

MASTER AGREEMENT

entered into by and between

TRANSNET SOC LTD

and

XXXXXXXX

**FOR THE APPOINTMENT OF A SERVICE PROVIDER TO CONDUCT TRANSNET
SUPPLIER INCUBATION TRAINING PROGRAMMES FOR A PERIOD OF 12
MONTHS**

Agreement Number	
Commencement Date	xxxxx
Expiry Date	xxxxx

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SCHEDULE 1 – WORK ORDER / SCHEDULE OF REQUIREMENTS

SCHEDULE 2 – PRICING SCHEDULE

1 INTRODUCTION

This Agreement is entered into by and between:

Transnet SOC Ltd [Registration Number 1990/000900/30] whose registered address is 138 Eloff Street Braamfontein Johannesburg 2000, Republic of South Africa [**Transnet**]

and

xxxxxxxxxxxxxxxxxxxx [Registration Number] whose registered address is
xxxxxxxxxxxxxxxxxxxx [**Service Provider**].

NOW THEREFORE, IT IS AGREED:

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

2 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:

- 2.1 **AFSA** means the Arbitration Foundation of South Africa;
- 2.2 **Agreement** means this Agreement and its associated schedules and/or annexures and/or appendices, and/or schedules, including the Schedule of Requirements/Work Orders, the technical specifications for the Services and such special conditions as shall apply to this Agreement, together with the General Tender Conditions and any additional provisions in the associated bid documents tendered by the Service Provider [as agreed, in writing, between the Parties], which collectively and exclusively govern the provision of Services and provision of ancillary Services by the Service Provider to Transnet;
- 2.3 **Assignment** refers to the transfer of rights and obligations in a contract from an assigner to an assignee.
- 2.4 **Background Intellectual Property** means all Intellectual Property introduced and required by either Party to give effect to their obligations under this Agreement owned in whole or in part by or licensed to either Party or their affiliates prior to the Commencement Date or developed after the Commencement Date otherwise pursuant to this Agreement;
- 2.5 **Business Day(s)** means Mondays to Fridays between 07:30 and 16:00, excluding public holidays as proclaimed in South Africa;
- 2.6 **Cession** refers to the transfer of only the rights a service provider has in terms of a contract from it to a third party.

- 2.7 **Commencement Date** means **xxxxxxx 2025** , notwithstanding the signature date of this Agreement;
- 2.8 **Confidential Information** means any information or other data, whether in written, oral, graphic or in any other form such as in documents, papers, memoranda, correspondence, notebooks, reports, drawings, diagrams, discs, articles, samples, test results, prototypes, designs, plans, formulae, patents, or inventor's certificates, which a Party discloses or provides to the other Party [intentionally or unintentionally, or as a result of one Party permitting the representative of the other Party to visit any of its premises], or which otherwise becomes known to a Party, and which is not in the public domain and includes, without limiting the generality of the term:
- a) information relating to methods of operation, data and plans of the disclosing Party;
 - b) the contents of this Agreement;
 - c) private and personal details of employees or clients of the disclosing Party or any other person where an onus rests on the disclosing Party to maintain the confidentiality of such information;
 - d) any information disclosed by either Party and which is clearly marked as being confidential or secret;
 - e) information relating to the strategic objectives and planning of the disclosing Party relating to its existing and planned future business activities;
 - f) information relating to the past, present and future research and development of the disclosing Party;
 - g) information relating to the business activities, business relationships, products, services, customers, clients and Subcontractors of the disclosing Party where an onus rests on the disclosing Party to maintain the confidentiality of such information;
 - h) information contained in the software and associated material and documentation belonging to the disclosing Party;
 - i) technical and scientific information, Know-How and trade secrets of a disclosing Party including inventions, applications and processes;
 - j) Copyright works;
 - k) commercial, financial and marketing information;
 - l) data concerning architecture, demonstrations, tools and techniques, processes, machinery and equipment of the disclosing Party;
 - m) plans, designs, concepts, drawings, functional and technical requirements and specifications of the disclosing Party;
 - n) information concerning faults or defects in Goods, equipment, hardware or software or the incidence of such faults or defects; and
 - o) information concerning the charges, fees and/or costs of the disclosing Party or its authorised Subcontractors, or their methods, practices or service performance levels actually achieved;
- 2.9 **Copyright** means the right in expressions, procedures, methods of operations or mathematical concepts, computer program codes, compilations of data or other material, literary works, musical works, artistic works, sound recordings, broadcasts, program carrying signals, published editions, photographic works, or cinematographic works of the copyright owner to do or to authorise the doing of certain acts specified in respect of the different categories of works;

- 2.10 **Data** means all data, databases, documents, information, graphics, text or other material in an electronic or tangible medium which the Parties to this Agreement generate, collect, process, store or transmit in relation to their business;
- 2.11 **Designs** mean registered Designs and/or Design applications and will include the monopoly right granted for the protection of an independently created industrial design including designs dictated essentially by technical or functional considerations as well as topographies of integrated circuits and integrated circuits;
- 2.12 **Expiry Date** means xxxxxxxx 2025;
- 2.13 **Foreground Intellectual Property** means all Intellectual Property developed by either Party pursuant to this Agreement;
- 2.14 **ICC Incoterms** means the the latest version of commercial trade terms as published by the International Chamber of Commerce, Paris [ICC], which are otherwise referred to as purchase terms and which define precisely the responsibilities, costs and risks of the buyer [**Transnet**] and the seller [**the Supplier**]. Incoterms are only applicable to contracts involving the import or export of Goods from one country to another and for the purpose of this Agreement, if applicable, shall mean the designated Incoterm as stipulated in Schedule 1 hereto. Further details of the Incoterm [purchase terms] for this Agreement, if applicable, can be viewed at the International Business Training website - <http://www.i-b-t.net/incoterms.html>;
- 2.15 **Intellectual Property** means Patents, Designs, Know-How, Copyright and Trade Marks and all rights having equivalent or similar effect which may exist anywhere in the world and includes all future additions and improvements to the Intellectual Property;
- 2.16 **Know-How** means all Confidential Information of whatever nature relating to the Intellectual Property and its exploitation as well as all other Confidential Information generally relating to Transnet's field of technology, including technical information, processing or manufacturing techniques, Designs, specifications, formulae, systems, processes, information concerning materials and marketing and business information in general;
- 2.17 **Parties** mean the Parties to this Agreement together with their subsidiaries, divisions, business units, successors-in-title and assigns;
- 2.18 **Party** means either one of these Parties;
- 2.19 **Patents** mean registered Patents and Patent applications, once the latter have proceeded to grant, and includes a right granted for any inventions, products or processes in all fields of technology;
- 2.20 **Permitted Purpose** means any activity or process to be undertaken or supervised by a Staff member of one Party during the term of this Agreement, for which purpose authorised disclosure of the other Party's Confidential Information or Intellectual Property is a prerequisite in order to enable such activity or process to be accomplished;
- 2.21 **Price(s)** means the agreed Price(s) for the Goods/Services to be purchased from the Supplier/Service Provider by Transnet, as detailed in the Schedule of Requirements, issued in accordance with this Agreement, as amended by mutual agreement between the Parties and in accordance with the terms and conditions in this Agreement from time to time;
- 2.22 **Purchase Order(s)** means official orders issued by an operating division of Transnet to the Service Provider for the supply of Services;

- 2.23 **Service(s)** means xxxxxxxxxxxxxxxx , the Service(s) provided to Transnet by the Service Provider, pursuant to the Work Order(s) in terms of this Agreement;
- 2.24 **Service Level Agreement** or **SLA** means the processes, deliverables, key performance indicators and performance standards relating to the Services to be provided by the Service Provider;
- 2.25 **Service Provider Materials** means all works of authorship, products and materials [including, but not limited to, data, diagrams, charts, reports, specifications, studies, inventions, software, software development tools, methodologies, ideas, methods, processes, concepts and techniques] owned by, or licensed to, the Service Provider prior to the Commencement Date or independently developed by the Service Provider outside the scope of this Agreement at no expense to Transnet, and used by the Service Provider in the performance of the Services;
- 2.26 **Staff** means any partner, employee, agent, consultant, independent associate or contractor, Subcontractor and the staff of such Subcontractor, or other authorised representative of either Party;
- 2.27 **Schedule of Requirements** means Schedule 1 hereto;
- 2.28 **Subcontract** means any contract or agreement or proposed contract or agreement between the Service Provider and any third party whereby that third party agrees to provide to the Supplier the related Services or any part thereof or material used in the manufacture of the Goods or any part thereof;
- 2.29 **Subcontractor** means the third party with whom the Service Provider enters into a Subcontract;
- 2.30 **Tax Invoice** means the document as required by Section 20 of the VAT Act, as may be amended from time to time;
- 2.31 **Trade Marks** mean registered Trade Marks and Trade Mark applications and include any sign or logo, or combination of signs and/or logos capable of distinguishing the goods or services of one undertaking from those of another undertaking;
- 2.32 **VAT** means Value-Added Tax chargeable in terms of the VAT Act, 89 of 1991, as may be amended from time to time; and
- 2.33 **VAT Act** means the Value Added Tax Act, No 89 of 1991, as may be amended from time to time.
- 2.34 **Work Order(s)** means a detailed scope of work for a Service required by Transnet, including **timeframes**, Deliverable, Fees and costs for the supply of the Service to Transnet, which may be appended to this Agreement from time to time.

3 INTERPRETATION

- 3.1 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.
- 3.2 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.
- 3.3 A reference to the singular incorporates a reference to the plural and *vice versa*.
- 3.4 A reference to natural persons incorporates a reference to legal persons and *vice versa*.

