

Transnet Freight Rail – an Operating Division of **Transnet SOC Ltd** [Registration No.1990/000900/30]

## Request for Commercial Proposal

**Leasing of the Transnet Freight Rail Sidings/Facilities for the Broodsyneersplaas for a minimum period of five (5) years**

<b>Siding/ Facility Name:</b>	Broodsyneersplaas
<b>Commercial Proposal Number:</b>	CPEX130124NC
<b>Issue Date:</b>	26 JUNE 2024
<b>Closing Date:</b>	12 AUGUST 2024 (10:00 AM)
<b>Proposal Validity Period:</b>	180 Business Days from closing date 05 May 2025



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## SECTION 1: SBD1 Form

### PART A INVITATION For Proposal

<b>YOU ARE HEREBY INVITED SUBMIT A PROPOSAL FOR REQUIREMENTS OF TRANSNET FREIGHT RAIL, A DIVISION TRANSNET SOC LTD</b>							
Proposal NUMBER:	CPEX130124NC	ISSUE DATE:	26 JUNE 2024	CLOSING DATE:	12 AUGUST 2024	CLOSING TIME:	10:00 AM
DESCRIPTION	<b>COMMERCIAL PROPOSAL FOR THE LEASING OF TRANSNET FREIGHT RAIL BLINKPAN SIDING FOR A MINIMUM PERIOD OF FIVE (5) YEARS</b>						
<b>PROPOSAL RESPONSE DOCUMENTS SUBMISSION</b>							
<b>RESPONDENTS ARE TO UPLOAD THEIR COMMERCIAL PROPOSAL RESPONSE ONTO THE TRANSNET SYSTEM AGAINST EACH PROPOSAL SELECTED</b> <i>(please refer to section 2, paragraph 3 for a detailed process on how to upload submissions):</i> <a href="https://www.transnet.net">https://www.transnet.net</a>							
<b>BIDDING PROCEDURE ENQUIRIES MAY BE DIRECTED TO</b>				<b>TECHNICAL ENQUIRIES MAY BE DIRECTED TO:</b>			
CONTACT PERSON	Michael Ramusandiwa			CONTACT PERSON	Michael Ramusandiwa		
TELEPHONE NUMBER	012 315 2137			TELEPHONE NUMBER	012 315 2137		
E-MAIL ADDRESS	<a href="mailto:Michael.Ramusandiwa@transnet.net">Michael.Ramusandiwa@transnet.net</a>			E-MAIL ADDRESS	<a href="mailto:Michael.Ramusandiwa@transnet.net">Michael.Ramusandiwa@transnet.net</a>		
<b>BIDDER INFORMATION</b>							
NAME OF BIDDER							
POSTAL ADDRESS							
STREET ADDRESS							
TELEPHONE NUMBER	CODE			NUMBER			
CELLPHONE NUMBER							
E-MAIL ADDRESS							
VAT REGISTRATION NUMBER							
SUPPLIER COMPLIANCE STATUS	TAX COMPLIANCE SYSTEM PIN:			<b>OR</b>	CENTRAL SUPPLIER DATABASE	UNIQUE REGISTRATION REFERENCE NUMBER:	MAAA
B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE	[TICK APPLICABLE BOX]			B-BBEE STATUS LEVEL SWORN AFFIDAVIT	[TICK APPLICABLE BOX]		

	<input type="checkbox"/> Yes <input type="checkbox"/> No		<input type="checkbox"/> Yes <input type="checkbox"/> No
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**[A B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE/ SWORN AFFIDAVIT (FOR EMES & QSEs) MUST BE SUBMITTED FOR PURPOSES OF COMPLIANCE WITH THE B-BBEE ACT]**

<b>1</b> ARE YOU THE ACCREDITED REPRESENTATIVE IN SOUTH AFRICA FOR THE GOODS /SERVICES /WORKS OFFERED?	<input type="checkbox"/> Yes <input type="checkbox"/> No  [IF YES ENCLOSE PROOF]	<b>2</b> ARE YOU A FOREIGN BASED SUPPLIER FOR <b>THE GOODS /SERVICES /WORKS OFFERED?</b>	<input type="checkbox"/> Yes <input type="checkbox"/> No  [IF YES, ANSWER QUESTIONNAIRE BELOW ]
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**QUESTIONNAIRE TO BIDDING FOREIGN SUPPLIERS**

IS THE ENTITY A RESIDENT OF THE REPUBLIC OF SOUTH AFRICA (RSA)?	<input type="checkbox"/> YES <input type="checkbox"/> NO
DOES THE ENTITY HAVE A BRANCH IN THE RSA?	<input type="checkbox"/> YES <input type="checkbox"/> NO
DOES THE ENTITY HAVE A PERMANENT ESTABLISHMENT IN THE RSA?	<input type="checkbox"/> YES <input type="checkbox"/> NO
DOES THE ENTITY HAVE ANY SOURCE OF INCOME IN THE RSA?	<input type="checkbox"/> YES <input type="checkbox"/> NO
IS THE ENTITY LIABLE IN THE RSA FOR ANY FORM OF TAXATION?	<input type="checkbox"/> YES <input type="checkbox"/> NO
<b>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.</b>	

**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 Request for Commercial [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**].

<b>DESCRIPTION</b>	Leasing of Transnet Freight Rail Broodsynersplaas Siding for a minimum period of five (5) years.
<b>COMMERCIAL PROPOSAL DOWNLOADING</b>	<p>This Request for Commercial Proposal may be downloaded directly from National Treasury's e-Tender Publication Portal at <a href="http://www.etenders.gov.za">www.etenders.gov.za</a> free of charge.</p> <p>To download the Request for Commercial Proposal and Annexures:</p> <ul style="list-style-type: none"> <li>• Click on "Tender Opportunities";</li> <li>• Select "Advertised Tenders";</li> <li>• In the "Department" box, select Transnet SOC Ltd.</li> </ul> <p>Once the tender has been located in the list, click on the "Tender documents" tab and process to download all uploaded documents.</p> <p>The Request for Commercial Proposal may also be downloaded from the Transnet website at <a href="http://www.transnet.net">www.transnet.net</a> free of charge. To access the Transnet eTender portal, please click <a href="#">here</a> (refer to section 2, paragraph 3 below for detailed steps)</p>
<b>COMMUNICATION</b>	<p>Any addenda to the Request for Commercial Proposal 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 Request for Commercial Proposal.</p> <p>Transnet will not be held liable if Bidders do not receive the latest information regarding this Request for Commercial Proposal with the possible consequence of either being disadvantaged or disqualified as a result thereof.</p>
<b>BRIEFING SESSION</b>	There will be a compulsory briefing session for this transaction on the 05 July 2024 @ 10:00 via MS Teams. Bidders who wish to attend the briefing session must email or leave their email address for teams invitation to <a href="mailto:michael.ramusandiwa@transnet.net">michael.ramusandiwa@transnet.net</a> by no later than 03 July 2024 @ 12:00 pm
<b>SITE VISITS</b>	<p>There will be <b>non-compulsory</b> site visits scheduled between 09 July &amp; 22 July 2024.</p> <p>Refer to Annexure A for the facility profile.</p> <p>Bidders interested in attending the site visits are requested to communicate their interest by sending an email to <a href="mailto:Michael.ramusandiwa@transnet.net">Michael.ramusandiwa@transnet.net</a> 3 days before the site visit.</p> <p>The subject of email must be the name of Rail Siding in question.</p>
<b>CLOSING DATE</b>	<p><b>10:00 a.m. on Monday 12 August 2024</b></p> <p>Bidders must ensure that bids are delivered timeously to the correct address.</p> <p>As a general rule, if a bid is late or delivered to the incorrect address, it will not be accepted for consideration.</p>

<b>VALIDITY PERIOD</b>	<p><b>180 Business Days from Closing Date</b></p> <p>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.</p> <p>With regard to the validity period of next highest ranked bidders, please refer to Section 2, paragraph 9.12</p>
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**Any additional information or clarification will be emailed to all Respondents, if necessary.** Any additional information or clarification will be published on the e-Tender portal and Transnet website, if necessary.

## 2 General Bid Conditions

Refer to Annexure B to see General Bid Conditions

## 3 Proposal Submission

Transnet has implemented a 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 (<https://www.transnet.net>);
- Click on "TENDERS";
- Scroll towards the bottom right hand side of the page;
- On the blue window click on "register on our new eTender Portal";
- 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.



## 4 Commercial Proposal 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 Commercial Proposal 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 13 below (Legal Review) and Section 6 of the Commercial Proposal, alterations, additions or deletions must not be made by the Respondent to the actual Commercial Proposal documents.

## 5 Joint Ventures or Consortiums

Respondents who would wish to respond to this Commercial Proposal as a Joint Venture [JV] or consortium with B-BBEE entities, must state their intention to do so in their Commercial Proposal 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 Commercial Proposal 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.

## 6 Compliance to B-BBEE

Bidders to provide a valid B-BBEE certificate issued by a SANAS accredited agency or Sworn Affidavit.

Successful bidder(s) are encouraged to improve their B-BBEE credentials on an annual basis.

B-BBEE verification agencies can be obtained on website: [www.sanas.co.za](http://www.sanas.co.za)

<b>Enterprise</b>	<b>B-BBEE Certificate &amp; Sworn Affidavit</b>
<b>Large</b>	Certificate issued by SANAS accredited verification agency
<b>QSE</b>	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 <a href="http://www.dti.gov.za/economic_empowerment/bee_codes.jsp">www.dti.gov.za/economic_empowerment/bee_codes.jsp</a> .]
<b>EME</b>	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

## 7 Bid Queries

- 7.1 For specific queries relating to this Request for Commercial Proposal, a Commercial Proposal Clarification Request Form should be submitted to [SCS person name; email] before 12:00 pm on date, substantially in the form set out 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.
- 7.2 After the closing date of the Request for Commercial Proposal, a Respondent may only communicate with the Secretariat of the Siding Leasing, email [Michael.ramusandiwa@transnet.net](mailto:Michael.ramusandiwa@transnet.net) on any matter relating to its Request for Commercial Proposal.
- 7.3 Respondents are to note that changes to its submission will not be considered after the closing date.
- 7.4 It is prohibited for Respondents to attempt, either directly or indirectly, to canvass any officer or employee of Transnet in respect of this Request Commercial Proposal between the closing date and the date of the award of the business.
- 7.5 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.

## 8 Confidentiality

All information related to this Request for Commercial Proposal 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 Request for Commercial Proposal or the subsequent contract, written approval must be obtained from Transnet.

## 9 Disclaimers

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

- 9.1 Modify any aspect of the leasing of sidings set out in this Request for Commercial Proposal, and request Respondents to re-bid on any such changes;
- 9.2 Reject any Proposal which does not conform to instructions and specifications which are detailed herein;
- 9.3 Disqualify Proposals submitted after the stated submission deadline [12 August 2024, 10:00 AM];
- 9.4 Award a contract (Lease Agreement) in connection with this Proposal at any time after the Request for Commercial Proposal's closing date;
- 9.5 Award a contract for only a portion of the proposed premises which are reflected in the scope of this Request for Commercial Proposal;
- 9.6 Split the award of the contract between more than one Bidder, should it at Transnet's discretion be more advantageous in terms of, amongst others, cost or developmental considerations;
- 9.7 Cancel the bid process;
- 9.8 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 in any medium or form that it requires. By submitting a bid, Respondents hereby irrevocably grant the necessary consent to Transnet to do so;
- 9.9 Request audited financial statements or other documentation for the purposes of a due diligence exercise;
- 9.10 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;
- 9.11 To cancel the contract and/or 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;
- 9.12 To award the business to the next ranked bidder, provided that he/she/it is still prepared to lease the siding at the quoted price, should the successful/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 next ranked bidder(s) were issued with a Letter of Regret. Bidders may therefore be requested to

advise whether they would still be prepared to lease the siding at their quoted price, even after they have been issued with a Letter of Regret.

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.

## **10 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.**

## **11 Tax Compliance**

- 11.1 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).
- 11.2 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.
- 11.3 The Tax Compliance status requirements are also applicable to foreign Respondents/ individuals who wish to submit bids.
- 11.4 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.

## **12 Protection of Personal Data**

In responding to this bid, Transnet acknowledges that it may obtain and have access to personal data of the Respondents. Transnet agrees that it shall only process the information disclosed by Respondents in their response to this bid for the purpose of evaluating and subsequent award of business and in accordance with any applicable law. Furthermore, Transnet will not otherwise modify, amend or alter any personal data submitted by Respondents or disclose or permit the disclosure of any personal data to any Third Party



without the prior written consent from the Respondents. Similarly, Transnet requires Respondents to process any personal information disclosed by Transnet in the bidding process in the same manner. The detailed mutual duties of Transnet and the Respondents to protect personal information is contained in paragraph 35 of the General Bid Conditions.

**Transnet urges its clients, suppliers and the general public to report any fraud or corruption to**

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

## **SECTION 3: Background, Overview and Scope of Requirements**

### **1 Background**

There are certain properties in the property portfolio of Transnet SOC Limited (Transnet) that are strategic and productive assets - vehicles for economic development, service delivery and transformation.

TFR set out to review the processes for leasing / letting TFR property and sidings to ensure effective utilisation of these properties as strategic enablers for rail logistics solutions to complement an end-to-end efficient logistics service to the market. and after Transnet EXCO's deliberations regarding numerous concerns raised by customers, lessees and other stakeholders.

These includes but not limited to a process that:

- Ensures effective management of TFR Properties as Strategic Enablers for Rail Logistics Solutions through diligent positioning of these to compliment an end-to-end efficient logistics service to the market.
- To work with private sector to unlock investment focused on improved efficiency in the supply chain, reducing complexities and the cost of doing business to enable volume growth from road to rail
- Encourage sustainable development and community upliftment.

Transnet is therefore embarking on an open process for Commercial Proposals for leasing of some of its sidings to allow all sectors to have open access to compete for the lease of sidings.

### **2 General**

The successful bidder has to agree to sign the Standard TFR Operational Lease Agreement.

Successful bidders are required to adhere to any changes to management policies, procedures or processes required by Transnet.

#### **2.1 Export Coal**

- 2.1.1 Rail allocation capacity from the siding will be dealt with via TFR's rail allocation model (RAM).
- 2.1.2 TFR is responsible to conclude Transport Agreements with its customers aligned to the RAM.
- 2.1.3 TFR will then inform the siding lessee of customers that will be loading from that siding, as well as their respective volume allocation.
- 2.1.4 Where relevant, the successful bidder appointed to lease the siding is responsible to directly conclude and manage contracts with TFR's rail customers for all siding-related facility charges, in line with TFR volumes allocated.

2.1.5 Any new customers or capacity can only be onboarded through the TFR customer onboarding process.

## 2.2 Other Commodities

2.2.1 Upfront volume commitments are required if the intended use of the siding is not for export coal.

2.2.2 The lease will be granted subject to concluding a Transport Agreement with TFR.

## 3 Scope of Requirements

### 3.1 Siding information

- |        |                                |   |
|--------|--------------------------------|---|
| 3.1.1  | Siding:                        | Broodsynersplaas  |
| 3.1.2  | Siding number:                 | 702412  |
| 3.1.3  | Siding map:                    | Refer to Annexure A   |
| 3.1.4  | Siding Land size:              | 156 997m <sup>2</sup>   |
| 3.1.5  | Stockpile Capacity in tons*:   | 24 500+   |
| 3.1.6  | Siding capacity**:             | 2,8mil  |
| 3.1.7  | Commodity/ies:                 | Coal, unless otherwise specified by bidder  |
| 3.1.8  | Purpose:                       | Maximize operational throughput and optimize operation efficiency.  |
| 3.1.9  | Minimum market related rental: | R 192 617.00  |
| 3.1.10 | Operational Parameters         |   |
|        |                                | <ul style="list-style-type: none"> <li>▪ 24/7 operation</li> <li>▪ Shunting: TFR shunts Puleg sidings</li> <li>▪ Maximum of 4 hours loading for a 104-jumbo/80 CFR equivalent wagon train</li> <li>▪ Provide dedicated stockpile capacity to accommodate coal to Eskom Power Stations (including Arnot, Grootvlei, Majuba, etc), as and when required.</li> </ul> |
| 3.1.11 | Train length                   |   |
|        |                                | <ul style="list-style-type: none"> <li>▪ Minimum number of wagons per shunt (50, 80, 104 wagons per shunt)</li> <li>▪ 80 CFR wagons for domestic coal</li> <li>▪ Export coal 104 Jumbo wagons</li> </ul>  |

**NOTES:**

- \* Estimated siding stockpile capacity based on current siding footprint and operational model.
- \*\* Estimated siding throughput capacity based on current siding operational model. Siding capacity constitutes a desk top technical throughput calculation of the facility and does not in any way represent a rail capacity commitment to the facility. Rail capacity allocation to the facility will be confirmed post award with the successful bidder.

## **3.2 Lease tenure**

- 3.2.1 Bidders need to submit a Request for Commercial Proposal for a minimum of five years.
- 3.2.2 The Bidder has to indicate the number of years that they bid for (Annexure F).
- 3.2.3 TFR is entitled to offer the winning bidder a lease period shorter than the period that was indicated in the bid submission.

## **3.3 Experience and Operational Plan**

### **3.3.1 Background**

- a. As part of the bid response, the bidder should submit an operational plan.
- b. The purpose of the operational plan is to illustrate how the bidder will maximize operational throughput and optimize operation efficiency.
- c. The winning bidder needs to implement initiatives to reduce the cost of logistics. A plan with the initiatives aimed at achieving cost reduction needs to be included in the bid. This plan will form part of the contracting process.
- d. Bidders need to provide the handling (loading, offloading and all other associated activities) and storage rate (R/ton or R/TEU) that will be offered to the market. The winning bidder will commit to this rate in the contracting process.
- e. Operational Readiness: The successful bidder must ensure that the siding has all required environmental approvals (i.e. authorisations, permits and licences) before commencing with operations.
- f. The siding must be managed in accordance with section 28 of the National Environmental Management Act, 1998, as amended and related provisions in other applicable legislations.
- g. Environmental Incidents must be reported in accordance with section 30 of the National Environmental Management Act, 1998, as amended and related provisions in other applicable legislations.



### 3.3.2 Expertise and experience

- a. Bidders will be evaluated on the expertise and experience (years) for storing and handling for bulk rail. Bidders need to list each project separately, and include the following information:
  - i. Legal entity contracted to do the work (Must be the same as the bidder)
  - ii. Customer
  - iii. Project/ contract duration (including start date and end date)
  - iv. Detailed description of work done
  - v. Contact person (for verification purposes).
- b. Only work done by the legal entity who submitted the bid would be considered for scoring purposes.
- c. Experience not related to bulk rail storing and handling will not be considered for scoring purposes.

### 3.3.3 Minimum Loading and offloading time

- a. For this siding, TFR requires a maximum offloading time of 4 hours.
- b. As stated in 3.3.1, bidders have to submit an operational plan as part of their bid submission.
- c. Based on this operational plan, bidders need to submit the loading and offloading time that they will achieve per 104-jumbo/80 CFR equivalent wagon train.
- d. TFR reserves the right to review the loading and offloading times provided by the bidder, and should they prove not be feasible, adjust these times accordingly.

## 3.4 Investment Plan

As part of the bid response a bidder must submit a plan that details their investment commitment detailing how they would optimally develop the siding. There are two returnable documents.

- In **Annexure F2A\_DCF** the bidder needs to provide a discounted cash flow.
- **Annexure F2B\_Detailed Investment** needs to be completed with full details of the intended investment.

For bid evaluation purposes, the investment commitment would be worked back to a per annum figure. Investment commitments beyond the first year will be discounted at an annual rate of 6%.

### 3.4.1 Discounted Cash flow

- a. The bidder should submit a detailed Discounted Cash Flow (**Annexure F2A\_DCF**) containing the following information:
  - i. Amount/ quantum of the investment
  - ii. Projected Asset Value at the end of Lease tenure.
  - iii. A detailed Investment Plan

### 3.4.2 Detailed Investment Plan

The bidder should submit a detailed investment plan **Annexure F2B\_Detailed Investment** containing the following information about investment within the siding boundary; investment outside the siding boundary; and investment in rolling stock.

- The investment plan should distinguish between fixed and moveable assets.
- The investment plan needs to include all planned investment (fixed and moveable assets)
- The scoring of the investment plan will only take into consideration investment in fixed items that will revert to TFR at the end of the lease period. Temporary structures and moveable assets will not be considered in the evaluation.
- All investment commitments in the bid response will form part of the lease agreement and the winning bidder will be bound to provide investment as required in this plan.
- The lease will be managed against the full investment plan (fixed and moveable assets).
- Bidders are required to submit one set of figures, and not several scenarios.

#### a. Direct Siding Investment

Bidders need to provide information on intended investment inside the siding boundary. Investment categories include but are not limited to:

- i. Security perimeter fencing
- ii. Establishing of water and electrical infrastructure on site
- iii. Installation of overhead lighting to enable 24/7 Operations
- iv. Rail line refurbishments and upgrades
  - Land side upgrades on storage and loading area
  - Construction of concrete Slab and not sacrificial layer
  - Draining system
  - Protection systems to prevent unauthorized access to the mainline

- Maintenance of rail related infrastructure in the siding
- v. Pollution control dam
- vi. Building upgrades (Office)
- vii. Ablution facilities
- viii. Paved access road
- ix. Construction of road weighbridges
- x. Siding operation handling equipment
- xi. Environmental authorization
- xii. Railway Siding Regulatory requirements
- xiii. Investments to meet all regulatory requirements

**b. Other (investment outside siding demarcation / rolling stock)**

Investment categories include but are not limited to:

- i. Rail Infrastructure (Rail Lines and OHTE) outside the facility.
- ii. Security & related technology
- iii. Yard upgrade and/or operations (e.g. derailer)
- iv. Rolling Stock (shunting equipment to perform own shunting)

**3.4.3 Proof of funding**

- a. The bid should provide proof of funding for the investment plan.
- b. If the funding will come from a Financial Institution, the bidder needs to provide a valid letter of commitment.
- c. If the investment will be funded by private investors, proof will need to be provided in the form of audited financial statements of the funders.

**3.5 Commercial Rental Offer**

- 3.5.1 Information regarding the market related rental is provided in Sections 3.1.6
- 3.5.2 Bidder are required to indicate whether they are willing to pay market related rental.

**3.6 Community Development Plan**

- 3.6.1 Bidders are required to commit minimum 3% of turnover generated from the facility on identified Community projects in the area/ close proximity to the facility.

- 3.6.2 For bid evaluation purposes, the commitment into Community Development would be worked back to a per annum figure. Community development commitments beyond the first year will be discounted at an annual rate of 6%.
- 3.6.3 As part of the bid response a bidder must submit a plan that details their commitment to invest in the local community. The bidder needs to complete **Annexure F3\_Community Development Plan** with details of the proposed investment.
- 3.6.4 Bidders are required to commit to identifying and funding community projects in the area/ close proximity to the facility.
- 3.6.5 A plan of how the initiative will be implemented must be shared with Transnet. Those initiatives must include but not limited to:
- a. Youth Development
    - i. Bursaries
    - ii. Skills Development - artisan and technical skills
    - iii. Job Creation
  - b. Women Development
    - i. Uplift community women through business development
    - ii. Co-operative formation
    - iii. Health awareness
  - c. Community Development
    - i. Support local businesses.
    - ii. Assist with knowledge on how to form co-operatives.
    - iii. Subcontract to local business.
    - iv. Provide financial assistance or non-financial resources to rural schools.
    - v. Support the welfare of people with disabilities in the community.
    - vi. Improve health systems in the local community.
- 3.6.6 Bidders would need to confirm what the Rand Value and percentage of their revenue derived from siding operations, will be directed to the Community Development Plan over the lease tenure together with a detailed plan on how funds will be spent.
- 3.6.7 The scoring of the Community development plan will only take into consideration new projects in the community.
- 3.6.8 Preferred bidders will be required to establish community structures with consortiums or groupings that are registered with the local government as a condition precedent based on the identified needs

of the community (6 months for new lessees. A shorter timeframe to be negotiated for existing lessees).

- 3.6.9 Job Creation to be excluded from this measure as it is a separate undertaking as per Section 11 of this Request for Commercial Proposal.

### 3.7 SHEQ (Safety, Health, Environmental and Quality) Requirements

#### 3.7.1 Environmental requirements (bidder to comment: "Yes" or "No")

Legislative Compliance	Yes/ No
<p>Special consideration must be provided to the Environmental Management Programme (EMPr), Risk Assessment as well as the Business Continuity Plan Guidelines;</p> <p>Where relevant, bidders will be required to obtain Water Use Licenses through relevant authorities, i.e., Department of Water and Sanitation. Such licence (s) must be inclusive of all relevant water uses taking place on site (i.e., uses c, i, h, and g as it relates to section 21 of the said Act);</p> <p>Bidders will also be required to obtain other Environmental Approvals (i.e. authorisations, air emission licenses and/or permits) relevant to the proposed activities before commencing with operations.</p>	
<p>Compliance to the Occupational Health and Safety Act, 85 of 1993 (as amended or replaced from time to time) (the "OHS Act"), any regulations made thereunder and any other applicable health and safety legislation, where applicable,</p>	
<p>Compliance to the requirements from time to time of the Railway Safety Regulator, which is established in terms of the Railway Safety Regulator Act (including being in possession of a valid certificate of compliance from the Railway Safety Regulator);</p>	
<p>Mine Safety Regulations under the Mine Health and Safety Act, 29 of 1996 (as amended or replaced from time to time) (the "Mine Health and Safety Act") and any other applicable mine health and safety legislation, where applicable, including when providing Transport Services or operating a train within any Loading Site; and</p>	
<p>Rail Safety Directives and all applicable legislation.</p>	
<p>Bidders will be required to submit a Risk Assessment Report/Register together with their proposal. A guideline and template for use are attached hereto as <b>Annexure G</b> and <b>Annexure L</b> for guideline.</p>	
<p>Bidders will be required to submit an Environmental Management Program together with their proposal. A guideline is attached hereto as <b>Annexure K</b>.</p>	

Legislative Compliance	Yes/ No
Bidders will be required to submit a Business Continuity Plan together with their proposal. A guideline is attached hereto as <b>Annexure K</b> .	

### 3.7.2 Health and Safety Requirements (bidder to comment: "Yes" or "No")

SHE requirement	Yes/ No
Bidders will be required to demonstrate how they will comply with Health and Safety Laws and Regulations and any other related Laws.	

### 3.7.3 Baseline Risk Assessment (bidder to comment comply or not comply)

Baseline Risk Assessment	Yes/ No
Bidders will be required to submit a Risk Assessment Methodology together with application. A guideline is attached hereto as <b>Annexure L</b>	

## 3.8 Company and Credit Risk Assessment

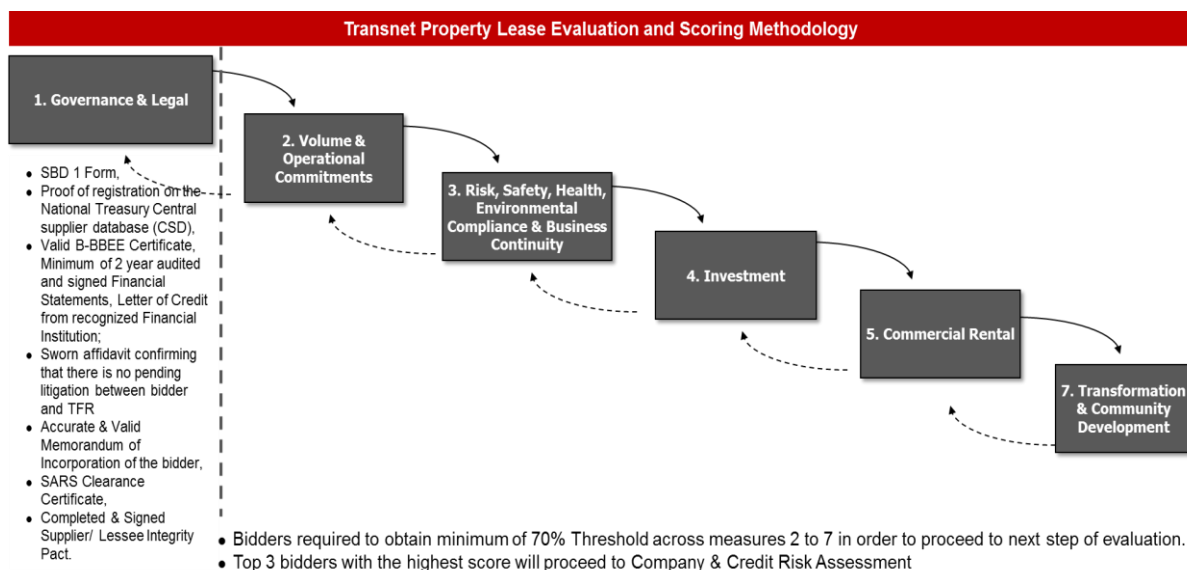
- 3.8.1 Submit minimum 24 months Audited (signed by an auditor) Financial Statements. If the bidding company is less than 2 years old, the bidder needs to provide a Letter of Credit from recognized Financial Institution. The Financial Stability and Risk Assessment informs the deposit required from the outcome of the credit risk assessment.
- 3.8.2 A previous bad payment history with Transnet might result in the Prospective Tenant, not being recommended. This will be evaluated during the financial risk assessment.
- 3.8.3 The qualifying bidder will be subjected to Credit Risk Assessment (risk grade) to determine deposit and guarantees required.

## 4 General Bidder Obligations

- 4.1 The Bidder shall be fully responsible to Transnet for the acts and omissions of persons directly or indirectly employed by them.
- 4.2 The Bidder must comply with the requirements stated in this Request for Commercial Proposal.

## 5 Evaluation Methodology

Transnet will utilise the following methodology and criteria in selecting a preferred Supplier:



### 5.1 Step One: Governance and Legal

The test for administrative responsiveness will include the following:

• Whether the Bid has been lodged on time	<i>Section 2 paragraph 2</i>
• Whether all Returnable Documents and/or schedules [where applicable] were completed and returned by the closing date and time	<i>All sections</i>
• Verify the validity of all returnable documents	<i>Section 5</i>
• Verify if the Bid document has been duly signed by the authorised respondent	<i>All sections</i>
• Whether the supplier is registered on the NT Central Supplier Database (CSD)	<i>Section 1</i>
• Tax Clearance Certificate or electronic access PIN obtained from SARS's new Tax Compliance Status (TCS) system [Consortia / Joint Ventures must submit a separate Tax Clearance Certificate/PIN for each party]	<i>Section 1, Section 2</i>
• B-BBEE certificate/ Sworn Affidavit	<i>Section 9</i>
• Sworn affidavit confirming that there is no pending litigation between bidder and TFR	
• Accurate & Valid Memorandum of Incorporation of the bidder	
• SARS Clearance Certificate,	
• Completed & Signed Supplier/ Lessee Integrity Pact ( <b>Annexure C</b> ).	

***The test for Governance and Legal [Step One]  
MUST be passed for a Respondent's Proposal  
to progress to Step Two for further pre-qualification***

## 5.2 Step Two to Seven: Minimum Threshold 70%

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

Measures	Description	Score	Scoring Table
<b>Operational Commitments</b>	a. Expertise and experience (years) in managing and operating train loading operations and multiuser facilities.	12	The bid with the most years of relevant experience (years on relevant projects) will receive maximum points. All other bid with less experience will score proportionally lower.
	b. Minimum Loading and offloading time per wagon	12	The bid with the lowest time for loading and offloading per wagon will receive the maximum points allocated to this segment. All other bids with higher loading and offloading times will score proportionally lower
	c. 24/7 working	12	12 Points = 24 Hours; 0 Points: Less than 24 hours
	d. Rate for handling and storage (Rand per Ton/TEU)	10	The bid lowest rate for handling and storage will receive the maximum points allocated to this segment. All other bid with higher rates will score proportionally lower.

Measures	Description	Score	Scoring Table
<b>Investment</b>	a. Security of funding: Letter of Commitment from a Financial Institution or Proof of self-funding	4	Valid Letter of Commitment from a Financial Institution or Proof of self-funding submitted.  4 = Yes 0 = No
	b. Investment within the siding boundary to be covered in plan include but not limited to <ul style="list-style-type: none"> <li>• Rail line refurbishments and upgrades</li> <li>• Land side upgrades on storage and loading area.</li> <li>• Building upgrades (e.g. Office, ablution facilities, lighting etc.)</li> <li>• Security upgrades (e.g. fencing/walling, guard house etc.)</li> </ul>	25	The bid with the highest investment offer per annum of the proposed lease tenure will receive the maximum points allocated to this segment. All other bids with lower investment offers will score proportionally lower.  Please note additional scoring notes in Section 3.4.



Measures	Description	Score	Scoring Table
	<i>Temporary structures will not be considered as part of evaluation.</i>		
	c. Other Investment categories to be covered in plan include <ul style="list-style-type: none"> <li>• Rail Infrastructure (Rail Lines and OHTE) outside the facility.</li> <li>• Rolling Stock (wagons &amp; shunting)</li> <li>• Security &amp; related technology for rail track</li> </ul>	5	The bid with the highest investment offer per annum of the proposed lease tenure will receive the maximum points allocated to this segment. All other bids with lower investment offers will score proportionally lower.  Please note additional scoring notes in Section 3.4.

Measures	Description	Score	Scoring Table
<b>Commercial Rental</b>	Rental offer	1	1 Point ≥ market related; 0 Points = < less than market related

Measures	Description	Score	Scoring Table							
<b>Risk, Safety, Health, Environmental Compliance &amp; Business Continuity</b>	Risk, Safety, Health, Environmental Compliance and Business Continuity Plans	5	<ul style="list-style-type: none"> <li>• 20% of total points – Risk Management Plan</li> <li>• 20% of total points – Safety Management Plan</li> <li>• 40% of total points – Environmental Management Plan</li> <li>• 20% of total points – Business Continuity Plan</li> </ul>							
<b>Transformation &amp; Community Development</b>	a. Community Development Plan – spend of identified community projects in the area/ close proximity to the facility – minimum 3% of turnover generated from facility.	10	Highest offer will receive the maximum points allocated to this segment. All other bidders with lower offers will proportionally receive points based on formula.							
	b. B-BBEE Rating	4	<table border="0"> <tr> <td>• Level 1 = 4 Points</td> <td>• Level 5 = 1.6 Points</td> </tr> <tr> <td>• Level 2 = 3.6 Points</td> <td>• Level 6 = 1.2 Points</td> </tr> <tr> <td>• Level 3 = 2.4 Points</td> <td>• Level 7 = 0.8 Points</td> </tr> <tr> <td>• Level 4 = 2 Points</td> <td>• Level 8 = 0.4 Points</td> </tr> </table>	• Level 1 = 4 Points	• Level 5 = 1.6 Points	• Level 2 = 3.6 Points	• Level 6 = 1.2 Points	• Level 3 = 2.4 Points	• Level 7 = 0.8 Points	• Level 4 = 2 Points
• Level 1 = 4 Points	• Level 5 = 1.6 Points									
• Level 2 = 3.6 Points	• Level 6 = 1.2 Points									
• Level 3 = 2.4 Points	• Level 7 = 0.8 Points									
• Level 4 = 2 Points	• Level 8 = 0.4 Points									
	<b>Total</b>	<b>100</b>								

*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 Two to Seven] must be met or exceeded for a Respondent's Proposal to progress to the Step 3 for final evaluation***

### 5.3 Step Eight: Company and Credit Risk Assessment

Measures	Description	Score	Scoring Table
<b>Company &amp; Credit Risk Assessment</b>	a. Inoxico - Advanced Risk Report	Green; Amber; Red	Company registration; Shareholding; Operational Licensing; Tax & VAT Registration; Bribery & Corruption
	b. Credit Risk Assessment	Risk Grade A to E	Assessment of risk grade to determine deposit and guarantees required

### 5.4 Step Nine: Award of business and conclusion of a contract

Immediately after approval to award the contract has been received, the successful or preferred bidder(s) will be informed of the acceptance of his/their Bid either by way of a Letter of Award or Letter of Intent where Transnet will negotiate the final terms and condition the contract with the successful Respondent(s). Thereafter the final contract will be concluded with the successful Respondent(s).

Otherwise, 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: Summary of Offer

**Bid submitted by:** \_\_\_\_\_

### 1. General information

	Value
Location (Facility Name)	
Lease tenure applying for (years)	_____ years

### 2. Operational Commitments

Measure	Value provided (in relevant unit of measure)	Annexure in RCP Response Documents	Reference relevant section in bid response (where relevant)
Expertise and experience (in years) in managing and operating train loading operations and multiuser facilities.	_____ years	Annexure F1A Complete one annexure for each contract/project	
Minimum Loading and offloading time per wagon (in hours)	_____ hours	n/a	
Working hours (24/7 working or other)	Hours	n/a	
	Days		
Rate for handling and storage (Rand per Ton/TEU)	R _____	n/a	

### 3. Investment Commitments

Measure	Value provided (Rand)	Annexure in RCP Response Documents
Security of funding		Annexure F1
Investment in rail siding (Rand value)	R _____	Annexure F2B
Projected Asset value at end of lease tenure	R _____	Annexure F2A
Detailed Investment Plan		Annexure F2B
Discounted Cash Flow Forecast		Annexure F2A

**4. Commercial Rental**

Measure	Value provided
Commercial rental (Total)	R

**5. Community Development Plan**

Measure	Value provided (in relevant unit of measure)	Annexure in RCP Response Documents
Total annual revenue generated from rail siding	R p/a	Annexure F
Total annual Rand commitment on Community Development	R p/a	Annexure F
Total commitment on Community Development	R	
Detailed breakdown of Community Development		Annexure F

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 5: Safety Commitment

### 1. National Railway Safety Regulator Act

In compliance with the National Railway Safety Regulator Act, 16 of 2002, the successful Respondent [the Bidder] shall, comply fully with the specifications as set out in this Request for Commercial Proposal, and shall also adhere to railway safety requirements and/or regulations [as applicable]. The Bidder shall grant Transnet access, during the term of the contract, to review any safety-related activities, including the coordination of such activities across all parts of the organisation.

### 2. Service Levels

2.1 Service Levels will be determined and approved as per the Lease Agreement

### 3. Total Cost of Ownership and Continuous Improvement Initiatives

3.1 Respondents commit, for the duration of any contract which may be awarded through this Request for Commercial Proposal 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 siding maintenance and logistics provided by Transnet's operating divisions within South Africa to the ultimate benefit of all end-users.

3.2 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.

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### 4. 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:

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\_\_\_\_\_  
\_\_\_\_\_

**4.1 Continuity of service:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**4.3 Compliance with the National Railway Safety Regulator Act, 16 of 2002:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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: Business Proposal Form and list of required documents**

I/We \_\_\_\_\_

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

\_\_\_\_\_

\_\_\_\_\_

carrying on business trading/operating as

\_\_\_\_\_

represented by \_\_\_\_\_

in his / her 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 lease the abovementioned siding 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 Request Commercial Proposal documents.

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

- (i) Standard Lease 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 (Commercial Proposal).

Should Transnet decide that a formal contract should be signed and so inform me/us in a letter of intent [the **Letter of Intent**], this Proposal [and, if any, its covering letter and any subsequent exchange of correspondence] together with Transnet's Letter of Intent, 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 written contract if called upon to do so, or fail to commence the occupation and use of the leased siding within the time period, or on the date stipulated by Transnet, 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, in the absence of a formal written contract, 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 Request for Commercial Proposal including non-performance by ourselves. etc.

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

### **Address for Notices**

The law of the Republic of South Africa shall govern this Request for Commercial Proposal, and any contract created by the acceptance of this Request for Commercial Proposal/entered into pursuant to this Request for Commercial Proposal. The *domicilium citandi et executandi* shall be an address 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: \_\_\_\_\_

Address: \_\_\_\_\_

**Notification of award of Request for Commercial Proposal**

As soon as possible after internal approval to award the contract(s)/lease(s), the successful Respondent [the Bidder] will be informed in writing of the acceptance of its Proposal. Unsuccessful Respondents will be advised in writing of the name of the successful Bidder and the reason as to why their Proposals have been unsuccessful, for example, in the category of price, delivery period, quality, B-BBEE status or for any other reason.

**Validity Period**

Transnet requires a validity period of 180 Business Days against this Request for Commercial Proposal, 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 Request for Commercial Proposal 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	<b><i>Failure to provide all these Mandatory Returnable Documents at the Closing Date and time of this Request for Commercial Proposal <u>will</u> result in a Respondent's disqualification.</i></b>
Returnable Documents Used for Scoring	<b><i>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.</i></b>
Essential Returnable Documents	<b><i>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.</i></b>

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

**a) Returnable Documents**

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

<b>MANDATORY RETURNABLE DOCUMENT</b>	<b>SUBMITTED [Yes/No]</b>
Bid documentation duly signed by the bidder	
Minimum of 2 year audited and signed Financial Statements * if not audited and signed by an auditor, bidder will be disqualified * Financial Statements must come from the bidding company and not a Holding Company or Group If bidding company has been in existence for less than 2 years, the bidder needs to provide a Letter of Credit from recognised Financial Institution	

SBD1 form Section 1	
Valid proof of Bidder's compliance to B-BBEE requirements stipulated in Section 9 of this Request for Commercial Proposal	
Annexure F: Returnable Evaluation Response	

**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 **Returnable Documents Used for Scoring** and also to confirm submission of these documents by so indicating [Yes or No] in the table below:

<b><u>RETURNABLE DOCUMENTS USED FOR SCORING</u></b>	<b>SUBMITTED [Yes or No]</b>
Operational plan to introduce innovation in order to improve Operational Efficiency. (Bidders to provide operational plan which addresses the following topics: Daily loading & offloading capabilities (Number of trains/wagons); Operational hours/ days (i.e., 24/7)	
Hours per day that the siding will be operational	
Rate for Handling and storage (Rand per ton)	
Annexure F1A: Experience Confirmation	
Annexure F1B: Volume Source Confirmation (Only relevant if the commodity is <i>not</i> export coal)	
Annexure F2A_DCF Template	
Annexure F2B_Detailed Investment Plan	
Annexure F3_Community Development Plan	
Annexure G: Risk Assessment	
Proof of security of funding	
Monthly Proposed rental Rate (Total for siding)	
Documentation regarding the management of environment matters (including compliance), risk, safety, and business continuity	
Community Development Plan	

<b><u>RETURNABLE DOCUMENTS USED FOR SCORING</u></b>	<b>SUBMITTED [Yes or No]</b>
B-BBEE status	
Job-Creation Schedule	

<b><u>RETURNABLE DOCUMENTS USED FOR SCORING</u></b>	<b>SUBMITTED [Yes or No]</b>
<ul style="list-style-type: none"> <li>Operational plan to introduce innovation in order to improve Operational Efficiency. Bidders to provide operational plan which addresses the following topics: Daily loading &amp; offloading capabilities (Number of trains/wagons); Operational hours/ days (i.e., 24/7)</li> </ul>	
<ul style="list-style-type: none"> <li>Information on experience</li> </ul>	
<ul style="list-style-type: none"> <li>Minimum loading and offloading time</li> </ul>	
<ul style="list-style-type: none"> <li>Hours per day that the siding will be operational</li> </ul>	
<ul style="list-style-type: none"> <li>Rate for Handling and storage (Rand per ton)</li> </ul>	
<ul style="list-style-type: none"> <li>Proof of security of funding</li> </ul>	
<ul style="list-style-type: none"> <li>Business Plan illustrating NPV</li> </ul>	
<ul style="list-style-type: none"> <li>Investment plan</li> </ul>	
<ul style="list-style-type: none"> <li>Monthly Proposed rental Rate (Total for siding)</li> </ul>	
<ul style="list-style-type: none"> <li>Documentation regarding the management of environment matters (including compliance), risk, safety, and business continuity</li> </ul>	
<ul style="list-style-type: none"> <li>Community Development Plan</li> </ul>	
<ul style="list-style-type: none"> <li>B-BBEE status</li> </ul>	

**c) Essential Returnable Documents required in the Lease Application Form:**

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:

<b>ESSENTIAL RETURNABLE DOCUMENTS</b>	<b>SUBMITTED [Yes or No]</b>
• Certificate of Incorporation or any amendment thereto	
• Certificate to Commence Business	
• Memorandum of Articles of Association	
• Resolution signed by the company Secretary or Chairperson and copy/copies of identity document/s of person/s authorised to act on behalf of the company and sign the lease agreement and in what capacity	
• Certificate from Secretary / Auditor of the company confirming address of registered office where processes are to be served	
• Operational readiness plan	
• Annexure I: Rail Transport 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 Request for Commercial Proposal. 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\_\_

**WITNESSES**

Name: \_\_\_\_\_ Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Name: \_\_\_\_\_ Date: \_\_\_\_\_

Signature: \_\_\_\_\_

**RESPONDENT'S AUTHORISED REPRESENTATIVE:**

Name: \_\_\_\_\_

Date: \_\_\_\_\_

Signature:

## SECTION 7: Certificate of Acquaintance with Request for Commercial Proposal, Master Agreements (Standard Lease 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 Request for Commercial Proposal. 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 to properly take it into account for the purpose of calculating tendered prices or for any other purpose:**

1	Transnet's General Bid Conditions
2	Master Agreements attached (Standard Lease Agreement and Rail Transport Agreement ("RTA")). Bidders to indicate whether they have an existing signed rail transport agreement with TFR, and the commencement and termination dates of such rail transport agreement. <b>If the Bidder is of the view that the RTA will not be applicable for any reason(s) whatsoever, then they must indicate such detailed reason(s) in their bid response.</b>
3	Transnet's Integrity Pact ( <b>Annexure C</b> )
4	Non-disclosure Agreement ( <b>Annexure D</b> )
5	Facility specifications and drawings attached to this Request for Commercial Proposal
6	Supplier Declaration Form and all supporting documents (new customers only). Alternatively, for all existing vendors, please complete the table below under the heading "Existing vendors". ( <b>Annexure E</b> )

Should the Bidder find any terms or conditions stipulated in any of the relevant documents quoted in the Request for Commercial Proposal 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 Request for Commercial Proposal 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 Request for Commercial Proposal documents included in the Request for Commercial Proposal as a returnable document, is found not to be true and complete in every respect.

