

TRANSNET SOC LTD

trading through its operating division, **TRANSNET NATIONAL PORTS**

AUTHORITY

[Registration No. 1990/000900/30]

[hereinafter referred to as **TNPA**]

REQUEST FOR QUOTATION [RFQ] No	:	TNPA/2021/12/0024/RFP
FOR THE PROVISION OF	:	SHEQ DEPARTMENT - GENERAL & HAZARDOUS WASTE MANAGEMENT SERVICES FOR A PERIOD OF THIRTY SIX (36) MONTHS.
FOR DELIVERY TO	:	PORT OF PORT ELIZABETH
ISSUE DATE	:	10 DECEMBER 2021
COMPULSORY BRIEFING MEETING	:	N/A
TIME	:	N/A
VENUE	:	N/A
CLOSING DATE	:	25 JANUARY 2022
CLOSING TIME	:	10:00AM SHARP
CLOSING VENUE	:	https://www.transnet.net
BID VALIDITY PERIOD	:	90 DAYS FROM CLOSING

PREQUALIFICATION CRITERIA - ONLY RESPONDENTS FALLING IN THE FOLLOWING CATEGORIES MAY RESPOND TO THIS RFQ:

- **RESPONDENT NEEDS TO HAVE A MINIMUM B-BBEE LEVEL 4; AND**
- **RESPONDENT MUST BE REGISTERED AS AN EXEMPTED MICRO ENTERPRISE (EME) OR A QUALIFYING SMALL ENTERPRISE (QSE).**

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RFP FOR THE PROVISION OF GENERAL AND HAZARDOUS WASTE MANAGEMENT FOR A PERIOD OF THIRTY SIX (36) MONTHS

SECTION 1: SBD1 FORM

PART A

INVITATION TO BID

YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF TNPA, A DIVISION TRANSNET SOC LTD							
BID NUMBER:	TNPA/2021/12/0024/RFP	ISSUE DATE:	10 December 2021	CLOSING DATE:	25 January 2022	CLOSING TIME:	12h00
DESCRIPTION	FOR THE PROVISION OF SHEQ DEPARTMENT GENERAL & HAZARDOUS WASTE MANAGEMENT SERVICES FOR A PERIOD OF THIRTY SIX (36) MONTHS						
BID RESPONSE DOCUMENTS TO BE SUBMITTED AS FOLLOWS:							
<p>a) The Transnet e-Tender Submission Portal can be accessed as follows:</p> <ul style="list-style-type: none"> ▪ Log on to the Transnet e-Tenders management platform website (https://www.transnet.net); ▪ Click on "TENDERS"; ▪ Scroll towards the bottom right hand side of the page; ▪ On the blue window click on "register on our new e-Tender Portal"; ▪ Click on "ADVERTISED TENDERS" to view advertised tenders; ▪ Click on "SIGN IN/REGISTER – for bidder to register their information (must fill in all mandatory information); ▪ Click on "SIGN IN/REGISTER" - to sign in if already registered; ▪ Toggle (click to switch) the "Log an Intent" button to submit a bid; ▪ Submit bid documents by uploading them into the system against each tender selected <p>b) The tender offers to this tender will be opened as soon as possible after the closing date and time. Transnet shall not, at the opening of tenders, disclose to any other company any confidential details pertaining to the Tender Offers / information received, i.e. pricing, delivery, etc. The names and locations of the Tenderers will be divulged to other Tenderers upon request.</p> <p>c) Submissions must not contain documents relating to any Tender other than that shown on the submission.</p>							
BIDDING PROCEDURE ENQUIRIES MAY BE DIRECTED TO				TECHNICAL ENQUIRIES MAY BE DIRECTED TO:			
CONTACT PERSON	Omashree (Vanessa) Balie or Zeldia Bosman			CONTACT PERSON	Omashree (Vanessa) Balie or Zeldia Bosman		
TELEPHONE NUMBER	083 749 1235			TELEPHONE NUMBER	083 749 1235		
FACSIMILE NUMBER	N/A			FACSIMILE NUMBER	N/A		
E-MAIL ADDRESS	Omashree.Balie@transnet Zelda.Bosman@transnet.net			E-MAIL ADDRESS	Omashree.Balie@transnet Zelda.Bosman@transnet.net		
SUPPLIER INFORMATION							
NAME OF BIDDER							
POSTAL ADDRESS							
STREET ADDRESS							
TELEPHONE NUMBER	CODE		NUMBER				
CELLPHONE NUMBER							
FACSIMILE NUMBER	CODE		NUMBER				
E-MAIL ADDRESS							
VAT REGISTRATION NUMBER							