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

4 NATURE AND SCOPE

- 4.1 This Agreement is an agreement under the terms and conditions of which the Service Provider will arrange for the provision to Transnet of the Services which meet the requirements and specifications of Transnet, the delivery of which is controlled by means of Purchase Orders to be issued by Transnet and executed by the Service Provider in accordance with this Agreement.
- 4.2 Such Purchase Orders and deliveries to Transnet shall be agreed between the Parties from time to time, subject to the terms of the Schedule of Work Order.
- 4.3 Each properly executed Purchase Order forms an inseparable part of this Agreement as if it were fully incorporated into the body of this Agreement.
- 4.4 During the period of this Agreement, both Parties can make written suggestions for amendments to the Schedule of Work Orders in accordance with procedures set out in clause 342 [*Amendment and Change Control*]. A Party will advise the other Party within 14 [fourteen] Business Days, or such other period as mutually agreed, whether the amendment is acceptable.
- 4.5 Insofar as any term, provision or condition in the Schedule of Work Order conflicts with a like term, provision or condition in this Agreement and/or a Purchase Order, the term or provision or condition in this Master Agreement shall prevail, unless such term or provision or condition in this Master Agreement has been specifically revoked or amended by mutual written agreement between the Parties.
- 4.6 Time will be of the essence and the Service Provider will perform its obligations under this Agreement in accordance with the timeframe(s) [if any] set out in the relevant schedule, save that the Service Provider will not be liable under this clause if it is unable to meet such obligation within the time required as a direct result of any act or omission by Transnet and it has used its best endeavours to advise Transnet of such act or omission. In the event of such delay, any time deadlines detailed in the relevant schedule shall be extended by a period equal to the period of that delay.

5 AUTHORITY OF PARTIES

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

6 DURATION/TERM AND CANCELLATION

- 6.1 Notwithstanding the date of signature hereof, the Commencement Date if this Agreement is **xxxxxxxxxx 2025** and the duration shall be for a **xxxx [x] years period**, expiring on **xxxxxxxxxx 2028**, unless:

- a) this Agreement is terminated by either Party in accordance with the provisions incorporated herein or in any schedules or annexures appended hereto, or otherwise in accordance with law or equity; or
 - b) this Agreement is extended at Transnet's option for a further period to be agreed by the Parties.
- 6.2 Notwithstanding clause 219 [*Breach and Termination*], either Party may cancel this Agreement without cause by giving 30 [thirty] calendar days prior written notice thereof to the other Party, provided that in such instance, this Agreement will nevertheless be applicable in respect of all Purchase Orders which have been placed prior to the date of such cancellation.

7 RISK MANAGEMENT

- 7.1 Where Transnet determines appropriate, within 2 weeks from the date of contract signature, the Parties are to meet to prepare and maintain a contract Risk Register. The Risk Register shall include a description of the risks and a description of the actions which are to be taken to avoid or reduce these risks which both Parties shall jointly determine.
- 7.2 Contract progress meetings shall be held monthly, or unless otherwise agreed between the Parties in writing. The purposes of these progress meetings shall be to capture the number of late deliverables against agreed milestones, actual costs against payment plans, performance issues or concerns, contract requirements not achieved, the status of previous corrective actions and risk management. Minutes of meetings shall be maintained and signed off between the Parties throughout the contract period

8 TRANSNET'S OBLIGATIONS

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

9 GENERAL OBLIGATIONS OF THE SERVICE PROVIDER

- 9.1 The Service Provider shall:
- a) respond promptly to all complaints and enquiries from Transnet;
 - b) inform Transnet immediately of any dispute or complaint arising in relation to the storage or delivery of the Goods;
 - c) conduct its business in a professional manner which will reflect positively upon the Service Provider and the Service Provider's services;
 - d) keep full records clearly indicating all transactions concluded by the Service Provider relating to the delivery of the Services and keep such records for at least 5 [five] years from the date of each such transaction;

- e) obtain, and at all times maintain in full force and effect, any and all licences, permits and the like required under applicable laws for the provision of the Services and ancillary Services and the conduct of the business and activities of the Service Provider;
- f) observe and ensure compliance with all requirements and obligations as set out in the labour and related legislation of South Africa, including the Occupational Health and Safety Act, 85 of 1993, as may be amended from time to time;
- g) observe and ensure compliance with all requirements and objectives of the Transnet Supplier Integrity Pact as agreed to in response to the RFP. The general purpose of the Supplier Integrity Pact is to agree to avoid all forms of dishonesty, fraud and corruption by following a system that is fair, transparent and free from any undue influence prior to, during and subsequent to the currency of the procurement event leading to this Agreement and this Agreement itself;
- h) comply with all applicable environmental legislation and regulations, demonstrate sound environmental performance and have an environmental management policy which ensures that its products, including the Services or ancillary Services are procured, produced, packaged, delivered and are capable of being used and ultimately disposed of in a way that is environmentally appropriate; and
- i) ensure the validity of all renewable certifications, including but not limited to its B-BBEE Verification Certificate, throughout the entire term of this Agreement. Should the Service Provider fail to present Transnet with such renewals as they become due, Transnet shall be entitled, in addition to any other rights and remedies that it may have in terms of the Agreement, to terminate this Agreement forthwith without any liability and without prejudice to any claims which Transnet may have for damages against the Service Provider.

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

- a) render the supply of the Services and ancillary Services (if applicable) and perform all its duties with honesty and integrity;
- b) communicate openly and honestly with Transnet regarding the supply and performance of the Services and demonstrate a commitment to effecting the supply and performing ancillary Services timeously, efficiently and at least to the required standards;
- c) endeavour to provide the highest possible standards of service and workmanship, with a reasonable degree of care and diligence;
- d) use its best endeavours and make every diligent effort to meet agreed deadlines;
- e) treat its own Staff, as well as all Transnet's Staff, with fairness and courtesy and respect for their human rights;
- f) practice and promote its own internal policies aimed at prohibiting and preventing unfair discrimination;
- g) treat all enquiries from Transnet in connection with the supply of the Services and/or ancillary Services with courtesy and respond to all enquiries promptly and efficiently. Where the Service Provider is unable to comply with the provisions of this clause, the Service Provider will advise Transnet of the delay and the reasons therefor and will keep Transnet informed of progress made regarding the enquiry;

- h) when requested by Transnet, provide clear and accurate information regarding the Service Provider's own policies and procedures, excluding Know-How and other Confidential Information, except where a non-disclosure undertaking has been entered into between the Parties;
 - i) not allow a conflict of interest to develop between its own interests [or the interests of any of its other customers] and the interests of Transnet;
 - j) not accept or offer, nor allow, induce or promote the acceptance or offering of any gratuity, enticement, incentive or gift that could reasonably be regarded as bribery or an attempt to otherwise exert undue influence over the recipient;
 - k) not mislead Transnet or its officers, employees and stakeholders, whether by act or omission;
 - l) not otherwise act in an unethical manner or do anything which could reasonably be expected to damage or tarnish Transnet's reputation or business image;
 - m) immediately report to Transnet any unethical, fraudulent or otherwise unlawful conduct of which it becomes aware in connection with Transnet or the supply of Services or ancillary Services to Transnet;
 - n) ensure that at all times, during the currency of this Agreement, it complies with all obligations and commitments in terms of the provisions of the Income Tax Act, No 58 of 1962, the VAT Act or any other tax legislation relating to their liability for Income Tax, VAT, Pay as You Earn or any other tax. The Service Provider shall further ensure Tax Clearance Compliance, for the duration of this Agreement;
 - o) not victimise, harass or discriminate against any employee of either Party to this Agreement or any applicant for employment with either Party to this Agreement due to their gender, race, disability, age, religious belief, sexual orientation or part-time status. This provision applies, but is not limited to employment, upgrading, work environment, demotion, transfer, recruitment, recruitment advertising, termination of employment, rates of pay or other forms of compensation and selection for training.
 - p) shall ensure that its employees, agents and Subcontractors will not breach any applicable discrimination legislation and any amendments and re-enactments thereof.
- 9.3 In compliance with the National Railway Safety Regulator Act, 16 of 2002, as may be amended from time to time, the Supplier shall ensure that the Services and ancillary Services, to be supplied to Transnet under the terms and conditions of this Agreement, comply fully with the Specifications as set forth in Schedule 1 hereto, and shall thereby adhere [as applicable] to railway safety requirements and/or regulations. Permission for the engagement of a Subcontractor by the Supplier, as applicable, shall be subject to a review of the capability of the proposed Subcontractor to comply with the specified railway safety requirements and/or regulations. The Supplier and/or its Subcontractor shall grant Transnet access, during the term of this Agreement, to review any safety-related activities, including the coordination of such activities across all parts of its organisation.

10 SERVICE PROVIDER'S PERSONNEL

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

- 10.2 The Service Provider warrants that all its Personnel will be entitled to work in South Africa or any other country in which the Services are to be performed.
- 10.3 The Service Provider will ensure that its Personnel comply with all reasonable requirements made known to the Service Provider by Transnet concerning conduct at any Transnet premises or any other premises upon which the Services are to be performed [including but not limited to security regulations, policy standards and codes of practice and health and safety requirements]. The Service Provider will ensure that such Personnel at all times act in a lawful and proper manner in accordance with these requirements.
- 10.4 Transnet reserves the right to refuse to admit or to remove from any premises occupied by or on behalf of it, any Service Provider Personnel whose admission or presence would, in the reasonable opinion of Transnet, be undesirable or who represents a threat to confidentiality or security or whose presence would be in breach of any rules and regulations governing Transnet's Personnel, provided that Transnet notifies the Service Provider of any such refusal [with reasons why]. The reasonable exclusion of any such individual from such premises shall not relieve the Service Provider from the performance of its obligations under this Agreement.
- 10.5 The Service Provider agrees to use all reasonable endeavours to ensure the continuity of its Personnel assigned to perform the Services. If any re-assignment by the Service Provider of those Personnel is necessary, or if Transnet advises that any such Personnel assigned are in any respect unsatisfactory, including where any such Personnel are, or are expected to be or have been absent for any period, then the Service Provider will promptly supply a replacement of equivalent calibre and experience, and any such replacement shall be approved by Transnet prior to commencing provision of the Services, such approval not to be unreasonably withheld or delayed.