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

**WITNESSES**

Name: \_\_\_\_\_ Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Name: \_\_\_\_\_ Date: \_\_\_\_\_

Signature: \_\_\_\_\_

**RESPONDENT'S AUTHORISED REPRESENTATIVE:**

Name: \_\_\_\_\_ Date: \_\_\_\_\_

Signature: \_\_\_\_\_



## SECTION 8: Request for Commercial Proposal 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 Request for Commercial Proposal Clarification purposes;
2. We have received all information we deemed necessary for the completion of this Request for Commercial Proposal;
3. We have been provided with sufficient access to the existing Transnet facilities/sites and any and all relevant information relevant to the sidings and/or the leasing of such sidings as well as related Transnet information and Employees, and have had sufficient time in which to conduct and perform a thorough due diligence of Transnet's operations, 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 us (the Respondent) in arriving at our Bid Price or our conclusion of the relevant contracts.
4. At no stage have we received additional information relating to the subject matter of this Request for Commercial Proposal from Transnet sources, other than information formally received from the designated Transnet contact(s) as nominated in the Request for Commercial Proposal documents;
5. We are satisfied, insofar as our entity is concerned, that the processes and procedures adopted by Transnet in issuing this Request for Commercial Proposal and the requirements requested from Bidders in responding to this Request for Commercial Proposal 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 document 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 Request for Commercial Proposal; 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:

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Indicate nature of relationship with Transnet:

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***[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]***

- 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.

### **Breach of Law**

- 12. 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:

NATURE OF BREACH:

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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\_\_

<b>DULY AUTHORISED AND FOR AND ON BEHALF OF</b>	Registered Company name:
	Registration No of Company/CC
Name:	
Position:	
Signature:	
Date:	
Place:	

<b>AS WITNESS:</b>	
Name:	
Position:	
Signature:	



## SECTION 9: Request for Commercial Proposal Clarification Request Form

Proposal No: CPEX130124NC

Commercial Proposal deadline for questions / Commercial Proposal Clarifications: Before 12:00 pm on 02 August 2024

TO: Transnet SOC Ltd  
ATTENTION: Michael Ramusandiwa  
EMAIL: [Michael.Ramusandiwa@transnet.net](mailto:Michael.Ramusandiwa@transnet.net)  
DATE: \_\_\_\_\_  
FROM: \_\_\_\_\_

Request for Commercial Proposal Clarification No *[to be inserted by Transnet]*

**REQUEST FOR COMMERCIAL PROPOSAL CLARIFICATION**

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## 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 ( ) should they be awarded this bid.

(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.

<b>Year 1</b>	<b>Q1</b>	<b>Q2</b>	<b>Q3</b>	<b>Q4</b>
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				



**GENERAL BID CONDITIONS**

**[June 2022]**



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## 1 DEFINITIONS

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

- 1.1 **Bid** shall mean a Respondent's tendered response / proposal to a Transnet RFP or RFQ;
- 1.2 **Bid Document(s)** shall mean a reference to a Request for Proposal or Request for Quotation;
- 1.3 **Business Day** shall mean any day other than a Saturday, Sunday or public holiday;
- 1.4 **Goods** shall mean the goods required by Transnet as specified in its Bid Document;
- 1.5 **Parties** shall mean Transnet and the Respondents to a Bid Document;
- 1.6 **Respondent(s)** shall mean a respondent/bidder to a Bid Document;
- 1.7 **RFP** shall mean Request for Proposal;
- 1.8 **RFQ** shall mean Request for Quotation;
- 1.9 **RFX** shall mean RFP or RFQ, as the case may be;
- 1.10 **Services** shall mean the services required by Transnet as specified in its Bid Document;
- 1.11 **Service Provider or Supplier** shall mean the successful Respondent;
- 1.12 **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;
- 1.13 **Transnet** shall mean Transnet SOC Ltd, a State Owned Company; and
- 1.14 **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.

## 2 GENERAL

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

## 3 SUBMITTING OF BID DOCUMENTS

- 3.1 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.
- 3.2 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](https://transnetetenders.azurewebsites.net).

## 4 USE OF BID FORMS

- 4.1 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.
- 4.2 Respondents must note that the original Bid forms and/or formats must be completed for submission.
- 4.3 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.

## **5 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](http://www.etenders.gov.za) and may also be downloaded from the Transnet website at [www.transnet.net](http://www.transnet.net) free of charge.

## **6 VALIDITY PERIOD**

6.1 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.

6.2 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.

## **7 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.

## **8 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.

## **9 COMMUNICATION AFTER THE CLOSING DATE**

After the closing date of a Bid (i.e. during the evaluation period) the Respondent may only communicate with the contact person listed in the RFX Document.

## **10 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.

## **11 RETURNABLE DOCUMENTS**

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

## **12 DEFAULTS BY RESPONDENTS**

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

- 12.1 enter into a formal contract when called upon to do so within such period as Transnet may specify; or
- 12.2 accept an order in terms of the Bid;
- 12.3 furnish satisfactory security when called upon to do so for the fulfilment of the contract; or
- 12.4 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.

### **13 CURRENCY**

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

### **14 PRICES SUBJECT TO CONFIRMATION**

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

### **15 ALTERATIONS MADE BY THE RESPONDENT TO BID PRICES**

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

### **16 EXCHANGE AND REMITTANCE**

- 16.1 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.
- 16.2 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.
- 16.3 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.
- 16.4 The South African Reserve Bank's approval is required before any foreign currency payments can be made to or on behalf of Respondents.
- 16.5 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.
- 16.6 Transnet reserves the right to request a pro-forma invoice/tax invoice in order to ensure compliance with the contract and Value-Added Tax Act no. 89 of 1991 [VAT Act].

## **17 ACCEPTANCE OF BID**

- 17.1 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.
- 17.2 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.

## **18 NOTICE TO UNSUCCESSFUL RESPONDENTS**

- 18.1 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.

## **19 TERMS AND CONDITIONS OF CONTRACT**

- 19.1 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.
- 19.2 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.

## **20 CONTRACT DOCUMENTS**

- 20.1 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.
- 20.2 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.
- 20.3 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.

## **21 LAW GOVERNING CONTRACT**

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

## **22 IDENTIFICATION**

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

## **23 RESPONDENT'S SAMPLES**

- 23.1 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.
- 23.2 Transnet reserves the right to retain samples furnished by Respondents in compliance with Bid conditions.
- 23.3 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.
- 23.4 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.

## **24 SECURITIES**

- 24.1 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.
- 24.2 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.
- 24.3 Such security, if required, shall be an amount which will be stipulated in the Bid Documents.
- 24.4 For the purpose of clause 24.124.1 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.
- 24.5 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 244 will be for the account of the Supplier/Service Provider.

## **25 PRICE AND DELIVERY BASIS FOR GOODS**

- 25.1 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.

25.2 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.

## **26 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.

## **27 QUALITY OF MATERIAL**

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

## **28 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.

## **29 VALUE-ADDED TAX**

29.1 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.

29.2 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.

## **30 IMPORTANT NOTICE TO RESPONDENTS REGARDING PAYMENT**

30.1 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 foregoing the Respondent is invited to submit offers based on alternative methods of payment and/or financing proposals.

- c) The Respondent is required to give full particulars of the terms that will be applicable to its alternative offer(s) and the financial merits thereof will be evaluated and taken into consideration when the Bid is adjudicated.
- d) The Respondent must, therefore, in the first instance, tender strictly in accordance with clause 30.1 (a) above. Failure to comply with clause 30.1 (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.

#### 30.2 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.

### 31 CONTRACT QUANTITIES AND DELIVERY REQUIREMENTS

#### 31.1 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.

#### 31.2 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.

## **32 PLANS, DRAWINGS, DIAGRAMS, SPECIFICATIONS AND DOCUMENTS**

### 32.1 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.

### 32.2 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.

### 32.3 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.

### 32.4 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.

## **33 BIDS BY OR ON BEHALF OF FOREIGN RESPONDENTS**

33.1 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.

33.2 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.

33.3 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.

33.4 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*.
- 33.5 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.
- 33.6 The attention of the Respondent is directed to clause 24 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.

#### **34 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.

#### **35 CONFLICT WITH ISSUED RFX DOCUMENT**

- 35.1 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 [C] - Lessee Integrity Pact**

1. TFR's Integrity Pact requires a commitment from Bidders to TFR that they will not engage in any:

- 1.1. corrupt and fraudulent practices;
- 1.2. anti-competitive practices; and
- 1.3. act in bad faith towards each other and towards TFR.

2. The Integrity Pact also serves to communicate TFR's Gift Policy as well as the remedies available to TFR where a Bidder contravenes any provision of the Integrity Pact and any provision of an agreement that the Bidder concluded with TFR historically.

3. Bidders are required to familiarise themselves with the contents of the Integrity Pact which is available on the Transnet Internet Project Site [[www.transnet.net/Tenders/Pages/default.aspx](http://www.transnet.net/Tenders/Pages/default.aspx)] or on request.

NAME OF ENTITY:

\_\_\_\_\_

We \_\_\_\_\_ do hereby certify that we have acquainted ourselves with all the documentation comprising the TFR Lessee Integrity Pact. We agree to fully comply with all the terms and conditions stipulated in TFR Lessee Integrity Pact.

4. We furthermore agree that TFR shall recognise no claim from us for relief based on an allegation that we overlooked any terms and conditions of the Integrity Pact or failed to take it into account for the purpose of submitting our offer.

5. We confirm having been advised that a signed copy of this Schedule can be submitted in lieu of the entire TFR Integrity Pact as confirmation in terms of the Returnable Schedule.

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

\_\_\_\_\_

SIGNATURE OF WITNESS

\_\_\_\_\_

SIGNATURE OF BIDDER



ANNEXURE D

**NON DISCLOSURE AGREEMENT**

**[April 2020]**

**THIS AGREEMENT is made between**

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

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

**and**

**the Company 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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## SUPPLIER DECLARATION FORM

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Transnet Vendor Management has received a request to load / change your company details onto the Transnet vendor master database. Please return the completed Supplier Declaration Form (SDF) together with the required supporting documents as per Appendix V to the Transnet Official who is intending to procure your company's services / products, to enable us to process this request. Please only submit the documentation relevant to your request.

**Please Note:** Effective **1 April 2016** all organisations, institutions and individuals who wish to provide goods and/or services to organs of the State must be registered on the National Treasury's Central Supplier Database (CSD). This needs to be done via their portal at <https://secure.csd.gov.za/> **before applying to Transnet.**

### General Terms and Conditions:

**Please Note:** Failure to submit the relevant documentation will delay the vendor creation / change process.

Where applicable, the respective Transnet Operating Division processing your application may request further or additional information from your company.

The Service Provider warrants that the details of its bank account ("the nominated account") provided herein, are correct and acknowledges that payments due to the Supplier will be made into the nominated account. If details of the nominated account should change, the Service Provider must notify Transnet in writing of such change, failing which any payments made by Transnet into the nominated account will constitute a full discharge of the indebtedness of Transnet to the Supplier in respect of the payment so made. Transnet will incur no liability for any payments made to the incorrect account or any costs associated therewith. In such an event, the Service Provider indemnifies and holds Transnet harmless in respect of any payments made to an incorrect bank account and will, on demand, pay Transnet any costs associated herewith.

Transnet expects its suppliers to timeously renew their Tax Clearance and B-BBEE certificates (where applicable), as EMEs and QSEs (QSE's with more than 51% ownership) are only expected to supply an affidavit as per (Appendix D and E). These affidavits must be resubmitted on an annual basis as failure to do so may result in the supplier's account being temporarily suspended.

### In addition, please note of the following very important information:

**1. If your annual turnover is less than R10 million**, then in terms of the DTI codes, you are classified as an Exempted Micro Enterprise (EME). If your company is classified as an EME, please include in your submission, a certified signed letter from your Auditor / Accountant confirming your company's most recent annual turnover is less than R10 million and percentage of black ownership and black female ownership in the company AND / OR B-BBEE certificate and detailed scorecard from an accredited rating agency (e.g. permanent SANAS Member), or a sworn Affidavit should you feel you will be able to attain a better B-BBEE score. (Appendix D).

**2. If your annual turnover is between R10 million and R50 million**, then in terms of the DTI codes, you are classified as a Qualifying Small Enterprise (QSE) and you claim a specific B-BBEE level based on any 4 of the 7 elements of the B-BBEE score-card, please include your B-BBEE certificate in your submission as confirmation of your status. Or if the Supplier is a QSE with More than 51% black owned, they can submit a sworn affidavit (Appendix E).

**Please Note:** B-BBEE certificate and detailed scorecard should be obtained from an accredited rating agency (e.g. permanent SANAS Member).

**3. If your annual turnover exceeds R50 million**, then in terms of the DTI codes, you are classified as a Large Enterprise and you claim a specific B-BBEE level based on all seven elements of the B-BBEE generic score-card. Please include your B-BBEE certificate in your submission as confirmation of your status.

**Please Note:** B-BBEE certificate and detailed scorecard should be obtained from an accredited rating agency (e.g. permanent SANAS Member).

4. **The supplier to furnish proof to the procurement department as required in the Fourth Schedule of the Income Tax Act. 58 of 1962** whether a supplier of service is to be classified as an “employee”, “personal service provider” or “labour broker”. Failure to do so will result in the supplier being subject to employee’s tax.
5. **No payments can be made to a vendor until the** vendor has been registered / updated, and no vendor can be registered / updated until the vendor application form, together with its supporting documentation, has been received and processed. No payments can be made to a vendor until the vendor has met / comply with the procurement requirements.
6. From 01 May 2015 only B-BBEE certificates issued by SANAS accredited verification agencies will be valid.

## Supplier Declaration Form

**Important Notice:** Effective 1 April 2016 all organisations, institutions and individuals who wish to provide goods and/or services to organs of the State must be registered on the National Treasury Central Supplier Database (CSD). This needs to be done via their portal at <https://secure.csd.gov.za/> **before applying to Transnet.**

CSD Number (MAAA xxxxxx):

Company Trading Name						
Company Registered Name						
Company Registration No Or ID No If a Sole Proprietor						
Company Income Tax Number						
Form of Entity	CC	Trust	Pty Ltd	Limited	Partnership	Sole Proprietor
	Non-profit (NPO's or NPC)	Personal Liability Co	State Owned Co	National Govt	Provincial Govt	Local Govt
	Educational Institution	Specialised Profession	Financial Institution	Foreign International	Foreign Branch Office	

Did your company previously operate under another name? Yes No

If **YES** state the previous details below:

Trading Name						
Registered Name						
Company Registration No Or ID No If a Sole Proprietor						
Form of Entity	CC	Trust	Pty Ltd	Limited	Partnership	Sole Proprietor
	Non-profit	Personal Liability Co	State Owned Co	National Govt	Provincial Govt	Local Govt
	Educational Institution	Specialised Profession	Financial Institution	Foreign International	Foreign Branch Office	

Your Current Company's VAT Registration Status

VAT Registration Number	
If <b>Exempted from VAT registration</b> , state reason and submit proof from SARS in confirming the exemption status	
If your business entity is not VAT Registered, please submit a current original sworn affidavit (see example in Appendix I). Your Non VAT Registration must be confirmed annually.	

Company Banking Details		Bank Name	
Universal Branch Code		Bank Account Number	

Company Physical Address			Code	
			Code	
Company Postal Address			Code	
Company Telephone number				
Company Fax Number				
Company E-Mail Address				
Company Website Address				

Company Contact Person Name	
Designation	
Telephone	
Email	

Is your company a Labour Broker?		Yes		No	
Main Product / Service Supplied e.g. Stationery / Consulting / Labour etc.					
How many personnel does the business employ?		Full Time		Part Time	
Please Note: Should your business employ more than 2 full time employees who are not connected persons as defined in the Income Tax Act, please submit a sworn affidavit, as per Appendix II.					

Most recent Financial Year's Annual Turnover	<R10Million		>R10Million <R50Million		>R50Million	
--	-------------	--	----------------------------	--	-------------	--

Does your company have a valid B-BBEE certificate?				Yes		No	
What is your Broad Based BEE status (Level 1 to 9)							
Majority Race of Ownership							
% Black Ownership		% Black Women ownership		% Black Disabled person(s) ownership		% Black Youth ownership	
<b>Please Note:</b> Please provide proof of B-BBEE status as per Appendix V. If you qualify as an EME or QSE then provide an affidavit following the examples provided in Appendix III and IV respectively. If you have indicated Black Disabled person(s) ownership, then provide a <b>certified</b> letter signed by a physician, on the physician's letterhead, confirming the disability.							

**By signing below, I hereby verify that I am duly authorised to sign for and on behalf of firm / organisation and that all information contained herein and attached herewith are true and correct**

Name		Designation	
Signature		Date	

**Stamp And Signature Of Commissioner Of Oaths**

Name		Date	
Signature		Telephone No	

Example of an Affidavit or Solemn Declaration as to VAT registration status

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**Affidavit or Solemn Declaration**

I, \_\_\_\_\_ solemnly swear/declare that \_\_\_\_\_  
\_\_\_\_\_ is not a registered VAT vendor and is not required to register as a VAT vendor because the combined value of taxable supplies made by the provider in any 12 month period has not exceeded or is not expected to exceed R1million threshold, as required in terms of the Value Added Tax Act.

Signature: \_\_\_\_\_

Designation: \_\_\_\_\_

Date: \_\_\_\_\_

**Commissioner of Oaths**

Thus signed and sworn to before me at \_\_\_\_\_ on this the \_\_\_\_\_ day of \_\_\_\_\_  
\_\_\_\_\_ 20\_\_\_\_\_,

the Deponent having knowledge that he/she knows and understands the contents of this Affidavit, and that he/she has no objection to taking the prescribed oath, which he/she regards binding on his/her conscience and that the allegations herein contained are all true and correct.

\_\_\_\_\_  
Commissioner of Oaths

Example of an Affidavit or Solemn Declaration as to number of employees

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**Affidavit or Solemn Declaration**

I, \_\_\_\_\_ solemnly swear/declare that \_\_\_\_\_  
\_\_\_\_\_ employs three or more full time employees, which employees are engaged  
in the business of rendering the services of the organisation and are not connected persons as defined  
in the Income Tax Act.

Signature: \_\_\_\_\_

Designation: \_\_\_\_\_

Date: \_\_\_\_\_

**Commissioner of Oaths**

Thus signed and sworn to before me at \_\_\_\_\_ on this the \_\_\_\_\_ day of \_\_\_\_  
\_\_\_\_\_ 20\_\_\_\_\_,

the Deponent having knowledge that he/she knows and understands the contents of this Affidavit, and  
that he/she has no objection to taking the prescribed oath, which he/she regards binding on his/her  
conscience and that the allegations herein contained are all true and correct.

\_\_\_\_\_  
Commissioner of Oaths

## Example of an Affidavit or Solemn Declaration as to EME B-BBEE Status

**SWORN AFFIDAVIT – B-BBEE EXEMPTED MICRO ENTERPRISE**

I, the undersigned,

<b>Full Name &amp; Surname</b>	
<b>Identity Number</b>	

Hereby declare under oath as follows:

1. The contents of this statement are to the best of my knowledge a true reflection of the facts.
2. I am a member / director / owner of the following enterprise and am duly authorised to act on its behalf.

<b>Enterprise Name</b>	
<b>Trading Name</b>	
<b>Registration Number</b>	
<b>Enterprise Address</b>	

3. I hereby declare under oath that:

- The enterprise is \_\_\_\_\_% black owned;
- The enterprise is \_\_\_\_\_% black woman owned;
- The enterprise is \_\_\_\_\_% black youth owned;
- The enterprise is \_\_\_\_\_% black disabled owned;
- Based on the management accounts and other information available for the \_\_\_\_\_ financial year, the income did not exceed R10,000,000.00 (ten million rand).

Please confirm on the table below the B-BBEE level contributor, **by ticking the applicable box.**

100% black owned	<b>Level One</b> (135% B-BBEE procurement recognition)	
More than 51% black owned	<b>Level Two</b> (125% B-BBEE procurement recognition)	
Less than 51% black owned	<b>Level Four</b> (100% B-BBEE procurement recognition)	

4. The entity is an empowering supplier in terms of the **DTI** Codes of Good Practice.
5. I know and understand the contents of this affidavit and I have no objection to take the prescribed oath and consider the oath binding on my conscience and on the owners of the enterprise which I represent in this matter.
6. The sworn affidavit will be valid for a period of 12 months from the date signed by commissioner.

**Deponent Signature:** \_\_\_\_\_

**Date:** \_\_\_\_\_

\_\_\_\_\_  
**Commissioner of Oaths  
Signature & stamp**

## Example of an Affidavit or Solemn Declaration as to QSE B-BBEE Status

**SWORN AFFIDAVIT – B-BBEE QUALIFYING SMALL ENTERPRISE**

I, the undersigned,

<b>Full Name &amp; Surname</b>	
<b>Identity Number</b>	

Hereby declare under oath as follows:

- The contents of this statement are to the best of my knowledge a true reflection of the facts.
- I am a member / director / owner of the following enterprise and am duly authorised to act on its behalf.

<b>Enterprise Name</b>	
<b>Trading Name</b>	
<b>Registration Number</b>	
<b>Enterprise Address</b>	

3. I hereby declare under oath that:

- The enterprise is \_\_\_\_\_% black owned;
- The enterprise is \_\_\_\_\_% black woman owned;
- The enterprise is \_\_\_\_\_% black youth owned;
- The enterprise is \_\_\_\_\_% black disabled owned;
- Based on the management accounts and other information available for the \_\_\_\_\_ financial year, the income did not exceed R50,000,000.00 (fifty million rand);
- The entity is an empowering supplier in terms of Clause 3.3 (a) or (b) or (c) or (d) or as amended 3.3 (e) of the DTI Codes of Good Practice. **(Tick appropriate box in table below).**

(a) At least 25% of cost of sales, (excluding labour costs and depreciation) must be procurement from local producers or suppliers in South Africa; for the services industry include labour costs but capped at 15%		(b) Job Creation – 50% of jobs created are for black people, provided that the number of black employees in the immediate prior verified B-BBEE measurement is maintained	
(c) At least 25% transformation of raw material / beneficiation which include local manufacturing, production and /or assembly, and / or packaging		(d) At least 12 days per annum of productivity deployed in assisting QSE and EME beneficiaries to increase their operation or financial capacity	
(e) At least 85% of labour costs should be paid to South African employees by service industry entities			

Please confirm on the table below the B-BBEE level contributor, **by ticking the applicable box.**

100% black owned	<b>Level One</b> (135% B-BBEE procurement recognition)	
More than 51% black owned	<b>Level Two</b> (125% B-BBEE procurement recognition)	

- I know and understand the contents of this affidavit and I have no objection to take the prescribed oath and consider the oath binding on my conscience and on the owners of the enterprise which I represent in this matter.
- The sworn affidavit will be valid for a period of 12 months from the date signed by commissioner.

Deponent Signature: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
**Commissioner of Oaths  
Signature & stamp**



Business Development: Sidings  
**Transnet Freight Rail**  
 15 Girton Road, Parktown,  
 Johannesburg, 2193

## PROPERTY LEASE BID EVALUATION RESPONSE

Dear Secretariat,

Kindly find bid evaluation response as follows:

### 1. General information

	Value	Annexure in RCP Response Documents
Location (Facility Name)		Annexure F
Lease tenure applying for (years)	years	Annexure F

### 2. Operational Commitments

Measure	Value provided (in relevant unit of measure)		Annexure in RCP Response Documents	Reference relevant section in bid response (where relevant)
Expertise and experience (in years) in managing and operating train loading operations and multiuser facilities.	years		Annexure F1 Complete one annexure for each contract/project	
Minimum Loading and offloading time per wagon (in hours)	hours		n/a	
Working hours (24/7 working or other)	Hours	Days	n/a	
Rate for handling and storage (Rand per Ton/TEU)	R		n/a	

Transnet SOC Ltd      138 Eloff Street      P.O. Box 72501  
 Registration Number      Braamfontein      Parkview, Johannesburg  
 1990/000900/30      JOHANNESBURG      South Africa, 2122  
 2000

Directors: Dr PS Molefe (Chairperson) PPJ Derby\* (Group Chief Executive) UN Fikelepi ME Letlape DC Matshoga Prof FS Mufamadi AP Ramabulana  
 NS Dlamini\* (Group Chief Financial Officer)

\*Executive

Group Company Secretary: Ms S Bopape

www.transnet.net

"This letterhead contains personal information as defined in the **Protection of Personal Information Act, No. 4 of 2013** (the "Act"). The signatory consents to the processing of his/ her personal information and is obliged to handle other data subject's information in accordance with the requirements of the Act".

**TRANSNET HAS A 'ZERO GIFTS' POLICY. NO EMPLOYEE IS ALLOWED TO ACCEPT GIFTS, FAVOURS OR BENEFITS**

### 3. Investment Commitments

Measure	Value provided (Rand)	Annexure in RCP Response Documents
Security of funding		Annexure F1
Investment in rail siding (Rand value)	R	Annexure F3A
Projected Asset value at end of lease tenure	R	Annexure F3B
Detailed Investment Plan		Annexure F3A
Discounted Cash Flow Forecast		Annexure F3B

### 4. Commercial Rental

Measure	Value provided (in relevant unit of measure)	Annexure in RCP Response Documents
Siding area (see Annexure A1)	m <sup>2</sup>	Annexure F
Commercial Rental (per m2)	per m <sup>2</sup>	Annexure F
Commercial rental (Total)	R	Annexure F

### 5. Community Development Plan

Measure	Value provided (in relevant unit of measure)	Annexure in RCP Response Documents
Total annual revenue generated from rail siding	R p/a	Annexure F
Total annual Rand commitment on Community Development	R p/a	Annexure F
Total commitment on Community Development	R	
Detailed breakdown of Community Development		Annexure F

Kind regards,

---

**Name:**

**Position / Title:**

**Company:**

**Date:**

25 June 2024  
Business Development: Sidings  
Transnet Freight Rail  
15 Girton Road  
Parktown  
Johannesburg  
2193

**EXPERIENCE CONFIRMATION**

Dear Secretariat,

Legal entity contracted to do the work		
Customer / Client		
Contract / Project start date		
Contract / Project end date		
Contract duration	Years	Months
Contact person: Name		
Contact person: Position at time of project		
Contact person: Phone number		
Contact person: Email address		
Detailed description of project/ contract scope		

Kind Regards,

---

**Name:**

**Position/ Title:**

**Company:**

**Date:**

Transnet Freight Rail,  
15 Girton Road,  
Parktown,  
Johannesburg,  
2193

**VOLUME SOURCE(S) CONFIRMATION**

Dear Secretariat,

**Section 1: Applicable to Cargo Owners**

Kindly be advised that ..... (Cargo Owner) commits to an offtake agreement of .....Tons per annum for ..... years from the ..... Rail Siding/ Facility.

Commodity: .....  
Mine Location: .....  
Destination: .....  
Tons per annum: .....  
Distance (from product source to rail siding): .....

**Section 2: Applicable to 3<sup>rd</sup> Party**

Kindly be advised that ..... (Cargo Owner) commits to an offtake agreement of .....Tons per annum with ..... (Service Provide) for ..... years from the ..... Rail Siding/ Facility.

Commodity: .....  
Mine Location: .....  
Destination: .....  
Tons per annum: .....  
Distance (from product source to rail siding): .....

Kind Regards,

---

**Name:**

**Position/ Title:**

**Company:**

**Date:**

## Annexure F2A\_DCF Template

# Property Leasing Template

Lease period (years)	
Discount Rate	
Tax Rate	
Investment Classification	

	2024	2025	2026	2027	2028	2029
	Year 0	Year 1	Year 2	Year 3	Year 4	Year 5
Tonnage (annual) Rate / Ton						
<b>Investment (annual)</b>						
*Capital Costs Rail line refurbishments and upgrades Land side upgrades on storage and loading area. Building upgrades (e.g Office, abolition facilities, lighting etc.) Security upgrades (e.g fencing/walling, guard house etc.) Siding operation handling equipment *Sustaining Capital						
<b>Cash Inflows (annual)</b>						
Revenue Miscellaneous Income Other income (list)						
<b>Cash Outflow( Variable)</b>						
Salaries & Wages Overtime Maintenance Electricity Fuel Electricity Material Other Operating Costs (list)						

<b>Cash Outflow( Fixed)</b>						
Salaries & Wages						
Overtime						
Training						
Data Cost						
Telecommunication						
Depreciation						
Inpairment						
Other Operating Costs (list)						
<b>Working Capital Movements</b>						
*Inventory						
*Receivables						
*Payables						
<b>Taxation</b>						
<b>Net Cash Flows</b>						

**Disclaimer:**

This information provided will be regarded as confidential and will be used to assess the reasonability of the requested lease period



## Annexure F2B

### Detailed Investment Plan

Investment Over 5 Years	Type of asset	Will asset revert to TFR at end of lease period?		2024	2025	2026	2027	2028	2029
Description	Fixed or moveable	Yes/No	Total Investment Amount	Year 0	Year 1	Year 2	Year 3	Year 4	Year 5
<b>Investment within siding boundary</b>									
<b>Rail line refurbishments and upgrades</b>									
E.g 1. Rehabilitation of Line ( R5m)	Fixed	Yes							
2.Upgrade of line from 40 wagon to 75 wagon (R4m)	Moveable	No							
Cover Full scope of work to be conducted.									
<b>Land side upgrades on storage and loading area.</b>									
E.g 1. Paving of surface area 500 square meters									
2. Weighbridge installation									
<b>Building upgrades (e.g Office, ablution facilities, lighting etc.)</b>									
E.g 1.									
2.									
<b>Security upgrades (e.g fencing/walling, guard house etc.)</b>									
<b>Investment outside siding boundary</b>									
E.g 1.									
2.									
<b>Rolling stock investment</b>									
<b>Total Investment</b>				R0	R0	R0	R0		

**Disclaimer:**

This information provided will be regarded as confidential and will be used to assess the reasonability of the requested lease period

**Annexure F3**

**Community Development Plan**

Investment into Community		2024	2025	2026	2027	2028	2029
Description	Total Investment Amount	Year 0	Year 1	Year 2	Year 3	Year 4	Year 5
<b>Youth Development</b>							
e.g. Fund underprivileged learners with school necessities							
Note: The initiatives should provide detail on what will be done							
<b>Women Development</b>							
<b>Community Development</b>							
<b>Total Value of Community Development Plan</b>	<b>R0</b>	<b>R0</b>	<b>R0</b>	<b>R0</b>	<b>R0</b>	<b>R0</b>	<b>R0</b>

**Disclaimer:**

This information provided will be regarded as confidential and will be used to assess the reasonability of the requested lease period

Risk Assessment Name: e.g. Road Tanker Exchange Yard      Date: 19 Aug 2019

Risk Assessor Name: e.g. Jason Scott

Identification and Context					Controls			Ri
Risk No.	Type of Risk	Risk Name	Risk Owner	Risk Cause/s	Control Name	Control Effectiveness	Control Owner	Consequence
1	Financial	Veld fire spread to the loaded tankers in the paking area from the adjacent veld.	xx	1. Out of control veld fire.	1.1. Onsite 24Hr Security emergency activation of local Fire Department	Requires Improvement	1.1. Tom Ellis	3
				2. No fire break.	2.1. Firebreak maintained (3 times as wide as the height of the nearest surface vegetation)	Satisfactory	2.1. Jason Scott	
				3. No fire protection in the tanker parking area	3.1. Fire extinguishers provided at ciritical points and maintained	Satisfactory	3.1. Jake Dawson	
2	Environment	Uncontained environmental pollution from loaded chemical tanks stored on site leading to off-site contamination of an adjacent veld.	xx	1. Faulty stop valve - maintenance failure.	1.1. Maintenance programme	Satisfactory	1.1. Tom Ellis	4
				2. Acts of Vandalism/ attempted product theft.	2.1. Onsite 24 hour security	Unsatisfactory	2.1. Mike Mills	
				3. No bund in area for over night tanker parking.				
3								1
								1

Risk Assessor Signature:

Risk Rating		Risk Mitigations			
Likelihood	Risk Rating	Risk Action/ Task	Risk Action/ Task Owner	Start Date	Completion Date
3	9	1.1.1. Quarterly interactions with the Local Fire Department	1.1.1. Tom Ellis	01-Apr-19	31-Mar-20
4	16	2.1.1. Implement CCTV and Access Control	2.1. 1. Jake Dawson	31-Aug-19	31-Dec-19
		3.1.1. Project to build bund around tanker storage area	3.1.1. Mike Mills	01-Sep-19	31-Jan-20
1	1				
1	1				

**Table 1 - Consequence / Severity**

Consequence/ Severity Score	Consequence/ Severity	Financial	Health & Safety	Environment	Community	Legal & Compliance	Reputation & Brand
5	Critical	>R 5million	Multiple fatalities, and/or Significant irreversible injuries/ illness to 5 or more people	Irreversible long term environmental damage to a highly valued species or location	Large-scale prolonged class action.	Litigation or prosecution with damages of R25m+, plus significant costs. Custodial sentence for company Executives and Managers. Long term closure of operations by authorities.	Prominent negative International and South African press reporting over many days. Executive departs and/or board is restructured. Lease is terminated.
4	Major	R1million to R5million	Single fatality and/or Significant irreversible injuries/ illness to up to 4 people	Prolonged environmental impact.	High-profile community concerns raised requiring significant remediation measures and management attention	Major litigation costing R10m+. Investigation by regulatory body resulting in long term interruption to operations. Possibility of custodial sentence.	National press reporting over several days. Pressure on Executives to leave. Implications for the Lease.
3	Moderate	>R 100 000 but less than R1million	Moderate to severe irreversible disability/ illness or impairment to one or more people.	Major spill or release leading to off site impact. Medium term recovery.	High potential for complaints from interested parties.	Breach of regulation with punitive fine. Litigation involving many weeks of management time.	Local press reporting and disciplinary action likely.
2	Minor	>R20 000 but less than R100 000	Reversible disability/ illness requiring hospitalisation to several people.	Medium term effect on environment. Required to inform environmental agencies, (e.g. noise, dust, chemical spill etc.)	Impact to the surrounding community with short to medium term effects	Minor legal issues, non-compliances and breaches of regulation.	No press reporting. Disciplinary action may be taken
1	Insignificant	<R20 000	1st aid injury with no time loss or reversible disability/ illness requiring the medical treatment of one person	Small, unconfined spill or release	No impact to the surrounding community.	Minor breach only	No reputational impact

**Table 2 - Likelihood/ Probability**

Likelihood/ Probability Score	Likelihood/ Probability Rating	Likelihood/ Probability Description
5	Almost certain	Very likely. The event is expected to occur in most circumstances as there is a history of regular occurrence
4	Likely	There is a strong possibility the event will occur as there is a history of frequent occurrence.

3	Possible	The event might occur at some time as there is a history of casual occurrence.
2	Unlikely	Not expected, but there's a slight possibility it may occur at some time.
1	Rare	Highly unlikely, but it may occur in exceptional circumstances. It could happen, but probably never will.

**Table 3- Risk Control Effectiveness Rating**

RCE Rating	Guide
Satisfactory	Nothing more to be done except review and monitor the existing controls. To the extent that is reasonably achievable, controls are well designed for the risk, are largely preventative and address the root causes and Management believes that they are effective and reliable at all times.
Requires Improvement	Most controls are designed correctly and are in place and effective. Some more work to be done to improve operating effectiveness or Management has doubts about operational effectiveness and reliability.
Unsatisfactory	While the design of controls may be largely correct in that they treat most of the root causes of the risk, they are not currently very effective. There may be an over-reliance on reactive controls. Or Some of the controls do not seem correctly designed in that they do not treat root causes, those that are correctly designed are operating effectively.
None	Virtually no credible control. Management has no confidence that any degree of control is being achieved due to poor control design and/or very limited operational effectiveness.

**Risk Heat Map Report**

LIKELIHOOD/ PROBABILITY	5					
	4				1	
	3			2		
	2					
	1					
		1	2	3	4	5
		CONSEQUENCE/ SEVERITY				

Risk Rating Categories	Priority	Score
HIGH	I	16 to 25
MEDIUM	II	9 to 15
LOW	III	1 to 8

The Risk Classification is determined by multiplying the Consequence/ Serverity by the Likelihood/ Probability, using the respective Tables in the Risk Rating "tab". The resultant outcome is used to determine the risk rating and categories and plotting onto the Risk Heat Map "tab".

No.	Risk Name	Risk Rating
1	Uncontained environmental pollution from loaded chemical tanks stored on site leading to off-site contamination of an adjacent veld.	16
2	Veld fire spread to the loaded tankers in the paking area from the adjacent veld.	9
3		0
4		0
5		0

ANNEXURE H

<b>TENDER SAFETY ASSESSMENT CRITERIA</b>				
	<b>HEALTH AND SAFETY</b>			
<b>1.</b>	<b>POLICY, ORGANISATION AND MANAGEMENT INVOLVEMENT</b>	<b>YES</b>	<b>NO</b>	<b>N/A</b>
1.1	Provide a copy of company SHE Policy?			
1.2	Provide company organogram indicating all legal appointments that will be made if successful?			
1.3	Has the Contractor made provision for the cost for health and safety requirements for the contract/project. Provide proof or declaration.			
<b>2.</b>	<b>TRAINING</b>	<b>YES</b>	<b>NO</b>	<b>N/A</b>
2.1	Provide proof of health and safety related training provided such as training analysis, Certificates, Job Specific Training or Induction Training program?			
<b>3.</b>	<b>Health and Safety Plan (SHE Plan)</b>	<b>YES</b>	<b>NO</b>	<b>N/A</b>
3.1	Provide a health and safety plan (SHE Plan).			
3.2	Does the health and safety (SHE) plan contain the following?			
	<ul style="list-style-type: none"> <li>▪ Define SHE responsibilities for different levels of employees i.e management, supervisors, employees</li> </ul>			
	<ul style="list-style-type: none"> <li>▪ Document how health and safety risks and hazards for the contract/project will be identified and mitigated?</li> </ul>			
	<ul style="list-style-type: none"> <li>▪ Document how Safe Working Procedures (SWP/SOP) will be developed and how employees will be trained on such SWP's?</li> </ul>			
	<ul style="list-style-type: none"> <li>▪ Document how health and safety training will be conducted?</li> </ul>			
	<ul style="list-style-type: none"> <li>▪ Document how inspections and audits will be conducted?</li> </ul>			
	<ul style="list-style-type: none"> <li>▪ Document how health and safety communication will be conducted i.e daily safety talks, toolbox talks, incident recalls, safety performance etc</li> </ul>			
	<ul style="list-style-type: none"> <li>▪ Document how health and safety representatives will be appointed?</li> </ul>			
	<ul style="list-style-type: none"> <li>▪ Document how occurrences/incidents will be recorded, reported and investigated?</li> </ul>			
	<ul style="list-style-type: none"> <li>▪ Document how Personal Protective Equipment (PPE) will be selected, approved and training of employees on their use?</li> </ul>			
	<ul style="list-style-type: none"> <li>▪ Document how emergency plans will be developed and training of employees on such plans?</li> </ul>			
	<ul style="list-style-type: none"> <li>▪ Fatigue management and Fit for duty processes i.e substance abuse testing and how to deal with positive results, fatigue management addressed?</li> </ul>			
	<ul style="list-style-type: none"> <li>▪ Provision of first aid measures?</li> </ul>			
	<ul style="list-style-type: none"> <li>▪ Medical testing of all employees by Occupational Health Practitioner?</li> </ul>			
	<ul style="list-style-type: none"> <li>▪ Measures to be put in place for security of employees and safeguarding of equipment?</li> </ul>			
	<ul style="list-style-type: none"> <li>▪ Provision of welfare facilities?</li> </ul>			
	<ul style="list-style-type: none"> <li>▪ COVID Requirements</li> </ul>			



4.	SELECTION, PROCUREMENT AND MANAGEMENT OF SUBCONTRACTORS	YES	NO	N/A
4.1	Will some of the work be subcontracted? If yes, provide:			
	<ul style="list-style-type: none"> <li>Procedure showing how subcontractors will be assessed to ensure that they are capable of performing the work safely and how they will be managed to ensure compliance to safety requirements?</li> </ul>			
5.	FALL PROTECTION (Applicable where work will be performed at fall risk position)	YES	NO	N/A
5.1	Will there be any work conducted from a fall risk position? If yes			
	<ul style="list-style-type: none"> <li>Provide a fall protection plan to demonstrate that all work at fall risk position will be undertaken under competent supervision, carried out by employees who are trained and medically fit?</li> </ul>			
	<ul style="list-style-type: none"> <li>Does your fall protection plan include rescue plan, risk assessment, inspection, testing and maintenance of fall protection equipment?</li> </ul>			
6.	RAILWAY SAFETY	YES	NO	N/A
6.1	Railway Safety Permit issued (where required)			
6.2	Siding Safe Working Procedure:			
6.3	Railway Safety Management System			
6.4	Reporting Procedure to RSR			
6.5	Maintenance Processes of railway infrastructure			
<b>Name of Transnet Contract Manager/Designated Transnet Person (Safety):</b>				
<b>Signature of Transnet Contract Manager/Designated Transnet Person :</b>				
<b>Signature of Transnet Contract Manager/Designated Transnet Person :</b>				
<b>Date of Receipt of Documentation:</b>				
<b>Comments:</b>				
<b>Date of Endorsement of Documentation:</b>				



## **Standard Conditions of Carriage ("SCC")**

**Version 17:** 1 April 2023

**Reference:** TFR/COM/CP12/4/6

**Document maintained and updated by:** **Manager  
Policy & Standards  
Commercial  
Commercial Management**



## Transnet Freight Rail Standard Conditions Of Carriage ("SCC")

In addition to this SCC, there are special Service Conditions for the packing, loading, acceptance, Transport and delivery of Dangerous Goods and/or, hazardous goods, explosives, perishable goods and abnormal loads carried in rail wagons or freight containers.

Transnet Freight Rail must be notified in advance if a Customer/Consignor wishes it to consign any of the Goods in order that the special Service Conditions can be complied with.

Please take special note of Clauses 24, 25 & 26, which relate to the exclusion of liability.

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# Transnet Freight Rail Standard Conditions of Carriage

## 1. Information

1.1. If, prior to the Transport of any traffic, the Customer requires any clarification on any of the terms of these Standard Conditions of Carriage or any related information, please telephone the contact person named in the Schedule provided to you; or in the absence of a Schedule, send an email to the TFR Customer Care email address: Tfr911@transnet.net or contact us at the following telephone number: 0860690730. The customer must note that any responses to such queries seeking clarification are provided by Transnet Freight Rail for information purposes only and will not be legally binding on Transnet Freight Rail.

## 2. Definitions And Interpretation

### 2.1 Definitions

In these Transnet Freight Rail Standard Conditions of Carriage (including the recitals if any), unless the contrary intention appears, the following words and expressions shall have the following meanings when such words and expressions are used with a capitalised first letter and cognate expressions shall have corresponding meanings, except where the context otherwise requires:

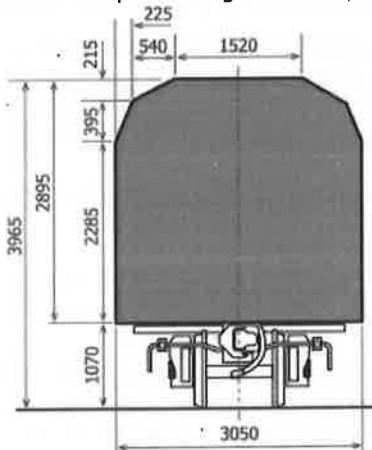
**2.1.1 "Additional Costs"** – means those costs arising additional to the railage price and charges for Transport payable by the Customer some of which are included in a Schedule and if not, as reasonably determined by Transnet Freight Rail;

**2.1.2 "Agreement"** – means a written Rail Transport Agreement document.

**2.1.3 "Available Capacity"** – means the availability of Transnet Freight Rail's locomotives, rail wagons of the type required by the Customer as set out or to be set out in a Schedule and Transnet Freight Rail's associated resources which, without limitation, includes Transnet Freight Rail's personnel for Transport of the Goods;

**2.1.4 "Abnormal freight container"** – means a freight container or tank container which has dimensions exceeding the standard size determined by the International Standards Organisation, or in the case of an open top container, where the load protrudes above the freight container, whether of standard size or not.

**2.1.5 "Abnormal Loads"** - in relation to those carried by rail, means goods having outside dimensions which exceed those on the load profile diagram below, and/or weigh more than eighteen metric tons per package or unit



**2.1.6 "Best Industry Practice"** – means the exercise of that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from time to time from a skilled and experienced supplier or professional seeking in good faith to comply with its contractual obligations, complying with all guideline documents, codes of practice and Laws and engaged in the same type of undertaking or industry and under the same or similar circumstances and conditions as those envisaged by these Transnet Freight Rail Standard Conditions of Carriage in accordance with Industry best practices;

**2.1.7 "Business Day"** – means any Day other than a Saturday, Sunday or any day that is a public holiday in terms of the Public Holiday Act 36 of 1994;

**2.1.8 "Business"** – means all and any business undertaken, including any advice, information or service provided, whether gratuitously or not, by Transnet Freight Rail.