Respondent's Signature

Date & Company Stamp

SUPPLIER COMPLIANCE STATUS	TAX COMPLIANCE SYSTEM PIN:		OR	CENTRAL SUPPLIER DATABASE	UNIQUE REGISTRATION REFERENCE NUMBER: MAAA
B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE	TICK APPLICABLE BOX] <input type="checkbox"/> Yes <input type="checkbox"/> No		B-BBEE STATUS LEVEL SWORN AFFIDAVIT		[TICK APPLICABLE BOX] <input type="checkbox"/> Yes <input type="checkbox"/> No
[A B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE/ SWORN AFFIDAVIT (FOR EMES & QSEs) MUST BE SUBMITTED IN ORDER TO QUALIFY FOR PREFERENCE POINTS FOR B-BBEE]					
1 ARE YOU THE ACCREDITED REPRESENTATIVE IN SOUTH AFRICA FOR THE GOODS /SERVICES /WORKS OFFERED?	<input type="checkbox"/> Yes <input type="checkbox"/> No [IF YES ENCLOSE PROOF]		2 ARE YOU A FOREIGN BASED SUPPLIER FOR THE GOODS /SERVICES /WORKS OFFERED?		<input type="checkbox"/> Yes <input type="checkbox"/> No [IF YES, ANSWER QUESTIONNAIRE BELOW]
QUESTIONNAIRE TO BIDDING FOREIGN SUPPLIERS					
<p>IS THE ENTITY A RESIDENT OF THE REPUBLIC OF SOUTH AFRICA (RSA)? <input type="checkbox"/> YES <input type="checkbox"/> NO</p> <p>DOES THE ENTITY HAVE A BRANCH IN THE RSA? <input type="checkbox"/> YES <input type="checkbox"/> NO</p> <p>DOES THE ENTITY HAVE A PERMANENT ESTABLISHMENT IN THE RSA? <input type="checkbox"/> YES <input type="checkbox"/> NO</p> <p>DOES THE ENTITY HAVE ANY SOURCE OF INCOME IN THE RSA? <input type="checkbox"/> YES <input type="checkbox"/> NO</p> <p>IS THE ENTITY LIABLE IN THE RSA FOR ANY FORM OF TAXATION? <input type="checkbox"/> YES <input type="checkbox"/> NO</p> <p>IF THE ANSWER IS "NO" TO ALL OF THE ABOVE, THEN IT IS NOT A REQUIREMENT TO REGISTER FOR A TAX COMPLIANCE STATUS SYSTEM PIN CODE FROM THE SOUTH AFRICAN REVENUE SERVICE (SARS) AND IF NOT REGISTER AS PER 1.3 BELOW.</p>					

Respondent's Signature

Date & Company Stamp

PART B

TERMS AND CONDITIONS FOR BIDDING

1. TAX COMPLIANCE REQUIREMENTS

- 1.1 BIDDERS MUST ENSURE COMPLIANCE WITH THEIR TAX OBLIGATIONS.
- 1.2 BIDDERS ARE REQUIRED TO SUBMIT THEIR UNIQUE PERSONAL IDENTIFICATION NUMBER (PIN) ISSUED BY SARS TO ENABLE THE ORGAN OF STATE TO VERIFY THE TAXPAYER'S PROFILE AND TAX STATUS.
- 1.3 APPLICATION FOR TAX COMPLIANCE STATUS (TCS) PIN MAY BE MADE VIA E-FILING THROUGH THE SARS WEBSITE WWW.SARS.GOV.ZA.
- 1.4 BIDDERS MAY ALSO SUBMIT A PRINTED TCS CERTIFICATE TOGETHER WITH THE BID.
- 1.5 IN BIDS WHERE UNINCORPORATED CONSORTIA / JOINT VENTURES / SUB-CONTRACTORS ARE INVOLVED, EACH PARTY MUST SUBMIT A SEPARATE TCS CERTIFICATE / PIN / CSD NUMBER.
- 1.6 WHERE NO TCS IS AVAILABLE BUT THE BIDDER IS REGISTERED ON THE CENTRAL SUPPLIER DATABASE (CSD), A CSD NUMBER MUST BE PROVIDED.