11 SUBCONTRACTING

- 11.1 The Service Provider may only enter into a subcontracting arrangement or replace a subcontractor with the approval of Transnet.
- 11.2 If the Service Provider subcontracts a portion of the contract to another person without declaring it to Transnet reserves the right to penalise the Service Provider up to 10% of the value of the contract.
- 11.3 Where the Service Provider seeks to replace a subcontractor Transnet shall be entitled to obtain representations or input from the initial subcontractor who was part of the tender process whose credentials were used in the Supplier/Service Provider's tender submission. Transnet shall consider input from all parties concerned, in order to take a decision on the proposed replacement of the subcontractor. The subcontracting arrangement or contract remains between the Supplier/Service Provider (main contractor) and the subcontractor.
- 11.4 Should Transnet approve the Supplier's/Service Provider's subcontracting arrangement, the Service Provider and not the Sub-contractor will at all times be held liable for performance in terms of its contractual obligations.
- 11.5 The Service Provider may not subcontract in such a manner that the the overall value of the contract is reduced to below the stipulated minimum threshold.
- 11.6 The Service Provider may not subcontract more than 25% of the value of the contract to any other enterprise that does not have an equal or higher B-BBEE status level of contributor than the Service Provider, unless the contract is subcontracted to an Exempted Micro Enterprise (EME) that has the capability and ability to execute the Subcontract.

12 PAYMENT TO SUB-CONTRACTORS

- 12.1 Transnet reserves the right, in its sole discretion, to make payment directly to the sub-contractor of the Service Provider, subject to the following conditions:
 - a) Receipt of an undisputed invoice from the sub-contractor; and
 - b) Receipt of written confirmation from the Service Provider that the amounts claimed by the sub-contractor are correct and that the services for which the sub-contractor has requested payment were rendered to the satisfaction of the Service Provider, against the required standards.
- 12.2 Nothing contained in this clause must be interpreted as bestowing on any sub-contractor a right or legitimate expectation to be paid directly by Transnet. Furthermore, this clause does not bestow any right or legitimate expectation on the Service provider to demand that Transnet pay its sub-contractor directly. The decision to pay any sub-contractor directly, remains that of Transnet alone.
- 12.3 The Service Provider remains liable for its contractual obligations under the Agreement, including all services rendered by the sub-contractor.
- 12.4 This clause does not establish any contractual relationship between Transnet and any sub-contractor of the Service Provider, whatsoever.

13 B-BBEE AND SOCIO-ECONOMIC OBLIGATIONS

13.1 B-BBEE Scorecard

- a) Transnet fully endorses and supports the Broad-Based Black Economic Empowerment Programme and is strongly of the opinion that all South African business enterprises have an equal obligation to redress the imbalances of the past.
- b) In response to this requirement, the Service Provider shall submit to Transnet's Contract Manager or such other designated person details of its B-BBEE status in terms of the latest Codes of Good Practice issued in terms of the B-BBEE Act and proof thereof at the beginning of March each year during the currency of this Agreement.
- c) The Service Provider undertakes to notify and provide full details to Transnet in the event there is:
 - (i) a change in the Service Provider's B-BBEE status which is less than what it was at the time of its appointment including the impact thereof; and
 - (ii) a corporate or internal restructure or change in control of the Service Provider which has or likely to impact negatively on the Service Provider's B-BBEE status.
- d) Notwithstanding any other reporting requirement in terms hereof, the Supplier Service Provider undertakes to provide any B-BBEE data (underlying data relating to the Service Provider which has been relied upon or utilised by a verification agency or auditor for the purposes of issuing a verification certificate in respect of the Service Provider B-BBEE status) which Transnet may request on written notice within 30 (thirty) calendar days of such request. A failure to provide such data shall constitute a Service Provider Default and may be dealt with in accordance with the provisions of clause 219.
- e) In the event there is a change in the Service Provider's B-BBEE status, then the provisions of clause 219 shall apply.

13.2 Green Economy/Carbon Footprint

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

14 PENALTIES

14.1 Penalties for Non-compliance to Service Level Agreement

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

15 FEES AND EXPENSES RELATING TO SERVICES

- 15.1 In consideration of the provision of the Services, Transnet will pay to the Service Provider the Fees detailed in the relevant schedule or Work Order.
- 15.2 Transnet will not be invoiced for materials used in the provision of the Services save for those materials [if any] set out in the Work Order and accepted by Transnet or in any relevant Work Order [which will be invoiced to Transnet at cost].
- 15.3 Unless otherwise agreed in a schedule or Work Order, Transnet will reimburse to the Service Provider all reasonable and proper expenses incurred directly and solely in connection with the provision of the Services, provided that all such expenses:
- a) are agreed by Transnet in advance;
 - b) are incurred in accordance with Transnet's standard travel and expenses policies;
 - c) are passed on to Transnet at cost with no administration fee; and
 - d) will only be reimbursed if supported by relevant receipts.
- 15.4 All Tax Invoices relating to Fees, out of pocket expenses and, if applicable, travel and accommodation costs, will provide the detail for each of the Personnel carrying out the Services and incurring the expenses, and the Tax Invoice will, where appropriate, include VAT as a separate item.

16 INVOICES AND PAYMENT

- 16.1 Transnet shall pay the Service Provider the amounts stipulated in each Purchase Order/Work Order, subject to the terms and conditions of this Agreement.
- 16.2 Transnet shall pay such amounts to the Service Provider upon receipt of a valid and undisputed Tax Invoice together with the supporting documentation, as specified in the Schedule of Requirements appended hereto, once the valid and undisputed Tax Invoices or such portions of the Tax Invoices which are valid and undisputed become due and payable to the Service Provider for the delivery of the Services ordered, in terms of clause 16.5 below.
- 16.3 Transnet may, pending an investigation, withhold any payments to the Service Provider, in the case where irregular expenditure has been identified in the particular contract and that there is reasonable suspicion that the Service Provider is involved or was aware that the contract transgressed any legislation.
- 16.4 All Prices set out in this Agreement and the Schedule of Requirements hereto are to be indicated inclusive and exclusive of VAT, which will be payable at the applicable rate in ZAR.

- 16.5 Unless otherwise provided for in the Schedule of Requirements appended to this Agreement, Tax Invoices shall be submitted together with a month-end statement. Payment against such month-end statement shall be made by Transnet within 30 [thirty] calendar days after date of receipt by Transnet of the Service Provider's statement together with the relevant valid and undisputed Tax Invoice(s) and supporting documentation.
- 16.6 Where the payment of any Tax Invoice, or any part of a Tax Invoice which is not in dispute, is not made in accordance with this clause, the Service Provider shall be entitled to charge interest on the outstanding amount, at The Standard Bank of South Africa's prime rate of interest in force, for the period from the due date of payment until the outstanding amount is paid.
- 16.7 The Service Provider shall remain the owner of all plant, material, machinery, equipment and the like [collectively, **the Supplier's Goods**] provided to Transnet until Transnet has paid in full for the Supplier's Goods, it being specifically agreed that Transnet shall acquire no rights [including liens] of whatsoever nature in such Supplier's Goods until date of final payment by Transnet. Subject to the foregoing, all risk and benefit to the Supplier's Goods shall pass from the Supplier to Transnet on delivery of the Supplier's Goods by the Supplier to Transnet.

17 PRICE ADJUSTMENTS

- 17.1 Prices for Services supplied in terms of this Agreement shall be subject to review as indicated in the Schedule of Requirements/Works Order annexed hereto.
- 17.2 No less than 2 [two] months prior to any proposed Price adjustment, the Parties shall commence negotiations for Prices for the next period or as otherwise indicated in Schedule 1 hereto. The Parties shall have regard for market-related pricing of equivalent goods, continuous improvement initiatives, costs [including labour, raw materials and transport/delivery], order size and frequency and changes to the specification of the Services.
- 17.3 Pursuant to clause 17.2 above, the Service Provider shall keep full and accurate records of all costs associated with the supply of the Services to Transnet, in a form to be approved in writing by Transnet. The Service Provider shall produce such records to Transnet for inspection at all reasonable times on request and such records may, at Transnet's option, be audited by Transnet or its designated representatives.
- 17.4 Should Transnet and the Service Provider fail to reach an agreement on Price for the successive period, either Party shall be entitled to submit this matter to dispute resolution in accordance with clause 39 of the Master Agreement [Dispute Resolution].
- 17.5 If during the period of this Agreement Transnet can purchase similar Services of a like quality from another supplier at a total delivered cost to a Transnet facility that is lower than the total delivered cost of the Services purchased hereunder from the Service Provider, Transnet may notify the Service Provider of such total delivered cost and the Service Provider shall have an opportunity to adjust the Price of the Goods/Services purchased hereunder, on such a basis as to result in the same total delivered cost to Transnet, within 30 [thirty] calendar days of such notice. If the Service Provider fails to do so or cannot legally do so, Transnet may (i) purchase the Services from such other supplier in which case the obligations, including, but not limited to, any purchase and sale requirements and/or commitments, if any, of Transnet and the Service Provider hereunder shall be reduced accordingly; (ii) terminate this Agreement without any penalty, liability or further obligation; or (iii) continue purchases under this Agreement.

17.6 If during the period of this Agreement the Service Provider sells any materials which are the same as, equivalent to, or substantially similar to the Services herein, at a total delivered cost to a third party lower than the total delivered cost to a Transnet facility, then the Service Provider has an opportunity to adjust its Price for the Services purchased hereunder within 30 [thirty] calendar days so that the Price is the same or lower than the total delivered cost of such third party. If the Service Provider fails to do so or cannot legally do so, Transnet may (i) purchase the Goods/Services from any other such supplier, in which case the obligations, including, but not limited to, any purchase and sale requirements and/or commitments, if any, of Transnet and the Service Provider hereunder shall be reduced accordingly; or (ii) terminate this Agreement without any penalty, liability or further obligation. Within 30 [thirty] calendar days of the Commencement Date of this Agreement or at any time Transnet so requests, the Service Provider shall certify in writing to Transnet that it is in compliance with this clause and shall provide all information that Transnet reasonably requests in order to verify such compliance.