**2.1.9 "Change in Control"** means any change whatsoever in Control whether effected directly or indirectly;

**2.1.10 "Claim"** – means any claim, demand, proceedings or liability;

**2.1.11 "Combined Consignment Note & Wagon Label/ Release Pro Forma"** – means the written notification from the Customer to Transnet Freight Rail in the form stipulated by Transnet Freight Rail containing;

**2.1.11.1** the wagon and/or container number of each rail wagon and container identifying the rail wagon/container;

**2.1.11.2** the total number of rail wagons and the total number of containers when loaded;

**2.1.11.3** the mass of each loaded rail wagon and container;

**2.1.11.4** the Contract Number and the Consignment Number allocated to the Customer confirmation that the rail wagon has been loaded or off-loaded by the Customer, is ready for collection by Transnet Freight Rail and all requirements in terms of Best Industry Practice and of any Relevant Authority with which the Customer is obliged to comply whether in terms of these Transnet Freight Rail Standard Conditions of Carriage or otherwise have been complied with;

**2.1.12 "Consignment Number"** – means the system generated number allocated to a particular consignment for Transport that has been requested by the Customer and approved and confirmed by Transnet Freight Rail;

## Transnet Freight Rail Standard Conditions of Carriage

- 2.1.13 "Contract Number"** – means the number that may be issued by Transnet Freight Rail as being the number for the Agreement which, if issued will be set out in a Schedule;
- 2.1.14 "Control"** means in relation to any entity, the ability directly or indirectly to direct or cause the direction of the votes attaching to the majority of its issued shares or interests carrying voting rights, or to appoint or remove or cause the appointment or removal of any directors (or equivalent officials) or those of its directors (or equivalent officials) holding the majority of the voting rights on its board of directors (or equivalent body); and/or control of the whole or any part of the Equity and/or the member's loans.
- 2.1.15 "Customer"** – means a party contracting with Transnet Freight Rail for the provision of rail and related services;
- 2.1.16 "Consignment"** – means goods conveyed under a single Transport document in rail wagons in relation to such wagonloads, or goods conveyed in one freight container in relation to containerised goods.
- 2.1.17 "Consignee"** – means the person or company nominated by the Consignor to take delivery of the goods, and in the absence of any such nomination means the person or company representing itself/himself, and reasonably accepted by Transnet Freight Rail, to be duly authorised to accept delivery on behalf of the Consignee.
- 2.1.18 "Consignor"** – means a Customer or any person/company duly authorised by the Customer requesting Transnet Freight Rail to convey the consignment, including his agent, and whose signature appears on the consignment documents issued by Transnet Freight Rail and completed by the Consignor for a particular consignment. In Electronic Data Interchange transactions, and other instances where normal Transport documents are not issued, the Consignor is the person who requests Transnet Freight Rail to convey goods.
- 2.1.19 "Customer Siding Arrival Wagon Checklist"** – means the checklist of items which will be inspected to determine whether there is any damage to rolling stock upon the arrival of the wagons in the exchange yard or Customer siding and before any loading or offloading can take place.;
- 2.1.20 "Customer Siding Departure Wagon Checklist"** – means the checklist of items which will be inspected to determine whether there is any damage to rolling stock upon the departure of the wagons in the exchange yard or Customer siding and after any loading or offloading has taken place.;
- 2.1.21 "Dangerous Goods"** – means Goods, including those Goods defined as Hazardous Substances, which have the potential to cause harm to persons, property or the environment or the potential to cause pollution or degradation of the environment as contemplated in the National Environmental Management Act 107 of 1998 ("NEMA") including such goods defined as such by the South African Bureau of Standards 0228 and the International Maritime Dangerous Goods ("IMDG") Code.;
- 2.1.22 "Day"** – means a calendar day;
- 2.1.23 "Demurrage"** – refers to Wagon Delay Charges which Transnet Freight Rail is entitled to charge in terms of clauses 10.4, 11.3, 15.4 and 16.8 of the Terms as well as Clause 15 of the Schedule.;
- 2.1.24 "Equity"** means the entire issued share capital (including share premiums) of the Customer;
- 2.1.25 "Explosives"** – means the materials listed in the Explosives Act No 26 of 1956, including any amendment thereto or replacing legislation, and South African Bureau of Standards 0228 and the International Maritime Dangerous Goods ("IMDG") Code.
- 2.1.26 "Free Time"** – means the time period, set out in or to be set out in a Schedule, calculated from the time when either:
- 2.1.26.1** the rail wagon is Placed at the Point of Placing; or;
- 2.1.26.2** from the time when the rail wagon is in a position to be Placed, but the Point of Placing cannot accommodate the rail wagon,
- 2.1.26.3** and is calculated without taking into account Non-Working Days unless provided otherwise in or to be set out in a Schedule;
- 2.1.27 "Electronic Data Interchange Transactions"** – means the transfer of data from one computer system to another;
- 2.1.28 "Force Majeure"** – means the occurrence after the Transport Agreement (Schedule) comes into effect of:
- 2.1.28.1** an event the occurrence of which could not have been reasonably foreseen by the Parties at the time the Transport Agreement (Schedule) came into effect; and
- 2.1.28.2** includes, but is not limited to:
- war, whether declared or not, revolution, riot, insurrection, civil commotion, invasion, armed conflict, a hostile act of a foreign enemy, act of terrorism, sabotage, radiation or chemical contamination, ionising radiation, Act of God, explosions, lightning, floods, storm, fire, earthquake, vis major or casus fortuitous, plague or other serious epidemic or pandemic, and any lockdown resulting from such epidemic and/or pandemic;
  - a national, provincial or regional shortage of diesel and/or electricity or any delay, interruption or failure in the supply thereof which is not attributable to the party seeking to rely on such shortage, interruption or failure in supply;
  - governmental restraint, Act of Parliament or any other legislation, including a regulation, a directive by any sphere of government or by any Court, authority or regulatory body having jurisdiction over one or more of the parties which has or had the force of and/or which precludes a party from exercising any of its rights and/or performing any of its duties, functions or obligations in terms of this Agreement.
  - any strike, lockout or industrial action by workers or employees of any party, provided that the party seeking to rely upon such an event has taken steps to mitigate the effect of such strike, lockout or industrial action and
- 2.1.28.3** which causes either of the Parties to be unable to comply with all or a material part of its obligations or to exercise all or a material part of its rights under this Agreement.
- 2.1.29 "Freight Container"** – means any article of Transport equipment constructed in accordance with the specifications of the International Standards Organisation designed for multimodal Transport, and the term includes an abnormal freight container.
- 2.1.30 "Global Train Plan"** – means Transnet Freight Rail's planned Transport Annually, Quarterly, Monthly and Weekly;

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- 2.1.31 "Goods"** – means any article, commodity, product or raw material tendered to or coming under the control of Transnet Freight Rail on behalf of any consignor or consignee, which Transnet Freight Rail has agreed to Transport and shall include any container, transportable tank, bolster, pallet, package, tarpaulin or other covering not supplied by or on behalf of Transnet Freight Rail as well as Dangerous Goods, explosives and hazardous substances.
- 2.1.32 "Hand Over Point"** – means an agreed place at a siding, station, exchange yard or an area in the Port or a road address in the case of containers on a road vehicle trailer where the Customer will Place empty or loaded wagons/containers for collection by Transnet Freight Rail;
- 2.1.33 "Hazardous Substance"** – means any Goods that have been designated as a Group I, II, III or IV hazardous substance or a grouped hazardous substance by the relevant minister in terms of the Hazardous Substances Act 15 of 1973;
- 2.1.34 "Law"** means the common law; all applicable national legislation, by-laws, treaties, directives and codes of practice having the force of law in the Republic and all localities within which Transnet Freight Rail operates; all other judicial or other decisions, determinations, notifications, rulings, findings and all similar directives that are binding on or applicable to Transnet Freight Rail; and any levies, charges, surcharges, imposts, taxes, fees and the like introduced, levied or imposed by any competent authority on Transnet Freight Rail and which are wholly or partly attributable and/or which relate directly or indirectly to Transnet Freight Rail's operations whether or not in connection with general freight;
- 2.1.35 "Loading Profile"** – means the specifications and procedures set out or to be set out in a Schedule setting out the manner and the parameters within which the Goods must be loaded and off-loaded and includes the loaded profile of the Goods;
- 2.1.36 "Loss"** – means any loss, damage, costs, charges, damages or expenses (including legal and other professional charges and expenses) but excludes all consequential and/or indirect damages unless stated otherwise in these Transnet Freight Rail Standard Conditions of Carriage;
- 2.1.37 "Mass Measuring Fee"** – means a fee set out or to be set out in a Schedule to the Transnet Freight Rail Standard Conditions of Carriage;
- 2.1.38 "Month"** – means a calendar month and "monthly" shall have a corresponding meaning;
- 2.1.39 "Non-Working Days"** – means any Day or Days that the Customer and Transnet Freight Rail have agreed on as a non-working day (a day on which the Customer will not require Transnet Freight Rail's services) set out or to be set out in a Schedule.
- 2.1.40 "Parties"** – means the Customer and Transnet Freight Rail and "Party" shall mean either of them as the context requires;
- 2.1.41 "Perishable Goods"** – means any goods which, by their nature, rot, wither or deteriorate over a period of time.
- 2.1.42 "Placed"** – means that rail wagons or road vehicle trailers with containers, empty or loaded, have been placed at the Point of Placing for loading, or off-loading and the locomotive/road vehicle has been uncoupled and "Place" shall have a corresponding meaning;
- 2.1.43 "Point of Placing"** – means an agreed place at a siding, station, exchange yard or an area in the Port or a road address in the case of containers on a road vehicle trailer where Transnet Freight Rail will Place empty or loaded wagons/containers for the Customer to load or off-load rail wagons/containers;
- 2.1.44 "Port"** – means the land that is specifically designated as such at a South African Harbour;
- 2.1.45 "Prime Rate"** – means the nominal, compounded monthly in arrear prime overdraft rate of interest from time to time publicly quoted as such by RMB Corporate Bank, a division of FirstRand Bank Limited, ("RMBCB"), calculated on a 365 Day factor, irrespective of whether or not the year is a leap year. If such rate quoted by the RMB Corporate Bank, a division of FirstRand Bank Limited ("RMBCB") is at any time exceeded by the inter-bank re-purchase rate as quoted by the South African Reserve Bank ("the Repo Rate") then the Prime Rate shall for so long as it is at any time exceeded by the Repo Rate, be deemed to be equal to the Repo Rate. A certificate issued under the hand of any manager (whose authority and appointment it shall not be necessary to prove) of the RMB Corporate Bank, a division of FirstRand Bank Limited ("RMBCB") as to the Prime Rate or the Repo Rate from time to time shall, in the absence of manifest error, be final and binding on the Parties;
- 2.1.46 "Private Siding"** – means the Customer's private siding, which is a railway line in private use and/or ownership which is connected to Transnet Freight Rail's railway line by means of a Turnout and includes, without limitation, any shunting yard, marshalling yard, siding extension or any section of a railway line which, either directly or indirectly, provides access to Transnet Freight Rail's railway lines and any premises owned/leased / or in respect of which the Customer has a right of use.
- 2.1.47 "Quarter"** – means a period of 3 consecutive calendar months and "Quarterly" shall have a corresponding meaning;
- 2.1.48 "Rand" or "R"** - means the lawful currency of the Republic of South Africa from time to time;
- 2.1.49 "Relevant Authority"** – means the Republic, any ministry, department, agency, authority or body of the Republic or any other public authority, body, entity or person having jurisdiction under the Laws of the Republic over any matter arising from or in any way connected with the Transport of the Goods;
- 2.1.50 "Republic"** – means the Republic of South Africa;
- 2.1.51 "Rolling Forecast"** – means the annual, Quarterly, Monthly or weekly forecast of Tonnes required to be Transported by the Customer and which is updated by the Customer Quarterly, Monthly or weekly as the case may be;
- 2.1.52 "Safety Permit"** – means a permit required in terms of section 22 of the National Railway Safety Regulator Act as issued by the chief executive officer of the Regulator in terms of sections 23 and 24 of the Act;
- 2.1.53 "SARA Rate"** – means the monthly exchange rate of the Southern African Railways Association Rate (SARA Rate) applied by all SARA members when a Customer has been quoted rates in foreign currency, which needs to be converted to Rand and vice versa for invoicing purposes;
- 2.1.54 "Schedule"** – means any document which Transnet Freight Rail has compiled that contains rates, prices, charges, levies, Additional costs, Service Conditions, or any other information related to this document;
- 2.1.55 "Service Conditions"** – means the special instructions available from Transnet Freight Rail and/or any relevant Competent Authority requirement as stipulated by applicable legislation upon request relating to loading methods for general,

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dangerous and/or hazardous goods, and the packaging, acceptance, Transport and delivery of those goods, when conveyed in freight containers, rail wagons and road vehicles.

**2.1.56 "SOLAS"** – means International Convention for the Safety of Life at Sea Convention, enforced in South Africa via the Merchant Shipping Act.

**2.1.57 "Terms", "Transnet Freight Rail Standard Conditions of Carriage" or "SCC"** – means this document, and any Schedules, Annexures and Service Level Agreements that are intended to govern the relationship between Transnet Freight Rail and the Customer with regard to the Transport of Goods by rail;

**2.1.58 "Time of Placing"** – means the time at which the wagons have been Placed;

**2.1.59 "Ton" or "Tonnes"**- means a metric ton or tonnes;

**2.1.60 "Transport"** – means the conveyance of Goods by rail from the Point of Placing to the Hand over Point and vice versa;

**2.1.61 "Turnout"** – means the place or places where the Private Siding and any siding extension branches off from Transnet Freight Rail's railway line.

**2.1.62 "Transnet Freight Rail" or "TFR"** – means a division of the state owned company **Transnet SOC Ltd [1990/000900/30]** providing rail transport services.

**2.1.63 "Transport Documents"** – means a combined consignment note and wagon label, freight transit order, driver's instruction for road vehicles, container terminal order, a container list, packing declaration for Dangerous Goods, Transport emergency cards ("*tremcards*") and the communication sent to Transnet Freight Rail in relation to Electronic Data Interchange transactions.

**2.1.64 "Value Added Tax" or "VAT"** – means Value Added Tax in terms of the Value Added Tax Act 89 of 1999. All amounts and prices are exclusive of such Value Added Tax;

**2.1.65 "Verified Mass Measuring Device"** – means a mass measuring device that has been verified and approved by a SANAS certified Officer or Inspector in accordance with the provisions of the Legal Metrology Act 9 of 2014.

**2.1.66 "VGM"** – Verified Gross Mass as required by IMO and SOLAS guidelines and instructions from 1 July 2016 for all Sea export containers.

**2.1.67 "Writing"** - means any handwritten, typewritten, or printed communication, including any facsimile transmission or electronic mail (email) or EDI- Electronic Data Interchange communication; and Written shall have a corresponding meaning.

**2.1.68 "Wagon/Container Delay Charges"** – means the charges set out or to be set out in a Schedule which will be raised by Transnet Freight Rail and calculated from the expiry of the Free Time until the time of collection of the rail wagons/containers by Transnet Freight Rail, or the time that Transnet Freight Rail is notified by the Customer that the rail wagons/containers are ready to be collected, whichever is the earlier, or where Wagons are delayed or detained in terms of clause 18.11.2.

## 2.2 Interpretation

**2.2.1** Unless the contrary intention appears, words importing:

**2.2.1.1** the singular shall also include the plural and vice versa;

**2.2.1.2** one gender shall also include the others; and

**2.2.1.3** natural persons shall include artificial persons whether incorporated or not.

**2.2.2** Headings of the clauses of these Transnet Freight Rail Standard Conditions of Carriage are for convenience only and shall not affect the interpretation or construction of these Transnet Freight Rail Standard Conditions of Carriage nor be deemed to be a part of these Transnet Freight Rail Standard Conditions of Carriage.

**2.2.3** Except where the context requires otherwise, references to clauses, sub-clauses, sections, paragraphs, Schedules and annexures are references to clauses, sections, paragraphs, Schedules and annexures of these Transnet Freight Rail Standard Conditions of Carriage.

**2.2.4** Reference to any person shall include the legal successors and permitted assigns of such person irrespective of whether such succession or assignment occurred before or after the coming into effect of these Transnet Freight Rail Standard Conditions of Carriage.

**2.2.5** Reference in these Transnet Freight Rail Standard Conditions of Carriage to a party in respect of any obligations or liabilities of that party, shall, unless expressly otherwise provided, include agents, employees and authorised representatives of that party and its permitted subcontractors.

**2.2.6** References to agreements, documents or other instruments include (subject to any relevant approvals) a reference to that agreement, document or instrument as amended, supplemented, substituted, ceded or assigned.

**2.2.7** References to any statute, statutory instrument or accounting standard or any of their provisions is to be construed as a reference to that statute, statutory instrument or accounting standard or such provision as the same may have been or may from time to time after these Transnet Freight Rail Standard Conditions of Carriage comes into effect be amended, replaced or re-enacted, unless specified otherwise.

**2.2.8** References to any amount of money to be paid by any party shall be deemed to be exclusive of VAT and VAT is payable at the applicable rate in respect of the goods or services to which the payment relates unless expressly stated to the contrary in these Transnet Freight Rail Standard Conditions of Carriage. The party obliged to make the payment shall add the amount of any applicable VAT to the payment.

**2.2.9** Terms such "s "including", "includes" and "included" when following a general statement or terms mean "including but not limited to".

**2.2.10** If any provision in a definition is a substantive provision conferring rights or imposing obligations on any party, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision in the body of the agreement.

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**2.2.11** Expressions defined in these Terms shall bear the same meanings in Schedules or annexures to these Terms where such Schedules and annexures do not contain their own definitions.

**2.2.12** Where any term is defined within the context of any particular clause in these Transnet Freight Rail Standard Conditions of Carriage the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the meaning ascribed to it for all purposes in terms of these Transnet Freight Rail Standard Conditions of Carriage, notwithstanding that that term has not been defined in this interpretation clause.

**2.2.13** Terms, acronyms abbreviations and phrases not defined in these Transnet Freight Rail Standard Conditions of Carriage but known or used in the railway industry shall be given the meaning given to them in that industry.

**2.2.14** When any number of Days is prescribed in these Transnet Freight Rail Standard Conditions of Carriage the same shall be calculated by excluding the first Day and including the last Day, unless the last Day is not a Business Day. Where the last Day is not a Business Day, the time shall be calculated by excluding the first Day, excluding the Day that is not a Business Day and including the next Business Day.

### **2.3 English Language**

**2.3.1** All notices, correspondence, documentation or communications of whatsoever nature, drawings, reports, certificates and specifications which are to be given, submitted or prepared under or in connection with these Transnet Freight Rail Standard Conditions of Carriage shall be in the English language.

### **2.4 Applicability Of These Standard Conditions Of Carriage & Other Provisions**

**2.4.1** Business is undertaken by Transnet Freight Rail subject to these Standard Conditions of Carriage which shall be deemed to be incorporated in and be a part of any agreement between Transnet Freight Rail and the Consignee or Consignor, particularly where there is a sale of goods agreement between Consignor and Consignee which expressly or impliedly contemplates that the goods will be carried by Transnet Freight Rail. In the event that the Customer has signed an Agreement with Transnet Freight Rail then, in the event of an irreconcilable conflict between any of the terms of the Agreement and these Standard Conditions of Carriage then the terms of the Agreements shall prevail. Transnet Freight Rail shall not be deemed a common carrier nor a public carrier and deals with goods only on the basis set out in these Standard Conditions of Carriage.

**2.4.2** No Agent or employee of Transnet Freight Rail, other than a director or an individual authorised thereto by the board of directors, has Transnet Freight Rail's authority to alter or vary Standard Conditions of Carriage nor shall any act or omission of Transnet Freight Rail be construed as a variation or waiver of any of these Standard Conditions of Carriage.

**2.4.3** The Consignor warrants that it has the requisite authority of the Consignee and any other party who may have an interest in the goods to engage the services of Transnet Freight Rail and to contract on the basis of these Standard Conditions of Carriage.

**2.4.4** The person representing the Consignor contracting with Transnet Freight Rail warrants that he is duly authorised to do so.

**2.4.5** If any legislation is compulsorily applicable to any business undertaken by Transnet Freight Rail then these Standard Conditions of Carriage shall, in relation to that business, be read as subject to such legislation which shall be incorporated herein and if any part of these Standard Conditions of Carriage be repugnant to such legislation such part shall, in relation to that business, be void to that extent only and no further.

**2.4.6** If, and to the extent that, Transnet Freight Rail in fulfilling its obligations to a particular person is, or becomes, bound by contractual or other rights and obligations to rail service providers in countries other than South Africa, then such rights or obligations shall be incorporated in these Standard Conditions of Carriage, whether or not inconsistent with these Standard Conditions of Carriage and/or any other terms and conditions agreed to by Transnet Freight Rail.

**2.4.7** Each and every provision contained in these Standard Conditions of Carriage and any other terms and/or conditions agreed between Transnet Freight Rail and any other person shall be capable of independent enforcement, thus enabling any Court or other competent tribunal to enforce the remaining provision if it adjudges one or more provisions to be wholly or partially invalid.

**2.4.8** These Standard Conditions of Carriage shall also govern any further or additional work or service which may not initially have been contemplated but is nevertheless performed by Transnet Freight Rail.

**2.4.9** Transnet Freight Rail will endeavour to provide the transportation and adhere to the Global Train Plan of which the Customer has been informed by way of confirmation of Next Week Business. However, this will be subject to Available Capacity and is not a guarantee that the Transport will be provided.

**2.4.10** Transnet Freight Rail is entitled to amend and supplement these Standard Conditions of Carriage from time-to-time, but no changes will be retrospective.

### **2.5. Charges and Quotations**

**2.5.1** Transnet Freight Rail shall be entitled to charge for all services rendered and goods supplied by it.

**2.5.2** Where Transnet Freight Rail has made a specific quotation for its charges based on the incorrect information furnished to it by the Consignor about the characteristics, dimensions and weight of those goods then Transnet Freight Rail shall be entitled to alter its price to reflect the true position, and to levy extra charges. All reference to tonnage in a quotation shall be deemed to be metric tonnes unless otherwise expressly stated.

**2.5.3** A percentage of the prices (the "levy component" of the price) in respect of traffic on Transnet Freight Rail lines will furthermore be subjected to the raising of a rail charge levy based on the diesel fuel price increase/decreases, electricity price increases as well as levies related to foreign currency exchange exposure and steel price increases in respect of maintenance to and capital investment in Transnet Freight Rail' assets which may occur during the period 1 April to 31 March of each year as well



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as to price adjustments related to statutory enactments. The rail charge levy determination shall be as reflected on the website [www.Transnetfreightrail.co.za](http://www.Transnetfreightrail.co.za) menu: Freight Business and submenu Rail Charge Levy. The levy component of the price shall be subject to an annual review.

**2.5.4** All charges and quotations are subject to the provisions of clause 2.4.9.

**2.5.5** Prices for certain services will be calculated rounded off to the nearest Rand, or be calculated in rands and cents, and rounded-off to the nearest cent where applicable. The aforementioned choice of the manner of providing a price shall be entirely in TFR's discretion. Except where otherwise specifically provided, fractions of a half-cent or more in calculations are rounded-off to a cent and in the case of a rand price, fifty and more cents are rounded off to the nearest Rand.

### **2.6 Notices, Consents, Approvals, Certificates and Determinations**

**2.6.1** Wherever in these Transnet Freight Rail Standard Conditions of Carriage provision is made for the giving or issuing of any notice, consent, permission, approval, certificate or determination by any person, then, unless otherwise specified, such notice, consent, approval, certificate or determination shall be in Writing and the words "notify", "certify", "consent", "permit", "approve" or "determine" shall be construed accordingly.

**2.6.2** Save where these Transnet Freight Rail Standard Conditions of Carriage expressly provides otherwise any such notice, consent, permission, approval, certificate or determination shall not be unreasonably withheld or delayed. Save where these Transnet Freight Rail Standard Conditions of Carriage expressly provides otherwise Transnet Freight Rail shall exercise its rights to give, grant or refuse any notice, consent, permission, approval, certificate or determination fairly and reasonably.

### **2.7 Acceptance**

**2.7.1** Should any of the terms of these Transnet Rail Freight Standard Conditions of Carriage not be acceptable to the Customer, the Customer may not commence using Transnet Freight Rail's Transport services, and must advise the contact person named or to be named in a Schedule in Writing to such effect.

**2.7.2** Under no circumstances will Transnet Freight Rail entertain any Claim to adjust railage prices or charges (or Additional Costs where applicable and determined) or to deviate from these Terms for any Goods railed by the Customer.

**2.7.3** Should the Customer commence railing Goods without signing the Agreement, and/or if Goods are Transported at any time when no written agreement has been signed between the Parties (including an agreement on railage prices, charges and Additional Costs where applicable and determined), for whatever reason, the Goods will be Transported at Transnet Freight Rail's railage prices, charges (and Additional Costs where applicable and determined) calculated by Transnet Freight Rail for Transport of the relevant Goods and the Transport will be subject to these Terms and which shall be conclusively deemed to have been accepted by the Customer and shall apply from the date of Transport of any Goods for the Customer. Under no circumstances will Transnet Freight Rail entertain any Claim to adjust railage prices, charges (and Additional Costs where applicable and determined) or to deviate from these Terms. The terms of clauses 28 and 29 of these Terms will apply in respect of payment.

### **2.8 Amendments**

**2.8.1** No addition to, variation of or agreed cancellation of these Transnet Freight Rail Standard Conditions of Carriage including any addition to, variation of or agreed cancellation of this clause shall be of any force or effect unless in Writing and signed by the duly authorised representative of each of the Parties named in a Schedule and then such addition, variation or agreed cancellation shall be effective only in the specific instance and only for the purpose and to the extent for which made or given.

### **2.9 Delivery**

**2.9.1** When the Customer, the consignor or consignee receives Goods at the Point of Placing, the Customer, the consignor or consignee undertakes to supply Transnet Freight Rail with proof of delivery from the Customer or the consignee in one of the following formats:

**2.9.1.1** Rail wagon labels signed on the reverse side; or

**2.9.1.2** A letter from the Customer, consignor or consignee reflecting details of all rail wagons with the Consignment Number allocated by Transnet Freight Rail to the consignor; or

**2.9.1.3** other documentary proof acceptable to Transnet Freight Rail, as confirmation of delivery of the Goods.

**2.9.2** Should the Customer or consignor fail to provide the proof of delivery within seven (7) Days, the provisions of clause 2.9.3 below shall apply.

**2.9.3** If delivery cannot be established in terms of clause 2.9.2 due to a failure or refusal on the part of the Customer/consignor or that of the consignee to supply the proof of delivery, delivery shall be deemed to have been effected at the Point of Placing at the time of Placing at which time risk in the Goods shall pass to the consignor or the consignee as the case may be.

**2.9.4** If the Customer is the consignor, Transnet Freight Rail will, on request, make reasonable efforts to supply the Customer/consignor with proof of delivery to the consignee in one of the formats stipulated in clause 2.9.1 above but if Transnet Freight Rail is not able to do so Transnet Freight Rail will not be liable for any Claim the Customer/consignor/consignee may have or Loss the Customer/consignor/consignee may suffer as a result and the provisions of clause 2.9.2 shall apply.

**2.9.5** Transnet Freight Rail will employ reasonable measures to collect and deliver rail wagons at the times and on the dates specified in or to be specified in a Schedule from and to the Hand over Point and the Point of Placing but Transnet Freight Rail is not responsible for any Claim the Customer/consignor/consignee may have or Loss that the Customer/consignor/consignee may suffer as a result of any failure on the part of Transnet Freight Rail to do so save to the extent, if any, set out or to be set out to the contrary in a Schedule. The times and dates for delivery will depend on the Customer's/Consignor's choice of the relevant Transnet Freight Rail service offering from Transnet Freight Rail's available service offerings set out in a Schedule.

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**2.9.6** If the Customer/consignor/consignee fails or refuses to take delivery of the Goods and/or comply with their obligations in terms of clause 11 within the Free Time, Transnet Freight Rail shall be entitled, and without prejudice to Transnet Freight Rail's rights in terms of clause 15.4, with notice to the Customer/consignor/consignee, if the rail wagons have not been off-loaded after the Free Time for a period in excess of the time set out or to be set out in a Schedule, to dispose of the Goods by auction and to apply the proceeds to satisfy the railage price, charges and any Additional Costs.

### **3. Diversion Of Wagons En Route**

**3.1** If the Customer/consignor requests Transnet Freight Rail to divert loaded wagons and re route to another destination, Transnet Freight Rail will endeavor (but without obligation) to execute the request subject to the following:

**3.1.1** The request must be in Writing and will be deemed conclusively to include;

**3.1.1.1** an undertaking by the Customer/Consignor indemnifying Transnet Freight Rail against any Loss to, or Claim from the original Consignee or any other third party resulting from such diversion by completing the relevant "Declaration of Indemnity" form; and

**3.1.1.2** an undertaking to pay the Additional Costs for railage prices, diversion and adjustments submitted to the Customer/consignor in Writing;

**3.1.2** the railage prices for the Transport of the Goods diverted, from the Loading Point to the final Point of Placing will be calculated by Transnet Freight Rail based on the actual distance Transported, including any part of the Transport performed en route to the original Point of Placing before the diversion;

**3.1.3** Transnet Freight Rail not having entered into an agreement with any of Transnet Freight Rail's other clients which would render the diversion of the Goods impossible or expose Transnet Freight Rail to any Claims;

**3.1.4** The Customer not being in breach of any of the terms of these Transnet Freight Rail Standard Conditions of Carriage.

**3.2** Transnet Freight Rail shall not be responsible for any malfunction, degradation, damage or passing of any "sell by date" of any Goods caused by or resulting directly or indirectly from any diversion or attempted diversion of any Goods.

**3.3** If the Goods have reached their original Point of Placing and been Placed for off-loading such Goods will be regarded as having been delivered and any request for movement to another Point of Placing will be regarded as a new order.

**3.4** If the Customer or consignor requests Transnet Freight Rail to divert the consignment (no diversion of freight containers will be entertained) destined for export to other African countries Transnet Freight Rail will endeavour to do so provided the rail wagon is still on Transnet Freight Rail's lines.

In such an event and if Transnet Freight Rail is successful in stopping the rail wagon, the Customer/consignor will be responsible to lodge a voucher of correction with the Department of Customs & Excise, supplying Transnet Freight Rail with a copy of such document, duly processed by the Department of Customs and Excise together with all other documentation required in terms of clause 7.2 and 7.3 before Transnet Freight Rail commences to move the rail wagon to the new Point of Placing.

**3.5** Notwithstanding the terms of this clause 3 above, Transnet Freight Rail will not intercept and/or divert import traffic destined for the Customer/consignor as the consignee.

### **4. Availability Of Capacity**

**4.1** The Transport of Goods will be provided to the Customer in terms of the categories set out in or to be set out in the Schedule relating to Mega Rail, Flexi Rail, Access Rail and Dual Route Rail as determined by Transnet Freight Rail based on the Customer requirements for Transport.

**4.2** The Customer must provide a Rolling Forecast of his Transport requirements on the times and dates set out in or to be set out in a Schedule.

**4.3** Transnet Freight Rail will on receipt of the weekly Rolling Forecasts (in terms of the ordering processes set out in or to be set out in a Schedule) incorporate the Customer's requirements into the design of the Global Train Plan for the next week and the Customer will be advised as soon as practical whether Transnet Freight Rail will be able (but without obligation unless stated otherwise) to meet the requirements of the Customer's forecasts subject to the category of Transport.

**4.4** Subject to clause 4.1, Transnet Freight Rail will endeavor to adhere to the Global Train Plan subject to the Available Capacity.

**4.4.1** Transnet Freight Rail shall endeavor to supply wagons that are suitable for the Transport of the Goods being offered for Transport by the Customer in terms of this Agreement.

### **4.5 Mega Rail**

**4.5.1** Any prices offered to the Customer, may not be used by the Customer to undermine or destabilise Transnet Freight Rail's business with Transnet Freight Rail's other customers.

**4.5.2** In terms of this category of Transport the Customer guarantees to offer for Transport the tonnes of Goods reflected in the Customer Forecast and commitment as stated in a Schedule to be Transported for the duration of the Agreement on a 'take or pay' basis, that is to say the Customer shall be liable to pay the railage prices, charges and Additional Costs irrespective of whether the Customer Transports Goods or not, and subject to the provisions of clause 4.5.5 and 4.5.6.

**4.5.3** Transnet Freight Rail will make available sufficient rail wagons to Transport the volume of Goods in clause 4.5.2 for the relevant Quarter. The Available Capacity is subject to the Rolling Forecast to be provided by the Customer annually, Quarterly, Monthly and weekly. The rail wagons will be made available to the Customer at the dates and times agreed for Transport on the routes as set out or to be set out in a Schedule.

**4.5.4** The provision of Transport in terms of Mega Rail will be on a fixed train plan and will not be changed unless advance notice is received by Transnet Freight Rail at least 1 Month prior to commencement of the Quarter and Transnet Freight Rail has agreed to such change. Transportation will be on fixed Days and times set out or to be set out in a Schedule hereto.

**4.5.5** The Customer acknowledges and accepts that notwithstanding the ordering process, Transport under this category is on a "take or pay" basis with the locomotives and rail wagons being committed well in advance.

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**4.5.6** The Customer shall on a Tuesday preceding a week on which the rail wagons are required, notify Transnet Freight Rail of the Customer's weekly request for Transport.

**4.5.7** On the Friday preceding a week during which the rail wagons are required, Transnet Freight Rail will confirm its intention to supply the rail wagons for the coming week by telefax, e-mail or other media in Writing detailing the Consignment Number, dates and times for collection and delivery of the Transport to be provided to the Customer for the coming week.

**4.5.8** A failure to place an order as set out in clause 4.5.6 to clause 4.5.7 will result in the Transport not being undertaken, but the Customer will still be liable for eighty (80) percent of the railage price of the Transport under the 'take or pay' principle.

**4.5.9** If Transnet Freight Rail fails to supply the rail wagons as per the Customer's request the following shall take place:

**4.5.9.1** Transnet Freight Rail shall use best endeavours to take steps to eliminate within 2 months any backlog in the Transport of Goods that has arisen due to Transnet Freight Rail's failure to supply the rail wagons as per the Customer's order.

**4.5.10** Transnet Freight Rail shall be entitled to use for other purposes any rail wagons, which the Customer has failed to use.

### **4.6 Flexi Rail**

**4.6.1** Any prices offered to the Customer, shall not be used by the Customer to undermine or destabilise Transnet Freight Rail's business.

**4.6.2** Transnet Freight Rail shall endeavour (but without obligation) based on Available Capacity from time to time to provide Transport to the Customer.

**4.6.3** The Customer must notify Transnet Freight Rail of the Customer's Rolling Forecasts for Transport. The weekly Forecast shall be provided on the Tuesday of the preceding week.

**4.6.4** The Rolling Forecasts are for Transnet Freight Rail's planning purposes only, Transnet Freight Rail do not guarantee Available Capacity for Transport and shall not be bound to collect or deliver on any particular Day. Time is not of the essence.

**4.6.5** Transnet Freight Rail will endeavour to make available to the Customer the number of rail wagons required according to the Customer's request.

**4.6.6** The Customer must comply with the ordering procedure set out in a Schedule to confirm the Transport the Customer requires.

### **4.7 Access Rail**

**4.7.1** Any prices offered to the Customer, shall not be used by the Customer to undermine or destabilise Transnet Freight Rail's business.

**4.7.2** Transnet Freight Rail shall endeavour (without obligation) as and when Transnet Freight Rail has Available Capacity to provide rail wagons on an ad hoc basis to the Customer for Transport of the Goods.

**4.7.3** The Customer must notify Transnet Freight Rail of the Customer's Rolling Forecasts for Transport. The weekly Forecast shall be provided on the Tuesday of the preceding week.

**4.7.4** The Rolling Forecasts are for Transnet Freight Rail's planning purposes only, Transnet Freight Rail does not guarantee the availability of Transport and shall not be bound to collect or deliver on any particular Day.

**4.7.5** Transnet Freight Rail will endeavour to make available to the Customer the number of rail wagons required according to the Customer's request.

**4.7.6** The Customer must comply with the ordering procedure set out in a schedule to confirm the Transport the Customer requires.

### **4.8 Dual Route**

**4.8.1** The supply of rail wagons is dependant on the loading by another party, or the Customer's consignee or a new consignor (collectively "the New Consignor") as the case may be, of the Customer's rail wagons to be Placed at the Customer's Point of Placing.

**4.8.2** The Customer and the New Consignor must communicate the Customer's Rolling Forecasts both to each other and to Transnet Freight Rail and ensure that the Customer and the New Consignor shall be able to meet the commitment in clause 4.8.

**4.8.3** The Customer's weekly Forecasts must be provided on the Tuesday of the preceding week. The Rolling Forecasts are for Transnet Freight Rail's planning purposes only, Transnet Freight Rail does not guarantee the availability of Transport and shall not be bound to collect or deliver on any particular Day. Time is not of the essence. The Customer and the New Consignor must comply with the ordering procedure as set out in a Schedule.

**4.8.4** For the purposes of this category of Transport it shall be the responsibility of the Customer and the New Consignor to ensure that the rail wagons are Placed at the Point of Placing for the use of the other party, either the Customer or the New Consignor as the case may be, will be made available at least by the end of Free Time.

**4.8.5** The Customer and the New Consignor shall individually and collectively comply with, and agree that they are jointly and severally bound by the Agreement, both in respect of their relationship with Transnet Freight Rail and with each other, where applicable.

**4.8.6** Notwithstanding the provisions of clause 24 and 25 of the Terms, the Customer and The New Consignor agree to indemnify Transnet Freight Rail for any loss or liability suffered by the other or by any third party caused due to delays by the other.

## **5. Maintenance Of Infrastructure**

**5.1** The rail Transport services that Transnet Freight Rail undertakes in terms of this Agreement may be either: (i) scaled down (ii) re-scheduled, (iii) temporarily suspended or (iv) interrupted by scheduled or unscheduled maintenance that is required to be performed on its rail infrastructure in order to ensure that the infrastructure is in a condition that is suitable for rail operations to be conducted on it. Transnet Freight Rail will use its best endeavours to ensure that there is a minimal impact on the Customer's orders.

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**5.2** Where Transnet Freight Rail requires scheduled maintenance, it will notify the Customer at least ten (10) working days in advance of such scheduled maintenance. The Customer acknowledges that such maintenance may result in planned Transport being delayed or rescheduled. Each instance of scheduled maintenance ("scheduled occupation") shall not be longer than twenty (20) days, and Transnet Freight Rail may require up to three (3) scheduled occupations per annum.

**5.3** In the event of unscheduled maintenance having to be undertaken due to unforeseen circumstances that have given rise to such unscheduled maintenance being required, then Transnet Freight Rail shall notify the Customer either when it commences with such unscheduled maintenance in the event of an emergency, or as soon as it is reasonably possible prior to undertaking the unscheduled maintenance in all other circumstances.

### **6. Transport Documents & Special Instruction**

**6.1** Transnet Freight Rail shall only accept goods for Transport if it has been timeously furnished with fully completed Transport documents, or the relevant Electronic Data Interchange information, by the Consignor who warrants that all information reflected on the Transport documents, or via Electronic Data Interchange information is accurate in all respects, and especially for Customs and Consular purposes.

**6.2** The Consignor shall indemnify Transnet Freight Rail and hold it harmless against all losses, damages, expenses and fines arising from any inaccuracy or omission made by the Consignor in the Transport documents.

**6.3** Wherever it is necessary, for the purpose of these conditions or any other purpose whatever, for special instructions such as stoppage or diversion (which will only be accepted in the case of wagonload traffic) of goods to be given to Transnet Freight Rail, such instructions shall only be recognised by Transnet Freight Rail as valid if they are timeously given and agreed to by Transnet Freight Rail.

**6.4** In addition, in order to render such special instructions valid, they shall either be given in writing by the Consignor or, if owing to the urgency of the situation it is not practicable to give same in writing and if this is agreed to by Transnet Freight Rail, they may be given orally and thereafter confirmed in writing as soon as reasonably practicable.

**6.5** Transnet Freight Rail shall supply wagons that are suitable for the Transport of the Goods being offered for Transport by the Customer in terms of this Agreement.

### **7. Documentation Necessary For Goods Transported**

**7.1** Transport will commence on receipt of the Combined Consignment Note and Wagon Label/Release Pro Forma, Container Consignment Note issued by Transnet Freight Rail or the relevant Electronic Data Interchange information, (or where the Customer uses it's own Combined Consignment Note and Wagon Label/Release Pro Forma or Container Consignment Note, then this must be approved by Transnet Freight Rail), or the relevant Electronic Data Interchange information to release the loaded wagons reflecting the Customer as either the consignor or consignee (after completion of loading) and will end when the rail wagon is Placed at the Hand Over Point.

**7.2** In terms of the Customs and Excise Act 91 of 1964 ("Customs and Excise Act"), the Transport of Goods for export/import over South African borders must be supported by the necessary customs clearance documentation.

**7.3** Importers, exporters and manufacturers, or their agents on their behalf, are required to make "due entry" in terms of the Customs and Excise Act and produce these documents (SAD 500/Custom Release Notification/electronic "CUSDEC (Customs Declaration) which is then responded to via an electronic "CUSRES" (Customs Release) message by SARS (South African Revenue Services) to Transnet Freight Rail to effect the release of the Goods. The Customer must hand in a SARS CN1 document in respect of Containers traffic originating or destined for African Countries.

**7.4** The validity of the above-mentioned documents is the responsibility of the importer, exporter, manufacturer or their appointed agents.

**7.5** In terms of the Customs and Excise Act the parties are required to make suitable adjustments to SARS documentation without delay on discovering of any error made or any changes required to be made in respect of clearance documentation by virtue of a voucher of correction/amended CUSDEC (Customs Declaration).

**7.6** The Customer shall be liable for all Additional Costs associated with failure to provide clearance documentation stipulated in clause 7.2 and 7.3 above and shall also be liable for wagon delay charges as set out in, or to be set out in the Schedule, and, if applicable, the costs related to the loading and the offloading of the consignment from the wagon.

**7.7** Any Relevant Authority may find it necessary to stop and inspect Goods for export or import and Transnet Freight Rail shall adhere to such requests. Additional Costs resulting from such inspections will, however, be for the Customer's account and Transnet Freight Rail will not incur any liability arising out of such stoppages and inspections.

**7.8** Transnet Freight Rail will not be held liable for any costs or any other liability arising from or connected with the Customer's failure to comply with the terms set out in clauses 7.2, 7.3, 7.5 and 7.6, the Customs and Excise Act and any regulations or the requirements of any Relevant Authority.

**7.9** The Customer hereby indemnifies Transnet Freight Rail against all Losses incurred by or Claims made against Transnet Freight Rail as a result of the Customer's failure to comply with:

**7.9.1** the terms of these Transnet Freight Rail Standard Conditions of Carriage; or

**7.9.2** the provisions of the Customs and Excise Act, any regulations or the requirements of any Relevant Authority relating to the importation or exportation of Goods.

**7.10** Notwithstanding any information furnished to the Customer by Transnet Freight Rail regarding any documentation required, Transnet Freight Rail will not be liable to the Customer or any third party for any Claim made or Loss suffered if such information is incorrect or incomplete in any respect. It is the Customer's entire and sole responsibility to arrange all documentation required.

**7.11** The Customer shall ensure that the correct placard(s) is/are displayed on the relevant wagon or container as may be required by legislation. If the Customer is transporting dangerous Goods, it shall ensure that the "DECLARATION WITH REGARD

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TO THE TRANSPORT OF DANGEROUS GOODS" required by SANS 10405:2009 is filled in and displayed on the relevant wagon or container.

**7.12** To facilitate the Reporting of Conveyances and Goods ("RCG") under the rules for section 8 of the Customs and Excise Act, 1964, Customers are required to provide correct documentation and/or Electronic Data Interchange data as prescribed for Customs Cargo Reports (EDI CUSCAR messages) to be reported electronically by Transnet Freight Rail to SARS.

### **8. Things Over Which Transnet Freight Rail Has No Reasonable Control**

**8.1** In the event of any situation or circumstance arising over which Transnet Freight Rail has no reasonable control and which renders the fulfilment of its obligations impracticable or impossible, then notwithstanding anything to the contrary in this Agreement Transnet Freight Rail shall consult with the Consignor or Consignee to make alternative arrangements. If no agreement is reached after those consultations Transnet Freight Rail shall be entitled to deliver the goods to the nearest reasonable destination or to make use of any reasonable alternative route to that initially commenced by or agreed to by Transnet Freight Rail.

### **9. Liberty To Deviate & Make Special Arrangements**

**9.1** If at any stage while it is conveying, or otherwise dealing with the goods Transnet Freight Rail, in its sole discretion, considers that it is in the interests of the Consignor, Consignee or other party who owns the goods, to depart from any special instructions, Transnet Freight Rail shall be entitled to do so with impunity.

**9.2** Transnet Freight Rail shall have absolute discretion as to the means, route and procedure to be followed in performing the carriage of goods or other business.

**9.3** In all cases where there is a choice of tariff rates or premiums offered by carriers, warehousemen, underwriters, or others depending upon the value declared or the extent of the liability assumed by the carrier, warehousemen, underwriter or other person, Transnet Freight Rail shall have absolute discretion and authority to determine what liability, if any, shall be imposed on the carrier, warehousemen, underwriter or other persons, and to declare the value of the goods, unless express instructions in writing are timeously given by the Consignor.

**9.4** Transnet Freight Rail is not obliged to make any declaration for the purpose of any statute or convention or contract as to the nature of goods, nor as to any special interest in delivery or otherwise, nor to seek any special protection from any carrier unless expressly instructed by the Consignor in writing.

