to its full compliance with the requirements of clause 3.3.2 above.

4. ANNOUNCEMENTS

4.1 Neither party will make or permit to be made any announcement or disclosure of its prospective interest in the Bid without the prior written consent of the other party.

4.2 Neither party shall make use of the other party's name or any information acquired through its dealings with the other party for publicity or marketing purposes without the prior written consent of the other party.

5. DURATION

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

6. PRINCIPAL

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

7. ADEQUACY OF DAMAGES

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

8. PRIVACY AND DATA PROTECTION

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

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

9. GENERAL

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

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

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

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

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

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

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