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

SIGNATURE OF BIDDER:

.....

CAPACITY UNDER WHICH THIS BID IS SIGNED:

.....

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

DATE: _____

SECTION 2 : NOTICE TO BIDDERS

1 INVITATION TO BID

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

DESCRIPTION	General and Hazardous Waste Management Services for 36 months [the Goods/Services]
TENDER ADVERT	All Transnet tenders are advertised on the National Treasury's e-Tender Publication Portal and the Transnet website. Should one of these media (i.e. National Treasury's e-Tender Publication Portal or Transnet website) not be available, bidders are advised to check on the other media for advertised tenders.
RFP DOWNLOADING	<p>This RFP may be downloaded directly from National Treasury's e-Tender Publication Portal at www.etenders.gov.za free of charge.</p> <p>To download RFP and Annexures:</p> <ul style="list-style-type: none"> Click on "Tender Opportunities"; Select "Advertised Tenders"; In the "Department" box, select Transnet SOC Ltd. <p>Once the tender has been located in the list, click on the 'Tender documents' tab and process to download all uploaded documents.</p> <p>The RFP may also be downloaded from the Transnet website at www.transnet.net free of charge. To access the Transnet eTender portal, please click here.</p> <p>To download RFP and Annexures,</p> <ul style="list-style-type: none"> Scroll towards the bottom right hand side of the page, On the blue window click on 'Transnet SOC Ltd' or Select Operating Division.
COMMUNICATION	<p>Any addenda to the RFP or clarifications will be published on the e-tender portal and Transnet website. Bidders are required to check the e-tender portal or Transnet website prior to finalising their bid submissions for any changes or clarifications to the RFP.</p> <p>Transnet will not be held liable if Bidders do not receive the latest information regarding this RFP with the possible consequence of either being disadvantaged or disqualified as a result thereof.</p>
ISSUE AND COLLECTION DATE DEADLINE	Bidders are to note that the RFP documents will be available for download from 07 December 2021.
BRIEFING SESSION	None – Bidders to forward queries as indicated to Omashree.Balie@transnet.net / Zelda.Bosman@transnet.net
CLOSING DATE	10:00 am on Tuesday 25 JANUARY 2021
BID OPENING	A public opening will not be held for this bid, however Respondents will be provided with a copy of the opening register indicating the names of the Respondents, upon request.
VALIDITY PERIOD	<p>90 Business Days from Closing Date</p> <p>Bidders are to note that they may be requested to extend the validity period of their bid, at the same terms and conditions, if the internal evaluation process has not been finalised within the validity period. However, once the adjudication body has approved the process and</p>

	<p>award of the business to the successful bidder(s), the validity of the successful bidder(s)' bid will be deemed to remain valid until a final contract has been concluded.</p> <p>With regard to the validity period of next highest ranked bidders, please refer to Section 2, paragraph 11.12</p>
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Any additional information or clarification will be published on the e-Tender portal and Transnet website, if necessary.

2 FORMAL BRIEFING

A formal briefing session will not be held but should Respondents have specific queries they should email these to the Transnet employee(s) indicated in paragraph 7 *[Communication]* below:

3 PROPOSAL SUBMISSION

Proposals must be addressed on the cover as follows:

RFP No:	TNPA 2021/12/0024/RFP
Description:	PROVISION OF GENERAL AND HAZARDOUS WASTE MANAGEMENT SERVICES FOR A PERIOD OF THIRTY SIX (36) MONTHS
Closing date and time:	25 JANUARY 2022 @ 10H00
Closing address:	

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

- a. The Transnet e-Tender Submission Portal can be accessed as follows:
 - Log on to the Transnet e-Tenders management platform website (<https://www.transnet.net>);
 - Click on "TENDERS";
 - Scroll towards the bottom right hand side of the page;
 - On the blue window click on "register on our new e-Tender Portal";
 - Click on "ADVERTISED TENDERS" to view advertised tenders;
 - Click on "SIGN IN/REGISTER – for bidder to register their information (must fill in all mandatory information);
 - Click on "SIGN IN/REGISTER" - to sign in if already registered;
 - Toggle (click to switch) the "Log an Intent" button to submit a bid;
 - Submit bid documents by uploading them into the system against each tender selected.
- b. The tender offers to this tender will be opened as soon as possible after the closing date and time. Transnet shall not, at the opening of tenders, disclose to any other company any confidential details pertaining to the Tender Offers / information received, i.e. pricing, delivery, etc. The names and locations of the Tenderers will be divulged to other Tenderers upon request.
- c. Submissions must not contain documents relating to any Tender other than that shown on the submission.