### **10. Packing, Loading & Securing Goods On Wagons**

**10.1** The Customer is responsible for ensuring that all Goods for Transport have, in accordance with Best Industry Practice and the requirements of all Relevant Authorities, been properly, lawfully and sufficiently packed, loaded, secured and prepared to:

**10.1.1** withstand all modes of Transport applicable to the Transport contemplated;

**10.1.2** prevent injury to any person or damage to Transnet Freight Rail's or any third party equipment.

**10.2** Transnet Freight Rail may refuse to Transport any Goods that are not properly, lawfully and sufficiently packed, loaded, secured and prepared for Transport. The Customer will be liable for Wagon Delay Charges as set out in or to be set out in a Schedule if delays arise as a result of the aforementioned.

**10.3** Inadequate packing may result in any Claim for damage being rejected by Transnet Freight Rail's and/or the Customer's insurers where that was the proximate cause of Loss.

**10.4** The Customer will be liable for Additional Costs to correct any packaging or packing of the Customer's Goods on Transnet Freight Rail's rail wagons which creates any danger. The Customer will also be liable for Wagon Delay Charges as set out in or to be set out in a Schedule if such delays arise.

**10.4.1** Guidelines for packaging, packing and loading methods are available from Transnet Freight Rail on request and/or from the Relevant Authorities as required in terms of the applicable legislation.

**10.4.2** If goods are likely to harbour or encourage vermin or other pests the Consignor must ensure that those goods are free from such creatures upon loading and are packaged appropriately.

**10.5** The Customer hereby indemnifies Transnet Freight Rail against any Claims of third parties arising from or connected with any inadequate, incorrect packaging or packing or securing of the Goods.

### **11. Loading And Off-Loading**

**11.1** The Customer is responsible for the loading and off-loading of the Customer's Goods whether the Customer does so personally or arranges for a third party or instructs the Customer's Consignor or Consignee (whichever applies) to do so, unless specific alternative arrangements have been agreed in Writing (which includes e-mail) between the parties and as set out in a Schedule.

**11.2** The Customer must schedule the loading and off-loading of wagons at each specific Hand Over Point and Point of Placing in such a manner that the number of rail wagons, to be loaded or off-loaded, are within the loading and off-loading capability at that Hand Over Point or Point of Placing as the case may be.

**11.3** If the number of rail wagons requested by the Customer to be loaded or off-loaded at any Hand Over Point or Point of Placing on any Day, exceeds the handling capacity of such Hand Over Point or Point of Placing and 1 or more or all of the rail wagons dispatched to that Hand Over Point or Point of Placing is or are delayed beyond the Free Time the Customer will be liable for Wagon Delay Charges arising out of such delays and the Customer's account will be debited with the Wagon Delay Charges set out in or to be set out in a Schedule.

**11.4** If a Schedule includes or refers to a Loading Profile the Customer is obliged to load the Goods on the rail wagon according to that Loading Profile and, if the Customer fails to do so, Transnet Freight Rail shall be entitled to require the Customer to re-load before Transnet Freight Rail accepts:

**11.4.1** the Goods for Transport; or

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**11.4.2** a Combined Consignment Note and Wagon Label/Release Pro Forma

**11.5** The Customer is liable for any Additional Costs incurred by Transnet Freight Rail and any Wagon Delay Charges incurred as a result of re-loading.

**11.6** The Customer is responsible for off-loading of the rail wagons and must ensure that all rail wagons:

**11.6.1** are fully off-loaded in terms of the requirements of any Relevant Authority and Best Industry Practice or Loading Profile; and

**11.6.2** clean for re-loading, before any empty rail wagons are handed back to Transnet Freight Rail.

**11.7** Transnet Freight Rail will be entitled to recover from the Customer all Additional Costs and Losses incurred by Transnet Freight Rail in loading and/or off-loading, fully or in part, any rail wagon and/or storage of the Goods for the Customer and/or the disposal of any debris.

**11.8** The Consignor shall indemnify Transnet Freight Rail against all and any losses and/or damages sustained by the latter arising out of the Consignor loading goods onto a rail wagon and the Consignee unloading goods from rail wagons.

**11.9** In instances where loaded or empty wagons are required to be staged en route due to the Customer or its service provider's fault/inability to receive these wagons at the destination, where the Customer requests Transnet Freight Rail to stage these wagons, or in the event where Transnet Freight Rail establishes that the Customer cannot receive these wagons at the destination (e.g. yard/siding blocked out, stock pile full, etc.) and Transnet Freight Rail has no other option other than to stage these wagons en route, Transnet Freight Rail will inform the Customer in writing of such instances, reflecting the time and dates where such wagons are staged. Transnet Freight Rail will be entitled to levy Wagon Delay Charges from the date and time that such wagons are staged until the date and time that these wagons are ready for onward railing to be Placed at the Point of Placing for off-loading or loading.

**11.10** In the event of spillage during loading or filling operation, which results in the contamination of the wagon or container, the Customer shall ensure that such wagons or containers are cleaned before they are moved. In addition to the Customer's obligations in terms of this Agreement with regard to loading and placarding, the Customer shall ensure that the provisions of any legislation with regard to the afore-mentioned are complied with.

**11.11** The Customer or its nominated siding operator shall ensure that a quality inspection is done on all loaded wagons before such wagons are handed over to Transnet Freight Rail. The purpose of such quality inspection is to ensure that the wagons are loaded according to the required loading profile and that the wagon capacity for each wagon is not exceeded, and is in terms of the stipulated wagon loading limits. The loading profile and wagon capacities are typically given to the Customer (who is required to communicate it to its nominated siding operator), and are also available from Transnet Freight Rail upon written request. Refer to clauses 11.4 and 16.8.

## 12. Inspection

**12.1** Transnet Freight Rail shall be entitled, if it has been ordered to do so by the Relevant Authorities in terms of a Court Order or if it has reason to believe that the nature and manner of packing or stowage endangers the employees, premises or equipment of Transnet Freight Rail in terms of safety legislation, to unpack any goods to inspect same in order to establish this. If, in the opinion of Transnet Freight Rail, the goods do so endanger its employees, premises or equipment then the actual cost of re-packing or re-stowing to the satisfaction of Transnet Freight Rail shall be borne by the Consignor.

**12.2** Stopping of containers/wagons by Relevant Authority en route

**12.2.1** Should the Transport of any containers/wagons be stopped at any point before, during or after transit and while still in the possession of Transnet Freight Rail, for inspection, search or seizure, by written order of any competent court or of any government official or other competent authority in the exercise of powers conferred by any law, Transnet Freight Rail shall be obliged to adhere to such order at the risk of the Customer.

**12.2.2** Transnet Freight Rail shall notify the Customer of such order within a reasonable time.

**12.2.3** The Customer will be responsible for compliance with such written order of a competent court or of any government official or other competent authority as shall be required, including but not limited to, lodgement of a correction voucher with such authority and a copy thereof to Transnet Freight Rail.

**12.2.4** Whenever any containers/wagons on which railage has been prepaid have been stopped as aforesaid at any point short of the destination, and to be offloaded or the contents unpacked, Transnet Freight Rail shall refund to the Customer the difference between the railage paid and the railage up to the point where the containers were stopped, less any miscellaneous charges which may have been incurred. The Customer shall be liable for the railage up to that point, plus any miscellaneous charges. If, however, any authorised government official or other competent authority should direct that the said containers be transported to some place other than that at which the containers were stopped for purposes of examination or otherwise, Transnet Freight Rail shall comply with such direction. In that case the Customer shall be liable to pay to Transnet Freight Rail all additional railage and miscellaneous amounts which may have been incurred by reason of Transnet Freight Rail compliance with such direction.

**12.2.5** Notwithstanding the above, it is hereby recorded that all Transnet Freight Rail's container terminals are only approved to allow for "Tailboard Inspections" by such authority, i.e. no contents of any container can be unpacked. Any request or directive to unpack and inspect the contents of the containers will be conducted at a licensed container depot. All un-cleared or "in bond" containers stopped in a Transnet Freight Rail container terminal for inspection, must be removed to a licensed container depot by the authorised official of such government authority ("approved Removal in Bond") for inspection, within 24 hours.

**12.2.6** All Additional Costs resulting from such stopping/inspections will, be for the Customer's account and Transnet Freight Rail will not incur any liabilities arising out of such stoppages and inspections.

**12.2.7** Transnet Freight Rail will not be held liable for any costs or any other liabilities arising from or connected with the Customer's failure to comply with the terms set out in any regulations or the requirements of any Relevant Authority.

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### 13. Containers & Rail Wagons

**13.1** The Consignor warrants the suitability and safety of all rail wagons and freight containers supplied by it, and that it shall take reasonable steps to ensure that any freight containers or rail wagons supplied by Transnet Freight Rail are in suitable condition for the conveyance of the goods concerned.

### 14. Marking

**14.1** The Consignor warrants that all goods have been properly, lawfully and sufficiently marked for identification and labelled and shall indemnify Transnet Freight Rail against all losses, damages, expenses and fines arising from any inaccuracy or omission in that respect.

### 15. Free Time For Loading And Unloading/Off Loading

**15.1** The Free Time will commence:

**15.1.1** when the rail wagon is Placed at the Hand Over Point or Point of Placing as the case may be;

**15.1.2** when the rail wagon was available to be Placed if the Customer or consignor or consignee were not in a position or failed to receive it, whichever occurs first.

**15.1.3** Wagon delay charges will apply from expiry of the Free Time until the wagon is cleared from the Hand Over Point or Point of Placing or the time when the Customer or the Customer's consignor/consignee offers the rail wagons for clearance whichever occurs first.

**15.1.4** If placement takes place on a non-working day, the relevant free time shall commence at 08:00 on the next business day.

**15.2** If the Customer, Consignor or Consignee, whichever is applicable, is unable to load or off-load in the Free Time, Transnet Freight Rail will calculate the applicable Wagon Delay Charges and levy them against the Customer.

**15.3** The Customer must take the necessary steps to load or off-load the wagons within the Free Time.

**15.4** Transnet Freight Rail is entitled to charge the Wagon Delay Charges after the expiry of the free time stipulated in clause 15.8 below, in relation to the equipment specified unless otherwise agreed as set out in or to be set out in a Schedule for any rail wagon/container released after Free Time.

**15.5** At the completion of loading the Customer must provide Transnet Freight Rail with the completed Combined Consignment Note and Wagon Label/Release Pro Forma or via Electronic Data Interchange information or.

**15.6** If Transnet Freight Rail has not received a Combined Consignment Note and Wagon Label/Pro Forma Note after the expiry of the Free Time then the collection of the rail wagons will in such circumstances be dependent on Available Capacity.

**15.7** If the Customer is importing or exporting Goods in shipload quantities or the Customer has limited capacity in any Private Siding where the Goods are to be loaded or off-loaded, the provisions of clauses 11.2 to 11.10 and 15.1 to 15.6 will apply, unless the Customer has made prior Written arrangements with Transnet Freight Rail to accommodate possible rail wagon delays caused by loading or off-loading Goods in shipload quantities or at such Private Siding with limited capacity.

<b>15.8</b>	The time limits for the various types of equipment are as follows: -	
<b>15.8.1</b>	rail wagons only	12 hours
<b>15.8.2</b>	freight containers on rail wagons	12 hours
<b>15.8.3</b>	freight containers and tank containers measuring 6 metres or more in length collected/delivered by road	4 hours
<b>15.8.4</b>	freight containers and tank containers measuring 3 metres in length collected/delivered by road	2 hours
<b>15.8.5</b>	if the cartage driver is in attendance upon request of consignor or consignee	15 minutes

**15.9** Transnet Freight Rail has implemented a process and system that will enable monitoring, recording and sign-off of wagon delays and wagon performance by both parties, i.e. the Customer and TFR, thereby creating a means of generating evidence of the occurrence of wagon delays in instances where these occur. Both parties will therefore have a means of viewing information about, and collating evidence of wagon delays. The information and evidence generated by the process and system shall be used by TFR in support of claims for Wagon Delay Charges.

**15.9.1** The implementation and usage of the process and automated system is for the benefit of both parties, i.e. the Customer and TFR, and it is essential that the system is used by the Customer, and its rules are adhered to and enforced by all parties. The Customer shall, upon being instructed to do so by TFR, download all electronic applications related to the system, and shall thereafter access, sign into, register itself with, and use the system.

**15.9.2** Furthermore is it essential that the Customer ensures that its work week/working times, and free periods are disclosed to Transnet Freight Rail in writing, and signed-off by duly authorised representatives. In the absence of such documented and signed-off information, Transnet Freight Rail will apply the conditions stipulated in this Standard Conditions of Carriage.

**15.9.3** In the event of a malfunction of the electronic application, Transnet Freight Rail will revert to all other means, manual or otherwise, that it has available for recording and collating evidence of wagon delays, which it shall be entitled to use in support of claims for Wagon Delay Charges until the electronic application is available for use again.

**15.9.4** Demurrage charges for the delaying of rail wagons by the Customer will be charged per hour, i.e. on an hourly basis. Where the delay is for any part of an hour it shall be rounded off to a full hour.

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## 16 Overloading And Mass Declared

**16.1** The Customer shall not overload wagons (i.e. load wagons in excess of their carrying capacity or modified/amended carrying capacity as prescribed for lines with axle load restrictions); nor under-declare the net mass per wagon (i.e. declare a nett mass per wagon that is less than the actual mass of the Goods loaded on the wagon). The Customer is responsible to ensure compliance with this clause by the Customer's Consignor, loader or transport coordinator if applicable.

**16.1.1** All Mass Measuring Devices used for Commercial or Operational purposes must comply with the Legal Metrology Act 2014 (Act 9 of 2014) and Codes of Standards, applicable to the specific mass measuring instruments used to determine weights as declared to Transnet Freight Rail.

**16.1.1.1** The Legal Metrology Act 2014 (Act 9 of 2014) is administered by the National Regulator for Compulsory Specifications of South Africa ("NRCS")

**16.1.1.2** The functions of the NRCS include (amongst others) the following;

- (a) to approve and verify weighbridges; and
- (b) to control the repair of weighbridges.

**16.2** The Customer will be liable for Losses (including but not limited to any damage to Transnet Freight Rail's rolling stock and infrastructure and any environmental liability, notwithstanding any other term of these Terms) caused directly or indirectly by such overloading or under-declaration.

**16.2.1** The Customer must, in order to avoid overloading, load the rail wagons in accordance with the Loading Profile, set out in or to be set out in a Schedule.

### 16.2.2. Axle Load And Restrictions On Rail Wagon Types

**16.2.2.1** Some sections of rail lines on parts of the TFR network can carry heavier loads than others, therefore different axle loads apply on different parts of the rail network. The axle load means "the mass which an axle of a rail wagon can carry."

**16.2.2.2** To determine the maximum carrying capacity of a rail wagon, the maximum axle load for the section of line over which the rail wagon will be hauled, is multiplied by the number of axles of the rail wagon to be used, less the stencilled mass (tare) of that rail wagon (the "net wagon-carrying capacity"). Loads must not exceed the net wagon-carrying capacity. The carrying capacity of a rail wagon is stencilled on the side of the wagon.

## 16.3 Overloading

**16.3.1** Overloading and/or improper loading of wagons are not permissible and the Customer is prohibited from doing so. Overloading and improper loading are safety risks and may directly lead to, or may be a contributing factor in a rail incident such as a derailment.

**16.3.1.1** Transnet Freight Rail reserves all of its rights in terms of this Agreement and the relevant Laws to, inter alia refuse to Transport the overloaded wagons or require the Customer to offload the excess goods/product from the wagon.

**16.3.2** Should overloading of a rail wagon in excess of its carrying capacity or modified carrying capacity be detected during or after Transport, the charges calculated on the actual mass conveyed in the rail wagon as determined below, will furthermore be subject to an overload surcharge as listed below.

**16.3.3** Rail charge will be calculated using the prevailing rail transport price as set in Schedule of the Agreement using the Customer declared mass on execution or TFR net mass if overload is detected in-transit

- (a) if a per ton rail price applies, the rail price payable will be calculated on the actual mass;
- (b) if a per rail wagon rail price applies, the rail price payable will be increased by a factor derived by dividing the actual mass transported in the rail wagon by the carrying capacity or the modified carrying capacity of the rail wagon.
- (c) **plus** an overload surcharge as specified in paragraph 16.3.3.1 for paragraph 16.3.3 (a) and (b)

**16.3.3.1** An Overload surcharge will be calculated by multiplying the rail price in Paragraph 16.3.3 with the overload surcharge mass (mass loaded in a wagon less the carrying capacity or the modified carrying capacity the lesser of the two, less the technical mass allowance in par 16.6) multiplied with the applicable overload surcharge percentage specified for the overload surcharge mass in par 16.6 where the surcharge mass is greater than zero.

**16.4** In the event that there are any provisions in this clause which may qualify as a penalty in terms of the Conventional Penalties Act, 15 of 1962 in relation to any act or omission by the Customer such provision shall not be deemed to preclude Transnet Freight Rail from recovering damages in lieu of the relevant penalty.

## 16.5 Under-Declaration

**16.5.1** The Customer must declare or, if the Customer is not the Consignor, ensure that the Consignor declares the correct net mass of the Goods per rail wagon on the Combined Consignment Note and Wagon Label/Release Pro Forma.

**16.5.1.1** Transnet Freight Rail is entitled to verify the mass declared by Mass Measuring each rail wagon prior to, during or after Transport of the Goods. Should Transnet Freight Rail find that the mass per rail wagon has been under declared, the amount payable by the Customer will be as set out in clause 16.5.2.

**16.5.2** In the event of an under-declaration of mass but the wagon is not overloaded in terms of clause 16.1 above, and the under declared mass is more than the minimum mass specified in the rail price schedule of the agreement the following will apply:

**16.5.2.1** Rail charge will be calculated using the prevailing rail transport price as set in Schedule of the Agreement using the TFR net mass if an under declaration is detected in-transit;

- (a) if a per ton rail price applies, the rail price payable will be calculated on the TFR net mass;



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**(b)** if a per rail wagon rail price applies, the rail price payable will be increased by a factor derived by dividing the TFR net mass transported in the rail wagon by the carrying capacity or the modified carrying capacity of the rail wagon

**(c)** plus an under declaration surcharge as specified in paragraph 16.5.2.2 for paragraph 16.5.2.1 (a) and (b).

**16.5.2.2** An under declaration surcharge will be calculated by multiplying the rail price in Paragraph 16.5.2.1 with the under declared surcharge mass calculated in the following manner:(TFR Net mass less Customer's declared mass, less the technical mass allowance in par 16.6) multiplied with the applicable surcharge percentage specified for the under declared surcharge mass in par 16.6. where the under declared surcharge mass is greater than zero

### 16.5.3 Under – Loading of Wagons

**16.5.3.1** Transnet Freight Rail is entitled to verify the mass declared by Mass Measuring each rail wagon prior to, during or after Transport of the Goods. Should Transnet Freight Rail find that the mass per rail wagon has been under-loaded, the amount payable by the Customer will be as set out in clause 16.5.3.2.

**16.5.3.2** In the event of an under-loading of mass but the wagon is not overloaded in terms of clause 16.1 above, and the under-loaded mass is more than the minimum mass specified in the rail price schedule of the agreement the following will apply:

**16.5.3.2.1** Rail charges will be calculated using the prevailing rail transport price as set in a Schedule of the Agreement using the TFR net mass if an under-loading is detected in-transit;

**(a)** if a per ton rail price applies, the rail price payable will be calculated on the TFR net mass;

**(b)** if a per rail wagon rail price applies, the rail price payable will be increased by a factor derived by dividing the TFR net mass transported in the rail wagon by the carrying capacity or the modified carrying capacity of the rail wagon

**(c)** plus an under-loading surcharge as specified in paragraph 16.5.3.3 for paragraph 16.5.3.2.1 (a) and (b).

**16.5.3.3** An under-loading surcharge will be calculated by multiplying the rail price in Paragraph 16.5.3.2.1 with the under loading surcharge mass calculated in the following manner:(TFR Net mass less Customer's declared mass, less the technical mass allowance in par 16.6) multiplied with the applicable surcharge percentage specified for the under loading surcharge mass in par 16.6. where the under loading surcharge mass is greater than zero.

### 16.6 Surcharge Mass Intervals And Technical Mass Allowance

Surcharge mass intervals	Description	Surcharge percentage
00000-05000 kg		100%
05001-10000 kg		300%
10001-99999 kg		500%
Overload	Technical mass allowance before overload surcharge calculation	2000kg
Under declared	Technical mass allowance before under declaration surcharge calculation	2000kg
Under- loaded	Technical mass allowance before under loading surcharge calculation	2000kg
Overload surcharge Mass	Calculation	Customer's declared mass or TFR net mass if detected in transit, less the carrying capacity or the modified carrying capacity the lesser of the two, less the technical mass allowance in par 16.6
Under declared surcharge mass	Calculation	TFR Net mass less Customer's declared mass, less the technical mass allowance in par 16.6
Under loading surcharge mass	Calculation	TFR Net mass less Customer's declared mass, less the technical mass allowance in par 16.6

**16.7** Where the Customer provides Transnet Freight Rail voluntarily with the actual mass measurement of the wagon (i.e. weighbridge slips) these mass will be used to determine the necessary rail charges and surcharges.

**16.8** If Transnet Freight Rail finds that mass has been under declared or that a rail wagon is overloaded, Transnet Freight Rail will raise the necessary charges and surcharges and furnish on their request and where applicable the Customer or the Consignor, with a report of the results.

**16.9** Transnet Freight Rail reserves the right to hold back at any time a rail wagon found to be overloaded or improperly loaded (either at the Hand over Point or en route) and Transnet Freight Rail may require the Customer to off-load or arrange to off-load sufficient quantity of the Goods to bring the mass of the rail wagon within the carrying capacity of the rail wagon and or require the Customer to re-arrange the improperly loaded Goods. Wagon Delay Charges as set out in or to be set out in a Schedule, Mass Measuring Fee and all other charges and Additional Costs reasonably attributable to or arising out of the holding back of the rail wagon will be for the Customer's account. Transnet Freight Rail will not be liable for any claims arising out of delays due to overloading or improper loading by the Customer.

**16.10** If the Customer wishes to load the excess mass of Goods into another rail wagon, subject to Available Capacity, the applicable rail price stipulated in or to be set out in a Schedule will apply but the carrying capacity of the rail wagon will be used as a minimum.

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**16.11** In the event that Transnet Freight Rail does not have Available Capacity to accommodate the excess mass of Goods, Transnet Freight Rail shall not be liable for any Loss incurred by the Customer.

**16.12** It is advisable for the Customer to have a Verified Mass Measuring Device in the Customer's siding to ensure accurate weighing of the goods to be transported by Transnet Freight Rail. Transnet Freight Rail shall also have its own Mass Measuring Devices installed at specified points. In the event of Transnet Freight Rail measuring the mass of the consignment, the mass measurements from Transnet's Mass Measuring Devices shall prevail.

**16.12.1** Weigh bridge slips must be provided, to TFR, in the following manner for Goods railed:

**(a)** where the data on the weigh bridge slip has been printed directly from the Verified Mass Measuring Device (i.e. the Verified Mass Measuring Device has a built in printer) then the slip of paper that is printed out must be provided to TFR

**(b)** where the data on the weigh bridge slip has been transmitted directly to a computer from the Verified Mass Measuring Device and has been printed out from the aforementioned computer then such print out must clearly indicate that the data has been received directly from the Verified Mass Measuring Device and printed out.

**(c)** where the data on the weigh bridge slip has been captured directly from the Verified Mass Measuring Device using any other electronic means, then any print out, resulting from this method, must clearly indicate that the data has been received directly from the Verified Mass Measuring Device.

**(d)** where the data on the weigh bridge slip has been captured manually from the Verified Mass Measuring Device (i.e. a person records the readings on paper) then such document containing hand-written data: (a) must be signed off by the person recording such data; their full names, designation and name of the company at which they are employed must be clearly stated on the weighbridge slip and (b) must include a confirmation from such person that the data has been captured directly from the Verified Mass Measuring Device.

**16.13** If the Customer disputes the accuracy of TFR's Verified Mass Measuring Device, the Customer may require the accuracy of TFR's device to be verified in accordance with the provisions of the Legal Metrology Act 9 of 2014, and the cost of such verification shall be borne by the Customer.

**16.14** In the event where the Customer weigh the empty wagon prior to loading as well as the loaded wagon Transnet Freight Rail will accept the measured masses reflected on the weigh bridge slips and will use these masses to determine the railage as well as any applicable surcharges for overloading.

**16.15** Customers must provide copies of their Certification and Verification certificates of their own Verified Mass Measuring Device to TFR's officials at their responsible Order Entry Office/Terminal responsible for the order entry function related to their consignment.

**16.16** In all instances where TFR does not mass measure wagons/containers to obtain the weight, copies of printed weighbridge slips must accompany TFR's Consignment Note documentation as proof of the weight. See also clause 16.12.1.

### **17. Non-Utilisation And Train Cancellation Charges**

**17.1** In the event where the Customer does not wish to utilise all or some of the rail wagons ordered after placement, or where the customer does not cancel an order at least seventy two (72) hours before the scheduled time of Placing in writing, Transnet Freight Rail shall be entitled to levy charges as set out or to be set out in the Schedule.

#### **17.2 Non-Utilisation Charges:**

**17.2.1** If the Customer fails to notify Transnet Freight Rail in writing that all or some of the rail wagons ordered will not be used after placement for all Rail Categories (Mega-, Flexi-, or Access Rail), Transnet Freight Rail shall be entitled to levy the charges set out in or to be set out in a Schedule.

**17.2.2** All such instances must be recorded in writing and signed-off by both parties, prior to the charges being raised against the Customer's account.

#### **17.3 Train Cancellation Charges:**

**17.3.1** If the Customer fails to notify Transnet Freight Rail in writing of the cancellation of an order, or of all or some of the rail wagons ordered at least seventy two (72) hours before the scheduled time of Placing, or before the time when rail wagons were available to be Placed, Transnet Freight Rail shall be entitled to levy the charges set out in or to be set out in a Schedule, except for clause 17.3.2 below.

**17.3.2** If the customer chooses the Mega Rail category of transport as stipulated in clause 4.5 and fails to notify Transnet Freight Rail in writing of the cancellation of an order at least seven (7) days before the scheduled time of Placing, Transnet Freight Rail shall be entitled to levy the charges set out in or to be set out in a Schedule.

**17.3.3** All such instances must be recorded in writing and signed-off by both parties, prior to the charges being raised against the Customers' account.

### **18 Conditions Related To Containerized Traffic**

**18.1** Only containers that conform to the requirements of the International Standards Organisation (ISO) will be accepted for conveyance under this Agreement except as detailed in clause 18.15.

**18.2** All containers provided for Transport must not exceed the stencilled gross mass as stencilled on the CSC (Container Safety Convention) plate of such containers.

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**18.2.1** Every ISO container should have a valid safety approval plate called CSC (Container Safety Convention) plate in order for it to be used in international trade. This is in accordance with the provisions of the International Convention on Safe Containers of 1972 and Merchant Shipping (Safe Containers Convention) Act, 2011 (Act No. 10 of 2011).

**18.2.2.** The role of this CSC plate is to confirm that the container has been inspected and found to be in a condition suitable for transportation on board the ship.

**18.2.3** This plate has all the details of the Owners, Technical Data, and Approved Continuous Examination Programmer ("ACEP") information. Every 30 months a container must be sent to a Container Depot for examination.

### 18.3 Container Mass Intervals For Pricing

**18.3.1** Containers, conveyed under the terms and conditions of this Agreement will be priced according to the actual nett mass loaded based on the following mass intervals:

REF	CONTAINER SIZE	MASS INTERVAL (NETT KILOGRAMS)	RELEVANT PRICE
<b>A MASS INTERVAL 1 (ONE) (EMPTY CONTAINERS):</b>			
(i)	3, 6 and 12 metre empty containers	Empty containers	Priced on mass indicated as 0 (zero) kilograms (empty containers). Note: The conveyance of empty Transnet Freight Rail containers will be subject to a discount of 100% (i.e. conveyed to loading points free of charge).
<b>B MASS INTERVAL 2 (TWO) (3 M NORMAL AND 6 TO 12 M LIGHT):</b>			
(i)	3 metre containers	1 to 9 000 kilograms	Priced on masses 1 to 9 000 kilograms
(ii)	6 metre containers	1 to 13 000 kilograms	Priced on masses 1 to 13 000 kilograms
(iii)	12 metre containers	1 to 26 000 kilograms	Priced on masses 1 to 26 000 kilograms.
<b>C MASS INTERVAL 3 (THREE) (3 M OVER MASS AND 6 TO 12 M HEAVY):</b>			
(i)	3 metre containers	> 9 000 kilograms	Conditions of clause 18.13.2 applicable. Double the relevant price for 1 to 9 000 kilograms
(ii) (a)	6 metre heavy container prices	13 001 to 22 000 kilograms	Priced on masses 13 001 to 22 000 kilograms
(ii) (b)	6 metre extra heavy container prices	22 001 to 27 500 kilograms	Priced on masses 22 001 to 27 500 kilograms Note: This option is only applicable to specifically agreed routes
(iii)	12 Metre containers	26 001 to 29 400 kilograms	Priced on masses 26 001 to 29 400 kilograms.
<b>D MASS INTERVAL 4 (FOUR) (6 TO 12 M OVER MASS):</b>			
(i) (a)	6 metre heavy containers	> 22 000 kilograms	Conditions of clause 18.13.2 applicable. Double the relevant price for 13 001 to 22 000 kilograms
(i) (b)	6 metre extra heavy containers	> 27 500 kilograms	Double the price applicable for the 6 metre extra heavy containers 22 001 to 27 500 kilograms Note: This option is only applicable to specifically agreed routes
(ii)	12 metre containers	> 29 400 kilograms	Conditions of clause 18.13.2 applicable. Double the relevant price for 26 001 to 29 400 kilograms

#### NOTE:

(i) For ease of reference and clarity, the previously known Light and Heavy containers will now fall under Mass Interval 2 (light) and 3 (heavy).

(ii) Containers must not exceed the maximum gross mass as stipulated in clause 18.2 above.

### 18.4 Packing/Filling/Loading And Unpacking/Decanting/Off-Loading Of Containers

**18.4.1** The Customer will be responsible for:

**18.4.1.1** packing and unpacking of containers/ filling and decanting of tank containers placed in a Private Siding or at a station or placed at the Customer's premises by cartage vehicle; and

**18.4.1.2** loading and off-loading of containers from the cartage trailer or rail wagon unless this service is rendered by Transnet Freight Rail, in which event such service will be provided for in a Schedule;

whether the Customer does so personally or arranges for a third party or instructs the Customer's consignor or consignee (whichever applies) to do so unless specific arrangements have been agreed upon between the Parties.

**18.5** Free time where containers are delivered/collected by cartage vehicle.

**18.5.1** Packing/unpacking of 6 and 12 metre containers and filling/decanting of 6 metre tank container: **4 hours**.

**18.5.2** Packing/filling or unpacking/decanting of a 3 metre container/tank container: **2 hours**

**18.5.3** Filling/decanting of tank container with dangerous/hazardous goods (cartage driver in attendance on request of consignor/consignee): **15 minutes**

**18.6** Containers delayed beyond the free times allowed above will be subject to delay charges stipulated in a Schedule.

**18.7** Cartage **haulage vehicles** that are delayed.

**18.7.1** The cartage haulage vehicle used for the delivery/collection of containers is allowed 15 minutes free period for placing/removal/ packing/un-packing/loading/off-loading of containers.

**18.7.2** Delay charge for cartage haulage vehicles delayed beyond the free time allowed will be raised at the price stipulated in a Schedule.

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- 18.8** Transnet Freight Rail containers ordered and delivered but not utilised will be subject to the applicable cartage charges and non-utilisation charges for such delivery.
- 18.8.1** Cartage charges applicable to the relevant container for futile trips will be raised should a container not be ready when the driver calls and the cartage haulage vehicle returns, after the expiry of the free period allowed, without a load to the container depot/terminal.
- 18.9** Free time where containers are delivered/collected by rail in Private Siding or station: **12 working hours**.
- 18.9.1** Where the free time is exceeded in respect of:
- 18.9.1.1.** Private containers a delay charge will be raised only in respect of the rail wagon as stipulated in a Schedule;
- 18.9.1.2** Transnet Freight Rail containers: a delay charge will be raised in respect of the container including the rail wagon as stipulated in a Schedule.
- 18.9.2** Free time referred to in clause 18.9 will commence at the actual time of placing of containers in the siding or the Customer's premises or the time when the containers were available to be placed, but the Customer or the Customer's consignor or consignee were not in a position to receive them. Please note: Where more than one container is delivered to a consignor/consignee at the same time, the free time in terms of clause 18.9 will apply simultaneously to all containers.
- 18.9.3** In the event of the Customer, the Customer's consignor or consignee, whichever is applicable, being unable to keep to the agreed loading and off-loading times, Transnet Freight Rail reserves the right to claim from the Customer the delay charges stipulated in clause 18.9, unless such problems were caused by Transnet Freight Rail.
- 18.10** In the event of the Customer being unable to accept containers where:
- 18.10.1** the Customer has insufficient capacity at the Customer's premises to receive or despatch the number of containers involved; or
- 18.10.2** containers need to be staged prior to delivery; or
- 18.10.3** a container for whatever reason is refused prior to delivery;
- 18.10.4** the provisions of clause 18.9 will apply, unless the Customer has made prior written arrangements with Transnet Freight Rail to accommodate possible delays caused by receiving or dispatching containers.
- 18.10.5** If a Schedule includes or refers to a Loading Profile the Customer is obliged to load the Goods into the container and onto the rail wagon according to that Loading Profile and, if the Customer fails to do so, Transnet Freight Rail shall be entitled to require the Customer to re-load before Transnet Freight Rail accepts the container for transportation.
- 18.10.6 Container Storage**
- 18.10.6.1** At Transnet Freight Rail Container Terminals and depots/stations where container-handling facilities are available:
- (i) in instances where a container must be staged (stored on a rail wagon) and/or stored at the Customer's request prior to delivery or being railed,
- (ii) where the Customer refuses to accept delivery of a container for whatever reason prior to delivery, or
- (iii) a container cannot be railed due to the customer being at fault, container storage charges, plus the container handling charges after the expiry of the Free Period shall be applicable for the particular Terminal/Depot/Station, or the charges as set out in a Schedule may be applied.
- 18.10.6.2** A standard Three (3) Day free Storage period will be applicable at all Transnet Freight Rail Owned Container Terminals, and facilities where Containers are handled, calculated as per the particular Terminal's agreed/published working hours to determine what constitutes a day for that specific terminal.
- 18.10.7** Where containers are already located within Transnet Freight Rail's Terminal and pre-advised in the relevant Transnet Freight Rail IT (information technology) system by the Customer for a vessel, and the vessel booking reference changes, the Customer must still lodge an amended transport document (CTO). No charges for such amendment shall be raised if the container still remains on rail.
- 18.10.8** In instances where Transnet Freight Rail cannot provide a service with regard to the acceptance, transportation and delivery of containers, as agreed per the relevant transport document (CTO), and/or where it requires the Customer to cancel or amend the original request for service with TFR, no storage, handling, and adjusting/amending fees must be raised.
- 18.11 Export Containers**
- 18.11.1** Where export containers arrive at a Port container terminal or conventional berth, prior to the stack opening date or after the stack closing date, for the nominated vessel, rail wagon delay charges as stipulated in a Schedule shall be levied from the date the rail wagon is received at the harbour up to and including the date the stack opens.
- 18.11.2** Where empty or packed export containers are despatched to a Port container terminal or conventional berth, prior to the stack opening date for the nominated vessel, and such containers are held back en-route, rail Wagon Delay Charges as stipulated in a Schedule, shall be levied from the date the rail wagon (s) is/are released by the consignor/exporter up to and including the date prior to the date of departure of the train conveying the containers to arrive on the date the stack opens.
- 18.11.3** In instances where Transnet Freight Rail, for its own convenience, rails containers earlier than scheduled, and the loaded wagons are staged en route or at their destination awaiting Stack Dates to be open, rail wagon delay charges will not be raised against the Customer's account.
- 18.12 Non Utilisation**
- 18.12.1** The Customer must cancel an order or part of an order 72 hours before containers/rail wagons are placed, or scheduled to be railed if the Customer is not going to utilize all the containers/rail wagons ordered.
- 18.12.2** A non-utilisation charge, plus cartage charges where applicable, if the order is not cancelled within the time stipulated in clause 18.12.1 before the containers/rail wagons are placed will be raised as stipulated in a Schedule.

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**18.12.3** In instances where Transnet Freight Rail cannot provide a service with regard to the acceptance, transportation and delivery of containers, as agreed per the relevant transport document (CTO), and/or where it requires the Customer to cancel or amend the original request for service with TFR, no storage, handling, and adjusting/amending fees must be raised.

### **18.13 Overloading And Mass Declared**

**18.13.1** The Customer must ensure that containers are not loaded more than their total nett mass, as per clause 18.3 above, and instruct the Customer's consignor or consignee, whichever is applicable, to adhere to the Customer's instruction, as in either case this may result in derailment or damage to infrastructure and equipment which the Customer will be liable for.

**18.13.2** Should overloading of a container in excess of its applicable nett mass as per clauses 18.3 above or any other maximum load agreed to for 6 Meter extra heavy containers, be detected prior to transit, and such containers are accepted for conveyance, or during or after transit, such container will be regarded as over mass and the price for that container will be levied at double the applicable mass interval price (i.e. double the applicable rail rate for the specific container).

**18.13.3** Instances where the nett mass of a container is under-declared by more than 1000 kilograms the following additional charges will also apply:

**18.13.3.1** Relevant rail price for the mass as measured; plus

**18.13.3.2** Mass measuring charge; plus

**18.13.3.3** Adjustment fee; plus

**18.13.3.4** Following surcharge:

**18.13.3.4.1** Container not loaded in excess of its attainable total nett mass will be subject to a surcharge equal to fifty percent of the relevant rail price.

**18.13.3.4.2** Containers loaded in excess of its attainable total nett mass will be subject to a surcharge as stipulated in clause 18.13.2 above.

**18.13.4** The Customer will declare, or where the Customer is not the consignor, ensure that the consignor declares the actual or estimated nett mass of the container on the freight transit/ orders/container terminal order. Transnet Freight Rail may verify the mass declared by mass measuring each container prior to, during or after transportation thereof. Should Transnet Freight Rail find that the mass per container has been over loaded/under-/over declared, the Customer or both the Customer and the consignor, where applicable, will be furnished with a written report of the results and the charges payable by the Customer will be calculated in terms of this clause 18.13.

**18.13.5** Transnet Freight Rail shall also have its own Mass Measuring Devices installed at specified points. In the event of Transnet Freight Rail measuring the mass of the container, the mass measurements from Transnet's Mass Measuring Devices shall prevail.

**18.13.6** To ensure compliance with SOLAS Chapter V1 and the relevant IMO guidelines relating to the mandatory verification of the gross weight of sea export containers prior to loading same on vessels, effective as of 00h01on 01 July 2016, this mass information as obtained by Transnet will be shared as the Verified Gross Mass (VGM).

**18.13.7** For all seaborne export containers railed from TFR sidings, areas or facilities with no weighbridge facilities or in instances where TFR weighbridge is out of service, customers must declare the Verified Gross Mass (VGM) to TFR as part of their rail documentation/electronic data interchange transactions. In all instances where TFR do not mass measure containers to obtain the weight, copies of printed weighbridge slips must accompany TFR documentation as proof of the VGM. See also clause 16.12.1.

**18.13.8** TFR shall be entitled to take all steps that it deems necessary to verify the actual weight of a container and/or its contents, and to ensure that such container is properly charged for in terms of its prevailing tariffs. TFR shall also be entitled to take all steps that it deems necessary to ensure that the containers meets all safety regulations and standards, and is safe for transport on rail.

**18.13.9** In instances where there is a discrepancy between the documented weight and the actual weight of a container, the customer shall be liable for additional charges, including overweight surcharges.

**18.13.10** Customers must provide copies of their Certification and Verification certificates of their own Verified Mass Measuring Device to TFR's officials at their responsible Order Entry Office/Terminal responsible for the order entry function related to their consignment.

**18.13.11** In all instances where TFR does not mass measure containers to obtain the weight, copies of printed weighbridge slips must accompany TFR's Consignment Note documentation as proof of the weight. See also clause 16.12.1.

### **18.14 Non Standard Containers:**

**18.14.1** Please note containers containing dangerous/hazardous goods (Classification in accordance with Section 5 of the General Introduction to the International Maritime Dangerous Goods Code (IMDG code), i.e. IMCO classes 2.1, 3.1, 3.2, 4.1, 4.2, 4.3, 5.1, 5.2, 6.1, 6.2, 7.1, 7.2, 7.3 and 8) will be conveyed at the applicable contract price plus the extra charges stipulated in a Schedule.

**18.14.2** Containers of which the dimensions exceed the ISO standard dimensions will be dealt with in terms of the conditions applicable to abnormal containers, which will be provided by Transnet Freight Rail where applicable.

**18.14.2.1** Containers which, when loaded on SHLJ-13 rail wagons, are within the loading gauge applicable to such rail wagon, are regarded as normal containerised traffic.

**18.14.2.2** Containers of which the dimensions are outside the ISO standard dimensions but do not exceed 2 900 mm (high) x 2 438 mm (wide) or 2 800 mm (high) x 2 600 mm (wide) and conveyed on standard container rail wagons (maximum height 1065 mm) shall be regarded as normal containers when conveyed on specific routes only.

# Transnet Freight Rail Standard Conditions of Carriage

## **18.15 Containers Transported Only Under Special Arrangement:**

**18.15.1** Please note that Transnet Freight Rail will not in terms of this Agreement transport, without special arrangement;

**18.15.1.1** containers of which the mass, nature or dimensions of the load require special transport arrangements; and

**18.15.1.2** containers containing dangerous/hazardous goods (Classification in accordance with section 5 of the General Introduction to the International Maritime Dangerous Goods Code (IMDG code), i.e. IMCO classes 1.1 to 1.6.

In instances where dangerous/hazardous product (i.e. IMCO classes 1.1 to 1.6) is conveyed in a single container, it is a safety requirement to use empty containers as blockers to prevent access to containers containing dangerous/hazardous products.

**18.15.1.3** declare and completing the correct rail documentation for the Transport of Dangerous Goods, See also clause 23.7.

## **18.16 Sealing Of Containers**

**18.16.1** The Customer must ensure that:

**18.16.1.1** all containers whether (full or empty) are securely and properly sealed;

**18.16.1.2** all container seal numbers are verified, checked or captured by it and/or its agents;

**18.16.1.3** container seals are placed on the inner (bottom) locking bar of the overlapping door;

**18.16.1.4** the particulars of the seal on the container correspond to the particulars of the seal on the CTO / import release / Pre-Advice, as the case may be;

**18.16.1.5** the seal on the container is always readily accessible;

**18.16.1.6** where the particulars of a seal on a container do not correspond to the particulars of the seal contained in the CTO / Pre-Advice / import release, such container must be moved to a pre-determined inspection area, jointly inspected in the presence of customer representative and Transnet Freight Rail representatives, re-sealed by the Customer representative and the documentation must be endorsed with the particulars of the new seal before the container is removed from the premises of the Terminal;

**18.16.1.7** no seal is removed or breached or attached to a container by the Customer and/or by any Visitor, whilst such container is in the possession of the Customer or Visitor or under its control, on the premises of the Terminal;

**18.16.2** Transnet Freight Rail shall not be responsible for replacing tampered with or broken container seals, nor shall it be responsible for monitoring and identifying containers that either do not have seals, or have tampered with or broken seals.

**18.16.3** If Transnet Freight Rail notices at any checkpoint in the terminal or whilst in the possession of Transnet Freight Rail that container seals are broken or tampered with, and if it attends to replacing such seals to secure the contents of a container, or it notifies the customer or any other relevant third party thereof, it does so entirely on a basis of goodwill towards the customer/third party, and it shall not, under any circumstances be liable for any consequences arising out of such actions, or failure to undertake such actions, including any claims arising out of any cause whatsoever.

## **18.17 Amendment/Adjustment/Cancellation Fees for Containers.**

**18.17.1** Alterations on Freight Transit Orders/Container Terminal Orders shall under no circumstances be allowed. Any alteration to a Freight Transit Order/Container Terminal Order shall be accepted only when an amended Freight Transit Order/Container Terminal Order, clearly endorsed "AMENDED FREIGHT TRANSIT ORDER" or "AMENDED CONTAINER TERMINAL ORDER" and cross-referenced to the original document, duly signed by the original consignor or his duly authorised representative, is handed in.

**18.17.2** If a Container List, a Freight Transit Order, or a Container Terminal Order has been tendered/lodged and the transaction is, for whatever reason, subsequently cancelled or amended by the customer, a Cancelling /Amended order document must be tendered/lodged, and charges as stipulated in a Schedule shall be levied.

**18.17.3** Where TFR, or any of Transnet's other Divisions contribute to such delays these fees should not be raised by the Transnet Freight Rail Terminal/Area Office. A proper file with supporting documentation and evidence must be kept on file for audit purposes at Terminals/Areas.

## **19 Goods Forwarded From Or Destined To Other Railways**

**19.1** If Goods having a Point of Placing on other railways are dispatched from points on Transnet Freight Rail lines, all costs and charges levied by the other railways will be for the Customer's account. With regard to the routing of traffic it is recorded that Transnet Freight Rail has specific arrangements with the other railways for the conveyance of Goods over specified routes depending on the origin and destination of the traffic, and Transnet Freight Rail will not be allowed to deviate from these arrangements under any circumstances.