17.7 time or to request Transnet to do so, Transnet may proceed to remedy or make good

18 TOTAL OR PARTIAL FAILURE TO PERFORM

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

- a) no manufacturing of the Goods specified in a Purchase Order has commenced and there is little or no prospect, in Transnet's opinion, that manufacturing will commence within a reasonable time; or
- b) delivery of any of the Goods is being or is likely to be delayed beyond the promised delivery date(s), and there is little or no prospect of the Purchase Order(s) being carried out within reasonable adherence to the promised delivery rate(s) or time(s),

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

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

18.3 Whenever, in any case not covered by clause 18.1 above, the Supplier fails or neglects to execute the work or to deliver any portion of the Goods/Services as required by the terms of this Agreement or Purchase Order, or if any Goods/Services are rejected on any of the grounds mentioned in clause **Error! Reference source not found.**5 [Defective Goods], Transnet may cancel this Agreement or Purchase Order in so far as it relates to the unexecuted work or the undelivered or rejected portion of the Goods/Services, and in such event, the supply of the remaining portion shall remain subject in all respects to these conditions.

19 NON CONFORMANCE OF SERVICES PROCURED

- 19.1 In the case of Goods/services manufactured for and procured by Transnet from the Supplier/Service Provider in terms of this Agreement, being found not to conform to the Transnet standards, specifications and requirements, Transnet at any time may be entitled to raise a Non Conformance Report (NCR) against a Supplier/Service Provider whose Goods/ Services do not conform to Transnet standards, specifications and requirements directing the Supplier/Service Provider to investigate and remedy the non-conformance within the stipulated time frame as may be determined by Transnet at its discretion.*
- 19.2 Failure by the Supplier/Service Provider to fully comply with NCR within the period stated in sub-clause 26.1 above, shall entitle Transnet to further conditions to which the Supplier/ Service Provider must discharge in order to close the NCR or to terminate the order without giving the Supplier/Service Provider written notice of termination in terms of this Agreement.*

20 RIGHTS ON CANCELLATION

- 20.1 If this Agreement or Purchase Order is cancelled in whole or in part in terms of clause 186 *[Total or Partial Failure to Perform]*, Transnet may execute or complete this Agreement with any other entity and do so on such terms as it may deem proper, or may procure other comparable Services in substitution for those neglected to be manufactured or supplied or rejected as aforesaid, and may recover from the Supplier the difference between the cost of such Services and the Price [if the latter was lower] as well as any costs and expenses [including any additional transport costs] which Transnet may have had to incur in consequence of the Service Provider's default.
- 20.2 Any amount which may be recoverable from the Service Provider in terms of clause 20.1 above, without prejudice to any other legal remedies available to Transnet, may be deducted in whole or in part from any monies in the hands of Transnet and due for payment to the Service Provider.

21 BREACH AND TERMINATION

- 21.1 Termination in accordance with clause 6 *[Term and Cancellation]* shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to either Party and all provisions which are to survive this Agreement or impliedly do so shall remain in force and in effect.
- 21.2 On termination of this Agreement or a Work Order, the Service Provider will immediately deliver up, and procure that its Personnel will immediately deliver up to Transnet, all Deliverables and property belonging to Transnet [or, in the event of termination of a Work Order, such as is relevant to that Work Order] which may be in the possession of, or under the control of the Service Provider, and certify to Transnet in writing that this has been done.
- 21.3 To the extent that any of the Deliverables and property referred to in clause 21.2 above are in electronic form and contained on non-detachable storage devices, the Service Provider will provide Transnet with unencrypted copies of the same on magnetic media and will irretrievably destroy and delete copies so held.
- 21.4 In the event that this Agreement is terminated by the Service Provider under clause **Error! Reference source not found.** *[Term and Cancellation]*, or in the event that a Work Order is terminated by Transnet under clause **Error! Reference source not found.**⁹ *[Breach and Consequences of Termination]*, Transnet will pay to the Service Provider all outstanding Fees [apportioned on a pro rata basis] relating to the work undertaken by the Service Provider up until the date of such termination. Transnet will also pay the costs of any goods and materials ordered by

the Service Provider in relation to the such work for which the Service Provider has paid or is legally obliged to pay, in which case, on delivery of such goods or materials, the Service Provider will promptly deliver such goods and materials to Transnet or as it may direct.

- 21.5 If either Party [**the Defaulting Party**] commits a material breach of this Agreement and fails to remedy such breach within 30 [thirty] calendar days of written notice thereof, the other Party [hereinafter **the Aggrieved Party**], shall be entitled, in addition to any other rights and remedies that it may have in terms of this Agreement, to terminate this Agreement forthwith without any liability and without prejudice to any claims which the Aggrieved Party may have for damages against the Defaulting Party.
- 21.6 Either Party may terminate this Agreement forthwith by notice in writing to the other Party when the other Party is unable to pay its debts as they fall due or commits any act or omission which would be an act of insolvency in terms of the Insolvency Act, 24 of 1936 [as amended from time to time], or if any action, application or proceeding is made with regard to it for:
- a) a voluntary arrangement or composition or reconstruction of its debts;
 - b) its winding-up or dissolution;
 - c) the appointment of a liquidator, trustee, receiver, administrative receiver or similar officer;
 - d) any similar action, application or proceeding in any jurisdiction to which it is subject.
- 21.7 Transnet may terminate this Agreement at any time within 2 [two] months of becoming aware of a change of control of the Service Provider by notice in writing to the Service Provider. For the purposes of this clause, **control** means the right to direct the affairs of a company whether by ownership of shares, membership of the board of directors, agreement or otherwise.
- 21.8 Notwithstanding this clause 219, Transnet may cancel this Agreement without cause by giving 30 [thirty] calendar days prior written notice thereof to the Service Provider, or
- 21.9 The provisions of clauses 2 [Definitions], **Error! Reference source not found.** 2 [Warranties], 208 [Rights on Cancellation], 243 [Confidentiality], 275 [Limitation of Liability], 36 [Intellectual Property Rights], 319 [Dispute Resolution] and 35.1 [Governing Law] shall survive termination or expiry of this Agreement.

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

- 22.1 The Service Provider is not allowed to cede its rights for payment in terms of this Agreement without prior written approval from Transnet. Cession shall only be applicable as follows:
- a) Cession must only be applicable to the transfer of right to payment for services rendered by a Service Provider to an FSP or State Institutions;
 - b) The written request for cession must be by the Service Provider and not a third party; and
 - c) The written request by the Service Provider must be accompanied by the cession agreement.
- 22.2 The Service Provider is prohibited from transferring its rights and obligations to perform under this contract. Assignments are against the principles of section 217 of the Constitution mainly, fairness, transparency and competitiveness.

23 FORCE MAJEURE

- 23.1 Neither Party shall have any claim against the other Party arising from any failure or delay in the performance of any obligation of either Party under this Agreement caused by an act of force majeure such as acts of God, fire, flood, war, lockout, government action, laws or regulations,

terrorism or civil disturbance, defaults or other circumstances or factors beyond the reasonable control of either Party, and to the extent that the performance of obligations of either Party hereunder is delayed by virtue of the foregoing, any period stipulated for any such performance shall be reasonably extended. Transnet may however rely on strikes, industrial dispute and riots as a ground of force majeure.

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

24 PROTECTION OF PERSONAL INFORMATION

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

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

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

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

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

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

- i. they process personal information only for the express purpose for which it was obtained;
- ii. once processed for the purposes for which it was obtained, all personal information will be destroyed to an extent that it cannot be reconstructed to its original form, subject to any legal retention requirements;
- iii. Personal information is provided only to authorised personnel who strictly require the personal information to carry out the Parties' respective obligations under this Agreement;
- iv. they do not disclose personal information of the other Party, other than in terms of this Agreement;
- v. they have all reasonable technical and organisational measures in place to protect all personal information from unauthorised access and/or use;

- vi. they have appropriate technical and organisational measures in place to safeguard the security, integrity and authenticity of all information in their possession or under their control in terms of this Agreement;
 - vii. they identify all reasonably foreseeable internal and external risks to personal information in their possession or under their control; establish and maintain appropriate safeguards against the risks identified; regularly verify that the safeguards are effectively implemented; and ensure that the safeguards are continually updated in response to new risks or deficiencies in previously implemented safeguards;
 - viii. such personal information is protected against unauthorised or unlawful processing, accidental loss, destruction or damage, alteration, disclosure or access.
- 24.1 The Parties agree that if personal information will be processed for additional purposes beyond the original purpose for which it was obtained, explicit consent must be obtained beforehand from those persons whose information will be subject to such processing.
- 24.2 Should it be necessary for either Party to disclose or otherwise make available the personal information to any third party (including sub-contractors and employees) that is not already consented to, it may do so only with the prior written consent of the other Party. The Party requiring such consent shall require of all such third parties, appropriate written undertakings to be provided, containing similar terms to that set forth in this clause, and dealing with that third party's obligations in respect of its processing of the personal information. Following approval by the other Party, the Party requiring consent agrees that the provisions of this clause shall *mutatis mutandis* apply to all authorised third parties who process personal information.
- 24.3 The Parties shall ensure that any persons authorized to process information on their behalf (including employees and third parties) will safeguard the security, integrity and authenticity of all information. Where necessary to meet this requirement, the Parties shall keep all personal information and any analyses, profiles, or documents derived therefrom logically separated from all other information and documentation held by it.
- 24.4 The Parties shall carry out regular assessments to identify all reasonably foreseeable internal and external risks to the personal information in its possession or under its control. The Parties shall implement and maintain appropriate safeguards against the risks which it identifies and shall also regularly verify that the safeguards which it has in place have been effectively implemented.
- 24.5 The Parties agree that they will promptly return, destroy or de-identify any personal information in their possession or control which belongs to the other Party once it no longer serves the purpose for which it was collected in relation to this Agreement, subject to any legal retention requirements. This may be at the request of the other Party and includes circumstances where a person has requested the Parties to delete all instances of their personal information. The information will be destroyed or de-identified in such a manner that it cannot be reconstructed to its original form, linking it to any particular individual or organisation.
- 24.6 Personal Information security breach:
- a) Each Party shall notify the other party in writing as soon as possible after it becomes aware of or suspects any loss, unauthorised access or unlawful use of any personal information and shall, at its own cost, take all necessary remedial steps to mitigate the extent of the loss or compromise of personal information and to restore the integrity of the affected personal information as quickly as is possible. The Parties shall also be required to provide each other

with details of the persons affected by the compromise and the nature and extent of the compromise, including details of the identity of the unauthorised person who may have accessed or acquired the personal information.