4 RFP INSTRUCTIONS

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

- a. The Transnet e-Tender Submission Portal can be accessed as follows:
 - Log on to the Transnet e-Tenders management platform website (<https://www.transnet.net>);
 - Click on "TENDERS";
 - Scroll towards the bottom right hand side of the page;
 - On the blue window click on "register on our new e-Tender Portal";
 - Click on "ADVERTISED TENDERS" to view advertised tenders;
 - Click on "SIGN IN/REGISTER – for bidder to register their information (must fill in all mandatory information);
 - Click on "SIGN IN/REGISTER" - to sign in if already registered;
 - Toggle (click to switch) the "Log an Intent" button to submit a bid;
 - Submit bid documents by uploading them into the system against each tender selected.
- b. The tender offers to this tender will be opened as soon as possible after the closing date and time. Transnet shall not, at the opening of tenders, disclose to any other company any confidential details pertaining to the Tender Offers / information received, i.e. pricing, delivery, etc. The names and locations of the Tenderers will be divulged to other Tenderers upon request.
- c. Submissions must not contain documents relating to any Tender other than that shown on the submission.

- 4.1 Sign one set of original documents [sign, stamp and date the bottom of each page]. This set will serve as the legal and binding copy. A duplicate set of documents is also required. This second set must be a copy of the original signed Proposal.
- 4.2 Both sets of documents are to be submitted to the address specified, and Respondents must ensure that the original and copies (where applicable) are identical in all respects.
- 4.3 **All returnable documents tabled in the Proposal Form [Section 5] must be returned with proposals.**
- 4.4 Unless otherwise expressly stated, all Proposals furnished pursuant to this RFP shall be deemed to be offers. Any exceptions to this statement must be clearly and specifically indicated.
- 4.5 Any additional conditions must be embodied in an accompanying letter. Subject only to clause 15 [Alterations made by the Respondent to Bid Prices] of the General Bid Conditions, paragraph 13 below (Legal Review) and Section 6 of the RFP, alterations, additions or deletions must not be made by the Respondent to the actual RFP documents.

5 JOINT VENTURES OR CONSORTIUMS

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

responsibilities of each party. In such cases, award of business will only take place once a signed copy of a JV or consortium agreement is submitted to Transnet.

Respondents are to note that for the purpose of Evaluation, a JV will be evaluated based on one consolidated B-BBEE score card as per the B-BBEE Preferential Procurement Regulations, 2017 preference point scoring.

6 PREFERENTIAL PROCUREMENT PREQUALIFICATION CRITERIA

6.1. Exempted Micro Enterprises & Qualifying Small Enterprises

Transnet has set a prequalification criterion that only Exempted Micro Enterprises (EMEs) OR Qualifying Small Enterprises may participate in this RFP process. A bid that fails to meet this pre-qualifying criteria will be regarded as an unacceptable bid.

6.2. Minimum B-BBEE level

Transnet has decided to set a minimum B-BBEE threshold for participation in this RFP process. The minimum B-BBEE threshold in this instance is a B-BBEE Level 4, and Respondents who do not have at least this B-BBEE status or higher will be disqualified.

7 COMMUNICATION

- 7.1 For specific queries relating to this RFP, an RFP Clarification Request Form should be submitted to **Omeshree.Balie@transnet.net** before **10:00 pm on 17 December 2021**, substantially in the form set out in Section 8 hereto. In the interest of fairness and transparency, Transnet's response to such a query will be published on the e-tender portal and Transnet website.
- 7.2 After the closing date of the RFP, a Respondent may only communicate with the Secretariat of the TNPA Divisional Acquisition Council, email Bhatisani.Widzani@transnet.net on any matter relating to its RFP Proposal.
- 7.3 Respondents are to note that changes to its submission will not be considered after the closing date.
- 7.4 It is prohibited for Respondents to attempt, either directly or indirectly, to canvass any officer or employee of Transnet in respect of this RFP between the closing date and the date of the award of the business.
- 7.5 Respondents found to be in collusion with one another will be automatically disqualified and restricted from doing business with organs of state for a specified period.