**19.2** The Transport of Goods over the lines of other railways will be subject to the terms of the railways concerned at time of dispatch while the Goods are in their (i.e. the other railway's) possession.

**19.3** Prices, charges (and Additional Costs where applicable and determined) for the Transport of Goods to or from Hand Over Points on other railways will be quoted to the Customer prior to the Transport of such Goods. If these quotations are acceptable to the Customer they will be included in the railage price charged by Transnet Freight Rail, and if the Customer declines to accept the quotation Transnet Freight Rail will not be under an obligation to Transport such Goods.

**19.4** The provisions of clause 7 above (Documentation) shall apply to the Transport provided in terms of this clause insofar as they are applicable.

# Transnet Freight Rail Standard Conditions of Carriage

## **20 Agents**

**20.1** If the Customer, at any time, engages the services of an agent to perform their obligations or exercise their rights in terms of the Agreement with Transnet Freight Rail, Transnet Freight Rail shall be entitled to require a copy of the Customer's agreement with any agent to be furnished to Transnet Freight Rail prior to the Customer's agent so performing or exercising any obligations or rights, subject to any confidentiality provisions in the Agreement between the Customer and its Agent. The Customer shall not enter into an agreement with any agent on terms and conditions that are substantially different from, or conflict with, or frustrate the spirit, purport and intent of the Agreement.

**20.2** The agreement between the Customer and the agent must specify that the agent acts on the Customer's behalf and that the Customer is liable for any act or omission of the Customer's agent.

**20.3** The Customer indemnifies Transnet Freight Rail against any Claim against Transnet Freight Rail or Loss Transnet Freight Rail may suffer as a result of any action or omission of the Customer's agent.

**20.4** If the Customer acts as agent for an undisclosed principal the Customer indemnifies Transnet Freight Rail against any Loss Transnet Freight Rail may suffer as a result of any action or omission of the Customer's undisclosed principal.

**20.5** Where applicable and relevant, the Customer acknowledges the role of the Customer's supplier in the ordering of the Goods. In the event of a conflict between the Customer's order and that of the Customer's supplier, the Customer accepts as per the industry practice that the Customer's order shall be superseded by the order of the Customer's supplier.

**20.5.1** Should the Customer persist with an order in conflict with the order placed by the Customer's supplier, Transnet Freight Rail shall as per industry practice not place wagons on the Customer's behalf and shall not be liable for any damages arising as a result of the conflicting orders.

## **21. Transnet Freight Rail entitled to Act as Agent or Principal in Contracting with Third Parties**

**21.1** Unless otherwise agreed in writing, Transnet Freight Rail shall, in procuring the carriage, storage, packaging or handling of the goods, be entitled to subcontract all or any of those duties.

**21.2** Transnet Freight Rail shall be entitled to act as the agent of the Consignor, Consignee or other person having risk in and title to the goods, in dealing with rail service providers in countries other than South Africa.

## **22. Safety And Access**

**22.1** If the Hand Over Point or the Point of Placing is a Private Siding or Transnet Freight Rail's premises the Customer must ensure that there is safe and proper access at the Points. The Customer accepts all responsibility for any Loss of or damage to the Goods or Transnet Freight Rail's rolling stock due to any unsuitability of the access to the Hand Over Point or the Point of Placing and the Customer indemnifies Transnet Freight Rail against any Claims arising from damage to property or injury or death to persons arising directly or indirectly as a result of the Customer's failure to provide proper and safe access or to ensure that such access exists.

**22.2** Transnet Freight Rail and the Customer agrees that all persons, whether employed by or subcontracted by Transnet Freight Rail or the Customer, to undertake shunting of rolling stock within a Private Siding or an exchange yard are trained in terms of and will comply with and adhere to the Best Industry Practice while performing their services.

**22.3** The Customer must keep walkways in the Customer's siding clear of obstruction to ensure safety for Transnet Freight Rail's train marshalling crew. Transnet Freight Rail reserves the right not to shunt where Transnet Freight Rail considers the siding unsafe. The provisions of the National Rail Safety Regulator Act 16 of 2002 ("National Railway Safety Regulator Act") shall be complied with.

## **23. Statutory and other requirements**

**23.1** Each of the Parties shall comply with all Laws applicable to the performance of their obligations in terms of these Transnet Freight Rail Standard Conditions of Carriage.

**23.1.1 Compliance with other legislation:** Specific mention of a specific legislation is to draw the Customer's attention thereto, and shall not derogate from, or diminish the Customer's general obligation to comply with all other laws in force at all times during this Agreement.

**23.2** Transnet Freight Rail is, and the Customer may be, regulated by the provisions of the National Railway Safety Regulator Act 16 of 2002, which provides that to ensure that railway operations are conducted safely, Transnet Freight Rail must adhere to strict safety requirements in the manner in which Goods are Transported by rail. The Parties:

**23.2.1** undertake that they are familiar with the provisions of the National Railway Safety Regulator Act;

**23.2.2** undertake not to act or omit to act in any manner that will result in contravening the provisions of the National Railway Safety Regulator Act in Transporting Goods;

**23.2.3** will comply with all requirements of any Relevant Authority and Best Industry Practice;

The Customer:

**23.2.4** indemnifies Transnet Freight Rail against any Claim against Transnet Freight Rail arising out of a breach by the Customer of this clause 23.

**23.2.5** undertakes that its agent, Consignor and/or Consignee shall be bound by the undertakings in clauses in 23.2.1 to 23.2.4 above.

**23.3** The Private Siding, is for purposes of the Occupational Health and Safety Act, No. 85 of 1993, a workplace and shall be deemed at all times to be under the complete control of the Customer.

## Transnet Freight Rail Standard Conditions of Carriage

**23.3.1** The Customer shall, if subject to the National Railway Safety Regulator Act, at all times, be in possession of a valid Safety Permit.

**23.3.2** It is recorded that:

**23.3.2.1** Transnet Freight Rail has access to the Private Siding;

**23.3.2.2** the Customer either owns, leases or has the right of use of the Private Siding;

**23.3.2.3** and where applicable, the Customer is at all times responsible for the maintenance of the Private Siding at its own cost and expense.

**23.4** The Customer hereby indemnifies and holds Transnet Freight Rail harmless against all actions, claims, injuries, loss or damage of whatsoever nature and howsoever arising which may be suffered by Transnet Freight Rail or any third party and which arises from the construction, use or operation of the Private Siding and shall, without limitation, include any accident or incident which may occur at any place where the Private Siding crosses a public street or road, provided that this indemnity shall not apply in any case where the event that gives rise to any such action, claim, injury, loss or damage is attributable to the gross negligence or wilful misconduct of Transnet Freight Rail or its officials or employees.

**23.5** In compliance with the requirements of any Law, Relevant Authority and Best Industry Practice, Transnet Freight Rail requires the Customer to abide by Transnet Freight Rail's requirements on loading. Transnet Freight Rail is not liable for any Claim or Loss arising from or connected with non-compliance by the Customer with such guidelines, requirements of any Relevant Authority and Best Industry Practice. The Customer must advise Transnet Freight Rail of any improvements or enhancements to such guidelines that the Customer may consider desirable but Transnet Freight Rail is not obliged to adopt any suggestions by the Customer.

**23.6** Transnet Freight Rail will not Transport Dangerous Goods in terms of these Transnet Freight Rail Standard Conditions of Carriage save to the extent and on the terms set out in or to be set out in a Schedule and the other terms of these Transnet Freight Rail Standard Conditions of Carriage.

**23.7** The Customer will be responsible for:

**23.7.1** using, declare and completing the correct rail documentation for the Transport of Dangerous Goods, including the Material Safety Data Sheets ("MSDS") in rail wagons or ISO Containers;

**23.7.2** completing and signing a declaration which states that *"I hereby declare that the contents of this consignment are fully and accurately described by the proper shipping name and are correctly classified, packed, marked and labelled/placarded, loaded according to the required profile and are in all respects in proper condition for Transport according to applicable international and national governmental regulations."*;

**23.7.3** loading and off-loading of Dangerous Goods to be Transported in rail wagons or ISO Containers;

**23.7.3.1** ensuring that Dangerous Goods have been properly and sufficiently secured to withstand loading, Transportation by rail and off-loading;

**23.7.3.2** observing and implementing Best Industry Practice;

**23.7.3.3** the requirements of Law or any Relevant Authority, in the packaging, loading, securing and off-loading of any such Dangerous Goods.

**23.7.4** Transnet Freight Rail may refuse to Transport any Dangerous Goods that are not properly, lawfully declared and sufficiently packed, loaded, secured and prepared for Transport in accordance with any requirements of any Relevant Authority, Best Industry Practice and Transnet Freight Rail's guidelines.

**23.8** Ensure compliance with SOLAS Chapter V1 and the relevant IMO guidelines relating to the mandatory verification of the gross weight of containers prior to loading same on vessels.

**23.9 The Protection of Personal Information Act. 4 of 2013 ("POPIA")** The Parties must process personal information in accordance with POPIA.

### **23.10 Enterprise Development**

**23.10.1** The Customer shall comply with all Broad Based Black Economic Empowerment (BBBEE) codes. As an Established Organisation (EO) in terms of the aforementioned codes, it must have a relationship and/or agreement with a Developing Organisation (DO). The Customer shall provide Transnet Freight Rail with a list of the DO's it has agreements/relationships with. This will be provided on an annual basis.

**23.10.2** In terms of the code series 2600:

A relationship agreement of co-operation and assistance has to be in place between the established organization (EO) and developing organisation (DO).

(a) The EO may not have an equity holding larger than 20% in the DO, either directly or through a flow through calculation.

(b) The DO that can qualify for Enterprise Development must:

(i) be a legal entity compliant with South African Revenue Service requirements;

(ii) be an employer of at least three other permanently employed personnel and not merely a one person operation with temporary employees; and

(iii) must be fifty percent (50%) or more black owned or thirty percent (30%) or more black women owned.

### **23.11 Electronic Communications and Transactions Act, 2002 (Act No. 25 of 2002)**

To provide for the facilitation and regulation of electronic communications and transactions; to provide for the development of a national e-strategy for the Republic; to promote universal access to electronic communications and transactions and the use of electronic transactions by SMMEs; to provide for human resource development in electronic transactions; to prevent abuse of information systems; to encourage the use of e-government services, and to provide for matters connected therewith.



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### **24 Transport Of Goods At Owner's Risk And Loss Or Damage To Rolling Stock**

**24.1** Transnet Freight Rail transports and deals with all Goods at the risk of the owner of the Goods, or any other person in whom the risk of Loss of or damage to the Goods lies at any relevant time. Unless stated otherwise in a Schedule Transnet Freight Rail is not liable for:

**24.1.1** any Loss of, or damage to the Goods whatsoever, whether due in whole or in part to any negligence or breach of contract on Transnet Freight Rail's part save, in the case of either a breach of the terms of these Transnet Freight Rail Standard Conditions of Carriage or Transnet Freight Rail's gross negligence, in either case, causing Loss, for an amount not exceeding that stated in or to be set out in a Schedule;

**24.1.2** any consequential or economic loss whatsoever, including but not limited to loss of production or profit, whether arising out of such Loss or not;

**24.1.3** any direct or indirect, incidental, special or consequential damages, loss of revenue, incurred by the Customer or any third party, even if Transnet Freight Rail have been advised of the possibility of such damages.

**24.2** The Customer indemnifies Transnet Freight Rail against all Claims made against Transnet Freight Rail by any third party arising out of Loss of or damage to the Goods if the Customer is not the owner or the person in whom the risk of Loss of or damage to the Goods lies at the relevant time.

**24.3** If the Customer wishes to proceed with any Claim against Transnet Freight Rail the Customer must report any Loss to the person named in, or to be set out in a Schedule and obtain an incident number from Transnet Freight Rail.

**24.4** The risk of loss or damage to Transnet Freight Rail's rolling stock will pass to the Customer at the Point Of Placing and will pass back to Transnet Freight Rail at the time the rail wagons are coupled back to Transnet Freight Rail's locomotive for dispatch.

**24.5** The Customer:

**24.5.1** must take reasonable care to ensure safe operations when shunting wagons in the Private Siding or exchange yard;

**24.5.2** must notify Transnet Freight Rail immediately of any derailment of any wagons in the siding or any damage to wagons in the Private Siding or at any other place where the wagons are in the possession of, or under the control of the Customer, or any damage to the wagons in the afore-mentioned places; and

**24.5.3** must under no circumstances attempt to re-rail a derailed wagon without Transnet Freight Rail's technical personnel being involved.

**24.5.4** In the event of any loss or damage caused to Transnet Freight Rail's rolling stock, freight containers, buildings, terminals and/or any other assets by the Customer, the Customer shall be liable for all such losses or damages, including all costs of repair or replacement of the aforementioned; and/or transport of the damaged rolling stock, freight containers, and/or any other assets to a Transnet Freight Rail repair facility.

**24.5.5** The repair costs mentioned in clause 24.5.4 above will be an estimate from the Transnet Engineering Department.

**24.5.6** In order to record any damage to Transnet Freight Rail rolling stock, the Customer must ensure the presence of a Customer representative at the Customer Siding or exchange yard who will alongside a Transnet Freight Rail employee, jointly inspect the rolling stock as follows:

**24.5.6.1** Upon arrival of the wagons, the Customer representative and Transnet Freight Rail employee must sign the Customer Siding Arrival Wagon Checklist.

**24.5.6.2** Upon the departure of the wagons, once the inspection is complete, the Customer representative and Transnet Freight Rail employee must sign the Customer Departure Wagon Checklist.

### **25. Limitation of Liability, Indemnity**

**25.1** Transnet Freight Rail shall not be liable to the Customer, whether in terms of any indemnity or otherwise, for any Loss arising in whole or in part from any act or omission of the Customer.

**25.2** The Customer indemnifies and holds Transnet Freight Rail harmless against any Loss suffered by or Claims made against Transnet Freight Rail as a result of or in connection with any act or omission of the Customer and/or any of the Customer's responsible persons (including any default or failure by the Customer to comply with any of the Customer's obligations under the Agreement

**25.3** For the purposes of this clause **Limitation of Liability, Indemnity**, "responsible" persons" means any subcontractor, agent, servant, officer or employee of the party concerned.

**25.4** If any legal action is brought or Claim is made against Transnet Freight Rail and Transnet Freight Rail is entitled to be indemnified pursuant to this clause 25, the Customer shall be entitled at his own expense to defend, have conduct of, or settle any such action or Claim and Transnet Freight Rail shall notify the Customer promptly of any such Claims or any such threatened Claims and take such action as the Customer reasonably directs. Transnet Freight Rail shall be entitled to engage its own legal counsel and the Customer shall co-ordinate their defence with Transnet Freight Rail. If the Customer fails to defend, deal with or negotiate any such action or Claim diligently, Transnet Freight Rail may proceed to defend or settle the Claim without the Customer's consent after first giving the Customer reasonable notice. However, this shall not relieve the Customer of the obligation to indemnify Transnet Freight Rail as provided in sub-clause 25.2.

**25.5** Insofar as the performance of any obligation or duty by either of the Parties in terms of the Agreement is performed by any of the Parties' respective responsible persons, clauses limiting and/or excluding the liability of Transnet Freight Rail are

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stipulated for the benefit of such responsible persons as well, and their liability shall be limited and/or excluded and they shall be indemnified accordingly.

**25.6** Notwithstanding anything to the contrary contained in the Agreement, Transnet Freight Rail's liability to the Customer in terms of clause 24 where specifically undertaken in the Agreement or for any other cause under the Agreement is limited to the amount set out or to be set out in a Schedule. If such Schedule has not been signed by the Customer, or if such Schedule does not stipulate an amount for the limitation of liability, then Transnet Freight Rail shall have no liability, save in the case of wilful misconduct or gross negligence on the part of Transnet Freight Rail, in either case causing loss.

**25.7** Should TFR agree to handle any containers it does so without accepting or incurring any liability to any party for any loss of or damage to such containers, any cargo in or on such containers, or to any other property whatsoever except in cases of gross negligence or wilful misconduct. The Customer hereby indemnifies and agrees to hold TFR harmless against any claims of whatever nature, arising from or attributable to the handling by TFR of such containers.

**25.8** TFR shall not be liable for any losses or damages to containers or their contents whilst in the terminal. In the event of TFR paying out any amounts for losses or damages to containers or their contents, such amounts shall be solely in the discretion of TFR.

**25.9** This shall apply to all activities undertaken in the terminal, including rail-to-stack, stack-to-rail and stack-to-road vehicles. The activities included are: offloading of containers from rail, storage of containers in the terminal, movement of containers within the terminal, loading of containers onto road vehicles, i.e. all activities relating to a container from the time that it enters the terminal until the time that it leaves the terminal.

**25.10** SARS customs officials exercising their statutory authority with regard to inspections and enforcement are allowed into the terminals, and TFR shall be legally obliged to assist them in whatever manner they require assistance from TFR. TFR shall not be liable for any delays, losses or damages arising out of it providing such assistance to SARS.

**25.11** No unmarked vehicles shall be allowed into the terminal. This shall be strictly monitored by TFR's terminal personnel, and access control in this regard shall be strictly applied.

TFR shall be entitled to implement any rules that it deems necessary to ensure effective and efficient terminal management, and shall communicate such rules to all users of the terminal, who shall thereafter be bound to adhere to such rules.

**25.12** If TFR engages with the customer or any third party on any issues with regard to the containers, and agrees to accommodate the customer/third party in terms of waiting until the customer/third party arrives at the terminal to jointly inspect containers, or enters into any other arrangements with the customer/third party with regard to practical arrangements relating to containers within the terminal, it does so entirely on the basis of goodwill towards the customer/third party, and it shall not, under any circumstances be liable for any consequences arising out of such actions, or failure to undertake such actions, including any claims arising out of any cause whatsoever.

### **26. Reporting of Discrepancy, Incident, Loss or Damage and any Liability Claims**

**26.1** It will be in the interests of any claimant to **IMMEDIATELY report** any discrepancy, incident, price disputes, damages to Transnet Freight Rail rolling stock, freight containers, buildings, terminals and/or any other assets loss or damages to Transnet Freight Rail within 48 hours to Transnet Freight Rail in writing, fax or send an email to the Transnet Freight Rail, Customer Interaction Centre ("CIC") email address: [Tfr911@transnet.net](mailto:Tfr911@transnet.net) or contact us at the following telephone number: 0860690730 in order to arrange an inspection of the goods where applicable, and to obtain an incident number from Transnet Freight Rail, Customer Interaction Centre ("CIC").

**26.2** Any liability claim brought against Transnet Freight Rail must be lodged during business hours with Transnet Freight Rail, Customer Interaction Centre ("CIC") email address: [Tfr911@transnet.net](mailto:Tfr911@transnet.net) or contact us at the following telephone number: 0860690730, quoting the incident number as obtained from CIC, who will accept notification of the claim in the capacity as representative of Transnet Freight Rail.

**26.3** A Claim Form (Obtainable from Transnet Freight Rail) must be lodged with Transnet Freight Rail within 180 (One Hundred and Eighty) calendar days for liability claims from the date the goods reached, or ought to have reached, their final destination, failing which the claim will irrevocably lapse and be of no force and effect.

**26.4** If the claim is rejected, a summons may be served on Transnet SOC Ltd at following addresses:

**Enterprise Risk Management, 4<sup>th</sup> floor, Inyanda House 2, 13-15 Girton Road, Parktown, Johannesburg**

### **27. Claims Against Employees Of Transnet Freight Rail By The Consignor, Consignee Or Third Party**

**27.1** The Consignor and Consignee undertake that no claim shall be made by either of them, nor any party, against any servant or employee of Transnet Freight Rail personally for any loss or damage caused by such persons while acting in the course and scope of their employment.

### **28. Account Number**

**28.1** If Transnet Freight Rail has granted credit facilities to the Customer, Transnet Freight Rail will allocate an account number to the Customer ("the Customer' account") set out or to be set out in a Schedule. The account number must be quoted on all orders and payments.

#### **28.2 For avoidance of doubt invoicing will take place as follows:**

**28.2.1** Traffic in rail wagons (non-containerised traffic):

**28.2.1.1** Domestic traffic railed within the Republic:

Transnet Freight Rail will invoice and raise the price and other charges applicable on the date the release instruction from the consignor is received telephonically or in writing.

**28.2.1.2** Export Traffic (to foreign railways):

Transnet Freight Rail will invoice and raise the price and other charges applicable on the date the release instruction from the consignor is received telephonically or in writing.

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### **28.2.1.3 Import Traffic (from foreign railways):**

Transnet Freight Rail will invoice and raise the price and other charges applicable on the date reflected on the rail invoice received from foreign railways.

### **28.2.2 Traffic in Containers:**

Due to the need to also raise feeder service charges for containerised traffic Transnet Freight Rail will invoice containerised traffic as follows:

#### **28.2.2.1 Import containerised Traffic (from foreign railways):**

Transnet Freight Rail will invoice and raise the price and other charges applicable on the date reflected on the rail invoice received from foreign railways.

#### **28.2.2.2 Import containerised Traffic ex RSA Harbours:**

Transnet Freight Rail will invoice and raise the price and other charges applicable on the date of the Transnet Port Terminals ("TPT") date stamp on the CTO/Container list.

#### **28.2.2.3 Other containerised Traffic (Domestic, Sea exports and foreign railway exports):**

Transnet Freight Rail will invoice and raise the price and other charges applicable on the date when the consignment note (requesting the service) is captured on Transnet Freight Rail's system.

#### **28.2.2.4 Other miscellaneous charges raised on containerised Traffic which were not raised on the original order/consignment:**

Transnet Freight Rail will invoice and raise these miscellaneous charges applicable on the date when the original consignment note (requesting the service) is captured on Transnet Freight Rail's system.

## **29. Credit Facilities And Payment**

**29.1** Unless otherwise agreed between duly authorised representatives of Transnet Freight Rail and the Consignor respectively, the terms of payment to Transnet Freight Rail shall be by means of a cash deposit into Transnet Freight Rail's Bank Account, in advance of conveyance. The granting, amendment, extension or withdrawal of credit facilities will be subject to the Customer providing Transnet Freight Rail with an appropriate bank guarantee in terms of this clause. In order to ensure that the Customer's obligations to Transnet Freight Rail can be fulfilled, the Customer must furnish Transnet Freight Rail with such a guarantee within seven (7) Days of the request in the amount requested by Transnet Freight Rail. It is recorded that the granting of credit shall be at Transnet Freight Rail's sole discretion. If:

**29.1.1** the guarantee is at any time withdrawn according to its terms or is held to be unenforceable for any reason; or

**29.1.2** the Customer fails to provide the bank guarantee as requested; or

**29.1.3** the Customer fails to make alternative arrangements satisfactory to Transnet Freight Rail,

**29.1.4.** the Customer is in business rescue in terms of Chapter 6 of the Companies Act 71 Of 2008.

then, notwithstanding any other clause in this Agreement, Transnet Freight Rail will be entitled to terminate this Agreement in terms of clause 32 (Breach) below with immediate effect upon notice to the Customer, and/or, suspend all Transport of consignments.

**29.2** The Customer will be invoiced and be held liable for all amounts which Transnet Freight Rail may pay on the Customer's behalf to other Railway administrations, hauliers or other persons.

**29.3** If the Customer's authorized credit limit on such an account is exceeded, the Customer must make an immediate interim payment in order to bring the account within the authorized credit limit failing which Transnet Freight Rail shall be entitled to suspend all Transport of consignments.

**29.4** Transnet Freight Rail will render a weekly tax invoice to the Customer, which will serve as an account for consignments transported by Transnet Freight Rail including Wagon Delay Charges. Any other amounts due to Transnet Freight Rail by the Customer in terms of these Transnet Freight Rail Standard Conditions of Carriage such as interest charges will appear on the monthly statement, which serves as a summary of all transactions on the Customer's account. The weekly tax invoice and the monthly credit account statements are available on Transnet Freight Rail's website at [www.transnetfreightrail.co.za](http://www.transnetfreightrail.co.za).

**29.5** The weekly tax invoice will furthermore also be:

**29.5.1** a VAT invoice; and

**29.5.2** proof of the VAT payable.

**29.6** Amounts debited to the Customer's account during any particular month must be paid by the Customer on or before the 25th Day of the month following the month in which the debits were raised. Payments must be made into such account as Transnet Freight Rail may from time to time notify the Customer. When the 25th is not a Business Day payment is required on the last Business Day prior to the 25<sup>th</sup>.

**29.7** If any railage prices are quoted in a foreign currency, the prevailing monthly SARA exchange rate for the month during which specific consignments were transported, will be applied in converting the foreign currency to Rand for invoicing purposes.

**29.8** Unless otherwise agreed by Transnet Freight Rail and permitted by the South African Reserve Bank invoices and accounts will be:

**29.8.1** Rand based; and

**29.8.2** be payable in Rand.

**29.9** Overdue amounts shall bear interest at a rate above the published prime overdraft rate of the RMB Corporate Bank, a division of FirstRand Bank Limited ("RMBCB"), (e.g. prime rate 17% plus 4% above = 21%) based on the Customer's credit worthiness evaluated by Transnet Freight Rail and as set out or to be set out in a Schedule, as applicable from time to time calculated daily and compounded monthly in arrears. Any change in the prime overdraft interest rate will be applied from the First Day of the next month.

**29.10** The Customer may query any invoice in Writing within ninety (90) Days of the invoice date, if no query is received in the said period the invoice will be:

**29.10.1** deemed to be correct; and

## Transnet Freight Rail Standard Conditions of Carriage

**29.10.2** final and binding on all parties.

**29.11** If any amount is erroneously debited to the Customer's account due to a mistake on the part of the Customer or their agent and the Customer subsequently requests Transnet Freight Rail to transfer the debit to another account, such transfer will not be done without the prior written consent of the account holder concerned. The Customer will be liable to compensate Transnet Freight Rail for any adjustment fees arising out of the correction of any such errors. Interest will also be payable by the Customer from the date of the first debit as if the amount had been originally included to the correct account number. No request for the transfer of debits lodged ninety (90) Days or more after the date of the statement will be entertained, save in the circumstances of an error by a Transnet Freight Rail employee.

**29.12** Transnet Freight Rail is entitled to refuse to Transport any consignment for the Customer (whether on a "cash" in advance basis or not) if any amount due by the Customer to Transnet Freight Rail is overdue for payment.

**29.13** The Customer is not entitled to:

**29.13.1** withhold payment of any amount due by the Customer for services because of any Loss or Claim of the Customer; or

**29.13.2** set off any amounts due by the Customer to Transnet Freight Rail against any amount due to or alleged to be due to the Customer by Transnet Freight Rail.

**29.14** The Customer must furnish Transnet Freight Rail on request with such information and references relating to the Customer's financial position as Transnet Freight Rail may from time to time require.

**29.15** If at any time during the term of the Agreement, and after an evaluation of the Customer's financial position in terms of clause 29.14, Transnet Freight Rail requires an additional bank guarantee on the same terms as clause 29.1 in order to ensure that the Customer's obligations to Transnet Freight Rail can be fulfilled, the Customer must furnish Transnet Freight Rail with such a guarantee within thirty (30) Days of that request in the amount requested.

**29.16** Transnet Freight Rail may at any time in Transnet Freight Rail's sole discretion amend, vary or revoke the Customer's credit facilities and/or suspend Transport for or on behalf of the Customer if its account is unpaid or if the Customer has not provided the bank guarantees required by Transnet Freight Rail or if the guarantees, having been provided, are withdrawn for whatever reason.

**29.17** The terms of the Agreement are without prejudice to Transnet Freight Rail's rights to exercise a lien over the Customer's consignments in Transnet Freight Rail's possession for unpaid storage, railage and other charges and Additional Costs and the Customer agrees that Transnet Freight Rail may exercise such a lien whether or not the unpaid amounts relate to the consignments in question.

**29.18** The Customer may authorise anyone to despatch goods for the debit of the Customer's account, provided the Customer has advised Transnet Freight Rail in Writing prior to granting such authorisation. The Customer may withdraw any such authorisation on fourteen (14) Days' written notice to Transnet Freight Rail. The Customer will remain liable before the lapse of such notice period for all debits against the Customer's account in terms of the authorisation.

### **29.19 Adjustments To Railage.**

**29.19.1** A request made to Transnet Freight Rail for the refund of an alleged overcharge on railage or any miscellaneous charges raised, must contain full particulars so that Transnet Freight Rail can deal with the matter effectively.

**29.19.2** To expedite the finalisation of a railage refund or price adjustment, full particulars must be forwarded to the Transnet Freight Rail Area Office/Terminal from where the goods are despatched and the relevant Account Executive.

**29.19.3** Where an adjustment to railage charges is made and the error is not due to Transnet Freight Rail, the adjustment/cancellation and other miscellaneous charges where applicable per consignment shall be levied.

**29.19.4** In instances where Transnet Freight Rail or any other Division of Transnet contributes/has contributed to the error, no adjustment/cancellation fees must be raised. Records and supporting documentation of such railage refund or price adjustments must be filed at Area/Terminal level for audit purposes.

**29.19.5** When a consignor states a mass incorrectly or makes another error, which gives rise to an overcharge or undercharge necessitating adjustment in railage, the adjustment charges shall be levied by Transnet Freight Rail against the party paying the railage.

**29.19.6** Where undercharges are brought to the attention of Transnet Freight Rail by the consignor or consignee or the party whose account was debited with the railage no adjustment fee shall be levied.

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### 30. Unclaimed Goods

**30.1** Transnet Freight Rail shall be entitled to sell or dispose of any goods where:

**30.1.1** a Consignee cannot be identified; or

**30.1.2** the goods cannot be delivered because they are insufficiently or incorrectly addressed; or

**30.1.3** where the goods have not been collected or accepted by the Consignee or any other person within 7 (*SEVEN*) days of their having arrived or being tendered for delivery by Transnet Freight Rail, as the case may be. Provided that where Transnet Freight Rail has an address for the Consignee (or in the case of a freight container, the container operator) then sale or disposal shall be effected only after the expiration of thirty (30) days from the posting of a written notice of its intention to do so to that address by registered mail.

**30.2** Perishable Goods: - Notwithstanding anything to the contrary in this Agreement, if perishable goods arrive at their destination in such a condition that they will, in the opinion of Transnet Freight Rail, become worthless if the owner or person entitled to claim them has not claimed them, or refuses to claim them, Transnet Freight Rail may, after reasonable attempts to obtain disposal instructions from the Consignor and Consignee, immediately sell such goods in any manner, or if the goods have in fact become worthless, to destroy them or arrange for their disposal.

**30.3** Transnet Freight Rail shall be entitled, without prejudice to any other rights, which it may have, and without further notice to the Consignor or Consignee –

**30.3.1** to open and examine any part of the consignment, and

**30.3.2** at the option of Transnet Freight Rail, to sell the whole or any part of the consignment, either by public auction or by private treaty, and to apply the proceeds of any such sale, after deducting all the expenses thereof, in payment of or towards any sum due by the Consignor or Consignee, to Transnet Freight Rail.

**30.4** Transnet Freight Rail shall pay over the surplus (if any) of the proceeds of such sale under this clause to the Consignor, but shall otherwise be released from all liability whatsoever in respect of the consignment.

**30.5** The Consignor and Consignee jointly and severally indemnify Transnet Freight Rail against any claims or fines which may be instituted or levied against Transnet Freight Rail arising out of or as a result of any sale under this Agreement.

**30.6** All unclaimed good or goods found on Transnet properties must be reported to the General Manager, Commercial and the General Manager, Enterprise Risk Management, 4<sup>th</sup> floor, Inyanda House 2, 13-15 Girton Road, Parktown, Johannesburg, who will issue disposal instructions.

### 31. Certificate

**31.1** The Customer agrees that any certificate given under the signature of any credit manager of Transnet Freight Rail (whose signature and capacity it shall not be necessary to prove) shall be *prima facie* evidence of:

any amount owing by the Customer to Transnet Freight Rail, whether liquid, liquidated or illiquid, including any interest and the rate thereof;

the reasonableness or normality of any charge raised by Transnet Freight Rail against the Customer.

### 32. Breach

**32.1** Subject to clause 32.2 should either of the "Parties ("the defaulting party") commit a breach of a term of the Agreement, then the other of the "Parties ("the aggrieved party") shall be entitled to give the defaulting party notice to remedy such breach within thirty (30) Days of receipt of such notice and, if the defaulting party fails to comply with the notice, the aggrieved party shall be entitled, but not obliged, without prejudice to any other rights or remedies which it may have, including the right to claim damages:

**32.1.1** cancel the Agreement; or

**32.1.2** claim specific performance.

**32.2** The aggrieved party shall not be entitled to exercise the rights granted to it in terms of this clause 32 until such time as the aggrieved party shall first have given the defaulting party notice as contemplated in sub-clause 32.1 above and the defaulting party shall have failed to comply therewith within a period of thirty (30) Days reckoned from the date upon which the defaulting party received such notice.

**32.3** The Agreement may be terminated forthwith by either of the Parties if the other is Placed under liquidation (provisional or final) or business rescue in terms Chapter 6 of the Companies Act 71 of 2008.

**32.4** Notwithstanding any other provisions in these Terms, Transnet Freight Rail reserves a right, on seven (7) Days Written notice, to terminate the Agreement if the Customer's account is in arrears in excess of thirty (30) Days.

**32.5** The termination of the Agreement shall have the effect of terminating the Parties respective rights and obligations save for the rights of either of the Parties that have already accrued prior to the event giving rise to the termination, the Confidentiality and Dispute Resolution provisions of these Standard Conditions of Carriage.

### 33. Cession, Delegation And Change In Control

**33.1** Neither of the Parties shall be entitled to cede any of their rights or delegate any of their obligations in terms of the Agreement save with the prior written approval of the other Party which approval in the case of a cession shall not be unreasonably withheld.

**33.2** The Customer shall ensure that there is no Change in Control, whether in a single or a series of transactions, in aggregate in the Customer (or in any company of which the Customer is a subsidiary) without the prior written notice to Transnet Freight Rail.

**33.3** Notwithstanding any other provision of these Standard Conditions of Carriage, the Customer shall ensure that there is no sale, assignment, cession, transfer, exchange, renunciation or other disposal of the whole or any part of the Equity and/or the member's loans, nor any dilution of the Equity, without the prior written notice to Transnet Freight Rail.

# Transnet Freight Rail Standard Conditions of Carriage

## **34. Force Majeure**

### **34.1 Notice of Force Majeure**

Each of the Parties shall promptly notify the other of the occurrence of a perceived or actual event of Force Majeure and when such event has ceased.

Continuation of performance

**34.1.1** Each of the Parties shall take all reasonable steps to prevent, limit and minimise the effect of events of Force Majeure on the performance of its obligations in terms of the Agreement.

**34.1.2** Any decisions taken by the Parties during an event of Force Majeure shall be directed toward the execution of the respective Party's obligations to the extent possible in terms of this Agreement.

**34.1.3** A party affected by the occurrence of the Force Majeure shall be excused from performance of its obligations in terms of the Agreement to the extent that it is unable to perform those obligations as a result of such Force Majeure and neither of the Parties shall be entitled to:

**34.1.3.1** terminate the Agreement on account of such occurrence other than in accordance with the terms of this clause; and/or

**34.1.3.2** claim damages, penalties or other compensation from the other of the Parties as a result of such failure to perform.

### **34.2 Insured events of Force Majeure**

To the extent that the consequences of an event of Force Majeure fall within any insurance cover then the party who is insured shall forthwith make the appropriate Claims thereunder and shall apply the proceeds in rectification of those consequences.

### **34.3 Consequences of Force Majeure**

**34.3.1** If Transnet Freight Rail agrees, or it is determined that an event of Force Majeure has occurred, Transnet Freight Rail shall promptly consult to agree a mutually satisfactory resolution to the changed circumstances resulting from the event of Force Majeure.

**34.3.2** If an event of Force Majeure (or its consequences) continues for an aggregate of sixty (60) or more Days in any one hundred and eighty (180) Day period or one hundred and eighty (180) consecutive Days and the Parties have not reached a mutually satisfactory resolution to the changed circumstances and the effect of the Force Majeure is continuing, the Agreement may, upon fourteen (14) Days prior notice, be terminated by either of the Parties.

**34.3.3** Neither of the Parties shall be obliged to counter-perform any obligation where the performance of the other has not taken place as a result of Force Majeure.

**34.3.4** In the event of any Force Majeure Event, the Customer may make an application for storage/cancellation/amendment charges to be waived. All such applications must be in writing and be sent to the Executive Manager, Operations of the relevant Terminal/ Area Office. Such applications must be accompanied by proof of the Force Majeure event that prevented the execution of services with or by TFR timeously.

## **35. Notices And Communications**

**35.1** The Parties choose as their respective *domicilia citandi et executandi* for all purposes in terms of the Agreement, whether in respect of court process, notices or other documents or communications of whatsoever nature (including the exercise of any option), the addresses for Transnet Freight Rail stipulated in a Schedule or **Transnet Freight Rail, 15 Girton Road, Parktown** and the Customer at its official address set out in a Schedule or the address appearing in the relevant transport document as the case may be.

**35.2** Any notice or communication required or permitted in terms of the Agreement shall be valid and effective only if in Writing, but it shall be competent to give notice by facsimile or by electronic mail.

**35.3** Either of the Parties may by notice to the other change the physical address chosen as their *domicilium citandi et executandi* to another physical address or change their postal address or their telefax number, or its email address, provided that the change shall become effective on the 20<sup>th</sup> Business Day from the receipt of the notice by the addressee.

### **35.4 Any notice to either of the Parties:**

**35.4.1** sent by prepaid registered post (by airmail if appropriate) in a correctly addressed envelope to the addressee at an address chosen as the *domicilium citandi et executandi* and to which post is delivered shall be deemed to have been received on the 14<sup>th</sup> Business Day after posting (unless the contrary is proved);

**35.4.2.** delivered by hand to a responsible person during ordinary Business hours at the physical address chosen as the *domicilium citandi et executandi* shall be deemed to have been received on the Day of delivery; or

**35.4.3** sent by telefax to the chosen telefax number, or an electronic mail to the chosen electronic mail address stipulated in clause 35.1 above shall be deemed to have been received on the date of despatch if that Day is a Business Day and, if it is not a Business Day, on the next succeeding Business Day (unless the contrary is proved).

**35.5** Notwithstanding anything to the contrary in the Agreement, a notice or communication actually received by one of the Parties shall be an adequate notice or communication notwithstanding that it was not sent to or delivered at the chosen *domicilium citandi et executandi*.

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**35.6** All communications, requests, notices, and any other queries in terms of this Agreement by the Customer shall be made only to the contact person nominated by Transnet Freight Rail in this Agreement, or to the contact person nominated by Transnet Freight Rail in any other written communication to the customer. Notwithstanding any other clause in this Agreement, a failure to do so shall give Transnet Freight Rail the right to claim confidentiality and/or privilege over the information obtained from any source other than the contact person nominated by Transnet Freight Rail in this Agreement, to designate such information as improperly obtained, and to require the Customer to return or destroy such information. If Transnet Freight Rail claims confidentiality and/or privilege over any such improperly obtained information, the Customer shall not be entitled to use such information for the purposes of any claim or legal proceedings that it may contemplate lodging against Transnet Freight Rail.

### **35.7 Maintaining of Records and Provision of Information:**

**35.7.1.** The Customer shall inform Transnet Freight Rail of any change to the following information relating to it within 7 (seven) days of the occurrence of any such change:

**35.7.1.1:** name;

**35.7.1.2:** business address and registered office;

**35.7.1.3:** directors and company secretary;

**35.7.1.4:** auditors;

**35.7.1.5:** trading name or names;

**35.7.1.6:** any change which has an impact on agreed conditions and/or tonnages in terms of a Transport Agreement with Transnet Freight Rail, a Schedule or in terms of any other document that has been agreed with Transnet Freight Rail.

### **36. Miscellaneous**

**36.1** No approvals, comments, instructions, consents or advice from one of the Parties to the other in connection with the subject matter of the Agreement shall in anyway relieve the other from its obligations under the Agreement. No representations, warranties or undertakings not contained in this Agreement shall be valid and binding.

**36.2** The Parties' respective rights and remedies under the Agreement are cumulative, may be exercised as often as either of the Parties consider appropriate and are, save where such rights are limited in terms of the Agreement in addition to the Parties' respective rights and remedies in Law.

**36.3** The Parties' respective rights and remedies whether arising under the Agreement or in Law shall not be capable of being waived or varied otherwise than by an express waiver or variation in Writing duly executed by an authorised representative of the holder of such right or remedy.

**36.4** The waiver by either of the Parties of any breach of the terms of the Agreement by the other shall not prejudice any remedy of the waiving party in respect of any continuing or other breach of the terms of the Agreement.

**36.5** No failure, delay, relaxation or indulgence on the part of either of the Parties in exercising any power, right or remedy conferred on such Party under the Agreement or by Law shall operate as a waiver of such power, right or remedy whether of a like or different character nor shall any single or partial exercise of any such power, right or remedy preclude any other or further exercises of such power, right or remedy or the exercise of any other power, right or remedy of either of the Parties.

**36.6** If any of the provisions in the Agreement is or becomes invalid, illegal or unenforceable in any respect under any Law the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired and:

**36.6.1** that provision shall be deemed for all purposes to be severable from all the other provisions of the Agreement, which provisions shall continue in force unaffected;

**36.6.2** The Agreement thus continuing shall (subject and without prejudice to any appeal to higher authority as to the status of that provision) exclude the offending provision but, if such deletion substantially affects or alters the commercial basis of the Agreement, then the Agreement, including such provision shall be amended in such manner as Transnet Freight Rail agrees which will, while not being void or unenforceable, most nearly achieve the object of the allegedly void or unenforceable provisions.

**36.7** The Agreement shall be binding upon and inure to the benefit of each of the Parties and the Parties' respective successors, legal representatives and permitted assigns.

**36.8** If the Customer has a lease agreement ("Lease") with Transnet Freight Rail in terms of which Transnet Freight Rail leases immovable property to the Customer, and such Lease is terminated for any reason whatsoever, then Transnet Freight Rail shall have the right to suspend any further transport to be undertaken for the Customer on the date of termination of the Lease and at any time thereafter. All orders that are in the process of being executed shall be completed

### **37. Laws And Jurisdiction**

**37.1** The Agreement shall be governed by and interpreted according to the Law of the Republic irrespective of where Goods are collected, or delivered and irrespective of where the Transport is carried out.

Subject to the provisions of clause 38 each of the Parties submits to the exclusive jurisdiction of the South African courts in respect of any matter arising from or in connection with the Agreement, including its termination. Each of the Parties further consents to the jurisdiction of the High Court of South Africa (**South Gauteng High Court (Johannesburg)**).

### **38. Dispute Resolution**

**38.1** Save for clause 29 above, or any other clause in the Agreement which provides for its own remedy, should any dispute arise between the Parties in respect of or pursuant to the Agreement, including, without limiting the generality of the afore-going, any dispute relating to:

**38.1.1** The formation, existence or implementation of the Agreement;

**38.1.2** the interpretation of the Agreement;

**38.1.3** the performance of any of the terms of the Agreement;

**38.1.4** any of the parties' rights and obligations;

**38.1.5** any procedure to be followed;

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- 38.1.6** the validity, enforceability, termination or cancellation or breach of the Agreement; or
- 38.1.7** the rectification or repudiation of the Agreement; then any Party may give the other Party written notice of such dispute, in which event the provisions below shall apply.
- 38.1.8** Any matter affecting the interest of the Parties in terms of this Agreement.
- 38.2 A Dispute shall:**
- 38.2.1** in the first instance, be referred to the responsible account managers of each Party, who shall attempt to resolve the dispute amicably within five (5) Business Days of the date on which the dispute was referred to them; and
- 38.2.2** if not resolved, be referred to the responsible executive managers of each Party, who shall attempt to resolve the dispute amicably within five (5) Business Days of the date on which the dispute was referred to them; and
- 38.3** if not resolved as above within ten (10) business days, the Parties' General Managers shall meet in the spirit of goodwill and endeavour to resolve the dispute, failing which the Parties shall escalate the dispute to their respective Chief Executives to resolve the dispute. If the dispute is not resolved as above within twenty one (21) business days (and without prejudice to any other alternative dispute resolution to which the Parties may agree, either prior to or concurrently with arbitration) the provisions of clause 38.4 below shall apply.
- 38.4** if the Parties are unable to resolve the dispute within fourteen (14) days of the notice of the dispute (or such longer period as they may have agreed to in Writing), then either Party may, on written notice to the other Party, require that the dispute be submitted to and decided by arbitration, in terms of the Arbitration Act, 42 of 1965 of the Republic ("the Arbitration Act").
- 38.4.1** This clause 38 shall not preclude any Party from obtaining interim relief on an urgent basis from a court of competent jurisdiction pending the decision of the arbitrator. The arbitration shall be held under the provisions of the Arbitration Act provided that the arbitration shall be:
- 38.4.2** at any place which the Parties agree, in Writing, to be mutually convenient; and
- 38.4.3** in accordance with such formalities and/or procedures as may be settled by the arbitrator and may be held in an informal and summary manner, on the basis that it shall not be necessary to observe or carry out the usual formalities of procedure, pleadings and/or discovery or respect rules of evidence.
- 38.5** If the arbitration is:
- 38.5.1** a legal matter, then the arbitrator shall be a practicing advocate or a practicing attorney of not less than fifteen (15) years' standing, or a retired High Court judge;
- 38.5.2** an accounting matter, then the arbitrator shall be a practicing chartered accountant of not less than fifteen (15) years' standing;
- 38.5.3** any other matter, then the arbitrator shall be any independent person agreed upon between the parties.
- 38.6** Should the Parties fail to agree on an arbitrator within fourteen (14) days after the arbitration has been demanded, then the arbitrator shall be nominated at the request of either of the Parties, by the President for the time being by the Arbitration Foundation of South Africa ("AFSA") Secretariat in terms of the rule of AFSA.
- 38.7** Should the Parties fail to agree whether the dispute is of a legal, accounting or other nature within seven (7) days after the arbitration has been demanded, then it shall be deemed to be a dispute of a legal nature.
- 38.8** The arbitrator may:-
- 38.8.1** investigate or cause to be investigated any matter, fact or thing which he considers necessary or desirable in connection with the dispute and for that purpose, shall have the widest powers of investigating all documents and records of any party having a bearing on the dispute;
- 38.8.2** interview and question under oath the parties or any of their representatives;
- 38.8.3** decide the dispute according to what he considers just and equitable in the circumstances; and
- 38.8.4** make such award, including an award for specific performance, damages or otherwise, as he in his discretion may deem fit and appropriate. The arbitration shall be held as quickly as possible after it is requested, with a view to it being completed within thirty (30) days after it has been so requested.
- 38.9** The arbitrator's decision and award shall be in Writing with reasons and shall be final and binding upon the Parties.
- 38.10** The arbitrator's award may, on application by either Party to a court of competent jurisdiction and after due notice is given to the other Party, be made an order of the court.
- 38.11** Notwithstanding the provisions of the clauses, 38.6, 38.7, 38.8 and 38.9 above; in the event of either Party having a claim against the other Party for a liquidated amount or an amount which arises from a liquid document(s), or for an interdict or other urgent relief, then the other Party having such a claim shall be entitled to institute action therefor in a court of law rather than in terms of the above clauses, notwithstanding the fact that the other Party may dispute the claim.
- 38.12** The provisions of this clause are severable from the rest of the Agreement and shall remain in effect even where the Agreement is terminated or cancelled for any reason.