- b) The Parties shall provide on-going updates on the progress in resolving the compromise at reasonable intervals until such time as the compromise is resolved.
- c) Where required, the Parties must notify the South African Police Service; and/or the State Security Agency and the Information Regulator and the affected persons of the security breach. Any such notification shall always include sufficient information to allow the persons to take protective measures against the potential consequences of the compromise.
- d) The Parties undertake to co-operate in any investigations relating to security which is carried out by or on behalf of the other including providing any information or material in its possession or control and implementing new security measures.

25 CONFIDENTIALITY

25.1 The Parties hereby undertake the following with regard to Confidential Information:

- a) not to divulge or disclose to any person whomsoever in any form or manner whatsoever, either directly or indirectly, any Confidential Information of the other without the prior written consent of such other Party, other than when called upon to do so in accordance with a statute, or by a court having jurisdiction, or by any other duly authorised and empowered authority or official, in which event the Party concerned shall do what is reasonably possible to inform the other of such a demand and each shall assist the other in seeking appropriate relief or the instituting of a defensive action to protect the Confidential Information concerned;
- b) not to use, exploit, permit the use of, directly or indirectly, or in any other manner whatsoever apply the Confidential Information disclosed to it as a result of this Agreement, for any purpose whatsoever other than for the purpose for which it is disclosed or otherwise than in strict compliance with the provisions in this Agreement;
- c) not to make any notes, sketches, drawings, photographs or copies of any kind of any part of the disclosed Confidential Information without the prior written consent of such other Party, except when reasonably necessary for the purpose of this Agreement, in which case such copies shall be regarded as Confidential Information;
- d) not to de-compile, disassemble or reverse engineer any composition, compilation, concept application, item, component de-compilation, including software or hardware disclosed and shall not analyse any sample provided by Transnet, or otherwise determine the composition or structure or cause to permit these tasks to be carried out except in the performance of its obligations pursuant to this Agreement;
- e) not to exercise less care to safeguard Transnet Confidential Information than the Party exercises in safeguarding its own competitive, sensitive or Confidential Information;
- f) Confidential Information disclosed by either Party to the other or by either Party to any other party used by such party in the performance of this Agreement, shall be dealt with as "restricted" or shall be dealt with according to any other appropriate level of confidentiality relevant to the nature of the information concerned, agreed between the Parties concerned and stipulated in writing for such information in such cases;

- g) the Parties shall not make or permit to be made by any other person subject to their control, any public statements or issue press releases or disclose Confidential Information with regard to any matter related to this Agreement, unless written authorisation to do so has first been obtained from the Party first disclosing such information;
- h) each Party shall be entitled to disclose such aspects of Confidential Information as may be relevant to one or more technically qualified employees or consultants of the Party who are required in the course of their duties to receive the Confidential Information for the Permitted Purpose provided that the employee or consultant concerned has a legitimate interest therein, and then only to the extent necessary for the Permitted Purpose, and is informed by the Party of the confidential nature of the Confidential Information and the obligations of the confidentiality to which such disclosure is subject and the Party shall ensure such employees or consultants honour such obligations;
- i) each Party shall notify the other Party of the name of each person or entity to whom any Confidential Information has been disclosed as soon as practicable after such disclosure;
- j) each Party shall ensure that any person or entity to which it discloses Confidential Information shall observe and perform all of the covenants the Party has accepted in this Agreement as if such person or entity has signed this Agreement. The Party disclosing the Confidential Information shall be responsible for any breach of the provisions of this Agreement by such person or entity; and
- k) each Party may by written notice to the other Party specify which of the Party's employees, officers or agents are required to sign a non-disclosure undertaking.

25.2 The duties and obligations with regard to Confidential Information in this clause 253 shall not apply where:

- a) a Party can demonstrate that such information is already in the public domain or becomes available to the public through no breach of this Agreement by that Party, or its Staff; or
- b) was rightfully in a Party's possession prior to receipt from the other Party, as proven by the first-mentioned Party's written records, without an infringement of an obligation or duty of confidentiality; or
- c) can be proved to have been rightfully received by a Party from a third party without a breach of a duty or obligation of confidentiality; or
- d) is independently developed by a Party as proven by its written records.

25.3 This clause 253 shall survive termination for any reason of this Agreement and shall remain in force and effect from the Commencement Date of this Agreement and 5 [five] years after the termination of this Agreement. Upon termination of this Agreement, all documentation furnished to the Service Provider by Transnet pursuant to this Agreement shall be returned to Transnet including, without limitation, all corporate identity equipment including dyes, blocks, labels, advertising matter, printing matter and the like.

26 INSURANCES

26.1 Without limiting the liability of the Supplier/Service Provider under this Agreement, the Service Provider shall take out insurance in respect of all risks for which it is prudent for the Service Provider to insure against, including any liability it may have as a result of its activities under this Agreement for theft, destruction, death or injury to any person and damage to property. The level

of insurance will be kept under review by Transnet, on an annual basis, to ensure its adequacy, provided that any variation to the level of such insurance shall be entirely at the discretion of the Service Provider.

- 26.2 The Service Provider shall arrange insurance with reputable insurers and will produce to Transnet evidence of the existence of the policies on an annual basis within 30 [thirty] calendar days after date of policy renewals.
- 26.3 Subject to clause 26.4 below, if the Service Provider fails to effect adequate insurance under this clause 26.4, it shall notify Transnet in writing as soon as it becomes aware of the reduction or inadequate cover and Transnet may arrange or purchase such insurance on behalf of the Service Provider. The Service Provider shall promptly reimburse Transnet for any premiums paid provided such insurance protects the Service Provider's liability. Transnet assumes no responsibility for such insurance being adequate to protect all of the Service Provider's liability.
- 26.4 In the event that the Service Provider receives written notice from its insurers advising of the termination of its insurance cover referred to in clause 26.1 above or if the insurance ceases to be available upon commercially reasonable terms, the Service Provider shall immediately notify Transnet in writing of such termination and/or unavailability, whereafter either the Service Provider or Transnet may terminate this Agreement on giving the other Party not less than 30 [thirty] calendar days prior written notice to that effect.

27 LIMITATION OF LIABILITY

- 27.1 The Service Provider's liability under this clause 27.1 shall be in addition to any warranty or condition of any kind, express or implied by law or otherwise, relating to the Services or ancillary Services, including the quality of the Services or ancillary Services or any materials delivered pursuant to this Agreement.
- 27.2 Neither Party excludes or limits liability to the other Party for:
 - a) death or personal injury caused by its negligence, [including its employees', agents' or Subcontractors' negligence]; or
 - b) fraud or theft.
- 27.3 The Service Provider shall indemnify and keep Transnet indemnified from and against liability for damage to any Transnet property [whether tangible or intangible] or any other loss, costs or damage suffered by Transnet to the extent that it results from any act of or omission by the Service Provider or its Personnel in connection with this Agreement. The Service Provider's liability arising out of this clause 27.3 shall be limited to direct damages.
- 27.4 Subject always to clauses 27.1 and 27.2 above, the liability of either the Service Provider or Transnet under or in connection with this Agreement, whether for negligence, misrepresentation, breach of contract or otherwise, for direct loss or damage arising out of each Default or series of related Defaults shall not exceed 100% [one hundred per cent] of the Fees paid under the schedule or Work Order to which the Default(s) relates.
- 27.5 Subject to clauses 27.1 to 27.4 above, in no event shall either Party be liable to the other for indirect or consequential loss or damage or including indirect or consequential loss of profits, business, revenue, goodwill or anticipated savings of an indirect nature or loss or damage incurred by the other Party as a result of third party claims.

27.6 If for any reason the exclusion of liability in clause 27.5 above is void or unenforceable, either Party's total liability for all loss or damage under this Agreement shall be as provided in clause 27.3 above.

27.7 Nothing in this clause 275 shall be taken as limiting the liability of the Parties in respect of clauses 243 [*Confidentiality*] and 286 [*Intellectual Property Rights*].

28 INTELLECTUAL PROPERTY RIGHTS

28.1 Title to Confidential Information

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

28.2 Title to Intellectual Property

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

refusal to file or continue prosecution or maintain any such applications and to maintain any protection issuing on the Foreground Intellectual Property.

- d) No consideration shall be paid by Transnet to the Service Provider for the assignment of any Foreground Intellectual Property from the Service Provider to Transnet, over and above the sums payable in terms of this Agreement. The Service Provider undertakes to sign all documents and do all things as may be necessary to effect, record and perfect the assignment of the Foreground Intellectual Property to Transnet.
- e) Subject to anything contrary contained in this Agreement and/or the prior written consent of Transnet [which consent shall not be unreasonably be withheld], the Service Provider shall under no circumstances be entitled as of right, or to claim the right, to use Transnet's Background Intellectual Property and/or Foreground Intellectual Property.