8 CONFIDENTIALITY

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

9 COMPLIANCE

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

10 EMPLOYMENT EQUITY ACT

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

11 DISCLAIMERS

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

- 11.1 modify the RFP's Goods/Services and request Respondents to re-bid on any such changes;
- 11.2 reject any Proposal which does not conform to instructions and specifications which are detailed herein;
- 11.3 disqualify Proposals submitted after the stated submission deadline [closing date];
- 11.4 award a contract in connection with this Proposal at any time after the RFP's closing date;
- 11.5 award a contract for only a portion of the proposed Goods/Services which are reflected in the scope of this RFP;
- 11.6 split the award of the contract between more than one Supplier/Service provider, should it at Transnet's discretion be more advantageous in terms of, amongst others, cost or developmental considerations;
- 11.7 cancel the bid process;
- 11.8 validate any information submitted by Respondents in response to this bid. This would include, but is not limited to, requesting the Respondents to provide supporting evidence. By submitting a bid, Respondents hereby irrevocably grant the necessary consent to Transnet to do so;
- 11.9 request audited financial statements or other documentation for the purposes of a due diligence exercise;
- 11.10 not accept any changes or purported changes by the Respondent to the bid rates after the closing date and/or after the award of the business, unless the contract specifically provided for it;
- 11.11 to cancel the contract and/request that National Treasury place the Respondent on its Database of Restricted Suppliers for a period not exceeding 10 years, on the basis that a contract was awarded on the strength of incorrect information furnished by the Respondent or on any other basis recognised in law;
- 11.12 to award the business to the next ranked bidder, provided that he/she is still prepared to provide the required Goods/Services at the quoted price, should the preferred bidder fail to sign or commence with the contract within a reasonable period after being requested to do so. Under such circumstances, the validity of the bids of the next ranked bidder(s) will be deemed to remain valid, irrespective of whether the next ranked bidder(s) were issued with a Letter of Regret. Bidders may

therefore be requested to advise whether they would still be prepared to provide the required Goods/Services at their quoted price, even after they have been issued with a Letter of Regret.

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

12 LEGAL REVIEW

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

13 SECURITY CLEARANCE

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

14 NATIONAL TREASURY'S CENTRAL SUPPLIER DATABASE

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

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

15 TAX COMPLIANCE


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

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






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


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


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



Ethics Helpdesk
Ethics Management Systems (Pty) LTD.


You can choose to be **Anonymous** or **Non-Anonymous** on ANY of the platforms
PLEASE RETAIN YOUR REFERENCE NUMBER

				
	<p>AI Voice Bot "Jack" Speak to our AI Voice Chat Bot "JACK", you converse with him like chatting to a human, with the option to record a message and speak to an agent at anytime.</p>	<p>What's App Speak to an Agent via What's App.</p>	<p>Speak to an Agent Speak to an Agent via the platform with no call or data charge</p>	<p>Telegram Speak to an Agent via Telegram</p>

 **0800 003 056**

 **086 551 4153**

 **reportit@ethicshelpdesk.com**

 ***120*0785980808#**

SECTION 3: BACKGROUND, OVERVIEW AND SCOPE OF REQUIREMENTS

1 BACKGROUND

Refer Annexure A Attached

2 EXECUTIVE OVERVIEW

Whereas TNPA is seeking a partner(s) to provide solutions for its General and Hazardous Waste Management for 36 months at the Port of Port Elizabeth, it also seeks to improve its current processes for providing these Services to its end user community at its locations.

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

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

- 2.1 TNPA must receive reduced cost of acquisition and improved service benefits resulting from the Supplier/Service provider's economies of scale and streamlined service processes.
- 2.2 TNPA must achieve appropriate availability that meets user needs while reducing costs for both TNPA and the chosen Supplier/Service provider(s).
- 2.3 TNPA must receive proactive improvements from the Supplier/Service provider with respect to provision of the Services and related processes.
- 2.4 TNPA's overall competitive advantage must be strengthened by the chosen Supplier/Service provider's leading edge technology and service delivery systems.
- 2.5 TNPA end users must be able to rely on the chosen Supplier/Service provider's personnel for service enquiries, recommendations and substitutions.
- 2.6 TNPA must reduce costs by streamlining its acquisition of the Services, including managed service processes on a port basis.