## 39. Confidentiality

**39.1** The Parties acknowledge that the contents of this Agreement, and all information disclosed as a result of this Agreement is confidential business and technical information, data, documents or other information necessary or useful for the carrying on by a Party of its business, which shall include, but shall not be limited to operating procedures, quality control procedures, approximate operation personnel requirements, descriptions and trade names and trademarks, know-how, techniques, technology, information relating to clients, customers, suppliers, business associates, relevant authorities, copyright, trade secrets and all goodwill relating to the business and any other intellectual property rights, technical data and documents in whole or in part, used by a Party in respect of its business; all documents and records relating to, or emanating from any boards of enquiries undertaken by Transnet Freight Rail ("**Confidential Information**"), shall remain confidential and shall not be made known unless the disclosing Party has given written consent to do so.



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**39.2** The contents of this Agreement and the information provided by the disclosing Party in the context of this Agreement is Confidential Information of the disclosing Party and the receiving Party shall take all reasonable measures to keep the information confidential and will only use the Confidential Information for the purpose for which it was provided.

**39.3** The Parties undertake not to disclose any such Confidential Information. However, there will be no obligation of confidentiality or restriction on use where:

**39.3.1** the information is publicly available, or becomes publicly available otherwise than by action of the receiving Party; or

**39.3.2** the information was already known to the receiving Party (as evidenced by its written records) prior to its receipt under this or any previous agreement between the Parties or their affiliates; or

**39.3.3** The information was received from a third Party not in breach of an obligation of confidentiality.

**39.4** The provisions of clause 39.3 are subject to the condition that any announcements made to the general public relating to the conclusion of an agreement with Transnet Freight Rail shall be given after due consultation with Transnet Freight Rail.

**39.5** Neither Party shall during the term of this Agreement (save in this Agreement) or at any time after the expiry or termination of this Agreement for any reason disclose to any person (other than to its professional advisers subject to obtaining similar confidentiality undertakings to those contained in this Agreement in favour of the other Party) or otherwise make use of any Confidential Information including information relating to prices without the prior written approval of the either Party save for such information or documentation that is or becomes in the public domain (other than through the default of one of the Parties) and such information or documentation that is required by law to be delivered to any Relevant Authority, stock exchange, or any other person. Nothing in this clause shall preclude either Party from using such information and documents in enforcing its rights against the other.

### **40. Termination**

**40.1** Either Party may terminate this Agreement or any severable portion by giving notice of cancellation in Writing of six(6) Months.

**40.2** Transnet Freight Rail may elect to regard this Agreement as cancelled if the Customer has not consigned any Goods to it for Transportation for the period set out or to be set out in a Schedule provided that Transnet Freight Rail has communicated that election to the Customer.

**40.3** This Agreement may also be terminated by agreement in Writing setting out the terms of such termination.

**40.4** The Confidentiality and Dispute Resolution provisions under these Standard Conditions of Carriage shall survive the termination of any agreement governed by these Standard Conditions of Carriage.

### **41 Execution**

**41.1** The Agreement may be executed in several counterparts, which shall each be deemed an original, but all of which shall constitute the same Agreement.

**41.2** The signatories to the Agreement by their signature warrant their authority to enter into the Agreement and the capacity of their principal, if signing in a representative capacity, to enter into the Agreement.

### **42. Claim For Costs Arising Out Of Tippler Unavailability**

**42.1** The Customer acknowledges that fully functioning rail wagon tippers ("tipplers") are critical to TFR in terms of scheduling of rail resources, actual rail transport and associated operations. It is therefore essential that tipplers be fully functional at all times, and tippler maintenance be planned so that alternative tipplers are always available for continuous duty.

**42.2** Non-functional tipplers have an adverse impact on TFR which results in wasted costs being incurred by TFR. It is for this reason that TFR shall have the right to invoice the Customer for wasted costs that it (TFR) has incurred as a result of non-functional tipplers of the Customer resulting in delays to, or cancellation of trains, with resultant tonnage losses.

**42.3** In order to mitigate the risks mentioned above, the Customer undertakes to plan its tippler maintenance in such a manner that alternative tipplers are always available for continuous duty. A situation where a maintenance delay of a rail wagon tippler results in a delay or cancellation of trains should therefore not occur.

**42.4** In the event of tipplers not being functional, resulting in TFR incurring wasted costs, TFR shall furnish the Customer as soon as practicably possible thereafter with a summary of the costs of its wasted resources, including, but not limited to:

- (i) Personnel costs: the total man-hours lost as a result of the cancellation of the scheduled trains;
- (ii) Cost of locomotive(s) and wagons lying idle;
- (iii) Cost of rescheduling train slots;
- (iv) Other costs associated with operational delays;
- (v) Revenue that has been lost due to lost volumes/tonnages.

**42.5** Invoicing for the wasted costs shall be dealt with as follows: The costs of wasted resources as described above will be included as separately detailed line items in TFR's monthly invoice to the Customer.

**42.6** Notwithstanding the provisions of the sub-clauses above, in the event of the Customer issuing a notice to TFR that it is unable to fulfil its obligations in terms of the originally planned transport due to tippler unavailability, TFR shall take all reasonable steps to mitigate any wasted costs by redeploying personnel, rolling-stock (locomotives and wagons) and other resources to other routes thereby limiting any wasted costs. The likelihood of TFR being able to mitigate its costs is greater if the Customer notifies TFR in writing (which shall include email communications) and in advance if it is unable to fulfil its obligations in terms of the originally planned transport and/or loading and offloading due to its (the Customer's) tipplers being unavailable, however this shall not exclude or limit TFR in any way from claiming wasted costs.

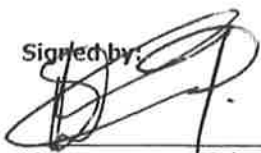
## Transnet Freight Rail Standard Conditions of Carriage

### 43. Warranties And Covenants

43.1. The Customer warrants to Transnet Freight Rail that–

43.1.1. no proceedings or any other steps have been taken or, to the best of the knowledge of the Customer having made all reasonable enquiries, threatened for the winding-up or liquidation (whether voluntary or involuntary, provisional or final), business rescue or deregistration of the Customer or for the appointment of a liquidator, business rescue practitioner or similar officer over it or over any of its assets.

Signed by:



Mr. Bonginkosi Mabaso  
Chief Commercial Officer  
Transnet Freight Rail

Date:

11/04/2023





**TRANSNET**  
*freight rail*

**ENVIRONMENTAL MANAGEMENT PROGRAMME (EMPr) GUIDELINES  
DESIGNED FOR USE BY THE LESSEES FOR NON-LISTED ACTIVITIES  
IN TERMS OF EIA REGULATIONS, AS AMENDED**



**Transnet Freight Rail (TFR)**

Risk Management

2020

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## 1. INTRODUCTION

Although most lessee activities are listed activities in terms of NEMA which require Environmental Authorization (EA) prior their commencements, some small-scaled activities are found to be below the legislated threshold and therefore no EA is required prior to commencement. These have less potential to adversely impact environment.

In order to practice effective environmental management throughout the life-cycle of non-listed activities, it is therefore important that the necessary management actions be clearly defined and translated into an Environmental Management Programmes (EMPR<sub>RS</sub>) for the design, construction, operation and/or decommissioning phases of such activities.

Experience in the management of non-listed activities has taught that lessees in this category not always have the necessary competencies to compile and produce credible EMP<sub>RS</sub> adequate to manage impacts associated with their business activities. This document is intended to provide a guide to prospective lessees in the compilation of EMP<sub>RS</sub> for non-listed activities. EMP<sub>RS</sub> for listed activities are mandatory in terms of the EIA Regulations, as amended.

## 2. DEFINITION, NEED AND PURPOSE

### 2.1. Definition

An EMP<sub>RS</sub> can be defined as follows (adapted from DEAT, 2004b):

*An EMP is an environmental management tool used to ensure that undue or reasonably avoidable adverse impacts of the construction and operation, and decommissioning of a project are prevented; and that the positive benefits of the projects are enhanced.*

### 2.2. Need for the Guideline Document

The need for this Guideline Document arises from the following factors:

- Development and implementation of EMP<sub>RS</sub> are mandatory for the conclusion of lease agreements;
- EMP<sub>RS</sub> need to be well-informed by project specifications and possible impacts in order to present adequate management actions (to mitigate impacts or enhance benefits);
- EMP<sub>RS</sub> need to be well structured with scientific input; and

- EMP<sub>RS</sub> need to be practical in their implementation, with measurable solution orientated outputs.

This Guideline Document has been developed to describe best practice, efficient and effective approach with regard to compilation and implantation of EMP<sub>RS</sub>. In this respect, the Guideline Document supports TFR's overall intent of promoting economic development whilst protecting the natural environment.

### **2.3. Purpose and Scope of this Guideline Document**

The key purpose of this Guideline Document is to:

- Assist lessees in the formulation of EMP<sub>RS</sub> which effectively address the management of own business activities;
- Support internal Environmental Specialists in the review of EMP<sub>RS</sub>; and
- Guide the lessees with respect to the appropriate implementation of the EMP<sub>r</sub> throughout the project life-cycle.

This Guideline Document is to be applied to a range of lessees' activities varying in type and scale, with differing biophysical, social and economic elements.

### **2.4. Exclusions**

The guideline should not be viewed as a prescriptive and inflexible document; its intention is to provide guidance on best practice.

## **3. COMPILATION OF ENVIRONMENTAL MANAGEMENT PLANS**

### **3.1. STEPS IN THE COMPILATION OF AN EMP**

It is widely recognized that there is no standard format for EMP<sub>RS</sub>. The format needs to fit the circumstances in which the EMP<sub>r</sub> is being developed and the requirements that it is designed to meet. The level of detail in the EMP<sub>r</sub> may vary from a few pages for a project with low project-related environmental risks; to a substantial document for a large-scale complex project with potentially high environmental risks.

The following sections provide minimum information required for inclusion in an EMP:

### *3.1.1. Project Description and associated activities*

*Provide a brief summary of the:*

- *proposed project and associated construction or operation activities; and*
- *an affected biophysical, social and economic environments.*

In order to place the EMPr in context, a brief summary should be given of the proposed development and associated processes involved in both the construction and operational phases. This should cover project location, layout plans, project phases (eg. design, construction, commissioning, operations and decommissioning), construction activities, operational processes and activities, employment and labour, directly associated infrastructure, and project schedule.

A brief description of the affected environment should also be provided, particularly those elements of the environment that may be impacted upon by the project and which should be included in the monitoring programme. The environment in this context includes the biophysical, economic and social components.

### *3.1.2. Legal requirements*

*Identify legislations, standards and guidelines and associated permits or licences that apply to the activity and are related to the management activities specified in the EMPr.*

The approval of lessee applications may be subject to compliance with other environmental legislation, such as legislation related to: water; air quality; hazardous substances; storage, transport and disposal of waste; occupational health and safety; traffic and transportation; cultural and heritage resources; and noise **(Additional permits required to achieve compliance of the project)**.

Compliance with environmental legal requirements is an essential project consideration and therefore needs attention in the EMPr. Failure to meet legal environmental requirements could result in the lessee agreement being withdrawn and effectively result in operations having to cease until such non-compliances are addressed.



### *3.1.3. Summary of impacts associated with the proposed activity*

***Summarise the predicted negative and positive impacts associated with the proposed activity, particularly those presenting those medium to high significance***

A summary should be provided of the predicted positive and negative impacts associated with the construction activities, operational processes and decommissioning processes. The impacts should then be linked to management actions (i.e. mitigation of negative impacts or enhancement of positive impacts).

### *3.1.4. Institutional arrangements: roles and responsibilities*

***Clearly define the responsibilities for management actions contained in the EMPr and clarify arrangements for coordination among the role-players involved in the implementation.***

The roles and responsibilities of the key parties involved in the implementation of the EMP (in particular, the management actions and monitoring requirements). A flow diagram should be included showing responsibilities and communication channels. Where specific EMPr responsibilities are assigned to Contractors or Sub-contractors, these must be clearly stipulated. The EMPr must specify responsibilities for the range of actions specified in the EMPr.

### *3.1.5. Implementation programme*

***Present the objectives to be achieved through the EMPr and the management actions that need to be implemented to mitigate negative impacts and enhance the benefits of the activities. Monitoring criteria/targets and timeframes must be clearly defined.***

Management actions are actions that are feasible, practical and cost-effective, and need to be implemented into order to achieve the objectives described above. These actions are based on the mitigation and enhancement actions identified. The EMPr must specify a programme for implementing the management actions, including: who, when and how; as well as what resources should be allocated. Enhancing the positive impacts of a project is often overlooked, and it is important that the EMPr contains clear actions in this regard.

### *3.1.6. Training and environmental awareness*

***Specify the requirements in terms of training and environmental awareness for all site and other personnel to ensure that management actions contained in the EMPr are implemented effectively and efficiently.***

Training is essential for ensuring that the EMPr provisions are implemented efficiently and effectively. Training needs should be identified based on the available and existing capacity of site and other personnel to undertake the required EMPr management actions and monitoring activities. It is vital that all personnel are adequately trained to perform their designated tasks to an acceptable standard.

In addition to training, general environmental awareness must be fostered among the project's workforce to encourage the implementation of environmentally sound practices throughout its duration. This ensures that environmental accidents are minimized and environmental compliance maximized. Environmental awareness could be fostered in the following manner:

- Induction for all workers on site, before commencing work on site;
- Refresher courses as and when required; and
- Daily toolbox talks at the start of each day with all workers coming on site, where workers might be alerted to particular environmental concerns associated with their tasks for that day or the area/habitat in which they are working.

## **4. CONCLUSION**

The guideline for EMPs describes the envisaged scope and content of an EMP, covering both the preparation and implementation stages of an EMP process, as well as the roles of key stakeholders associated with EMPs. It must be emphasized that these criteria are intended to provide minimum requirements for each and every EMP and to guide the compilation of such. So every lessee is advised to take the contents of this document into consideration to ease processing and reviewing the applications.

## 5. REFERENCES

Department of Environmental Affairs & Tourism (DEAT). 2004b. *Environmental Management Plans, Integrated Environmental Management Information Series 12*. Department of Environmental Affairs and Tourism, Pretoria.

## **Enterprise Risk Management (Risk Assessment)**

**Utilising the parameters below as a guide and the excel template provided a risk assessment relating to the site/ premises must be completed, considering the operations intended for the site/ premises, also identifying risk with site/ premises decommissioning or termination of the lease.**

1. Provide a Risk Assessment relating to site/ premises establishment and Site decommissioning i.e. consideration of risks arising from the activities etc. for the setup of operational readiness of the site and risks relating to the decommissioning of the site/ premises.
2. Provide a Risk Assessment relating to Operational risks once the site/ premises has been established and operations commence.
3. The Risk Assessment must provide at minimum risks in the following types, i.e. Environment, Community, Reputation and Brand, Health and Safety, Legal and Compliance.
4. A defined Risk Assessment methodology utilising a basic 5 x 5 table is provided on how the Risk Consequence or Severity and the Risk Likelihood or Probability is determined and the resultant Risk Rating as the residual risk rating, after the effectiveness of the controls have been considered.
5. A clear ranking of the risks from Highest to Lowest ranking risks be provided in the risk assessment and plotted on the Risk Heat Map.
6. Risk mitigating actions must be specific, clear and defined with a start and completion date.
7. All risk responsibility on the risk assessment, i.e. name of the risk owner, name of the control owner and name of the risk mitigation owners must be provided.
8. All risk assessments must be signed off by the risk assessor.

### **Risk Assessment Guideline**

*How to utilise the Risk Assessment Template provided. Below is a high level step by step guide to assist with the completion of the risk assessment template.*

*It is recommended that the risk assessment not be undertaken by only the Risk Assessor but rather in a Risk Workshop with representation from the Organisations Subject Matter Experts, were possible.*

*Proof of the risk workshop in the form of an attendance register along with other supporting documents might be requested as part of the adjudication process of the risk assessment.*

*The Risk Assessment Template is provided as an Excel Workbook with three (3) Excel Worksheets namely "1. Risk Register", "2. Risk Rating Criteria", "3. Risk Heat Map". Worksheets that need input for completion of the risk register is "1. Risk Register" and "3. Risk Heat Map".*

*Worksheet “2. Risk Rating Criteria” is a guidance document that contains three (3) guidance Tables to assist the risk rating determination of Table 1 - Consequence / Severity; Table 2 - Likelihood/ Probability and Table 3 - Risk Control Effectiveness Rating.*

*Table 1 - Consequence/ Severity provides a score from 1 (Insignificant) to 5 (Critical) with descriptors across these levels for Financial, Health and Safety, Environment, Community, Legal & Compliance and Reputation & Brand, to aid the selection of the consequence.*

*Table 2 - Likelihood/ Probability provides a score from 1 (Rare) to 5 (Almost certain) with a descriptor for each level.*

*Table 3 - Risk Control Effectiveness Rating (RCE) provides a RCE rating and guide for “None”, “Unsatisfactory”, “Requires Improvement” and “Satisfactory”.*

*Worksheet “3. Risk Heat Map”, provides a reference heat map of the risk rating scores when the risk consequence and likelihood ratings are multiplied and aids identification of High, Medium and Low Risks when plotted on the Heat Map and listed in the summary table below.*

*How to complete the risk assessment template:-*

1. Fill in the risk assessment description information i.e. Name of Risk Assessment, Date the risk assessment was undertaken and Name of the Risk Assessor.
2. Column A. Provide a sequential number from one (1) to the risk to be assessed.
3. Column B. Indicate the Type of Risk this is e.g. Financial or Health and Safety etc.
4. Column C. Provide a full Risk Name that describes the risk being assessed and the impact of the risk should it materialise.
5. Column D. Risk Owner, provide the name of the person who is responsible to ensure the risk controls are maintained (as in Column F and G) and the risk actions are implemented (as defined in Columns L, M, N and O).
6. Column E. Risk Cause/s, Identify and note the cause/s that give rise to the risk.
7. Column F. Control Name, Identify and note existing controls that address the cause/s as captured in Column E. The control and risk causes should be paired such that any risk cause/s without an assigned control is easily identified and if determined to have a significant impact be addressed with a Risk action/ task under Column L.
8. Column G. Control Effectiveness. Utilising the guide (Table 3 - Risk Control Effectiveness Rating) provided in the excel template under worksheet “2. Risk Rating Criteria”, assign a corresponding rating for each control as in Column F.
9. Column H. Control Owner. Provide the name of the person whom is responsible to ensure that the identified control as in Column F, operates in its most effective manner.
10. Column I. Risk Rating Consequence. Utilising the guide (Table 1 - Consequence / Severity) provided in the excel template under worksheet “2. Risk Rating Criteria”, assign a corresponding consequence for the risk considering the following (a) which risk category is impacted by the risk i.e. Finance, Health and Safety, Environment, Community, Legal & Compliance, Reputation and Brand, (b) consequence level from 1 to 5, considering the basket of controls (all controls for the risk in Column F) and the assigned control effectiveness (for all the controls in Column G), i.e. if there are 3 controls and 2 of the

- controls have a unsatisfactory control effectiveness rating, err on the side of caution and consider the risk consequence to be higher.
11. In the event that a risk category is not provided for e.g. Security and Theft consider this in terms of its Financial consequences and record "Security and Theft" as the Risk type under Column B (Refer to number 3 above).
  12. Column J. Risk Rating Likelihood. Utilising the guide (Table 2 - Likelihood/ Probability) provided in the excel template under worksheet "2. Risk Rating Criteria", assign a corresponding likelihood for the risk considering the selected consequence of the risk in Column I and the basket of controls (all controls for the risk in Column F) and the assigned control effectiveness (for all the controls in Column G).
  13. The Consequence and Likelihood is determined in consideration of existing controls and its agreed effectiveness rating. It is recommend that should there be doubt about the level of consequence and likelihood that the risk assessment team, err on the side of caution and select the higher level of consequence and likelihood.
  14. Column K. Risk Rating. This is the residual risk rating. The selected consequence (1 to 5) multiplied by the selected likelihood (1 to 5) returning a risk rating score from 1 to 25. This formula is automated in the template and colour coded to the appropriate risk priority rating (refer worksheet 3 "Risk Heat Map"). The residual risk rating is the risk score after consideration of the controls and its effectiveness.
  15. Once the risk rating is determined the risk assessment team should assess if the risk is at an acceptable level and/ or the suitable action/ task to be taken to reduce the risk to an acceptable level. Column L, must detail the desired Risk Action/ task to be undertaken.
  16. At a minimum Risk Action/ task shall be implemented for all controls with a control effectiveness rating of Unsatisfactory and lower and for all causes which have no linked control as stated in number 7 above. The Risk Action/ task be aligned in the row to the control being improved or the risk cause/s for which there are no controls. This is to ensure that an active risk mitigation programme is in place to reduce identified risks.
  17. Once a Risk Action/ task is recorded Column M, Risk Action/ Task Owner must be recorded. This is the person responsible to implement the Risk Action/ Task.
  18. Column N, Start date. The date the Risk Action/ Task will commence and Column O, Completion Date, The date the Risk Action/ Task with be finalised.
  19. The risks shall be plotted on worksheet "3. Risk Heat Map". First complete the table below with the risk name and the numeric risk rating from the highest to the lowest risk score from worksheet "1. Risk Register." The numeric risk rating will be automatically assigned a colour of either "Red", "Yellow" or "Green" based on the score entered under risk rating. Next plot the risk numbers onto the Heat Map (the colour matrix) based on the Likelihood and Consequence ratings. This provides a visual representation of the highest to lowest risks.
  20. Once the risk assessment and the populated risk register in excel is done this must be signed by the risk assessor.
  21. Risks should be revised on a regular basis at time intervals not less than Bi- annually and/ or when any of the following conditions are met:- (a) occurrence of an incident; and/ or (b) change in operating procedure/ processes, change in management structures etc.; and/ or (c) completion of an assigned Risk Action/ Task.
  22. Additional rows can be inserted into the Risk Register and Risk Heat Map as required.

### ***Business Impact Analysis (BIA)***

***Provide evidence that a systematic process was utilised to determine and evaluate the potential negative effects of an interruption (i.e. as a result of an accident, emergency, disaster and epidemic/ pandemic – e.g. Covid-19 etc.) to critical business operations. This is an essential component of a business continuity plan, which describes the potential risks specific to the proposed scope of works.***

1. The business impact analysis must identify and detail the critical processes/ activities within the leasing period (site/ premises establishment, operational and decommissioning) that would negatively impact TFR (i.e. as a result of an accident, emergency, disaster **and epidemic/ pandemic – e.g. Covid-19 etc.**);
2. The BIA must also identify and document, but not limited to, resources (i.e. financial, human etc.), infrastructure, equipment, suppliers, service providers etc. needed to support these processes/ activities.
3. The BIA to also include a rating of the criticality of an impact/ event on these processes/ activities within the project and should this impact occur, detail the recovery time objective for the critical processes/ activities. The criticality rating can be simply stated as High, Medium or Low.
4. The recovery time objective is the unit of time (either in hours, days, weeks etc.) taken for the successful resumption of the process or activity.
5. The BIA must also detail additional resources (i.e. financial, human etc.), infrastructure, equipment, suppliers, service providers etc. needed for resumption of critical processes/ activities within the specified recovery time objective.

The unpacking of the above would be deemed as the minimum for the development of recovery strategies in the BCP.

### ***Business Continuity Plan (BCP)***

***Provide detailed emergency and business continuity plans, plan activation structure and contact numbers for the efficient recovery of critical processes / activities within the specified RTO.***

1. Provide a detailed emergency plan to address those incidents/ events that may impeded TFR operations. The emergency plan must detail the emergency activation and escalation structure and the emergency contact names and numbers.
2. A detailed BCP be provided and include (a) the business continuity invocation process (b) a list of the business continuity role-players (inclusive of but not limited to the recovery teams, suppliers, service providers etc.) and their contact numbers, (c) detailed recovery strategies, and (d) a “battle box” with all of the above documentation or any additional resources essential to support the recovery as identified in the BIA.
3. **The BCP to contain details on how operations will be recovered or continue in the event of:**
  - (a) Declaration of national emergency or disaster,
  - (b) Declaration of an epidemic / pandemic (e.g. COVID-19),

(c) Declaration of lockdown levels/ conditions due to the above.

4. Consideration of operational, resourcing, staffing, financing, security, technical, infrastructural, outsourcing etc. recovery requirements at the various lockdown alert levels to be covered in the plan in preparation for a second wave of COVID-19 infections. The plan to also be inclusive of prevention, reporting and management within the guidelines of the Disaster Management Act of 2002 and related regulations.
5. All emergency plans and BCPs must be the latest and signed off by the relevant BCP Owners, to prove that management is aware of this plan and understand their respective roles and responsibilities in execution.




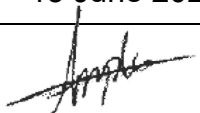

# TRANSNET FREIGHT RAIL



## Annexure L Transnet Freight Rail Safety Health and Environmental (SHE) Specifications for Contractors

Contractor Signature.....

Date.....

<b>PROJECT NAME:</b>	Leasing of Transnet Freight Rail Sidings/Facilities	
<b>CONTRACT NUMBER:</b>		
<b>PROJECT SCOPE:</b>	<p>Leasing of TFR Sidings/facilities across the various corridors of the business and involve various commodities</p> <p>The provision of all services required at a rail siding/ facility to allow for the transportation of freight by rail</p> <p>All sidings/facilities may operate as a Common User or Multi-User Facility</p>	
<b>PROJECT LOCATION:</b>	All Transnet Freight Rail Corridors	
<b>PROJECT DURATION:</b>	Minimum Five years	
<b>PROJECT MANAGER:</b>	Lindokuhle Mthethwa	
<b>TFR CONTRACT REPRESENTATIVE / TECHNICAL OFFICER:</b>	Nikiwe Shandu	
<b>AGENT:</b>	N/A	
<b>SHE SPECIFICATION APPROVAL</b>		
	<b>NAME:</b>	<b>SIGNATURE:</b>
<b>PROJECT MANAGER / TFR CONTRACT REPRESENTATIVE / TFR AGENT</b>	Lindokuhle Mthethwa	 ..... <b>DATE:</b> 15 June 2022
<b>RISK / ENVIRONMENTAL SPECIALIST</b>	Mmagauta Tabane	 ..... <b>DATE:</b> 15/06/2022
<b>SAFETY SPECIALIST / MANAGER</b>	Kedibone Moselane	 ..... <b>DATE:</b> 15/06/2022

Contractor Signature.....

Date.....

## 1. Introduction

- 1.1 This Safety, Health and Environmental (SHE) specification is Transnet Freight Rail (TFR) minimum requirements to be met by contractors when performing work for or on behalf of TFR. They set out the requirements to be followed by the Contractor and other contractors so that the health and safety of all person's potentially at risk may receive the same priority as other facets of the project.
- 1.2 The Contractor shall **develop a SHE plan and prepare a SHE file** based on these requirements, risk assessment as well as all the relevant applicable legislation. The contractor shall remain accountable for the quality and execution of his health and safety programme for his employees and sub-contractor employees. This specification in no way releases the contractors from compliance with the relevant legislation.

## 2 Purpose

- 2.1 The purpose of this specification is to ensure that the Contractor provides and maintains, as far as reasonably practicable a safe working environment for all employees and the public whilst performing work for or on behalf of TFR.
- 2.2 This specification form an integral part of the contract, and the Contractor shall forward this specification to all subcontractors at the bidding stage so that they can in turn prepare health and safety plans relating to their operations

## 3 Scope and Application

- 3.1 This specification is applicable to all contractors, suppliers and all activities and processes carried out for or on behalf of Transnet Freight Rail. The Specification defines the strategies to manage Health and Safety and is a compliance document drawn up in terms of the Occupational Health and Safety Act 85 of 1993 and National Railway Safety Regulator Act (Act no 16 of 2002) requirements as applicable.
- 3.2 This specification shall also apply to any subcontractors as employers in their own right. The Contractor shall furnish the TFR Contract Representative/Technical Officer with full particulars of such subcontractors and shall ensure that they comply with the OHS Act and Regulations and Transnet's safety requirements and procedures.
- 3.3 Every effort has been made to ensure that this specification document is accurate and adequate in all respects. Should it however, contain any errors or omissions they may not be considered as grounds for claims under the contract for additional reimbursement or extension of time, or relieve the Contractor from his responsibilities and accountability in respect of the project to which this specification document pertains. Any such inaccuracies, inconsistencies and/or inadequacies must immediately be brought to the attention of the TFR Contract Representative/Technical Officer or Client Agent.
- 3.4 The leased fibre will be either aerial or underground cables and shall join the TFR fibre on the railway line for continuity of services. To improve the performance and availability of Transnet's optic fibre network by improving the level of engagement between TFR Transnet Group, Transnet Operating Divisions (OD's) and current 3<sup>rd</sup> party lessors. TFR is solely responsible for the Transmission planning and design of the fibre networks for the whole Transnet SOC Ltd. The majority of the OFC are installed on the Overhead Traction Equipment (OHTe) masts.

Contractor Signature.....

Date.....

**4 General**

- 4.1 The Contractor and Transnet Freight Rail are individual employers, each in its own right, with their respective duties and obligations set out in the Occupational Health and Safety Act, Act 85 of 1993 (herein referred as the OHS Act) and applicable Regulations.
- 4.2 The Contractor accepts, in terms of the General Conditions of Contract and in terms of the OHS Act, his obligations as an employer in respect of all persons in his employ, other persons on the premises or the Site or place of work or on the work to be executed by him, and under his control. The Contractor shall, before commencement with the execution of the contract work, comply with the provisions set out in the OHS Act, and shall implement and maintain a SHE Plan approved by Transnet Freight Rail, on the Site and place of work for the duration of the contract.
- 4.3 The Contractor accepts his obligation with complying to the OHS Act and applicable Regulations notwithstanding the omission of some of the provisions of the OHS Act and the Regulations from this document.
- 4.4 Transnet Freight Rail accepts, in terms of the OHS Act, its obligations as an employer of its own employees working on or associated with the site or place of work, and the Contractor and TFR Contract Representative/Technical Officer or his deputy shall at all times, co-operate in respect of the health and safety management of the site, and shall agree on the practical arrangements and procedures to be implemented and maintained during execution of the works
- 4.5 In the event of any discrepancies between any legislation and this specification, the applicable legislation will take precedence.

**5. Section 37(2) Agreements**

- 5.1 Transnet Freight Rail and the Contractor shall enter into an agreement in terms of section 37(2) of the Occupational Health and Safety Act to the arrangements and procedures between them to ensure compliance by the Contractor with the provisions of the OHS Act.
- 5.2 The agreement shall be completed and signed by the Contractor mandated representative as soon as possible and returned to the relevant TFR Project Manager / TFR Contract Representative for his/her signature on behalf of TFR.
- 5.3 The Contractor shall enter into a Section 37(2) Agreement with their respective sub-contractors. Signed copy of such agreement must be kept on the Contractor’s SHE file.

**6. Definitions**

- 6.1 In this Specification the definitions as listed in the Occupational Health and Safety Act 85 of 1993 and Construction Regulations, 2014 shall apply, unless the context otherwise indicates: -
- 6.2 **"Contractor"** means an employer (organisation) or a person who performs ANY work and has entered into a legal binding business agreement contract to supply a product or provide services to Transnet. This applies to the Suppliers, Vendors, Consultants, Service Providers or Contractors (includes principal contractor and subcontractors). NB: A contractor is an employer in his/her own right

Contractor Signature.....

Date.....

6.3 **"competent person"** means a person who—

- a) has in respect of the work or task to be performed the required knowledge, training and experience and, where applicable, qualifications, specific to that work or task: Provided that where appropriate qualifications and training are registered in terms of the provisions of the National Qualification Framework Act, 2000 (Act No.67 of 2000), those qualifications and that training must be regarded as the required qualifications and training; and
- b) is familiar with the Act and with the applicable regulations made under the Act;

6.4 **"Safety, Health and Environmental (SHE) File"** means a file or other record in permanent form, containing the information required to be kept on site in accordance with the OHS Act and applicable Regulations;

6.5 **"health and safety (SHE) plan"** means a site, activity or project specific documented plan in accordance with the client's health and safety specification;

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

6.7 **"TFR"** means Transnet Freight Rail, a division of Transnet SOC Ltd (Registration No. 1990/000900/30), a public company incorporated in accordance with the company laws of the Republic of South Africa

6.8 **"TFR Contract Representative"** TFR employee appointed to liaise with the contractor to ensure that the specifications of the contract are met (with special emphasis on safety, technical specifications, inspection of quality and quantity of work). It includes a Technical Officer, Security Depot Manager, Senior Protection Officer, Leading Protection Officer, Maintenance Supervisor's etc.

**7. Notification of Construction Work**

7.1 The Contractor who intends to carry out any construction work other than work where a Construction Work Permit is required, must at least 7 days before carrying out such work, notify the Provincial Director of the Department of Labour in writing if the construction work:-

- (a) includes excavation work
- (b) includes working at a height where there is a risk of a person falling;
- (c) includes the demolition of a structure; or
- (d) includes the use of explosives to perform construction work,

7.2 The notification to the Provincial Director shall be on a form similar to Annexure 2 of the Construction Regulations, 2014. The Contractor shall ensure that a copy of the completed notification form is kept on site for inspection by an inspector, TFR Contract Representative/Technical Officer or employee.

Contractor Signature.....

Date.....

**8. Letter of Good standing**

- 8.1 The Contractor shall submit proof of registration and Letter of Good Standing with the compensation fund or with a licensed compensation insurer as contemplated in the Compensation for Occupational Diseases Act, 1993 (Act No. 130 of 1993) for his company and each of his sub-contractors’.
- 8.2 The Contractor shall not do any work for TFR without a valid letter of good standing. The Contractor must ensure that the Letter of Good Standing remains valid for the duration of the contract period.
- 8.3 The letter of good standing must reflect the name of the Contractor and/or Sub-contractor, registration number and, expiry date.

**9. Management and Supervision**

- 9.1 The Contractor and all subcontractors shall submit a SHE organogram outlining the site SHE management structure including the relevant appointments/competent persons or the intended appointments where such appointments have not been made.
- 9.2 The Contractor shall, in accordance with the OHS Act and applicable Regulations, make all the necessary appointments of competent persons in writing. Copies should also be retained on the SHE file.
- 9.3 Subcontractors shall also make the above written appointments and the Contractor shall deliver copies thereof to the TFR Contract Representative/Technical Officer.

**10. SHE Committee Meetings and SHE Representatives**

- 10.1 When required by legislation, Contractor and subcontractors shall appoint SHE Representative/s in writing after consultation with employees and ensure that they are trained in performing their duties.
- 10.2 SHE Representatives duties shall include inspections of the workplace, taking part in incident investigations, risk assessments, attending SHE Committee meetings etc. Records of monthly inspections of SHE Representatives must be kept on the SHE file.
- 10.3 The number of SHE Representatives appointed shall be in accordance with the requirements of the Occupational health and Safety Act 85 of 1993.
- 10.4 The Contractor must ensure that a project/site SHE Committee meeting is held monthly and minutes of such meeting shall be recorded and records kept on the SHE file. The Contractor representative and appointed SHE representatives shall attend the monthly SHE Committee meeting.
- 10.5 The TFR Contract Representative/Technical Officer or his deputy shall be allowed to attend meetings of the Contractor's health and safety committee as an observer.
- 10.6 Subcontractors appointed by the Contractor shall have their own internal monthly SHE Committee meeting.

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**11. SHE Audits and Contractor Monthly Reports**

- 11.1 The TFR Contract Representative/Technical Officer or his deputy shall ensure that the Contractor’s SHE Plan is audited at intervals mutually agreed to between them, but at least once every month to ensure that the SHE Plan is implemented and maintained on site.
- 11.2 TFR Safety Officers / Specialists shall at all reasonable times be allowed access to the work sites, the Contractor site offices and tool-sheds to inspect the Contractor’s and its subcontractor’s tools, equipment, registers and workplace.
- 11.3 Should any non-compliances or contraventions to the TFR safety requirements, legal requirements, this specification or the contractor’s SHE Plan be identified, such non-compliances or contraventions shall be rectified by the contractor at its cost immediately or within a period specified by the TFR Contract Representative/Technical Officer, his deputy, or TFR Safety Officers / Specialists.
- 11.4 Should the Contractor refuse or fail to rectify such non-compliances or contraventions, TFR may take remedial action at the Contractor’s cost as it may deem necessary to ensure safety at the TFR sites at all times.
- 11.5 TFR reserves the right to conduct safety audits without prior warning.
- 11.6 The Contractor on all contracts of more than 1 month shall provide a monthly safety performance report as required by TFR.
- 11.7 The Monthly safety performance report shall be compiled in terms of Annexure 1 of this specification or in any format that the Contractor has as long as it includes all items listed in Annexure 1.

**12. Training, Competence and Awareness**

**12.1 Induction Training**

- 12.1.1 The Contractor shall ensure that all his employees and subcontractors employees undergo a TFR SHE Induction with regard to the general hazards prevalent on the site, rules and regulations, and other related aspects before commencing work. It is the responsibility of the contractor to inform TFR whenever new employees are appointed after the initial induction was conducted.
- 12.1.2 In addition to the TFR SHE induction, it is the responsibility of the Contractor to develop and implement a site specific SHE Induction programme, a job specific induction programme and a general employee SHE awareness programme, to develop awareness amongst employees on the generic SHE issues associated with the scope of work and the specific environmental issues in question.
- 12.1.3 The Contractor shall ensure that all visitors and suppliers to the site undergo and comply with Contractors’ site-specific safety induction requirement prior to being allowed access to site. All visitors and suppliers shall sign the attendance register.
- 12.1.4 All visitors and suppliers shall wear the necessary personal protective equipment whilst on site and shall remain in the care of the host who understand the scope of work and associated risks.
- 12.1.5 The Contractor shall maintain comprehensive attendance records of SHE induction training on the SHE file.

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**12.2 Competency / Training**

- 12.2.1 The Contractor must ensure that all his employees are adequately trained to perform the tasks allocated to them and that there is the requisite amount of supervision at all times to maintain safe work practices and standards.
- 12.2.2 The Contractor shall identify training requirements of employees whose work may have a significant impact on their health and safety or that might create a significant impact upon the environment and ensure that these employees will receive appropriate training. A Training matrix shall be used as a mechanism to manage and control the training of employees.
- 12.2.3 The Contractor shall identify all training needs and incorporate the site specific training into the SHE plan.
- 12.2.4 Each Contractor shall be required to ensure that before an employee commences work on the project that the supervisor in control with responsibility for the employee has informed the employee of his scope of authority and any hazards associated with the work performed. This will include man-job specifications, the discussion of any standard task procedures or hazardous operational procedures to be performed by the employee
- 12.2.5 The Contractor is to ensure that the supervisor has satisfied himself that the employee is conversant with all hazards associated with any work to be performed by conducting task observations.
- 12.2.6 The Contractor must ensure that certificate/s of competence where applicable is/are provided in the SHE File.

**12.3 Awareness Training**

- 12.3.1 Awareness training required shall be identified for all employees on the project using the SHE Policy, the SHE Plan, the SHE programmes and procedures.
- 12.3.2 The Contractor shall have a daily safety talk. This talk shall include subcontractor employees.
- 12.3.3 The talk must be brief and concise. Subject topics should be applicable to the job at hand, incidents, accidents and up-and-coming work will be discussed along with suggestions and comments. These meetings can be used as a training meeting with the central idea of educating employees.

**13. Health and Safety Plan (SHE Plan)**

- 13.1 Potential Contractor submitting tenders shall submit with their tender, a Health and Safety Plan setting out the practical arrangements and procedures to be implemented by him to ensure compliance by him with the OHS Act and Regulations, this SHE specification and particularly in respect of: -
  - (a) The provision, as far as is reasonably practical, of a working environment that is safe and without risk to the health of his employees and subcontractors in terms of section 8 of the OHS Act;
  - (b) the execution of the contract work in such a manner as to ensure in terms of section 9 of the OHS Act that persons other than those in the Contractor's employment, who may be directly affected by the contract work are not thereby exposed to hazards to their health and safety;

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

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

13.3 The SHE Plan shall include full particulars in respect of: -

- (a) Safety Management Structure arrangements i.e. Appointments to be done and how;
- (b) SHE Organisation arrangements i.e. SHE Committees, SHE Audits, Findings and Corrective Actions
- (c) Risk Management i.e. Risk Assessment frequencies, methodology
- (d) Education and Training i.e. safety induction, site / job specific training arrangements
- (e) Emergency Planning
- (f) Health and Safety Communication i.e. Toolbox talks, incident recall
- (g) Safe working methods and procedures to be implemented i.e. safe work procedures, task observation
- (h) Fall Protection Plan i.e. documented plan, training/competency, medical surveillance, rescue plan
- (i) Personal protective Equipment and Clothing
- (j) Project Security i.e. site access control and security
- (k) SHE Costs
- (l) Occupational Health i.e Medical Surveillance, First Aid, Welfare Facilities, Substance Abuse testing, Noise, Vibration, Manual Handling etc
- (m) Environmental management
- (n) Incident Management i.e. reporting and investigation
- (o) Operational Control
- (P) COVID 19 protocol and
- (q) Review plan of the SHE Plan

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- 13.5 The Contractor shall submit a final SHE Plan after awarding of the contract which shall be subject to the TFR Contract Representative/Technical Officer's approval and he may, in consultation with the Contractor, order that additional and/or supplementary practical arrangements and procedures be implemented and maintained by the Contractor or that different working methods or safety equipment be used or safety clothes be issued which, in the TFR Contract Representative/Technical Officer's opinion, are necessary to ensure full compliance by the Contractor with his obligations as an employer in terms of the OHS Act and Regulations.
- 13.6 The Contractor shall approve the SHE Plan of the subcontractor and further take reasonable steps to ensure that each subcontractor's SHE Plan is implemented and maintained on the site: Provided that the steps taken, shall include periodic audits at intervals mutually agreed to between them, but at least once every month.
- 13.7 The Contractor shall stop any subcontractor from executing any construction work, which is not in accordance with the Contractor's, and/or subcontractor's SHE Plan for the site or which poses a threat to the health and safety of persons.
- 13.8 The Contractor shall ensure that a copy of the SHE Plan is available on site for inspection by an inspector, TFR Contract Representative/Technical Officer, agent, subcontractor, employee, registered employee organisation, health and safety representative or any member of the health and safety committee.

**14. Hazards Identification and Potential Hazardous Situations**

- 14.1 The Contractor shall ensure a risk assessment is carried out by a competent person, appointed in writing, before commencement of any work and reviewed during the duration of the contract period. The Risk Assessments shall form part of the Health and Safety Plan to be applied on the site and shall include at least the following:
  - (a) The identification of the risks and hazards (including ergonomic risks) that persons may be exposed to;
  - (b) The analysis and evaluation of the hazards identified;
  - (c) A documented plan, including safe work procedures to mitigate, reduce or control the; risks identified; and
  - (d) A monitoring and review plan.
- 14.2 Risk assessments shall be conducted by a competent person and such person shall use a documented method to analyse and evaluate identified risk and hazards.
- 14.3 The Contractor shall consult with the health and safety committee or, if no health and safety committee exists, with a representative group of employees, on the development, monitoring and review of the risk assessment
- 14.4 The risk assessment shall be reviewed when there are changes that affect the design of the structure that may affect the health, safety and environment on site or after an incident.
- 14.5 The Contractor shall ensure that all employees are to be informed, instructed and trained regarding any risks, hazard and related SHE procedures by a competent person as outlined in the risk assessment prior to commencement of work and thereafter at predetermined intervals as outlined in the monitoring plan.