28.3 **Title to Improvements**

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

28.4 **Unauthorised Use of Confidential Information**

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

28.5 **Unauthorised Use of Intellectual Property**

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

proceedings are commenced by both Parties, both Parties will be responsible for the expenses and both Parties shall be entitled to damages or other awards arising out of proceedings.

29 NON-WAIVER

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

30 PARTIAL INVALIDITY

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

31 DISPUTE RESOLUTION

- 31.1 Should any dispute of whatsoever nature arise between the Parties concerning this Agreement, the Parties shall try to resolve the dispute by negotiation within 10 [ten] Business Days of such dispute arising.
- 31.2 If the dispute has not been resolved by such negotiation, either of the Parties may refer the dispute to AFSA and notify the other Party accordingly, which proceedings shall be held in Johannesburg.
- 31.3 Such dispute shall be finally resolved in accordance with the rules of AFSA by an arbitrator or arbitrators appointed by AFSA.
- 31.4 This clause constitutes an irrevocable consent by the Parties to any proceedings in terms hereof, and neither of the Parties shall be entitled to withdraw from the provisions of this clause or claim at any such proceedings that it is not bound by this clause 31.
- 31.5 This clause 319 is severable from the rest of this Agreement and shall remain in effect even if this Agreement is terminated for any reason.
- 31.6 This clause 319 shall not preclude either Party from seeking urgent relief in a court of appropriate jurisdiction, where grounds for urgency exist.

32 ADDRESSES FOR NOTICES

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

a) **Transnet**

- | | | |
|------|-------------------------|---|
| (i) | For legal notices: | Group Legal Department
138 Eloff Street, Braamfontein,
Johannesburg, 2017
Email: CLO.referrals@transnet.net
Attention: Group Legal Department |
| (ii) | For commercial notices: | Group B-BBEE & Localisation department |

138 Eloff Street, Braamfontein

Johannesburg, 2017

Email: xxxxxxxxxx@transnet.net

Attention: xxxxxxxxxxxx

b) The Supplier/Service Provider

(i) For legal notices:

.....
.....
.....

Fax No.

Attention:

(ii) For commercial notices:

.....
.....
.....

Fax No.

Attention:

32.2 Any notice shall be addressed to a Party at its physical address, or delivered by hand, or sent by fax or email.

32.3 Any notice shall be deemed to have been given:

- a) if hand delivered, on the day of delivery;
- b) if faxed, on the date and time of sending of such fax, as evidenced by a fax confirmation printout, provided that such notice shall be confirmed by prepaid registered post on the date of dispatch of such fax, or, should no postal facilities be available on that date, on the next Business Day; or
- c) if sent by email, on the date and time received, provided that such notice shall be confirmed by prepaid registered post on the date of dispatch of such email, or, should no postal facilities be available on that date, on the next Business Day.

33 WHOLE AND ONLY AGREEMENT

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

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

34 AMENDMENT AND CHANGE CONTROL

34.1 Any amendment or change of any nature made to this Agreement and the Schedule of Requirements thereof shall only be valid if it is in writing, signed by both Parties and added to this Agreement as an addendum hereto. In this regard a Change Notice must first be defined and issued by the requesting Party. A Change Notice Response must then be issued by responding Party. A

formal approval of the Change Request will then trigger the issue of the addendum to this Agreement.

- 34.2 In the event the Parties cannot agree upon changes, the Parties shall in good faith seek to agree any proposed changes using the dispute resolution procedures in clause 319 [*Dispute Resolution*].

35 GENERAL

35.1 Governing Law

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

35.2 Change of Law

In this Agreement, unless the context otherwise requires, references to a statutory provision include references to that statutory provision as from time to time amended, extended or re-enacted and any regulations made under it, provided that in the event that the amendment, extension or re-enactment of any statutory provision or introduction of any new statutory provision has a material impact on the obligations of either Party, the Parties will negotiate in good faith to agree such amendments to this Agreement as may be appropriate in the circumstances. If, within a reasonable period of time, the Supplier/Service Provider and Transnet cannot reach agreement on the nature of the changes required or on modification of Prices, delivery schedules, warranties, or other terms and conditions, either Party may seek to have the matter determined in accordance with clause 319 [*Dispute Resolution*] above.

35.3 Counterparts

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

36 DATABASE OF RESTRICTED SUPPLIER

The process of restriction is used to exclude a company/person from conducting future business with Transnet and other organs of state for a specified period. No Bid shall be awarded to a Bidder whose name (or any of its members, directors, partners or trustees) appear on the Register of Tender Defaulters kept by National Treasury, or who have been placed on National Treasury's List of Restricted Suppliers. Transnet reserves the right to withdraw an award, or cancel a contract concluded with a Bidder should it be established, at any time, that a bidder has been restricted with National Treasury by another government institution.

Thus signed by the Parties and witnessed on the following dates and at the following places:

For and on behalf of TRANSNET SOC LTD duly authorised hereto	For and on behalf of XXXXXXXXXXXXXXXXXX duly authorised hereto
Name:	Name:
Position:	Position:
Signature:	Signature:
Date:	Date:
Place:	Place:

AS WITNESS: Name:	AS WITNESS: Name:
Signature:	Signature:

AS WITNESS: Name:	AS WITNESS: Name:
Signature:	Signature:

SCHEDULE 1 – SCHEDULE OF REQUIREMENTS

DESCRIPTION
FOR THE APPOINTMENT OF A SERVICE PROVIDER TO CONDUCT TRANSNET SUPPLIER INCUBATION TRAINING PROGRAMMES FOR A PERIOD OF 12 MONTHS

SERVICE PROVIDER **xxxxxxxxxxxxx**

CONTRACT NUMBER

DURATION **xxxxxxxxxxxxx**

COMMENCEMENT DATE **xxxxxxxxxx 2025**

EXPIRY DATE **xxxxxxxxxxxxx**

SCOPE OF WORK

1. BACKGROUND & NEED

- 1.1 Transnet has a responsibility to support government programmes such as the Broad-Based Black Empowerment (B-BBEE) Act and its accompanying Codes of Good Practice since it is a State-Owned Company (SOC) and a responsible corporate citizen.
- 1.2 Transnet leverages on its Procurement budget to re-industrialise, develop, and sustain the local manufacturing base.
- 1.3 Enterprise Supplier Development (ESD) is one (1) of the three (3) priority elements of the Broad-Based Black Economic Empowerment (B-BBEE) Scorecard. The aim is to strengthen local procurement, enhance local supplier development programmes and increase financial support towards black entities. Thus, as per the new Integrated Transport Sector Codes the measured entity (ME) is required to achieve a forty percent (40%) sub-minimum on the total points allocated for preferential procurement (40% of 33 points), supplier development (40% of 15 points) and Enterprise development (40% of 5 points).
- 1.4 Transnet's ESD objectives are outlined in the Enterprise Supplier Development and Localisation (ESDL) Strategy that was approved by the board on 21 August 2024. The approved Transnet's ESDL strategy supports the Black entrepreneurs through the various developmental levels – business case development, business incubation, Transnet's Black Industrialist Programme, as well as its regional and global exporting and trade programmes.

2. EXECUTIVE SUMMARY

- 2.1 Transnet seeks to strengthen its supply chain by onboarding black-owned companies through structured Enterprise and Supplier Development (ESD) programmes. To achieve this, Transnet intends to appoint a competent service provider to manage and implement incubation and training programmes across multiple disciplines for a period ranging from 6 to 12 Months.
- 2.2 The appointed service provider must:
 - Have a **minimum of seven (7) years' experience** in the business incubation sector.
 - Possess a **competent, full-time project team and operational capacity**.
 - Demonstrate access to a **local and international network** of private and public sector partners, including but not limited to Africa, Europe, and America.
- 2.3 Important conditions:
 - Bidders **may not select individual programmes** from the scope of services to manage and implement incubation and training programmes across multiple disciplines for a period 12 months.
 - Transnet will appoint **only one service provider** to deliver the full scope of services to manage and implement incubation and training programmes across multiple disciplines for a period of 12 months.

3. SCOPE OF WORK

3.1 Plumbing Incubator Program (Scope A)

3.1.1 The appointed service provider is expected to coordinate manage and implement the following technical training for 10 black youth owned SMMEs for a period of 6 months to ensure that the participants are capacitated in terms of the required technical skills to become sustainable and competitive:

- **Basic Plumbing Principles:** Understanding how plumbing systems work, including water supply and drainage systems.
- **Installation and Maintenance:** Learning how to install and maintain plumbing components like pipes, fixtures, geysers, showers, and toilets.
- **Tools and Safety:** Proper usage and safety protocols for plumbing tools.
- **Troubleshooting and Repairs:** Identifying and fixing common plumbing issues.
- **Equipment usage:** knowledge of Plumbing equipment usage and basic maintenance
- **Quality management control:** putting in place processes and systems to maintain and/or improve the quality of products and services.

3.2 Cleaning Incubator Program (Scope B)

3.2.1 The appointed service provider is expected to coordinate, manage and implement the following technical training for 10 black women and youth owned SMMEs for a period of 6 months to ensure that the participants are capacitated in terms of the required technical skills to become sustainable and competitive:

- **Basic Cleaning Skills:** Understanding basic hygiene and cleaning.
- **Spillage removal:** removing spillage and cleaning toilets.
- **Chemical usage:** Learning and understanding the different cleaning chemicals and how to use them.
- **Equipment usage:** knowledge of cleaning equipment usage and basic maintenance
- **Quality management control:** putting in place processes and systems to maintain and/or improve the quality of products and services.
- **Pest control:** pest extermination, pest removal, pest inspection and pest prevention.