3 SCOPE OF REQUIREMENTS

Refer Annexure A Attached

4 GREEN ECONOMY / CARBON FOOTPRINT

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

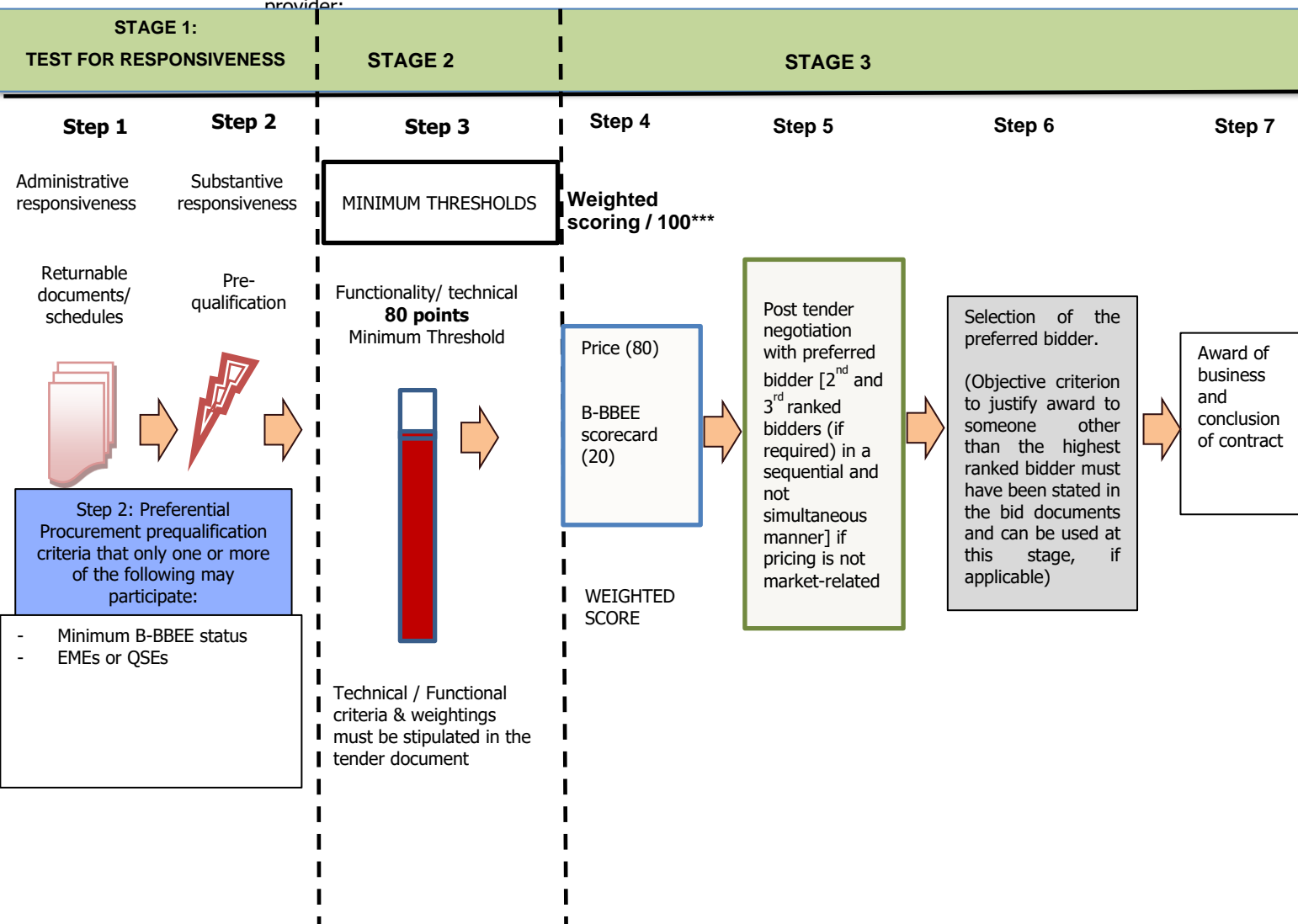
5 GENERAL SUPPLIER/SERVICE PROVIDER OBLIGATIONS

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

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

6 EVALUATION METHODOLOGY

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



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

6.1 STEP ONE: Test for Administrative Responsiveness

The test for administrative responsiveness will include the following:

Administrative responsiveness check	RFP Reference
<ul style="list-style-type: none"> Whether the Bid has been lodged on time 	<i>Section 1 paragraph 3</i>
<ul style="list-style-type: none"> Whether all Returnable Documents and/or schedules [where applicable] were completed and returned by the closing date and time 	<i>Section 5</i>
<ul style="list-style-type: none"> Verify the validity of all returnable documents 	<i>Section 5</i>
<ul style="list-style-type: none"> Verify if the Bid document has been duly signed by the authorised respondent 	<i>All sections</i>