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- 14.6 The Contractor shall ensure that all subcontractors are informed regarding any hazard as stipulated in the risk assessment before any work commences, and thereafter at such intervals as may be determined in the risk assessment.
- 14.7 The risk assessment shall be available on site for review. Where a risk assessment is not readily available or not communicated to contractor employees, the construction activities shall be stopped until such time the contractor complies.
- 14.8 The Contractor and the TFR Contract Representative/Technical Officer shall immediately notify one another of any hazardous or potentially hazardous situations which may arise during performance of the contract or any subcontractor and, in particular, of such hazards as may be caused by the design, execution and/or location and any other aspect pertaining to the contract work.
- 14.9 The Contractor shall be required to analyse his scope of work and define these critical activities. For each activity, a risk assessment shall be required which defines systems and safe work procedures that will be used in order to complete the activity safely.
- 14.10 Copies of all safe work procedures and proof that employees have been trained on those safe work procedures shall be kept on the SHE file.
- 14.11 Preliminary risk and hazard identification shall be conducted by the Contractor prior to work commencement on site. Should the Client’s Agent, Project Manager, TFR Contract Representative/Technical Officer or his duly nominated alternative identify hazardous activities performed by the Contractor on the site for which the Contractor has not submitted a risk assessment, the Contractor shall be required to do so before continuing with work.

**15. Safety, Health and Environmental (SHE) File**

- 15.1 The Contractor shall prepare a SHE file and submit to TFR Contract Representative for approval prior to commencement of work on site. The file shall include all documentation required as per the OHS Act and applicable regulations. ,
- 15.2 The approval time of the SHE file is at least 5 working days
- 15.3 The Contractor shall ensure that a copy of the both his SHE File as well as any subcontractor’s SHE File is kept on site and made available to an inspector of the Department of Labour, the TFR Contract Representative/Technical Officer, or subcontractor upon request.
- 15.4 The Contractor shall hand over a consolidated SHE file to the TFR Contract Representative/Technical Officer upon completion of the Construction Work and shall in addition to documentation mentioned in the OHS Act and applicable Regulations include a record of all drawings, designs, materials used and other similar information concerning the completed structure.

**16. Occupational Health**

**16.1 Medical Surveillance Programme**

- 16.1.1 The Contractor shall ensure that all his and subcontractor employees have a valid medical certificate of fitness issued by an Occupational Health Practitioner.
- 16.1.2 Medical certificate of fitness must be available and be kept in the SHE file.

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**16.2 Substance Abuse**

- 16.2.1 All Contractors must comply with the Transnet Substance Abuse Policy and Regulation 2A of the General Safety Regulations of the OHS Act.
- 16.2.2 No Contractor may possess, sell, offer to other person, use, store, manufacture, transport, distribute, or transfer drugs or alcohol during work hours, on or off TFR premises.
- 16.2.3 TFR will not tolerate substance abuse or use which put at risk the health and safety of its employees or threatens its services to our stakeholders. It is on this basis that a contractor employee will be considered unfit for work if:
  - (a) He/she is subjected to alcohol screening and/or alcohol testing and is found to have alcohol in his/her breathe and/or blood;
  - (b) Refuses to undergo substance screening and/or testing;
  - (c) He /she produces a positive confirmatory test for any other substances, measured by sample analysis at a registered pathological laboratory and authorised by a medical practitioner; and/or
  - (d) Through observation by security personnel or TFR Contract Representative, it is evident that the contractor’s physical, emotional, mental or behavioural state reflects that they are intoxicated or under the influence.
- 16.2.4 Any transgression of this policy will constitute a breach of the relevant contract and may result in the termination of services/contract.
- 16.2.5 Any contractor employee using medication that has a narcotic effect must declare before work to his / her supervisor.

**16.3 Occupational Hygiene**

- 16.3.1 The Contractor shall conduct Health Risk Assessments of all the Occupational Hygiene / Environmental stressors (e.g. noise, dust, illumination, HCS, heat & cold stressors, ergonomics, etc.) present in the area where they operate to determine if there is any possible worker exposure. Records of all these assessment should be documented and kept up to date.
- 16.3.2 The Contractor shall monitor the extent to which their employees are exposed to the occupational hygiene stressors. These assessments shall be conducted by an Approved Inspection Authority as listed on the Department of Labour database. The findings from these assessments should be kept on the SHE file, communicated to all affected parties and be reported to relevant authorities.

**16.4 Welfare Facilities**

- 16.4.1 The Contractor must ensure that all workplace facilities meet health, safety and welfare needs of all employees, including disabled persons where applicable.
- 16.4.2 The Contractor must in addition to Facilities Regulations 2004, provide at or within reasonable access of every construction site, the following clean, hygienic and maintained facilities:
  - (a) shower facilities, at least one shower facility per 15 persons
  - (b) at least one sanitary facility for each sex and for every 30 workers
  - (c) changing facilities for each sex; and
  - (d) sheltered eating areas

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16.4.3 The Contractor must provide reasonable and suitable living accommodation for the workers at construction sites who are far removed from their homes and where adequate transportation between the site and their homes or other suitable living accommodation, is not available.

**16.5 First Aid requirements**

16.5.1 All Contractors shall ensure that their employees receive prompt first aid treatment in case of injury or emergency. The Contractor must have the necessary equipment and/or facility on site for treatment of injured persons.

16.5.2 Contractor shall ensure that the first aid box / boxes are available and accessible. More first aid boxes shall be provided if the risks, distance between work teams, or the working environment requires it.

16.5.3 Taking into account the type of injuries that are likely to occur on site, the nature of activities performed and the number of employees on site, the Contractor shall ensure that the first aid box contain suitable first aid equipment which includes at least the minimum contents as listed on Annexure 1 of General Safety Regulation (GSR).

16.5.4 The Contractor must ensure that trained / certificated first-aid personnel are appointed and be available on site at all times. The ratio of first aiders to employees shall be 1:50.

**16.6 Asbestos Control**

16.6.1 The Contractor shall inform the TFR Project Manager or TFR Contract Representative if during construction work asbestos or suspected asbestos containing material is found. Only Asbestos Approved Contractor can work on asbestos containing material.

**16.7 Noise**

16.7.1 The Contractor shall ensure that the requirements of the Noise Induced Hearing Loss Regulations are complied with.

16.7.2 The Contractor shall ensure that machinery and equipment are operated at noise levels not exceeding an equivalent level of 85-dB (A) during normal working conditions.

16.7.3 Where the noise levels at the Operator position or to employees working in the vicinity exceed an equivalent level of 85-dB (A) during normal working conditions, the Contractor shall take appropriate measures to reduce such levels to an equivalent level of 85-dB (A). The use of Personal Protective Equipment (PPE) should be the last resort.

16.7.4 All employees exposed to noise must be trained on the effects of exposure, precautionary measures to be taken to prevent exposure and the correct use of PPE.

16.7.5 Noise zones must be demarcated as such.

**16.8 COVID 19 Requirements**

16.8.1 The Contractor shall complete and submit to the TFR Contract Manager a declaration stating that the contractor is permitted to operate in terms of the provisions of the Disaster Management Act 2002 (Act No 57 of 2002) and Regulations, Transnet COVID-19 Guidelines and COVID-19 Occupational Health and Safety Measures in Workplaces, COVID-19 (C19 OHS), 2020 and have prepared a COVID-19 Workplace Readiness Plan and shall operate within the regulated permissions and restrictions of applicable lockdown level.

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- 16.8.2 The Contractor must ensure that all its employees are trained on the health risks and hazards associated with COVID-19 and what precautionary measures they must follow for the protection of their health, including the proper use and maintenance of PPE. They are prepared and informed regarding updated rules, hygiene and behavioural practices, complete a "return to work interview" with their line manager and sign commitment to maintain social distancing.
- 16.8.3 The Contractor shall ensure that every employee reporting for duty is screened to ascertain whether they have any observable symptoms associated with COVID-19 and require such employee to immediately inform the contractor if he/Health and Safety experiences such symptoms
- 16.8.4 Non-essential physical work that requires close contact between workers should be avoided where it is possible to do so.
- 16.8.5 Where it is practicable, every employee must be issued with own tool for use for the duration of the shift. Tools and equipment in stores should be sanitised before issued and on return to the stores.
- 16.8.6 Washing hands facilities must be provided on site, and where it is not available, employees should be provided with hand sanitisers. Employees should be encouraged to regularly wash their hands.
- 16.8.7 Alcohol testing on site should be managed in such a way that no employee is exposed to the virus and contractors must promote personal hygiene. Breathalyzer equipped with disposable mouthpieces shall be used and shall be cleaned and/or disinfected after every use.
- 16.8.8 All non-essential visitors to site are not allowed, only suppliers are allowed. Suppliers must be advised in advance of the COVID-19 site screening tests and required COVID-19 PPE requirements for the site.
- 16.8.9 Where site meetings are held, only absolutely necessary meeting participants should attend. Social distancing should be maintained.
- 16.8.10 The Contractor shall when transporting his employees to TFR premises comply with the regulations which outlines that 70% of the vehicle capacity can be utilised.
- 16.8.11 The Contractor shall inform the TFR Contract Manager when any of its employees working on TFR premises has been diagnosed with COVID-19. The contractor shall investigate the cause and control failure and review its risk assessment to ensure that the necessary controls and PPE requirements are in place.

**16.9 Manual Handling**

- 16.9.1 The Contractor must reduce risk of injury due to manual handling by using mechanical assistance involving the use of mechanical aids to assist the manual handling operation. Mechanical aids such as hand-powered hydraulic hoists, specially adapted trolleys, hoist for lifting patients and roller conveyors can be used.
- 16.9.2 The Contractor shall ensure all employees involved in manual handling are trained in good lifting techniques.

**16.10 Dust**

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- 16.10.1 The Contractor shall monitor dust caused by their activities, mobile equipment, generators and other equipment during construction. Factors such as wind can often affect the intensity to which the impact is experienced.
- 16.10.2 Dust suppression measures must be in place to reduce the dust caused by the activities on site.
- 16.10.3 Appropriate PPE should be provided to exposed employees.

**16.11 Weather precautions**

- 16.11.1 In the event of adverse weather (high winds, flooding, storm surge, lightning etc) or other conditions, the Contractor must institute precautionary measures to protect employees on site.
- 16.11.2 The Contractor shall take steps to prevent heat stroke, dehydration and exhaustion of employees as a result of exposure to excessive heat on site. Such steps may include employees taking regular breaks, consuming enough water, provision of sun brims for their hard hats and sun screen to protect them against sun burn.
- 16.11.3 The Contractor shall take steps to prevent hypothermia or dangerous overcooling of the body as a result of exposure to cold temperatures.

**17 Incidents/Occurrences**

- 17.1 All incidents referred to in Regulation 9 of General Administration Regulations of the OHS Act involving the contractor and his subcontractor on TFR premises, shall be reported to the TFR Contract Representative and Department of Labour as prescribed by the OHS Act.
- 17.2 TFR must be forwarded with a copy of a report of any investigation, formal inquiry conducted in terms of Section 31 and 32 of the Act into any incident involving the contractor, his subcontractor, any person or machinery under his control on TFR premises.
- 17.3 TFR Contract Representative must be informed of the above incidents/occurrences before the end of shift when the incident/occurrence occurred.
- 17.4 The Contractor shall make available its employees to attend as witnesses when required so by TFR during an investigation into any incident where TFR believes the said contractor employees were witnesses or may assist in the investigation.
- 17.5 The Contractor shall make available to TFR any documents required to assist in their investigation.

**18. SHE Cost**

- 18.1 The Contractor shall ensure that it has made adequate provision for the cost of health and safety measures in the tender offer.
- 18.2 The Contractor shall ensure that it's subcontractors have made adequate provision for the cost of health and safety measures in the tender offer.

**19. Personal Protective Equipment (PPE)**

- 19.1 The Contractor shall ensure that all employees are provided with appropriate prescribed Personal Protective Equipment (PPE) free of charge (according to General Safety Regulations (2), suitable for the type of activities that the employees will perform.

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- 19.2 Such PPE shall be approved by credible institution such as SABS, EN, or AN.
- 19.3 The Contractor shall manage the issuing of PPE and ensure that PPE is used at all times. Employees shall be trained in the proper use of PPE.

**20. Emergency Evacuation Plan and Procedure**

- 20.1 The Contractor must establish and implement an emergency evacuation plan to ensure that in the event of fire, explosion structural collapse etc. all staff is able to evacuate the area to a demarcated areas for the purpose.
- 20.2 The area so selected must be demarcated and the relevant "Assembly Point" sign displayed where applicable or use TFR nearest assembly point.
- 20.3 An Emergency Evacuation Procedure must be drawn up; all staff members and contractors shall be given awareness training and participate in regular evacuation drills.
- 20.4 The Contractor and its employees shall collaborate and adhere to TFR evacuation drills and requirements.

**21. Access Control and Security**

- 21.1 The Contractor shall, before commencing any work, obtain from the TFR Contract Representative/Technical Officer a Site Access Certificate executed and signed by him, permitting and limiting access to the designated site or place of work by the Contractor and any subcontractors under his control.
- 21.2 No Site Access Certificate will be granted to the Contractor who fails to comply with TFR minimum SHE requirements, with the SHE File not approved and without the SHE induction been concluded.
- 21.3 The Contractor must assess the security risks and implement appropriate measures. All contractors are to strictly adhere to all security requirements on the premises.
- 21.4 The Contractor in collaboration with the TFR representative will ensure that proper access control is in place and functional at all times onto and out of the site. A form of access control will be issued to contractor employees who have been inducted and submitted copies of ID documents or work permits (where required).
- 21.5 Access Permits should be carried by a contract employee at all time when on site. Access Permits shall be produced at the point of entry / gate.
- 21.6 The Contractors shall ascertain from TFR Contract Representative/Technical Officer the correct route along with their employees may proceed when coming on or going off shift and direct their employees accordingly.

**22. Management of Subcontractors**

- 22.1 The Contractor is directly responsible for the actions of his contractors/sub-contractors.
- 22.2 The Contractor will also be responsible for initiating any remedial action (recovery plan) that may be necessary to ensure that the contractor complies with all requirements.

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- 22.3 The Contractor shall provide any contractor who is making a bid or appointed to perform construction work, with the relevant sections of the documented SHE specification, who would in turn provide a SHE plan for approval.
- 22.4 The Contractor shall carry out inspection/audits on the contractor/subcontractor to ensure that their SHE plan is being implemented and maintained and submit audit report to TFR Representative.
- 22.5 The Contractor shall stop any contractor/subcontractor from executing construction work which poses a threat to the safety and health of persons or the environment.
- 22.6 The Contractor shall ensure that the sub-contractors appointed have the necessary competencies and resources to perform the work safely.
- 22.7 The contractor will be required to submit 37(2) mandatory agreement between him/herself and subcontractor to the TFR Contract Representative

**23. Environmental Management**

- 23.1 The Contractor shall identify, document and comply with all pertinent Environmental laws and associated Regulations, approvals, licenses and permits which are applicable to the Services and activities undertaken.
- 23.2 Before commencement with any of the services to be rendered to TFR, the Contractor shall make available all personnel who will be working on the specified contract to be given environmental induction training. All Contractor employees arriving on the site shall attend such induction.
- 23.3 The Contractor shall adhere to all instructions issued by Project Manager or his /her delegated person in promotion of environmental management and legal compliance.
- 23.4 The Contractor shall determine the correct positioning of topsoil stockpiling to avoid massive disturbance and prepare the topsoil for reuse during landscaping.
- 23.5 Concrete shall not be mixed directly on the ground or any other permeable surface. Should concrete batching activities occur, these should be located in the designated area on site with low environmental sensitivity levels.
- 23.6 All excess concrete shall be removed from site on completion of plastering or concrete pouring and disposed of in an environmentally acceptable manner.
- 23.7 The Contractor shall ensure that his or her employees are aware of the procedures to be followed when dealing with spills and leaks, which shall include notifying the relevant authorities and TFR as required in terms of National Environmental Management Act (NEMA), 1998 and National Water Act (NWA), 1998. The Contractor shall ensure that all necessary material and equipment required for use during clean – up/rehabilitation of spills and leaks are available on site at all times. Treatment, remediation and/or rehabilitation of contaminated areas shall be undertaken to the reasonable satisfaction of the TFR Environmental Control Officer or relevant Environmental Specialist.
- 23.8 Contractor shall be solely responsible for the control of dust generated from his or her activities. Excavation, handling and transport of erodible material shall be avoided under aggressive wind conditions or when a visible dust plume is present. If dust damping measures are deemed inadequate, working must cease until the wind speed drops to an acceptable level.

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- 23.9 Construction activities generating output levels of 85 db (A) or more shall be confined to the hours 08h00 to 17h00 Mondays to Fridays (close to residential areas).
- 23.10 No on-site burying or dumping of waste material shall occur. Waste must be collected by a licensed waste transporting contractor and disposed of at a licensed disposal site. Disposal certificate must be made available to TFR on request.
- 23.11 Waste bins must be provided in sufficient number and capacity to store solid waste produced on a daily basis. These bins must be kept closed and emptied regularly.
- 23.12 A designated re-fuelling area (s) must be provided. The re-fuelling area must be protected from hydrocarbon spillage to the reasonable satisfaction of the TFR Environmental Control Officer or Relevant Environmental Specialist. As a minimum requirement, re-fuelling and workshop areas shall have a bunded floor surface and storm water collection mechanism. Refuelling shall always be accompanied by the use of drip trays.
- 23.13 The Contractor must notify the Project Manager immediately of any pollution incident. An incident record system shall be maintained on site for inspection by TFR and relevant authorities.
- 23.14 All vehicles and equipment's shall be kept in good working condition. All leaking equipment's shall be repaired immediately or removed from site. All vehicles and equipment shall be maintained and not emit excessive noise.
- 23.15 In case of major hydrocarbon spill or leakage as a result of equipment failure, Project Manager must be made aware of such event and the affected area must be fenced off and be cleaned immediately to the reasonable satisfaction of the TFR Environmental Control Officer to prevent contamination of soil and both surface and groundwater.
- 23.16 The Contractor shall ensure that no spillage occurs when toilets are being cleaned or emptied and that the contents are removed from site by a licensed service provider.
- 23.17 The use of borrow pits for the construction of access roads must comply with the provisions of Minerals and Petroleum Resources Development Act of 2004 as amended and should not be located inside the border of any protected area (e.g. Nature Reserve).
- 23.18 All disturbed areas must be rehabilitated to the reasonable satisfaction of TFR Environmental Control Officer or Relevant Environmental Specialist.
- 23.19 Transportation, handling and storage of all substances classified as hazardous must comply with the provisions of the Hazardous Substances Act, 15 of 1973, relevant Regulations and SANS Codes.
- 23.20 Archaeological remains, artificial features and structures older than 60 years are protected by the Natural Heritage Resources Act, 25 of 1999. Should any archaeological artefact be exposed during construction or any contract work, such work must be stopped immediately. The TFR Environmental Control Officer must be called in for inspection and to recommend the way-forward. Under no circumstances may any artefacts be destroyed or removed from site.
- 23.21 The extraction of water for construction purposes must at all times comply with licensing requirements of Department of Water Affairs, where applicable. Extraction of water from a stream or a river requires approval.
- 23.22 Blasting work that may be required on site shall be carried out entirely within the provisions of the Explosives Act, 26 of 1956 and other relevant engineering and safety standards.

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- 23.23 Office and camp sites shall be established, as far as is practicable, outside the flood plain, above the 1:50 flood level mark within the boundaries of the construction area.
- 23.24 No camp or office site shall be located closer than 100 metres from a stream, river, spring, dam or pan.
- 23.25 The area chosen for these purposes shall be the minimum reasonably required and which will involve the least disturbance to vegetation.
- 23.26 Camps and site offices shall be fenced (where necessary) in consultation with the landowner.
- 23.27 The Project Manager or TFR Contract Representative may, at his or her discretion stop any work, activity or process not in accordance with Environmental laws and associated Regulations, approvals, licenses and permits.
- 23.28 The contractor shall preserve wild life in terms of the NEMA.

## 24. Operational Safety

### 24.1 National Railway Safety Regulator Act / Railway Safety

- 24.1.1 The Contractor shall ensure that its equipment, machinery and employees when on TFR premises complies fully with all applicable railway safety requirements and/or regulations of the National Safety Regulator Act 16 of 2002 and the relevant SANS Codes of Practice.
- 24.1.2 The Contractor when engaging subcontractor must review the capability of the proposed contractor to comply with specified railway safety requirements and/or regulations.
- 24.1.3 Permission for the engagement of a subcontractor during a contract shall be subject to a review by TFR of the capability of the proposed subcontractor to comply with railway safety requirements and user specifications.
- 24.1.4 The Contractor and/or his subcontractors must grant TFR access, during the term of the contract, to review any railway safety related activities, including the coordination of such activities across all parts of the organisation.
- 24.1.4 The Contractor shall ensure that where applicable, such work is performed by person who has the necessary competencies as required in terms of any applicable railway safety standard or code of practice.
- 24.1.5 The Contractor shall ensure that all his employees are protected from the risk of being hit by moving trains.

### 24.2 Special Permits

- 24.2.1 Where special work permits are required before work may be carried out such as for e.g. hot work (welding, cutting etc.), isolation, and occupations, the Contractor shall apply to the TFR Contract Representative/Technical Officer or the relevant authority for such permits to be issued. The Contractor shall strictly comply with the conditions and requirements pertaining to the issue of such work permits.

Contractor Signature.....

Date.....

**24.3 Vehicle Safety**

With respect to vehicles, construction vehicles and mobile plants the Contractor must ensure that:

- 24.3.1 They are of an acceptable design and construction, are maintained in a good working order and are used in accordance with their design and the intention for which they were designed
- 24.3.2 Are operated by a person who has received appropriate training, is certified competent and in possession of proof of competency and is authorised in writing to operate such vehicle and mobile plant;
- 24.3.3 Are operated by a person who has a medical certificate of fitness to operate those vehicle and mobile plant, issued by an occupational health practitioner;
- 24.3.4 Vehicles used to transport employees have seats firmly secured and adequate for the number of employees to be carried. No employees will be allowed to be transported at the back of LDV's / bakkies unless it is provided with a seat and safety belt and further that the risk assessment has indicated it to be a low risk.
- 24.3.5 Construction vehicles are fitted with structures designed to protect the operator from falling material or from being crushed should the vehicle or mobile plant overturn;
- 24.3.6 Construction vehicle must be equipped with an acoustic warning device which can be activated by the operator and an automatic acoustic reversing alarm
- 24.3.7 Construction vehicles must be inspected by the authorised operator or driver on a daily basis using a relevant checklist prior to use and that the findings of such inspection are recorded in a register kept in the construction vehicle or mobile plant.
- 24.3.8 No person rides or is required or permitted to ride on a construction vehicle or mobile plant otherwise than in a safe place provided thereon for that purpose.
- 24.3.9 All construction vehicles or mobile plant when not in use, have buckets, booms or similar appendages, fully lowered or blocked, controls in a neutral position, motors stopped, wheels chocked, brakes set and ignition secured.
- 24.3.10 Whenever visibility conditions warrant additional lighting, all mobile plant are equipped with at least two headlights and two taillights when in operation
- 24.3.11 Tools, material and equipment are secured and separated by means of a physical barrier in order to prevent movement when transported in the same compartment with employees.
- 24.3.12 Where applicable, also in collaboration with the TFR representative and other appropriate personnel develop a traffic management plan for the site to ensure the safe movement of all construction related mobile plant where applicable
- 24.3.13 This plan is to be reviewed at the allocated SHE meeting to ensure its applicability where applicable. Where applicable the Contractor shall appoint traffic officials to manage the manoeuvre of mobile plant and vehicles on the construction site.
- 24.3.14 Those working or operating on public roads comply with the requirements of the National Road Traffic Act, 1996.

Contractor Signature.....

Date.....

#### **24.4 Housekeeping and general safeguarding on construction sites**

- 24.4.1 The Contractor must ensure that suitable housekeeping is continuously implemented on each construction site
- 24.4.2 The Contractor must ensure proper storage of materials and equipment and the removal of scrap, waste and debris at appropriate intervals.
- 24.4.3 The Contractor must ensure that materials required for use, are not placed on the site so as to obstruct means of access to and egress from workplaces and passageways
- 24.4.4 The Contractor must ensure that materials which are no longer required for use, do not accumulate on and are removed from the site at appropriate intervals.

#### **24.5 Hazardous Chemical Substances (HCS)**

- 24.5.1 The Contractor must ensure that all employees exposed to hazardous chemicals are trained on the potential source of exposure, potential risk to health caused by exposure and measures to be taken by the contractor and employees against any risk of exposure.
- 24.5.2 HCS risk assessment to be conducted and where it indicates that any employee may be exposed, the contractor shall ensure that monitoring is carried out in terms of regulation 6 and 7 of the Hazardous Chemical Substances Regulations.
- 24.5.3 Employees exposed to hazardous substances shall be under medical surveillance
- 24.5.4 Where herbicides are used, the contractor shall comply with all relevant legislative requirements pertaining to the use of herbicides and that work is undertaken under the supervision of a person with a valid certificate in Pest Control.

#### **24.6 Stacking and Storage**

- 24.6.1 The Contractor shall ensure that a competent person is appointed in writing with the duty of supervising all stacking and storage.
- 24.6.2 Adequate storage areas are provided, demarcated as storage areas and are kept neat and under control.

#### **24.7 Fire prevention and Protection**

- 24.7.1 The contractor must compile a Fire Protection and Prevention Plan for the work that will be carried out on site.
- 24.7.2 The Contractor must assess / survey his area of responsibility and identify locations where the risk of fire is high. Cognisance must be taken of the fact that certain locations may need to be designated as high risk due to the presence of large quantities of flammable or combustible materials / substances.
- 24.7.3 For all high-risk areas, the contractor must ensure that additional precautions are taken to prevent fires and strict control is exercised when fuelling, refuelling and etc. is carried out.
- 24.7.4 The contractor must supply and maintain all required firefighting equipment. The type, capacity, positioning, and number of firefighting appliances must be to the satisfaction of the Transnet Contract Manager and must meet the requirements of the applicable legislation. Fire mains, hydrants and hose reels will rarely be available on site, so use must primarily be made of portable fire extinguishers.

Contractor Signature.....

Date.....

- 24.7.5 Firefighting equipment, fixed and portable, must be strategically located with a view to being able to rapidly deploy the equipment in order to bring potentially dangerous and destructive fires under control while still in their infancy.
- 24.7.6 All fire extinguishers (and any other firefighting equipment) provided must be:
  - a. Conspicuously numbered;
  - b. Recorded in a register;
  - c. Visually inspected by a competent person on a monthly basis (the results of each inspection must be recorded in the register and the competent person must sign off on the entries made); and
  - d. Inspected and serviced by an accredited service provider every six months (the Transnet Contract Manager may require that this frequency be increased depending on the environmental conditions (e.g. high dust levels, water, heat, etc.) to which the fire extinguishers are exposed).
- 24.7.7 Any fire extinguisher that has a broken seal, has depressurised, or shows any sign of damage must be sent to an accredited service provider for repair and / or recharging.
- 24.7.8 Details must be recorded in the register.
- 24.7.9 Firefighting equipment may not be used for any purpose other than fighting fires.
- 24.7.10 Disciplinary action must be taken against any person who misuses or wilfully damages any firefighting equipment.
- 24.7.11 Access to firefighting equipment, fixed or portable, must be kept unobstructed at all times.
- 24.7.12 Approved signage must be in place to clearly indicate the location of each permanently mounted fire extinguisher, fire hose reel, etc.
- 24.7.13 The contractor must ensure that all persons working in / entering his area of responsibility are made aware of where all firefighting appliances and alarm points are located.
- 24.7.14 The contractor must ensure that his employees (and those of any appointed sub-contractors) are trained in firefighting procedures and the use of firefighting equipment.

**24.8 Site Establishment and Demarcation of the site**

- 24.8.1 It is important that activities of the contractor(s) are conducted within a limited area to facilitate control and to minimize the impact on the existing natural environment and the surroundings landowners.
- 24.8.2 The Contractor shall demarcate the boundaries of the site in order to restrict activities to the site.
- 24.8.3 The method of demarcation and the location of the demarcated area shall be determined by the Contractor and approved by the TFR Contract Representative prior to any work being undertaken. The Contractor shall ensure that all his plant, labour and materials remain within the boundaries of the site.
- 24.8.4 Failure to do so may result in the Contractor being required to fence off the boundaries of the site at his own expense to the satisfaction of the TFR .The contractor is responsible for the safeguarding of his/her own equipment and material while on site.

Contractor Signature.....

Date.....

Contractor Signature.....

Date.....

**24.9 Fall Protection Plan**

- 24.9.1 In the event of the risk and hazard identification, as required in terms of clause 14 of this Specification, revealing risks relating to working from an elevated position the contractor shall cause the designation of a competent person, responsible for the preparation of a fall protection plan;
- 24.9.2 The Contractor shall implement, maintain and monitor the fall protection plan for the duration of the contract. The Contractor shall also take such steps to ensure the continued adherence to the fall protection plan.
- 24.9.3 The fall protection plan shall include:-
  - (a) a risk assessment of all work carried out from an elevated position;
  - (b) the procedures and methods to address all the identified risks per location;
  - (c) the evaluation of the employees physical and psychological fitness necessary to work at elevated positions;
  - (d) the training of employees working from elevated positions;
  - (e) rescue plan; and
  - (f) the procedure addressing the inspection, testing and maintenance of all fall protection equipment

**24.10 SHE Signage (Symbolic Safety Signs) on plant and in buildings**

- 24.10.1 The Contractor’s employees shall comply with all SHE signage posted at various locations of TFR sites.
- 24.10.2 The Contractor shall after occupation of the construction site ensure that appropriate SHE signs (Symbolic Safety Signs) are displayed on site

**24.11 General Machinery, Tools and Equipment**

- 24.11.1 The Contractor shall ensure that all machinery, tools and equipment are identified, numbered or tagged, listed on an inventory list.
- 24.11.2 The Contractor shall ensure that all machinery, tools and equipment are safe to be used and is maintained in a good condition.
- 24.11.3 The Contractor shall ensure that all machines driven by means of belts, gear wheels, chains and couplings shall be adequately guarded in such a manner that persons cannot gain inadvertent access to the moving parts.
- 24.11.4 All machinery, tools and equipment to be regularly inspected at least monthly or as required by legislation and risk assessments. Records of such inspections shall be kept on the SHE file.
- 24.11.5 Where applicable machinery, tools and equipment must have the necessary approved test or calibration documentation.
- 24.11.6 The Contractor shall ensure that all machinery, tools and equipment are operated by persons who have been trained to operate such machinery, tools or equipment.

Contractor Signature..... .

Date.....



**24.12 Portable Electrical Tools and Explosive Power Tools**

- 24.12.1 The Contractor shall ensure that use and storage of all explosive power tools and portable electrical tools comply with all applicable legislation.
- 24.12.2 The Contractor shall ensure that only trained employees are authorised to use portable electrical tools and explosive power tools
- 24.12.3 The Contractor shall ensure that all portable electrical tools and explosive power tools are kept in a safe working condition.
- 24.12.4 All portable electrical tools and explosive power tools are inspected monthly by a competent person and daily before use by the operator of such tool. Records of such inspections must be kept in the safety file.
- 24.12.5 Safety signs and barriers must be erected before explosive power tools are used.
- 24.12.6 Cartridges and explosive power tools to be stored separately
- 24.12.7 Register for the issue and return of cartridges be kept in the SHE file.
- 24.12.8 Users / Operators of electrical power tools and explosive power tools should be issued with suitable protective equipment

**24.13 Electrical Equipment**

The Contractor must ensure that:

- 24.13.1 Implementation and compliance with Electrical Installation Regulations, Electrical Machinery Regulations and regulation 24 of the Construction Regulations and OH&S Act.
- 24.13.2 All electrical installations, machinery and electrical work is performed in compliance with TFR Electrical Safety Instructions.
- 24.13.3 Connections are not made to any power supply without the prior written approval of the TFR Contract Representative.
- 24.13.4 All electrical machines and appliances provided by the Contractor for his own use on the Site are in a serviceable condition
- 24.13.5 Power tools used on the Site are protected by residual current devices approved by TFR Contract Representative and are double insulated.
- 24.13.6 All extension cords, portable tools and electrical plant supplied at a voltage above 32 volts are inspected, tested and tagged by a Licensed Electrician at regular monthly intervals. Details of inspections and tests are kept in Log Books available for inspection by the TFR Contract Representative or any other authorised Officer of TFR.
- 24.13.7 All electrical installations are inspected by the TFR Contract Representative (or his nominee) to ensure that the installation complies with the Statutory Regulations applicable to the site and TFR Electrical Safety Instructions. Any installations deemed unsatisfactory by the TFR Contract Representative should be removed by the Contractor at his expense.

Contractor Signature.....

Date.....

- 24.13.8 Portable lights have adequate stability and are fitted with a mechanical guard to protect the lamp. Temporary festoon lighting is of the 'double insulated' type and is supported at least 2.5m above the floor, if possible. Hand lamps are of the 'all insulated' type.
- 24.13.9 All temporary light fittings are supplied from more than one final sub-circuit, with the supply from a residual current device, extra low voltage source or an isolating transformer.
- 24.13.10 The Contractor must obtain approval from the TFR Contract Representative before any of his employees or Sub-contractors commence work within three (3) metres of conductor rails or high tension wires, or where there is a possibility of equipment coming close to and/or touching a power source, and must provide suitable protective insulating barriers. For the erection of scaffolding, the distance is five (5) metres.
- 24.13.11 Only authorised persons may enter Electrical Contactor Houses, Motor Rooms, Switch Rooms, Control Rooms or Cable Ducts. Should the Contractor require entering such places to carry out work, he must first obtain permission from the TFR Contract Representative and obtain a valid Permit to Work.
- 24.13.12 The Contractor's employees required to enter such electrical spaces "authorised persons", with the names entered in the TFR Authorised Persons Register, after receiving approval from the TFR Electrical Officer, or they are accompanied by an authorised person who must supervise the placement of Danger Tags and Out-of-Service Tags, as well as Electrical Isolation Permit.
- 24.13.13 Electrical equipment supply cabling distribution boards, fixed lighting and portable appliances, extension leads, welding machines, compressors, pumps and hand portable tools are inspected on a monthly basis and also by the user daily before use.
- 24.13.14 Such monthly inspection(s) are to be performed by an appropriately qualified Electrician.
- 24.13.15 Contractors working on, over, under, or adjacent to railway lines and near high voltage equipment shall comply with the TFR E7/1 Specification for Works On, Over, Under or Adjacent to Railway Lines and Near High Voltage Equipment.

**24.14 Hand Tools and Pneumatic Tools**

- 24.14.1 All hand tools (hammers, chisels, spanners, etc) must be recorded on a register and inspected by a competent person on a monthly basis as well as by users prior to use.
- 24.14.2 All pneumatic tools should be numbered, recorded and inspected at least monthly as well as by users prior to use. And the revolutions per minutes measured in accordance with the manufacturer specifications
- 24.14.3 Tools with sharp points in tool boxes must be protected with a cover.
- 24.14.4 All files and similar tools must be fitted with handles.
- 24.14.5 The Contractor must have a policy on private and make shift tools on site.
- 24.14.6 No pneumatic tool shall be operated by using a compressed gas cylinder. Pneumatic equipment shall only draw supply from mobile air compressors or from compressed air lines installed within the premises.

Contractor Signature.....

Date.....

## 25. Confidentiality

- 25.1 The Contractor must, at all times, consider all data or information given to him or that is required in connection with the work of the Company, as confidential and not makes unauthorized use of it.
- 25.2 He/she must ensure that such data or information is not given to any non-employee of the contractor without written consent of the TFR Project Manager.
- 25.3 The Contractor shall be aware of the confidentiality of the mentioned information and is compelled to treat it accordingly.
- 25.4 The contractor must provide adequate physical protection for any confidential documents, etc, which were obtained from Transnet in connection with the contract work as well as any copies made thereof. If any documents or sketches are lost TFR must be notified immediately.

## ANNEXURE 1

### CONTRACTOR MONTHLY SHE REPORT

<b>For Month/Year</b>		<b>Name of Contractor</b>		
<b>Name of Project</b>				
<b>Project Number</b>	<b>Date of Commencement</b>	<b>Date of Completion</b>		
<b>Number of employees</b>	<b>Man-hours worked this Month</b>	<b>Cumulative (Project duration man-hours)</b>	<b>Man-hours Since last Lost Time Incident (LTI)</b>	<b>DIFR</b>

#### 1. Details of SHE Incidents

<b>Incident</b>	<b>This Month</b>	<b>Cumulative (Project duration)</b>	<b>Short description of major/ significant incidents and preventative action taken</b>
<b>Number of fatalities</b>			
<b>Number of disabling incidents</b>			
<b>Number of Medical Treatment Cases</b>			
<b>Number of first aid Cases</b>			
<b>Number of near miss incidents</b>			
<b>Motor vehicle incidents</b>			
<b>Number of environmental incidents</b>			
<b>Positive substance abuse incidents</b>			
<b>Substandard Act/ Conditions observed</b>			
<b>Legal violations observed</b>			

Contractor Signature.....

Date.....

**2. Details of SHE Meetings**

Date	No of participants	Major SHE Concerns	Action taken

**3. Details of Audits/Inspections**

Date	Area / Facility	Findings/Recommendations	Action taken

**5. Details of any SHE Promotional activities for the month**

Date	Activity	Remarks

**6. Safety Communication**

Month	Number of Safety talks held	Remarks

Attach separate sheets for further or other details

.....  
Name of Contractor Representative

.....  
Signature

.....  
Date

Contractor Signature.....

Date.....

## **TRANSNET FREIGHT RAIL**



# **Annexure M Mandatory Agreement – Occupational Health and Safety**



## **Mandatory Agreement**

OCCUPATIONAL HEALTH AND SAFETY ACT 85 of 1993 (AS AMENDED)

### **AGREEMENT WITH MANDATORY**

In terms of Section 37(1) & (2)

### **WRITTEN AGREEMENT ENTERED INTO AND BETWEEN**

**Transnet SOC Ltd**

(Hereinafter referred to as the Employer)

**AND**

-----  
(Hereinafter referred to as Mandatory (Principal Contractor))

**Compensation Fund Number** :

**Project Name** :

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## PREAMBLE

**WHEREAS** section 37(1) & (2) of the Occupational Health and Safety Act No 85 of 1993 ("the Act") requires that parties have an agreement in writing to ensure compliance by a mandatory in line with the provisions of the Act.

**AND WHEREAS** Transnet SOC Ltd requires the services of the Contractors to execute certain projects within its workshops.

**AND WHEREAS** TRANSNET SOC LTD can be better served by Contractors who have the infrastructure, specialist employees and expertise to execute such projects at the highest level of efficiency on short notice.

**NOW THEREFORE the parties agree as follows;**

## 1. DEFINITIONS

For the purpose of this agreement, unless the context indicates otherwise, the following definitions are set out for the terms indicated:

- 1.1 "Act" means the Occupational Health and Safety Act No 85 of 1993;
- 1.2 "Agreement" means this Mandatory agreement;
- 1.3 "Contractor " means the Mandatory;
- 1.4 "COID Act" means the Compensation for Occupational Injuries and Diseases Act No 130 of 1993.
- 1.5 "Effective Date" means the date of signature of this Agreement by the last party signing hereto;
- 1.6 "Employer" refers to TRANSNET SOC LTD;
- 1.7 "Mandatory" means an agent, Contractor or sub-contractor for work, but without derogating from the status in his own right as an employer or user;
- 1.8 "Parties" means TRANSNET SOC LTD and the Contractor, and "Party" shall mean either one of them, as the context indicates;
- 1.9 "Principal Contract" means the appointed contractor whereby such contractor has to provide goods and or services to TRANSNET SOC LTD.
- 1.10 "Regulations" means regulations promulgated in terms of the relevant legislation.
- 1.11 "Section" means the relevant section of the Occupational Health and Safety Act No 85 of 1993
- 1.12 "Services" means the services to be provided by the Contractor to TRANSNET SOC LTD.
- 1.13 "TRANSNET SOC LTD" means Transnet Group and all its operating divisions and Specialist units with (Registration No. **1990/000900/06**), a public company incorporated in accordance with the company laws of the Republic of South Africa;

## 2. INTERPRETATION

- 2.1 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.

- 2.2 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.
- 2.3 A reference to the singular incorporates a reference to the plural and vice versa.
- 2.4 A reference to natural persons incorporates a reference to legal persons and vice versa.
- 2.5 A reference to a particular gender incorporates a reference to the other gender.

### **3. REPORTING**

- 3.1 The Mandatary and/or his designated person appointed in terms of Section 16(2) of the Occupational Health and Safety Act 85 of 1993 ("the OHS Act") shall report to the Risk Manager and/or a Project Manager and/or a representative designated by the Employer prior to commencing the work at the premises of the Employer.

### **4. WARRANTY OF COMPLIANCE**

- 4.1 In terms of this Agreement the Mandatary warrants that he agrees to any of the arrangements and procedures as prescribed by the Employer and as provided for in terms of Section 37(2) of the OHS Act for the purposes of compliance with the OHS Act.
- 4.2 The Mandatary further warrants that he and/or his employees undertake to maintain such compliance with the OHS Act. Without derogating from the generality of the above, nor from the provisions of the said Agreement, the Mandatary shall ensure that the clauses as hereunder described are at all times adhered to by himself and his employees.
- 4.3 The Mandatary hereby undertakes to ensure that the health and safety of any other person on the premises is not endangered by the conduct of his activities and that of his employees.

### **5. APPOINTMENTS AND TRAINING**

- 5.1 The Mandatary shall appoint competent persons as per Section 16(2) of the OHS Act. Any such appointed person shall be trained on any occupational health and safety matter and the OHS Act provisions pertinent to the work is to be performed under his responsibility. Copies of any appointments made by the Mandatary shall immediately be provided to the Employer.
- 5.2 The Mandatary shall further ensure that all his employees are trained on the health and safety aspects relating to the work to be done on the premises of the Employer and that they understand the hazards associated with such work being carried out on the premises. Without derogating from the foregoing, the Mandatary shall, in particular, ensure that all his users or operators of any materials, machinery or equipment are properly trained in the use of such materials, machinery or equipment.
- 5.3 Notwithstanding the provisions of the above, the Mandatary shall ensure that he, his appointed responsible persons and his employees are at all times familiar with the provisions of the OHS Act, and that they comply with the provisions of the Act.

### **6. SUPERVISION, DISCIPLINE AND REPORTING**

- 6.1 The Mandatary shall ensure that all work performed on the Employer's a premise is done under strict supervision and that no unsafe or unhealthy work practices are permitted. Discipline regarding health and safety matters shall be strictly enforced against any of his employees regarding non-compliance by such employee with any health and safety matters.
- 6.2 The Mandatary shall further ensure that his employees report to him all unsafe or unhealthy work situations immediately after they become aware of such conditions and that he in turn immediately reports these to the Employer and/or his representative.

## **7. ACCESS TO THE OHS ACT**

- 7.1 The Mandatary shall ensure that he has an updated copy of the OHS Act on site at all times and that this is accessible to his appointed responsible persons and employees, save that the parties may make arrangements for the Mandatary and his appointed responsible persons and employees to have access to the Employer's updated copy/copies of the Act.

## **8. COOPERATION**

- 8.1 The Mandatary and/or his responsible persons and employees shall provide full co-operation and information if and when the Employer or his representative inquires into any occupational health and safety issues concerning the Mandatary. It is hereby recorded that the Employer and his representative shall at all times be entitled to make such inquiry.
- 8.2 Without derogating from the generality of the above, the Mandatary and his responsible persons shall make available to the Employer and his representative, on request, all and/or any checklists and inspection registers required to be kept by him in respect of any of his materials, machinery or equipment.

## **9. WORK PROCEDURES**

- 9.1 The Mandatary shall, after having established the dangers associated with the work performed, develop and implement mitigation measures to minimize or eliminate such dangers for the purpose of ensuring a healthy and safe working environment. The Mandatary shall then ensure that his responsible persons and employees are familiar with such mitigation measures.
- 9.2 The Mandatary shall implement any other safe work practices as prescribed by the Employer and shall ensure that his responsible persons and employees are made conversant with such other safe work practices as prescribed by the Employer and that his responsible persons and employees adhere to such safe work practices.
- 9.3 The Mandatary shall ensure that work for which any permit is required by the Employer is not performed by his employees prior to the Employer obtaining such permit from the Mandatary.

## **10. HEALTH AND SAFETY MEETINGS**

- 10.1 If required in terms of the OHS Act, the Mandatary shall establish his own health and safety committee(s) and ensure that his employees, being the committee members, provide health and safety representatives to attend the Employer's health and safety committee meetings.

## **11. COMPENSATION REGISTRATION**

- 11.1 The Mandatary shall ensure that he has a valid proof of registration with the Compensation Commissioner, as required in terms of **COID Act**, and that all payments owing to the Commissioner are discharged. The Mandatary shall further ensure that the cover remain in force while any such employee is present on the premises.

## **12. MEDICAL EXAMINATIONS**

- 12.1 The Mandatary shall ensure that all his employees undergo routine medical examinations and that they are medically fit for the purposes of the work they are to perform.

## **13. INCIDENT REPORTING AND INVESTIGATION**

- 13.1 All incidents referred to in Section 24 of the OHS Act shall be reported by the Mandatary to the Department of Labour and to the Employer. The Employer shall further be provided with copies of any written documentation relating to any incident.
- 13.2 The Employer retains an interest in the reporting of any incident as described above as well as in any formal investigation and/or inquiry conducted in terms of section 32 of the OHS-Act into such incident.

## **14. SUBCONTRACTORS**

- 14.1 The Mandatary shall notify the Employer of any subcontractor he may wish to perform work on his behalf on the Employer's premises. It is hereby recorded that all the terms and provisions contained in this clause shall be equally binding upon the subcontractor prior to the subcontractor commencing with the work. Without derogating from the generality of this paragraph:
- 14.1.1 The Mandatary shall ensure that training as discussed under appointments and training, is provided prior to the subcontractor commencing work on the Employer's premises.
- 14.1.2 The Mandatary shall ensure that work performed by the subcontractor is done under his strict supervision, discipline and reporting.
- 14.1.3 The Mandatary shall inform the Employer of any health and safety hazards and/or issue that the subcontractor may have brought to his attention.
- 14.1.4 The Mandatary shall inform the Employer of any difficulty encountered regarding compliance by the subcontractor with any health and safety instruction, procedure and/or legal provision applicable to the work the subcontractor performs on the Employer's premises.