Deliverables: Scope A and B

The successful bidder is required to deliver a detailed and complete set of deliverables not limited to the list below (in the form of MS Word document, PowerPoint presentations, Excel model and/or other formats as required) in line with the notes below:

- Screening and Interviews of applicants
- Recruitment and short listing of 10 qualifying SMMEs
- Diagnosis, Gap Analysis and Growth Plan Development
- Technical and Business Support Training

- Relevant accreditation and/or registration
- Closeout Report – with portfolio of evidence

The successful bidder must ensure that the deliverables cover the entire scope of work and all required activities in totality to achieve the overall objective of the Incubation program.

3.3 Spill Clean-Up Program (Scope C)

- 3.3.1 The appointed service provider is required to coordinate, manage and implement an ESD Spill Cleanup Program for 2 regions over a 12 months period: namely the inland region and the KwaZulu Natal Region
- 3.3.2 The aim of the program is to facilitate accessibility to economic opportunities in the hydrocarbon spill cleanup and recovery sector by assisting 10 black owned (BO) SMMEs to be positioned to penetrate this market.
- 3.3.3 The development provided must include following:

Needs assessment:

- To analyze beneficiaries' current strengths, weaknesses, opportunities, and threats (SWOT analysis)
 - i. Identify knowledge and skills gaps in areas like but not limited to spill cleanup and recovery procedures, market research, asset finance, and relevant legislations, regulations, and compliances.
 - ii. Determine the need for mentorship, coaching, and networking with more established market players.
 - iii. Assess the demand for market access and access to finance.
 - iv. Assess revenue streams.
 - v. Assess organizational structure.
 - vi. Evaluate the current level of industry related compliance and regulatory understanding.
 - vii. Gather data on beneficiaries' current industry performance, challenges, and growth aspirations.
 - viii. The needs assessment would provide insights to tailor the program's content, structure, and delivery to address the specific requirements of South African exporters, ensuring the program's effectiveness and impact.

- **Technical Support:**

- i. The service provider will be required to develop a developmental plan for each of the beneficiaries based on the needs assessment above.

- ii. Technical training will be based on each beneficiary's developmental plan and should the beneficiaries be assessed as competent and have the required certification in the following areas:
 - a. Management of spill site and remediation process.
 - b. Reporting of incidents as per the National Environmental Management Act, 1998 (Act No. 107 of 1998) (NEMA) and National Water Act, 1998 (Act No. 36 of 1998) (NWA).
 - c. Health and Safety standards as per the Occupational Health and Safety Act, 1993 (Act No. 85 of 1993)
 - d. Assist beneficiaries obtain Waste Manifest and waste disposal certificates.
 - e. Pumping out, treatment and disposal of contaminated water and hydrocarbons from boreholes and trenches.
 - f. Development of relevant documentation for the remediation to the authorities as required by Section 30 of NEMA and Section 20 of the NWA which is aligned to South African and relevant international standards.
 - g. Excavation of highly contaminated material and backfilling with clean material
 - h. Cleaning, replacement, or repair of areas affected by the spillage.
 - i. Creation and management of biopads.
 - j. Application of biosolve or other material necessary to breakdown the hydrocarbons.
 - k. Operational procedures for the transportation (that comply with SABS Codes 0231 and 0232) and disposal of industrial waste.

Deliverables: Scope C

- Screening and Interviews of applicants
- Recruitment and short listing of 10 qualifying SMMEs
- Diagnosis, Gap Analysis and Growth Plan Development
- Technical and Business Support Training
- Relevant accreditation and/or registration
- Closeout Report – with portfolio of evidence
- Market access and market linkage opportunities.
- Critical Capital Equipment funding.
- Productivity improvement.
- National and international standards training and certification relevant to the industry.
- Create linkages for the beneficiaries to venture beyond a single client dependency.
- Beneficiary Exit Strategy from program.

3.4 Maritime Development Program (Scope D)

The appointed service provider is expected to coordinate, manage and implement the following business support services training to 5 qualifying beneficiaries for a period of 12 months to ensure that

the participants are capacitated in terms of the required experience and skills to become sustainable and competitive:

The aim of the programme is to facilitate the transformation and development of black-owned SMMEs (EMEs and or QSEs) within the maritime space in the Western Region (Western Cape), Eastern Region (KwaZulu Natal) and Central Region (Eastern Cape) where TNPA operates.

The following are focused areas of ship repairs and maintenance development:

- Marine Hull sand/water blasting
- Marine Valves Repairs
- Navigation Equipment Repairs
- Marine Electrical Repairs
- Galley/Garbage Waste Management
- Hull Cleaning
- Marine Pollution Combating
- Marine Spray Painting
- Servicing of Marine Life Saving Appliances
- Create linkages for the beneficiaries to venture beyond a single client dependency.
- Beneficiary Exit Strategy from programme.
- The soft skills focus of this incubation programme will equip beneficiaries with the following skills:
 - Project management
 - Business management
 - Quality management
 - Business development and networking
 - Costing, billing, and invoicing
 - Financial and cash flow management
 - Customer service
 - People management and treatment (employees)
 - Understanding of maritime industry
 - Understanding of TNPA requirements and compliance
 - Digital revolution

Deliverables: Scope D

The successful bidder is required to deliver a detailed and complete set of deliverables not limited to the list below (in the form of MS Word document, PowerPoint presentations, Excel model and/or other formats as required) in line with the notes below:

- Screening and Interviews of applicants
- Recruitment and short listing of 5 qualifying SMMEs

- Diagnosis, Gap Analysis and Growth Plan Development
- Technical and Business Support Training
- Relevant accreditation and/or registration
- Closeout Report – with portfolio of evidence

The successful bidder must ensure that the deliverables cover the entire scope of work and all required activities in totality to achieve the overall objective of the of Incubation program.

3.5 Constructor Development Program (Scope E)

3.5.1 The appointed service provider is expected to coordinate manage and implement the following business support services training to 5 qualifying beneficiaries for a 6 months period to ensure that the participants are capacitated in terms of the required business management skills to become sustainable and competitive:

3.5.2 The following are focused areas of the contractor incubation programme:

- Project Management Skills: training will cover site operations, scheduling, workforce management, and adherence to project timelines.
- Cash Flow Management: participants will learn financial management techniques, with an emphasis on cash flow control to ensure sustainable project delivery.
- Costing and pricing: to provide skills with regards to the pricing of services and the bill of quantities when tendering and during execution stage.
- Quality Management: the program will instill high standards of work quality and implement quality control processes on site.
- Compliance and Governance: training on industry regulations and Transnet procurement and preferential policies and procedures also ensuring compliance with contractual and safety requirements.
- Tender process: to understand clearly what the tender process and the requirements are.
- Business development: to provide the necessary skills and knowledge required to enable SMMEs to market their business to be sustainable.

Deliverables: Scope E

The successful bidder is required to deliver a detailed and complete set of deliverables not limited to the list below (in the form of MS Word document, PowerPoint presentations, Excel model and/or other formats as required) in line with the notes below:

- Screening and Interviews of applicants
- Recruitment and short listing of 5 qualifying SMMEs
- Diagnosis, Gap Analysis and Growth Plan Development
- Technical and Business Support Training
- Relevant accreditation and/or registration
- Closeout Report – with portfolio of evidence

The successful bidder must ensure that the deliverables cover the entire scope of work

and all required activities in totality to achieve the overall objective of the Incubation program.

3.6 Exporter Development Program (Scope F)

3.6.1 The appointed service is required to coordinate, manage and implement an ESD Exporter Development Programme for 20 qualifying SMMEs in 5 regions over a period of 12 months:

- Eastern Cape
- Western Cape
- KwaZulu-Natal
- Northwest (Pondoring Terminal)
- Mpumalanga (Kendal Terminal)

3.6.2 The programme will focus on the following key sectors:

- Personnel Protective Equipment (PPE): Manufactures of safety gear, clothing and equipment.
- Cleaning Consumables: Producers of cleaning products, chemicals and supplies.
- Engineering Services: Providers of engineering solutions including design, fabrication and installation.

The development provided must include:

• Needs assessment	- Identify beneficiaries' strengths, weaknesses, opportunities, and threats (SWOT analysis). - Assess current export capabilities, capacity, and market presence. - Determine training and support requirements. - Establish baseline data for future program evaluation.
• Baseline analysis	Collect and analyze data on beneficiaries' current: - Export volumes and revenue - Market share

	- Product offerings - Business operations and management - Compliance with international standards - Establish key performance indicators (KPIs) for program evaluation.
• Technical Support	Provide expert guidance on: - Export procedures and documentation - Product development and quality control - Supply chain management - Logistics and transportation - Regulatory compliance - On-site consultations and mentoring
• Kaizen Program (Continuous Improvement)	Implement a structured approach to: - Identify areas for improvement - Analyze and solve problems - Implement changes - Monitor progress - Foster a culture of continuous improvement and innovation.
• HS Code Training	Educate beneficiaries on: - Harmonized System (HS) code classification - Tariff and non-tariff barriers - Customs procedures and compliance - Export documentation and procedures
• Intellectual Property Training	Educate beneficiaries on: - IP rights and protection (patents, trademarks, copyrights) - Branding and trademark registration - Licensing agreements - IP infringement and dispute resolution

• Advanced Exporter Training	Comprehensive training on: - International market research and analysis - Export marketing strategies - Trade agreements and regulations - Supply chain optimization - Risk management and mitigation
• Market access and market linkage opportunities	Facilitate connections with: - International buyers and trade partners - Export promotion agencies - Trade associations and networks - E-commerce platforms - Support market research and feasibility studies.
• Critical Capital Equipment funding	Provide assistance to the beneficiaries in accessing funding from DFIs and commercial banks, where feasible for: - Equipment upgrades - Technology adoption - Capacity expansion - Quality control and testing equipment
• Productivity improvement	Support beneficiaries in: - Streamlining operations - Improving efficiency - Reducing waste and costs - Enhancing product quality
• Relevant ISO International standards training and certification for PPE, Cleaning consumables and	Educate beneficiaries on: <u>Personnel Prospective Equipment (PPE)</u>

engineering services.	- ISO 11612: Protective clothing against heat and flames. - ISO 11611: Protective clothing and welding and related techniques. - ISO 20471: High visibility clothing <u>Cleaning Consumables</u> - ISO 14065: Textiles – Laundry processed textiles for healthcare and hygiene - Engineering Equipment - ISO 14001: Environmental management systems: Requirements with guidance for use - ISO 19600: Compliance management systems – Guidelines. - ISO 31000: Risk management – principles and guidelines - ISO 31010: Risk management- risk assessment techniques.
• Create linkages for the beneficiaries to venture beyond a single client dependency.	Facilitate diversification strategies: - Identify new markets and customers - Develop alternative revenue streams - Foster partnerships and collaborations - Enhance marketing and sales capabilities
• Beneficiary Exit Strategy from programme.	Develop a phased exit plan: - Gradual reduction of support services - Transition to independent operations - Monitoring and evaluation - Alumni network establishment.