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

6.2 STEP TWO: Test for Substantive Responsiveness to RFP

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

Check for substantive responsiveness	RFP Reference
<ul style="list-style-type: none"> Whether any general pre-qualification criteria set by Transnet, have been met 	<i>All sections including: Section 2</i>
<ul style="list-style-type: none"> Whether the Bid contains a priced offer as prescribed in the pricing and delivery schedule 	<i>Section 4</i>
<ul style="list-style-type: none"> Whether the Bid materially complies with the scope and/or specification given 	<i>All Sections</i>
<ul style="list-style-type: none"> Whether any set prequalification criteria for preferential procurement have been met: <ul style="list-style-type: none"> BBBEE Level 4. Only EMEs and QSEs may participate in this RFP 	<i>Section 2 - Paragraph 6</i>

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

6.3 STEP THREE: Minimum Threshold 80 points for Technical Criteria

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

Technical Evaluation Criteria	Points Weightings	Scoring guideline (0 to 10)
Landfill Site Documentation <ul style="list-style-type: none"> Name/Address of the site where the waste will be disposed of Permit number and registration status of the site Note: Waste Disposal Site Authorizations must be valid and be able to accept TNPA waste Certified copy of the certificate issued by DEA for a waste consolidation area at the bidder's premises Certified copy of the letter of good standing of the landfill site & consolidation area from DEA or DWA Is the owner/operator of the disposal site contractually committed to accepting your waste? Please furnish a copy of the written Agreement to TNPA Has the owner/operator of the disposal site been made fully aware of the nature and quantity of waste which will be disposed of under this Contract? Please furnish a copy of the written Agreement to TNPA 	10	10 = 6 Documents (Full Compliance) 5 = 4-5 Documents (Any of the documents listed in the sub-criteria) 2 = 1-3 Documents (Any of the documents listed in the sub-criteria) 0 = No Document
Service Provider Registration Service Provider Registration, Permits and Memberships: Provide copies of the following documentation: <ul style="list-style-type: none"> Proof of registration with the Nelson Mandela Municipality as a Waste Transporter Waste Management Licenses for all facilities involved in the storage, transfer, recycling, recovery, treatment or disposal of wastes as may be required in terms of Schedule 1 of the National Environment Management Waste Act (Act 59 of 2009) Copies of registered landfill site permits where such permits have not been converted to waste management licenses Proof of membership with an applicable Waste Management Institution. Proof of ISO14001 Certification Is your Company registered as an Operator as provided for in the National Road Traffic Act? Please furnish proof of Registration to TNPA as well as certification of your drivers and vehicle registration as required to ensure proper licensing to carry dangerous goods. 	10	10 = 7 Documents (Full Compliance) 5 = 4-6 Documents (Any of the documents listed in the sub-criteria) 2 = 1-3 Documents (Any of the documents listed in the sub-criteria) 0 = No Document

Technical Evaluation Criteria	Points Weightings	Scoring guideline (0 to 10)
<ul style="list-style-type: none"> SAWIC/SAWIS Registration 		
Capacity to deliver adequate services Number of resources to be made available for the contract <ul style="list-style-type: none"> Vehicles Suitably Qualified Personnel Premises Waste Skips Financial Resources and Systems Any additional information 	10	10 = Detailed number of resources provided in line with the requirements of this RFQ 0 = Zero / Inadequate number of resources provided in response to the requirements of this RFQ
Relevant Employee Training <ul style="list-style-type: none"> Proof of accredited waste management services training including relevant emergency training provided to bidder's employees CV's of human resources to be deployed as part of this contract 	10	10 = Copies of accredited waste management and emergency training certificates for employees-submitted. Site Supervisor & Green Guards CV's - submitted 0 = No accredited waste management and emergency training certificates. No CV's submitted
Timeframes for Service Provision <ul style="list-style-type: none"> Number of days required from the date of notification of award of the contract to provide all the waste services on site as specified in the contract Ability to provide 24 hour service if requested to do so Turnaround/Collection time for bookings logged with Head Office 	10	10 = Immediately + 24 Hour Service + Turnaround Time Specified 5 = 14 Days + 24 Hour Service + Turnaround Time Specified 0 = 30 Days + No Emergency Service + No Turnaround Time Specified
Operations & Maintenance Manual <ul style="list-style-type: none"> Overall Waste Management Process-Flow Equipment, vehicles, skips, etc. Labour (Green Guards, Site Supervisor) Emergency Plan (vehicle breakdown, labour unrest/strikes) Management of spillages to ensure the site is free from pollutants 	10	10 = Detailed Operations & Maintenance Manual provided in line with the requirements of this RFQ 0 = No / Poor Quality Operations & Maintenance Manual provided in response to the requirements of this RFQ
Emergency Preparedness Are you able to provide extra skips/staff members/ vehicles as and when the need arises without any breakdown to the service rendered?	10	10 = Detailed number of resources that can be made available as and when required is provided in line with the requirements of this RFQ 0 = Zero / Inadequate number of resources that can be made available as and when required to fully comply with the requirements of this RFQ provided
Waste Management Awareness Initiatives How would you assist TNPA in increasing awareness on management of general and hazardous waste within the port?	10	10 = 5 Initiatives 5 = 3-4 Initiatives 0 = No Initiative