## **15. SECURITY AND ACCESS**

- 15.1 The Mandatary and his employees shall enter and leave the premises only through the main gate(s) and/or checkpoint(s) designated by the Employer. The Mandatary shall ensure that employees observe the security rules of the Employer at all times and shall not permit any person who is not directly associated with the work from entering the premises.
- 15.2 The Mandatary and his employees shall not enter any area of the premises that is not directly associated with their work.
- 15.3 The Mandatary shall ensure that all materials, machinery or equipment brought by him onto the premises are recorded at the main gate(s) and/or checkpoint(s). Failure to do this may result in a refusal by the Employer to allow the materials, machinery or equipment to be removed from the Employer's premises.

## **16. FIRE PRECAUTIONS AND FACILITIES**

- 16.1 The Mandatary shall ensure that an adequate supply of fire-protection and first-aid facilities are provided for the work to be performed on the Employer's premises, save that the Parties may mutually make arrangements for the provision of such facilities.

- 16.2 The Mandatary shall further ensure that all his employees are familiar with fire precautions at the premises, which includes fire-alarm signals and emergency exits, and that such precautions are adhered to.

## **17. ABLUTION FACILITIES**

- 17.1 The Mandatary shall ensure that an adequate supply of ablution facilities are provided for his employees performing work on the Employer's premises, save that the parties may mutually make arrangements for the provision of such facilities.

## **18. HYGIENE AND CLEANLINESS**

- 18.1 The Mandatary shall ensure that the work site and surround area is at all times maintained to the reasonably practicable level of hygiene and cleanliness. In this regard, no loose materials shall be left lying about unnecessarily and the work site shall be cleared of waste material regularly and on completion of the work.

## **19. NO NUISANCE**

- 19.1 The Mandatary shall ensure that neither he nor his employees undertake any activity that may cause environmental impairment or constitute any form of nuisance to the Employer and/or his surroundings.
- 19.2 The Mandatary shall ensure that no hindrance, hazard, annoyance or inconvenience is inflicted on the Employer, another Mandatary or any tenants. Where such situations are unavoidable, the Mandatary shall give prior notice to the Employer.

## **20. INTOXICATION NOT ALLOWED**

- 20.1 No intoxicating substance of any form shall be allowed on site. Any person suspected of being intoxicated shall not be allowed on the site. Any person required to take medication shall notify the relevant responsible person thereof, as well as the potential side effects of the medication.

## **21. PERSONAL PROTECTIVE EQUIPMENT**

- 21.1 The Mandatary shall ensure that his responsible persons and employees are provided with adequate personal protective equipment (PPE) for the work they may perform and in accordance with the requirements of General Safety Regulation 2 (1) of the OHS Act. The Mandatary shall further ensure that his responsible persons and employees wear the PPE issued to them at all material times.

## **22. PLANT, MACHINERY AND EQUIPMENT**

- 22.1 The Mandatary shall ensure that all the plant, machinery, equipment and/or vehicles he may wish to utilize on the Employer's premises is/are at all times of sound order and fit for the purpose for which it/they is/are attended to, and that it/they complies/comply with the requirements of Section 10 of the OHS Act.
- 22.2 In accordance with the provisions of Section 10(4) of the OHS Act, the Mandatary hereby assumes the liability for taking the necessary steps to ensure that any article or substance that it erects or installs at the premises, or manufactures, sells or supplies to or for the Employer, complies with all the prescribed requirements and will be safe and without risks in terms of health and safety when properly used.

## **23. NO USAGE OF THE EMPLOYER'S EQUIPMENT**

- 23.1 The Mandatary hereby acknowledges that his employees are not permitted to use any materials, machinery or equipment of the Employer unless the prior written consent of the Employer has been obtained, in which case the Mandatary shall ensure that only those persons authorized to make use of such materials, machinery or equipment, have access thereto.

#### **24. TRANSPORT**

- 24.1 The Mandatary shall ensure that all road vehicles used on the premises are in a roadworthy condition and are licensed and insured. The Mandatary shall ensure that all drivers shall have relevant and valid driving licenses and the Mandatary shall ensure that no vehicle/s shall carry passengers unless it is specifically designed to do and that all drivers shall adhere to the speed limits and road signs on the premises at all times.
- 24.2 In the event that any hazardous substances are to be transported on the premises, the Mandatary shall ensure that the requirements of the Hazardous Substances Act 15 of 1973 are complied with fully all times.

#### **25. CLARIFICATION**

- 25.1 In the event that the Mandatary requires clarification of any of the terms or provisions of this Agreement, he should take the necessary steps to contact the Risk Manager of the Employer to obtain such clarification.

#### **26. DURATION OF AGREEMENT**

- 26.1 This Agreement shall remain in force for the duration of the work to be performed by the Mandatary and/or while any of the Mandatary's employees are present on the Employer's premises.

#### **27. NON COMPLIANCE WITH THE AGREEMENT**

- 27.1 If the Mandatary fails to comply with any provisions of this Agreement, the Employer shall be entitled to give the mandatory 7 (seven) days written notice to remedy such non-compliance and if the Mandatary fails to comply with such notice, then the Employer shall forthwith be entitled but not obliged, without prejudice to any other rights or remedies which the mandatory may have in law,
- 271.1 to suspend the main Agreement; or
- 27.1.2 To claim immediate performance and/or payment of such obligations.
- 27.2 Should mandatory continue to breach the contract on three occasions, then the Employer is authorised to suspend the main contract without complying with the condition stated in the clause above.



**28. HEADINGS**

The headings as contained in this Agreement are for reference purposes only and shall not be construed as having any interpretative value in them or as giving any indication as to the meaning of the contents of the paragraphs contained in this Agreement.

**Thus done and signed**

at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ 201\_\_

\_\_\_\_\_  
**For and on behalf of the Employer**

**Witnesses:**

1. \_\_\_\_\_
2. \_\_\_\_\_

at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ 201\_\_

\_\_\_\_\_  
**for and on behalf of the Mandatary**

**Witnesses:**

3. \_\_\_\_\_
4. \_\_\_\_\_

**TRANSNET**



Transnet SOC Limited Registration Number 1990/00900/06

## **TRANSNET SPECIFICATION**

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# **E7/1 - SPECIFICATION FOR GENERAL WORK AND WORKS ON, OVER, UNDER OR ADJACENT TO RAILWAY LINES AND NEAR HIGH VOLTAGE EQUIPMENT**

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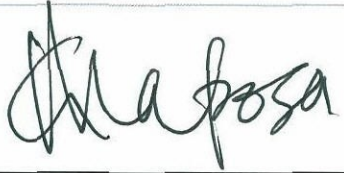



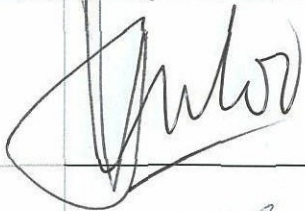

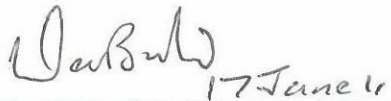

(This specification shall be used in network operator contracts)

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**SPECIFICATION FOR GENERAL WORK AND WORKS ON, OVER, UNDER OR  
ADJACENT TO RAILWAY LINES AND NEAR HIGH VOLTAGE EQUIPMENT**

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Date:

May 2011

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**TRANSNET**



Transnet SOC Limited Registration Number 1990/00900/06

## **TRANSNET SPECIFICATION**

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# **E7/1 - SPECIFICATION FOR GENERAL WORK AND WORKS ON, OVER, UNDER OR ADJACENT TO RAILWAY LINES AND NEAR HIGH VOLTAGE EQUIPMENT**

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(This specification shall be used in network operator contracts)

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**1.0 SCOPE**

- 1.1 This specification covers the network operator's requirements for general work and works on, over, under or adjacent to railway lines and near high voltage equipment.

**2.0 DEFINITIONS**

The following definitions shall apply:

"Authorised Person" - A person whether an employee of the network operator or not, who has been specially authorised to undertake specific duties in terms of Transnet' publication Electrical Safety Instructions, and who holds a certificate or letter of authority to that effect.

"Barrier" Any device designed to restrict access to "live" high-voltage electrical equipment.

"Bond" - A short conductor installed to provide electrical continuity.

"Contractor" - Any person or organisation appointed by the network operator to carry out work on its behalf.

"Contract Supervisor" - The person or juristic person appointed by the network operator from time to time as the Contract Supervisor, to administer the Contractor's performance and execution of the Works according to the powers and rights held by and obligations placed upon the Contract Supervisor in terms of the Contract.

"Dead" - Isolated and earthed.

"Electrical Officer (Contracts)" - The person appointed in writing by the Project Manager in terms of this specification as the person who shall be consulted by the Contractor in all electrical matters to ensure that adequate safety precautions are taken by the Contractor.

"Executive Officer" - The person appointed by the network operator from time to time as the Executive Officer to act according to the rights and powers held by and obligations placed upon him in terms of the Contract.

"High-Voltage" - A voltage normally exceeding 1000 volts.

"Live" - A conductor is said to be "live" when it is at a potential different from that of the earth or any other conductor of the system of which it forms a part.

"Near" - To be in such a position that a person's body or the tools he is using or any equipment he is handling may come within 3 metres of "live" exposed high-voltage electrical equipment.

"Occupation" - An authorisation granted by the network operator for work to be carried out under specified conditions on, over, under or adjacent to railway lines.

"Occupation Between Trains" - An occupation during an interval between successive trains.

"Optical Fibre Cable" - Buried or suspended composite cable containing optical fibres used in:

- telecommunication networks for transmission of digital information and
- safety sensitive train operations systems.

"Project Manager" – As defined in the special conditions of the contract. The person or juristic person appointed by the network operator from time to time as the Project Manager, to administer the Contract according to the powers and rights held by and obligations placed upon him in terms of the Contract.

"Responsible Representative" - The responsible person in charge, appointed by a contractor, who has undergone specific training (and holds a certificate) to supervise (general or direct) staff under his control who perform general work or to work on, over, under or adjacent to railway lines and in the vicinity of high-voltage electrical equipment.

"Total Occupation" - An occupation for a period when trains are not to traverse the section of line covered by the occupation.

"Work on" - Work undertaken on or so close to the equipment that the specified working clearances to the "live" equipment cannot be maintained.

"Work Permit" - A combined written application and authority to proceed with work on or near dead electrical equipment.

"Works" – The contractual intent for the work to be done as defined in the contract at a defined work site.

---

**PART A - GENERAL SPECIFICATION****3.0 AUTHORITY OF OFFICERS OF TRANSNET**

- 3.1 The Contractor shall co-operate with the officers of the network operator and shall comply with all instructions issued and restrictions imposed with respect to the Works which bear on the existence and operation of the network operator's railway lines and high-voltage equipment.
- 3.2 Without limiting the generality of the provisions of clause 3.1, any duly authorised representative of the network operator, having identified himself, may stop the work if, in his opinion, the safe passage of trains or the safety of the network operator's assets or any person is affected. **CONSIDERATIONS OF SAFETY SHALL TAKE PRECEDENCE OVER ALL OTHER CONSIDERATIONS.**

**4.0 CONTRACTOR'S REPRESENTATIVES AND STAFF**

- 4.1 The Contractor shall nominate Responsible Representatives of whom at least one shall be available at any hour for call-out in cases of emergency. The Contractor shall provide the Contract Supervisor with the names, addresses and telephone numbers of the representatives.
- 4.2 The Contractor guarantees that he has satisfied himself that the Responsible Representative is fully conversant with this specification and that he shall comply with all his obligations in respect thereof.
- 4.3 The Contractor shall ensure that all contractor staff receives relevant awareness, educational and competence training regarding safety as prescribed.

**5.0 OCCUPATIONS AND WORK PERMITS**

- 5.1 Work to be done during total occupation or during an occupation between trains or under a work permit shall be done in a manner decided by the Contract Supervisor and at times to suit the network operator requirements.
- 5.2 The Contractor shall organise the Works in a manner which will minimise the number and duration of occupations and work permits required.
- 5.3 The network operator will not be liable for any financial or other loss suffered by the Contractor arising from his failure to complete any work scheduled during the period of an occupation or work permit.
- 5.4 The Contractor shall submit to the Contract Supervisor, in writing, requests for occupations or work permits together with details of the work to be undertaken, at least 21 days before they are required. The network operator does not undertake to grant an occupation or work permit for any particular date, time or duration.
- 5.5 The network operator reserves the right to cancel any occupation or work permit at any time before or during the period of occupation or work permit. If, due to cancellation or change in date or time, the Contractor is not permitted to start work under conditions of total occupation or work permit at the time arranged, all costs caused by the cancellation shall be born by the Contractor except as provided for in clauses 5.6 to 5.8.
- 5.6 When the Contractor is notified less than 2 hours before the scheduled starting time that the occupation or work permit is cancelled, he may claim reimbursement of his direct financial losses caused by the loss of working time up to the time his labour and plant are employed on other work, but not exceeding the period of the cancelled occupation or work permit.
- 5.7 When the Contractor is notified less than 2 hours before the scheduled starting time, or during an occupation or work permit, that the duration of the occupation or work permit is reduced, he may claim reimbursement of his direct financial losses caused by the loss of working time due to the reduced duration of the occupation or work permit.
- 5.8 Reimbursement of the Contractor for any loss of working time in terms of clause 5.6 and 5.7, shall be subject to his claims being submitted within 14 days of the event with full details of labour and plant involved, and provided that the Contract Supervisor certifies that no other work on which the labour and plant could be employed was immediately available.
- 5.9 Before starting any work for which an occupation has been arranged, the Contractor shall obtain from the Contract Supervisor written confirmation of the date, time and duration of the occupation.
- 5.10 Before starting any work for which a work permit has been arranged, the Responsible Representative shall read and sign portion C of the Work Permit, signifying that he is aware of the work boundaries within which work may be undertaken. After the work for which the permit was granted has been completed, or when the

work permit is due to be terminated, or if the permit is cancelled after the start, the same person who signed portion C shall sign portion D of the Work Permit, thereby acknowledging that he is aware that the electrical equipment is to be made "live". The Contractor shall advise all his workmen accordingly.

## 6.0 SPEED RESTRICTIONS AND PROTECTION

- 6.1 When speed restrictions are imposed by the network operator because of the Contractor's activities, the Contractor shall organise and carry out his work so as to permit the removal of the restrictions as soon as possible.
- 6.2 When the Contract Supervisor considers protection to be necessary the Contractor shall, unless otherwise agreed, provide all protection including flagmen, other personnel and all equipment for the protection of the network operator's and the Contractor's personnel and assets, the public and including trains.
- 6.2.1 The network operator will provide training free of charge of the Contractor's flagmen and other personnel performing protection duties. The Contractor shall consult with the Contract Supervisor, whenever he considers that protection will be necessary, taking into account the minimum permissible clearances set out in the Manual for Track Maintenance (Document no. BBB0481):
- Drawing no. BE-97 Sheet 1: Horizontal Clearances: 1065mm gauge (Annexure 1 sheet 1)
  - Drawing no. BE-97 Sheet 2: Vertical Clearances: 1065mm gauge (Annexure 1 sheet 2)
  - Drawing no. BE-97 Sheet 3: Clearances: Platform (Annexure 1 sheet 3)
  - Drawing no. BE-97 Sheet 5: Clearances: 610mm Gauge (Annexure 1 sheet 5)
- 6.3 The Contractor shall appoint a Responsible Representative to receive and transmit any instruction which may be given by the network operator personnel providing protection.

## 7.0 ROADS AND ROADS ON THE NETWORK OPERATOR'S PROPERTY

- 7.1 The Contractor shall take every reasonable precaution to prevent damage to any roads or bridges used to obtain access to the site, and shall select routes, use vehicles, and restrict loads so that any extraordinary traffic as may arise from the moving of plant or material to or from the site shall be limited as far as is reasonably possible.
- 7.2 The Contractor shall not occupy or interfere in any way with the free use of any public or private road, right-of-way, path or street unless the Contract Supervisor has obtained the approval of the road authority concerned.

## 8.0 CLEARANCES

- 8.1 No temporary works shall encroach on the appropriate minimum clearances set out in the Manual for Track Maintenance (Document no. BBB0481):
- Drawing no. BE-97 Sheet 1: Horizontal Clearances: 1065mm gauge (Annexure 1 sheet 1)
  - Drawing no. BE-97 Sheet 2: Vertical Clearances: 1065mm gauge (Annexure 1 sheet 2)
  - Drawing no. BE-97 Sheet 3: Clearances: Platform (Annexure 1 sheet 3)
  - Drawing no. BE-97 Sheet 5: Clearances: 610mm Gauge (Annexure 1 sheet 5)

## 9.0 STACKING OF MATERIAL

- 9.1 The Contractor shall not stack any material closer than 3m from the centre line of any railway line without prior approval of the Contract Supervisor.

## 10.0 EXCAVATION, SHORING, DEWATERING AND DRAINAGE

- 10.1 Unless otherwise approved by the Contract Supervisor any excavation adjacent to a railway line shall not encroach on the hatched area shown in Figure 1.

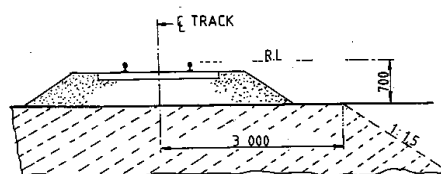


Fig. 1.

- 10.2 The Contractor shall provide, at his own cost any shoring, dewatering or drainage of any excavation unless otherwise stipulated elsewhere in the Contract.
- 10.3 Where required by the Contract Supervisor, drawings of shoring for any excavation under or adjacent to a railway line shall be submitted and permission to proceed, obtained before the excavation is commenced.
- 10.4 The Contractor shall prevent ingress of water to the excavation but where water does enter, he shall dispose of it as directed by the Contract Supervisor.
- 10.5 The Contractor shall not block, obstruct or damage any existing drains either above or below ground level unless he has made adequate prior arrangements to deal with drainage.

#### **11.0 FALSEWORK FOR STRUCTURES**

- 11.1 Drawings of falsework for the construction of any structure over, under or adjacent to any railway line shall be submitted to the Contract Supervisor and his permission to proceed obtained before the falsework is erected. Each drawing shall be given a title and a distinguishing number and shall be signed by a registered professional engineer certifying that he has checked the design of the falsework and that the drawings are correct and in accordance with the design.
- 11.2 After the falsework has been erected and before any load is applied, the Contractor shall submit to the Contract Supervisor a certificate signed by a registered professional engineer certifying that he has checked the falsework and that it has been erected in accordance with the drawings. Titles and numbers of the drawings shall be stated in the certificate. Notwithstanding permission given by the Contract Supervisor to proceed, the Contractor shall be entirely responsible for the safety and adequacy of the falsework.

#### **12.0 PILING**

- 12.1 The Contract Supervisor will specify the conditions under which piles may be installed on the network operator's property.

#### **13.0 UNDERGROUND SERVICES**

- 13.1 No pegs or stakes shall be driven or any excavation made before the Contractor has established that there are no underground services which may be damaged thereby.
- 13.2 Any damage shall be reported immediately to the Contract Supervisor, or to the official in charge at the nearest station, or to the traffic controller in the case of centralised traffic control.

#### **14.0 BLASTING AND USE OF EXPLOSIVES**

- 14.1 When blasting within 500m of a railway line, the Contractor shall observe the requirements stipulated in this specification.
- 14.2 No blasting shall be carried out except with the prior written permission of the Contract Supervisor and under such conditions as he may impose.
- 14.3 On electrified lines the Contractor shall also obtain the permission of the Electrical Officer (Contracts) before blasting, and shall give at least 21 days notice of his intention to blast. No blasting shall be done in the vicinity of electrified lines unless a member of the network operator's electrical personnel is present.
- 14.4 The Contractor shall arrange for the supply, transport storage and use of explosives.
- 14.5 The Contractor shall have labour, tools and plant, to the satisfaction of the Contract Supervisor, available on the site to clear immediately any stones or debris deposited on the track or formation by blasting, and to repair any damage to the track or formation immediately after blasting. Repairs to the track shall be carried out only under the supervision of a duly authorised representative of the network operator.
- 14.6 The Contractor shall notify the Contract Supervisor of his intention to blast at least 21 days before the commencement of any blasting operations.
- 14.7 Before any blasting is undertaken, the Contractor and the Contract Supervisor shall jointly examine and measure up any buildings, houses or structures in the vicinity of the proposed blasting to establish the extent of any existing cracking or damage to such structures, etc. The Contractor, shall, subject to the provisions stipulated in the Contract Insurance Policy, make good any deterioration of such buildings, houses, or structures, which, in the opinion of the Contract Supervisor, was directly caused by the blasting.
- 14.8 After completion of the blasting the Contractor shall obtain a written clearance from each landowner in

the vicinity of the blasting operations to the effect that all claims for compensation in respect of damage caused by the blasting operations to their respective properties, have been settled.

- 14.9 The Contractor shall provide proof that he has complied with the provisions of clauses 10.17.1 to 10.17.4 of the Explosives Regulations (Act 26 of 1956 as amended).
- 14.10 Blasting within 500m of a railway line will only be permitted during intervals between trains. A person appointed by the Contract Supervisor, assisted by flagmen with the necessary protective equipment, will be in communication with the controlling railway station.
- Only this person will be authorised to give the Contractor permission to blast, and the Contractor shall obey his instructions implicitly regarding the time during which blasting may take place.
- 14.11 The flagmen described in clause 14.10, where provided by the network operator, are for the protection of trains and the network operator's property only, and their presence does not relieve the Contractor in any manner of his responsibilities in terms of Explosives Act or Regulations, or any obligation in terms of this Contract.
- 14.12 The person described in clause 14.10 will record in a book provided and retained by the network operator, the dates and times:-
- (i) when each request is made by him to the controlling station for permission to blast;
  - (ii) when blasting may take place;
  - (iii) when blasting actually takes place; and
  - (iv) when he advises the controlling station that the line is safe for the passage of trains.
- 14.13 Before each blast the Contractor shall record in the same book, the details of the blast to be carried out. The person appointed by the Contract Supervisor and the person who will do the blasting shall both sign the book whenever an entry described in clause 14.12 is made.

## **15.0 RAIL TROLLEYS**

- 15.1 The use of rail trolleys or trestle trolleys on a railway line for working on high voltage equipment will be permitted only if approved by the Contract Supervisor and under the conditions stipulated by him.
- 15.2 All costs in connection with trolley working and any train protection services requested by the Contractor shall, be borne by the Contractor, unless otherwise agreed.

## **16.0 SIGNAL TRACK CIRCUITS**

- 16.1 Where signal track circuits are installed, the Contractor shall ensure that no material capable of conducting an electrical current makes contact between rails of railway line/lines.
- 16.2 No signal connections on track-circuited tracks shall be severed without the Contract Supervisor's knowledge and consent.

## **17.0 PENALTY FOR DELAYS TO TRAINS**

- 17.1 If any trains are delayed by the Contractor and the Contract Supervisor is satisfied that the delay was avoidable, a penalty will be imposed on the Contractor as stipulated in the contract, for the period and number of trains delayed.

## **18.0 SURVEY BEACONS AND PEGS**

- 18.1 The Contractor shall not on any account move or damage any beacon, bench mark, reference mark, signal or trigonometrical station in the execution of the Works without the written approval of the Contract Supervisor.

Should the Contractor be responsible for any such occurrence, he shall report the circumstances to the Contract Supervisor who will arrange with the Director-General of Surveys for replacement of the beacon or mark at the cost of the Contractor.

- 18.2 The Contractor shall not move or damage any cadastral or mining beacon without the written approval of the Contract Supervisor and before it has been referenced by a registered land surveyor. Any old boundary beacon, which becomes an internal beacon on creation of new boundaries, shall not be moved without the written approval of the Contract Supervisor.

---

Should the Contractor move or damage any cadastral or mining beacon without authority, he shall be responsible for having it replaced, at his cost, by a land surveyor.

- 18.3 The Contractor shall preserve all pegs and bench marks. Such survey points shall not be removed without the written approval of the Contract Supervisor. Should any peg or benchmark be removed without authority, the Contract Supervisor will arrange for its replacement and the cost will be recovered from the Contractor. No claim will be considered for delay in replacing any such peg or bench mark. Each peg replaced shall be checked by the Contractor.
- 18.4 Where a new boundary has been established, beacons on the fence line shall not be disturbed, and fence posts or anchors may not be placed or excavations made within 0,6 m of any beacon without the prior written approval of the Contract Supervisor.

## **19.0 TEMPORARY LEVEL CROSSINGS**

- 19.1 The Contract Supervisor may, on request of the Contractor, and if necessary for the purpose of execution of the Works, permit the construction of a temporary level crossing over a railway a line at a position approved by the Contract Supervisor and at the Contractor's cost. The period for which the temporary level crossing is permitted will be at the discretion of the Contract Supervisor.
- 19.2 The Contractor will provide protection and supervise the construction of the road over the track(s) and within the railway servitude at the level crossing, as well as the erection of all road signs and height gauges. All cost to be borne by the applicant.

The Contractor shall exercise extreme caution in carrying out this work, especially in respect of damage to tracks, services, overhead power and communications routes and prevent contact with "live" overhead electrical equipment.

Unless otherwise agreed, the Contractor will provide the service deviations or alterations to the network operator's track-, structure-, drainage-, electrical-, telecommunications- and train authorisation systems to accommodate the level crossing.

- 19.3 The Contractor shall take all necessary steps including the provision of gates, locks and, where necessary, watchmen to restrict the use of the temporary level crossing to himself and his employees, his subcontractors and their employees, the staff of the network operator and to such other persons as the Contract Supervisor may permit and of whose identity the Contractor will be advised. If so ordered by the Contract Supervisor, the Contractor shall provide persons to control road traffic using the temporary level crossing. Such persons shall stop all road traffic when any approaching train is within seven hundred and fifty (750) metres of the temporary level crossing, and shall not allow road traffic to proceed over it until the lines are clear.
- 19.4 The Contractor shall maintain the temporary level crossing within the railway servitude in good condition for the period it is in use. A temporary agreement with the road authority to be concluded for the maintenance of the level crossing outside the railway servitude.
- 19.5 When the temporary level crossing is no longer required by the Contractor, or permitted by the network operator, the Contractor shall at his own cost remove it and restore the site and the network operator's track-, structure-, drainage-, electrical-, telecommunications- and train authorisation systems to its original condition. Work over the tracks and within the railway servitude will be supervised by the network operator.

## **20.0 COMPLETION OF THE WORKS**

- 20.1 On completion of the works, the Contractor shall remove all the remaining construction plant and material from the site, other than material which is the property of the network operator, and leave the site in a clean, neat and tidy condition. If material and plant is required for the liability and maintenance period the Contract supervisor must authorise it's retention on site.

## **21.0 PROTECTION OF PERSONS AND PROPERTY**

- 21.1 The Contractor shall provide and maintain all lights, guards, barriers, fencing and watchmen when and where necessary or as required by the Contract Supervisor or by any statutory authority, for the protection of the Works and for the safety and convenience of the public.

Red, yellow, green or blue lights may not be used by the Contractor as they can be mistaken for signals. Red, yellow, green or white flags shall only be used for protection by the Contractor. Within the precincts of a port the Contractor shall obtain the permission of the Port Captain before installing any light.



- 21.2 The Contractor shall take all the requisite measures and precautions during the course of the Works to:
- (i) protect the public and property of the public,
  - (ii) protect the property and workmen of both the network operator and the Contractor,
  - (iii) avoid damage to and prevent trespass on adjoining properties, and
  - (iv) ensure compliance with any instruction issued by the Contract Supervisor or other authorised person, and with any stipulation embodied in the contract documents which affects the safety of any person or thing.
- 21.3 The network operator will provide, at its own cost, protection for the safe working of trains during such operations as the Contract Supervisor may consider necessary. Protection by the network operator for any purpose whatsoever, does not absolve the Contractor of his responsibilities in terms of the Contract.
- 21.4 The Contractor shall take all precautions and appoint guards, watchmen and compound managers for prevention of disorder among and misconduct by the persons employed on the Works and by any other persons, whether employees or not, on the work site and for the preservation of the peace and protection of persons and property in the direct neighbourhood. Any relocation of camps because of disorder shall be at the Contractor's expense.
- 21.5 All operations necessary for the execution of the Works, including the provision of any temporary work and camping sites, shall be carried out so as not to cause veldt fires, ground and environmental pollution, soil erosion or restriction of or interference with streams, furrows, drains and water supplies.
- If the original surface of the ground is disturbed in connection with the Works, it shall be made good by the Contractor to the satisfaction of the land owner, occupier or responsible authority.
- 21.6 The Contractor shall take all reasonable steps to minimise noise and disturbance when carrying out the Works, including work permitted outside normal working hours.
- 21.7 Dumping of waste or excess materials by the Contractor shall, in urban areas, be done under the direction and control of, and at sites made available by the local authority. Dumping outside local authority boundaries shall be done only with the express permission and under the direction and control of the Contract Supervisor.
- 21.8 The Contractor shall comply with environmental protection measures and specifications stipulated by the Contract Supervisor and/or local and environmental authorities.
- 22.0 INTERFERENCE WITH THE NETWORK OPERATOR'S ASSETS AND WORK ON OPEN LINES**
- 22.1 The Contractor shall not interfere in any manner whatsoever with an open line, nor shall he carry out any work or perform any act which affects the security, use or safety of an open line except with the authority of the Contract Supervisor and in the presence of a duly authorised representative of the network operator.
- 22.2 The Contractor shall not carry out any work or operate any plant, or place any material whatsoever nearer than three metres from the centre line of any open line except with the written permission of the Contract Supervisor and subject to such conditions as he may impose.
- 22.3 Care must be taken not to interfere with or damage any services such as overhead wire routes, cables or pipes and optical fibre cable, except as provided for the work specified. The Contractor will be held responsible for any damage to or interruption of such services arising from any act or omission on his part or of any of his employees, or persons engaged by him on the Works. The cost of repairing, replacing or restoring the services, as well as all other costs arising from any damage to services, shall be borne by, and will be recovered from the Contractor.
- 22.4 Authority granted by the Contract Supervisor and the presence of an authorised representative of the network operator in terms hereof, shall not relieve the Contractor of his duty to comply with this specification.
- 23.0 ACCESS, RIGHTS-OF-WAY AND CAMPSITES**
- 23.1 Where entry onto the network operator's property is restricted, permission to enter will be given only for the purpose of carrying out the Works and will be subject to the terms and conditions laid down by the network operator.
- 23.2 The Contractor shall arrange for campsites, workplaces and access thereto as well as for any right-of-

way over private property to the site of the Works, and for access within the boundaries of the network operator's property. The owners of private property to be traversed shall be approached and treated with tact and courtesy by the Contractor, who shall, if necessary, obtain a letter of introduction to such property owners from the Contract Supervisor.

The Contractor shall be responsible for the closing of all gates on roads and tracks used by him or his employees. Except with the prior approval of the Contract Supervisor and the owner or occupier of any private land to be traversed, the Contractor shall not cut, lower, damage, remove or otherwise interfere with any fence or gate which is either on the network operator's property or on private property and which restricts access to the Works. Where such approval has been given, the Contractor shall prevent entry of animals or unauthorised persons onto the network operator's or private property, and shall make the fences safe against trespass at the close of each day's work.

- 23.3 The Contractor shall take all reasonable steps to confine the movement of vehicles and plant to the approved right-of-way to minimise damage to property, crops and natural vegetation.
- 23.4 When access is no longer required, and before completion of the Works, the Contractor shall repair, restore or replace any fence or gate damaged during execution of the Works to the satisfaction of the Contract Supervisor and shall furnish the Contract Supervisor with a certificate signed by the owner and occupier of land over which he has gained access to a campsite, workplace and the Works, certifying that the owner and occupier have no claim against the Contractor or the network operator arising from the Contractor's use of the land. Should the Contractor be unable to obtain the required certificate, he shall report the circumstances to the Contract Supervisor.

#### **24.0 SUPERVISION**

- 24.1 The Contract Supervisor will provide overall technical superintendence of the Works, and may direct the Contractor in terms of the provisions of the Contract or in respect of any measures which the Contract Supervisor may require for the operations of the network operator, the safety of trains, property and workmen of the network operator, and for the safety of other property and persons. The Contractor shall carry out the directions of the Contract Supervisor. The superintendence exercised by the Contract Supervisor, including any agreement, approval, refusal or withdrawal of any approval given, shall not relieve the Contractor of any of his duties and liabilities under the Contract, and shall not imply any assumption by the network operator or by the Contract Supervisor of the legal and other responsibilities of the Contractor in carrying out the Works.
- 24.2 The Contract Supervisor may delegate to any deputy or other person, any of his duties or functions under the Contract. On receiving notice in writing of such delegation, the Contractor shall recognise and obey the deputy or person to whom any such duties or functions have been delegated as if he were the Contract Supervisor.
- 24.3 The Contractor shall exercise supervision over the Works at all times when work is performed or shall be represented by an agent having full power and authority to act on behalf of the Contractor. Such agent shall be competent and responsible, and have adequate experience in carrying out work of a similar nature to the Works, and shall exercise personal supervision on behalf of the Contractor. The Contract Supervisor shall be notified in writing of such appointment which will be subject to his approval.
- 24.4 The Contractor or his duly authorised agent shall be available on the site at all times while the Works are in progress to receive the orders and directions of the Contract Supervisor.

#### **25.0 HOUSING OF EMPLOYEES**

- 25.1 The Contractor shall, where necessary, make his own arrangements for suitable housing of his employees. Where temporary housing is permitted by the Contract Supervisor on any part of the site, the Contractor shall provide suitable sanitation, lighting and potable water supplies in terms of the requirements of the local authority or the current network operator's specification; Minimum Communal Health Requirements in Areas outside the Jurisdiction of a Local Authority - E.4B, as applicable.
- 25.2 Fouling the area inside or outside the network operator's boundaries shall be prevented. The Contractor will be called upon by the Contract Supervisor to dispose of any foul or waste matter generated by the Contractor.

#### **26.0 OPTICAL FIBRE CABLE ROUTES**

- 26.1 The Contractor shall not handle, impact, move or deviate any optical fibre cable without prior approval.
- 26.2 Works that in any way affect the optical fibre cable requires prior approval from the Contract Supervisor

who will determine the work method and procedures to be followed.

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**PART B - SPECIFICATION FOR WORK NEAR HIGH-VOLTAGE ELECTRICAL EQUIPMENT**
**27.0 GENERAL**

27.1 This specification is based on the contents of Transnet's publication ELECTRICAL SAFETY INSTRUCTIONS, as amended, a copy of which will be made available on loan to the Contractor for the duration of the contract.

These instructions apply to all work near "live" high-voltage equipment maintained and/or operated by the network operator, and the onus rests on the Contractor to ensure that he obtains a copy.

27.2 This specification must be read in conjunction with and not in lieu of the Electrical Safety Instructions.

27.3 The Contractor's attention is drawn in particular to the contents of Part I, Sections 1 and 2 of the Electrical Safety Instructions.

27.4 The Electrical Safety Instructions cover the minimum safety precautions which must be taken to ensure safe working on or near high-voltage electrical equipment, and must be observed at all times. Should additional safety measures be considered necessary because of peculiar local conditions, these may be ordered by and at the discretion of the Electrical Officer (Contracts).

27.5 The Contractor shall obtain the approval of the Electrical Officer (Contracts) before any work is done which causes or could cause any portion of a person's body or the tools he is using or any equipment he is handling, to come within 3 metres of any "live" high-voltage equipment.

27.6 The Contractor shall regard all high-voltage equipment as "live" unless a work permit is in force.

27.7 Safety precautions taken or barriers erected shall comply with the requirements of the Electrical Officer (Contracts), and shall be approved by him before the work to be protected is undertaken by the Contractor. The Contractor shall unless otherwise agreed, bear the cost of the provision of the barriers and other safety precautions required, including the attendance of the network operator's staff where this is necessary.

27.8 No barrier shall be removed unless authorised by the Electrical Officer (Contracts).

**28.0 WORK ON BUILDINGS OR FIXED STRUCTURES**

28.1 Before any work is carried out or measurements are taken on any part of a building, fixed structure or earthworks of any kind above ground level situated within 3 metres of "live" high-voltage equipment, the Electrical Officer (Contracts) shall be consulted to ascertain the conditions under which the work may be carried out.

28.2 No barrier erected to comply with the requirements of the Electrical Officer (Contracts) shall be used as temporary staging or shuttering for any part of the Works.

28.3 The shuttering for bridge piers, abutments, retaining walls or parapets adjacent to or over any track may be permitted to serve as a barrier, provided that it extends at least 2,5 metres above any working level in the case of piers, abutments and retaining walls and 1,5 metres above any working level in the case of parapets.

**29.0 WORK DONE ON OR OUTSIDE OF ROLLING STOCK, INCLUDING LOADING OR UNLOADING**

29.1 No person may stand, climb or work, whilst on any platform, surface or foothold:

29.1.1 higher than the normal unrestricted access way, namely -

29.1.1.1 external walkways on diesel, steam and electric locomotives, steam heat vans, etc. and

29.1.1.2 walkways between coaches and locomotives.

29.1.2 of restricted access ways in terms of the Electrical Safety Instructions namely -

29.1.2.1 the floor level of open wagons

29.1.2.2 external walkways or decks of road-rail vehicles, on-track maintenance machines and material trains.

29.1.3 Unauthorised staff working on these platforms must be directly supervised by duly authorised persons in terms of clause 607.1.3 of the Electrical Safety Instructions. These persons must attend the relevant electrical safety module training. A letter of training must then be issued by an accredited training authority. A Category C Certificate of Authority must be obtained from the

local depot examining officer.

- 29.2 When in the above positions no person may raise his hands or any equipment he is handling above his head.
- 29.3 In cases where the Contractor operates his own rail mounted equipment, he shall arrange for the walkways on this plant to be inspected by the Electrical Officer (Contracts) and approved, before commencement of work.
- 29.4 The handling of long lengths of material such as metal pipes, reinforcing bars, etc should be avoided, but if essential they shall be handled as nearly as possible in a horizontal position below head height.
- 29.5 The Responsible Representative shall warn all persons under his control of the danger of being near "live" high-voltage equipment, and shall ensure that the warning is fully understood.
- 29.6 Where the conditions in clauses 30.1 to 30.4 cannot be observed the Electrical Officer (Contracts), shall be notified. He will arrange for suitable Safety measures to be taken. The Electrical Officer (Contracts), may in his discretion and in appropriate circumstances, arrange for a suitable employee of the Contractor to be specially trained by the network operator and at the Contractor's cost, as an Authorised Person to work closer than 3 metres from "live" overhead conductors and under such conditions as may be imposed by the senior responsible electrical engineer of the network operator.

### **30.0 USE OF EQUIPMENT**

#### **30.1 Measuring Tapes and Devices**

- 30.1.1 Measuring tapes may be used near "live" high-voltage equipment provided that no part of any tape or a person's body comes within 3 metres of the "live" equipment.
- 30.1.2 In windy conditions the distance shall be increased to ensure that if the tape should fall it will not be blown nearer than 3 metres from the "live" high-voltage equipment.
- 30.1.3 Special measuring devices longer than 2 metres such as survey sticks and rods may be used if these are of non-conducting material and approved by the responsible Electrical Engineer of the network operator, but these devices must not be used within 3 metres of "live" high-voltage equipment in rainy or wet conditions.
- 30.1.4 The assistance of the Electrical Officer (Contracts) shall be requested when measurements within the limits defined in clauses 31.1.1 to 31.1.3 are required.
- 30.1.5 The restrictions described in 31.1.1 to 31.1.3 do not apply on a bridge deck between permanent parapets nor in other situations where a barrier effectively prevents contact with the "live" high-voltage equipment.

#### **30.2 Portable Ladders**

- 30.2.1 Any type of portable ladder longer than 2 metres may only be used near "live" high-voltage equipment under the direct supervision of the Responsible Representative. He shall ensure that the ladder is always used in such a manner that the distance from the base of the ladder to any "live" high-voltage equipment is greater than the fully extended length of the ladder plus 3 metres. Where these conditions cannot be observed, the Electrical Officer (Contracts) shall be advised, and he will arrange for suitable safety measures to be taken.

### **31.0 CARRYING AND HANDLING MATERIAL AND EQUIPMENT**

- 31.1 Pipes, scaffolding, iron sheets, reinforcing bars and other material which exceeds 2 metres in length shall be carried completely below head height near "live" high-voltage equipment. For maximum safety such material should be carried by two or more persons so as to maintain it as nearly as possible in a horizontal position. The utmost care must be taken to ensure that no part of the material comes within 3 metres of any "live" high-voltage equipment.
- 31.2 Long lengths of wire or cable shall never be run out in conditions where a part of a wire or cable can come within 3 metres of any "live" high-voltage equipment unless the Electrical Officer (Contracts) has been advised and has approved appropriate safety precautions.
- 31.3 The presence of overhead power lines shall always be taken account of especially when communications lines or cables or aerial cables, stay wires, etc. are being erected above ground level.

### **32.0 PRECAUTIONS TO BE TAKEN WHEN ERECTING OR REMOVING POLES, ANTENNAE, TREES ETC.**

- 32.1 A pole may be handled for the purpose of erection or removal near high-voltage equipment under the following conditions:

(i) If the distance between the point at which the pole is to be erected or removed and the nearest "live" high-voltage equipment is more than the length of the pole plus 3 metres, the work shall be supervised by the Responsible Representative.

(ii) If the distance described in (i) is less than the length of the pole plus 3 metres, the Electrical Officer (Contracts) shall be consulted to arrange for an Authorised Person to supervise the work and to ensure that the pole is earthed where possible. The pole shall be kept in contact with the point of erection, and adequate precautions shall be taken to prevent contact with "live" high-voltage equipment.

32.2 The cost of supervision by an Authorised Person and the provision of earthing shall, unless otherwise agreed, be borne by the Contractor.

32.3 The provisions of clauses 33.1 and 33.2 shall also apply to the erection or removal of columns, antennae, trees, posts, etc.

### **33.0 USE OF WATER**

33.1 No water shall be used in the form of a jet if it can make contact with any "live" high-voltage equipment or with any person working on such equipment.

### **34.0 USE OF CONSTRUCTION PLANT**

34.1 "Construction plant" entails all types of plant including cranes, piling frames, boring machines, excavators, draglines, dewatering equipment and road vehicles with or without lifting equipment.

34.2 When work is being undertaken in such a position that it is possible for construction plant or its load to come within 3 metres of "live" high-voltage equipment, the Electrical Officer (Contracts) shall be consulted. He will arrange for an Authorised Person to supervise the work and to ensure that the plant is adequately earthed. The Electrical Officer (Contracts) will decide whether further safety measures are necessary.

34.3 The cost of any supervision by an Authorised Person and the provision of earthing shall, unless otherwise agreed, be borne by the Contractor.

34.4 When loads are handled by cranes, non-metallic rope hand lines shall be used, affixed to such loads so as to prevent their swinging and coming within 3 metres of "live" high-voltage equipment.

34.5 Clauses 35.1 to 35.4 shall apply *mutatis mutandis* to the use of maintenance machines of any nature.

### **35.0 WORK PERFORMED UNDER DEAD CONDITIONS UNDER COVER OF A WORK PERMIT**

35.1 If the Responsible Representative finds that the work cannot be done in safety with the high-voltage electrical equipment "live", he shall consult the Electrical Officer (Contracts) who will decide on the action to be taken.

35.2 If a work permit is issued the Responsible Representative shall-

(i) before commencement of work ensure that the limits within which work may be carried out have been explained to him by the Authorised Person who issued the permit to him, and that he fully understands these limits.

(ii) sign portion C of the permit before commencement of work;

(iii) explain to all persons under his control the limits within which work may be carried out, and ensure that they fully understand these limits;

(iv) care for the safety of all persons under his control whilst work is in progress; and

(v) withdraw all personnel under his control from the equipment on completion of the work before he signs portion D of the work permit.

### **36.0 TRACTION RETURN CIRCUITS IN RAILS**

36.1 DANGEROUS CONDITIONS CAN BE CREATED BY REMOVING OR SEVERING ANY BOND.

36.2 Broken rails with an air gap between the ends, and joints at which fishplates are removed under "broken bond" conditions, are potentially lethal. The rails on either side of an air gap between rail ends on electrified lines shall not be touched simultaneously until rendered safe by the network operator personnel.

36.3 The Contractor shall not break any permanent bonds between rails or between rails and any structure. He shall give the Contract Supervisor at least 7 days written notice when removal of such bonds is necessary.

36.4 No work on the track which involves interference with the traction return rail circuit either by cutting or removing the rails, or by removal of bonds shall be done unless the Electrical Officer (Contracts) is consulted. He will take such precautions as may be necessary to ensure continuity of the return circuit before permitting the work to be commenced.

**37.0 HIGH-VOLTAGE ELECTRICAL EQUIPMENT NOT MAINTAINED AND/OR OPERATED BY THE NETWORK OPERATOR**

Where the work is undertaken on or near high-voltage electrical equipment which is not maintained and/or operated by the network operator, the Occupational Health and Safety Act No. 85 of 1993, and Regulations and Instructions, or the Mines Health and Safety Act (Act 29 of 1996), shall apply.

Such equipment includes:-

- (i) Eskom and municipal equipment;
- (ii) The Contractor's own power supplies; and
- (iii) Electrical equipment being installed but not yet taken over from the Contractor.

**END**