Deliverables: Scope F

The successful bidder is required to deliver a detailed and complete set of deliverables not limited to the list below (in the form of MS Word document, PowerPoint presentations, Excel model and/or other formats as required) in line with the notes below:

- Screening and Interviews of applicants
- Recruitment and short listing of 20 qualifying SMMEs
- Diagnosis, Gap Analysis and Growth Plan Development
- Technical and Business Support Training
- Relevant accreditation and/or registration
- Closeout Report – with portfolio of evidence
- An export market plan specifically for their business that will be used to guide their access to markets.
- Understand the process of exporting and should be able to expand their exports as needed.
- Have experience in export promotion in foreign markets and pitching importers.
- Improved manufacturing capability through Critical Equipment Purchases
- International standards certification
- Assist the beneficiaries in securing d access to export missions to various markets including Africa, Asia, Americas, Europe, and Middle East arranged by the service provider.

The successful bidder must ensure that the deliverables cover the entire scope of work and all required activities in totality to achieve the overall objective of the Incubation program.

3.7 Supplier Development Program (Scope G)

3.7.1 The appointed service provider is required to coordinate, manage and implement Industrial Maturity Assessment training for fifteen (15) Transnet qualifying black owned small, medium and micro enterprises (SMMEs) as part of supplier development for a period of 6 Months

3.7.2 The scope of services required from the appointed service provider will include the following:

- **Auditing:** offer training on auditing techniques and how to prepare and conduct supply chain, generic and special process audits.
- **Operational management:** provide training on conducting capacity assessments and method times.
- **Total quality management systems:** provide training on QRQC- Quick Response Quality Control, 8D model, Non-conformances, root cause analysis.
- **Risk management and control:** provide training on Process Failure Mode Effects Analysis (PFMEA) and Risk Priority Number (RPN).
- **Lean manufacturing:** provide training on operational efficiency.

Deliverables: Scope G

- Screening and Interviews of applicants
- Recruitment and short listing of 15 qualifying SMMEs
- Diagnosis, Gap Analysis and Growth Plan Development

- Technical and Business Support Training
- Post training support
- Relevant accreditation and/or registration
- Closeout Report – with portfolio of evidence

The successful bidder must ensure that the deliverables cover the entire scope of work and all required activities in totality to achieve the overall objective of the Incubation program.

3.8 Supplier Quality Management Program (Scope H)

3.8.1 The appointed service provider will be required to coordinate, manage and implement a supplier quality management program to 20 qualifying enterprise and supplier development beneficiaries on the following Systems Standards for a period of 12 months:

- Quality Management Systems (QMS).
- Environmental Management Systems (EMS).
- Health and Safety Management System Standard.
- Food Safety Management Systems.
- Occupational Health and Safety Systems.
- Quality Management Systems.
- Environmental Management Systems.

3.8.2 The objective of the programme is to empower qualifying ESD beneficiaries to improve their quality system and meet industry quality standards by ensuring that the beneficiaries attain the following quality standards:

Quality Management	Training	Certification
SANS/ISO 9001 - Quality Management Systems (QMS) SANS/ISO 14001 - Environmental Management Systems (EMS) SANS/ISO 45001 - Health and Safety Management System Standard SANS/ISO22000 - Food Safety Management Systems	Yes	Yes

ISO 45001:2018 - Occupational Health and Safety Systems	Yes	Yes
ISO 9001:2015 - Quality Management Systems	Yes	Yes
ISO 14001:2015 - Environmental Management Systems		

Deliverables: Scope H

- Screening and Interviews of applicants
- Recruitment and short listing of 20 qualifying SMMEs
- Diagnosis, Gap Analysis and Growth Plan Development
- The appointed service provider shall provide training to 20 SMMEs beneficiaries on Quality Management Standards and Certification for a period of approximately 12 months
- The appointed service provider shall provide Technical and Business Support Training to the beneficiaries
- The appointed service provider shall provide the Relevant accreditation and/or registration for the beneficiaries
- The appointed service provider shall provide the Closeout Report on the program with portfolio of evidence
- The appointed service provider shall assist with Testing of products, in accordance with applicable South African national standards or specifications.

3.9 Business Support Services – All Scopes (Scope A – Scope H)

3.9.1 The appointed service provider is expected to provide the following business support services training to ensure that the participants are capacitated in terms of the required business management skills to become sustainable and competitive:

- a. Basic Business Management Skills.
- b. Labor relations, Contract Management and Supplier Relationship Management
- c. Business Model development.
- d. Financial Management Skills (invoicing, quoting, etc.).
- e. Budgeting and cash flow management
- f. Marketing and Public relations
- g. Operational management skills.
- h. Social Media presence/visibility.
- i. Sales leads – B2B marketing, attending industry events.

- j. Governance and Compliance
- k. Development of a beneficiary exit strategy

NB: The above business support services is a requirement for all the participating beneficiaries in all the 8 programs – depending on the needs of each beneficiary.

3.10: Performance Requirements – KPIs (Scope A – Scope H)

3.10.1 The KPIs will be developed together with the appointed service provider as per specific training requirements, with targets, timelines and key milestones as part of the Master Agreement and/or Service Level Agreement.

3.11 Progress Reports and Review Meetings

3.11.1 The appointed service provider partner will be expected to provide a close-out report supported by portfolio of evidence. Furthermore, the ESD implementing partner's reports will be subjected to Monitoring and Evaluations process and/or external party audit processes.

3.11.2 Transnet and the service provider shall set up a Steering Committee which will meet monthly or when necessary to oversee the implementation and performance of the programs in relation to the agreed upon KPIs.

4. PROJECT DURATION

4.1 The program durations range from 6 Months – 12 Months as outlined below:

SCOPE	NUMBER OF BENEFICIARIES	DURATION
Scope A	10	6 Months
Scope B	10	6 Months
Scope C	10	12 Months
Scope D	5	12 Months
Scope E	5	6 Months
Scope F	20	12 Months
Scope G	15	6 Months
Scope H	20	12 Months
Total	95	

SCHEDULE 2 – PRICING SCHEDULE

Item No	Description of Item	UOM	Quantity	Unit Cost [ZAR]	Total Price [ZAR]
Scope: A - Plumber's programme					
1	Recruitment, Selection and Onboarding of beneficiaries	Per Beneficiary	10		
2	Diagnosis, Gap analysis and Growth Plan Development	Per Beneficiary	10		
3	Training (Theory and Practical)	Per Beneficiary	10		
Scope: B - Cleaning programme					
1	Recruitment, Selection and Onboarding of beneficiaries	Per Beneficiary	10		
2	Diagnosis, Gap analysis and Growth Plan Development	Per Beneficiary	10		
3	Training (Theory and Practical)	Per Beneficiary	10		
Scope: C – Spill Cleaning and Environmental Program					
1	Recruitment, Selection and Onboarding of beneficiaries	Per Beneficiary	10		
2	Diagnosis, Gap analysis and Growth Plan Development	Per Beneficiary	10		
3	Training (Theory and Practical)	Per Beneficiary	10		
Scope: D – Maritime Development Program					
1	Recruitment, Selection and Onboarding of beneficiaries	Per Beneficiary	5		
2	Diagnosis, Gap analysis and Growth Plan Development	Per Beneficiary	5		
3	Training (Theory and Practical)	Per Beneficiary	5		
Scope: E - Constructor Development programme					
1	Recruitment, Selection and onboarding of beneficiaries	Per Beneficiary	5		
2	Diagnosis, Gap analysis and Growth Plan Development	Per Beneficiary	5		
3	Training (Theory and Practical)	Per Beneficiary	5		
Scope: F - Exporter Development Programme					
1	Recruitment, Selection and onboarding of beneficiaries	Per Beneficiary	20		
2	Needs assessment	Per Beneficiary	20		
3	Baseline Analysis	Per Beneficiary	20		
4	Technical Support	Per Beneficiary	20		
5	Kaizen Program (Continuous Improvement)	Per Beneficiary	20		
6	Harmonized Systems Training	Per Beneficiary	20		

Scope: G - Supplier Development programme					
1	Training of the Beneficiaries				
	Auditing	Per Beneficiary	15		
	Operational Management	Per Beneficiary	15		
	Total Quality Management systems	Per Beneficiary	15		
	Risk management and control	Per Beneficiary	15		

1	Recruitment, Selection and Onboarding of beneficiaries	Per Beneficiary	20		
2	Diagnosis, Gap analysis and Growth Plan Development	Per Beneficiary	20		
3	Training (Theory and Practical)	Per Beneficiary	20		

- Project inception meetings with all Operating Divisions
- Development of a consolidated ESD implementation Plan
- Finalisation of beneficiary selection criteria
- Set-up of monitoring and evaluation tools

TOTAL PRICE, exclusive of VAT:	
VAT 15% (if applicable)	
Total Inclusive of VAT (where applicable)	