Technical Evaluation Criteria	Points Weightings	Scoring guideline (0 to 10)
Audits Submission of a signed Commitment Statement which serves as an undertaking that the service provider agrees to be audited	10	10 = Submission of signed Audits Commitment Statement 0 = No signed Audits Commitment Statement
Supplier Development Initiatives(SDI) Please provide current & future SDI's	10	10 = Current & future SDI's provided 0= No current & future SDI's provided
Total Weighting:	100	
Minimum qualifying score required:	80	

Respondents must complete and submit **Annexure A** which include a Technical Questionnaire. A Respondent's compliance with the minimum functionality/technical threshold will be measured by their responses to Annexure A.

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

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

6.4 STEP FOUR: Evaluation and Final Weighted Scoring

a) Price Criteria [Weighted score 80 points]:

Evaluation Criteria	RFP Reference
• Commercial offer	Section 4

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

$$PS = 80 \left(1 - \frac{Pt - Pmin}{Pmin} \right)$$

Where:

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

- b) **Broad-Based Black Economic Empowerment criteria** [Weighted score 20 points]
- B-BBEE - current scorecard / B-BBEE Preference Points Claims Form
 - Preference points will be awarded to a bidder for attaining the B-BBEE status level of contribution in accordance with the table indicated in Section 4.1 of the B-BBEE Preference Points Claim Form.

6.5 SUMMARY: Applicable Thresholds and Final Evaluated Weightings

Thresholds	Minimum Threshold
Technical / functionality	80

Evaluation Criteria	Final Weighted Scores
Price	80
B-BBEE - Scorecard	20
TOTAL SCORE:	100

6.6 STEP FIVE: Post Tender Negotiations (if applicable)

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

6.7 STEP SIX: Objective Criteria (if applicable)

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

- Geographical location;
- all Risks identified during a risk assessment exercise/probity check (which may be conducted by an authorised third party) that would be done to assess all risks, including but not limited to:
 - the financial stability of the bidder based on key ratio analysis, which would include, but not be limited to Efficiency, Profitability, Financial Risk, Liquidity, Acid Test, and Solvency;

- a due diligence to assess functional capability and capacity. This could include a site visit;

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

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

SECTION 4: PRICING AND DELIVERY SCHEDULE

Refer Annexure A

Respondents are to note that Transnet will round off final pricing scores to the nearest 2 (two) decimal places.

Notes to Pricing:

- a) Respondents are to note that if the price offered by the highest scoring bidder is not market-related, Transnet may not award the contract to that Respondent. Transnet may-
 - (i) negotiate a market-related price with the Respondent scoring the highest points or cancel the RFP;
 - (ii) if that Respondent does not agree to a market-related price, negotiate a market-related price with the Respondent scoring the second highest points or cancel the RFP;
 - (iii) if the Respondent scoring the second highest points does not agree to a market-related price, negotiate a market-related price with the Respondent scoring the third highest points or cancel the RFP.

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

- b) Prices must be quoted in South African Rand inclusive of VAT.
- c) To facilitate like-for-like comparison bidders must submit pricing strictly in accordance with this pricing schedule and not utilise a different format. Deviation from this pricing schedule could result in a bid being declared non-responsive.
- d) Quantities given are estimates only. Any orders resulting from this RFP will be on an "as and when required" basis.
- e) Please note that should you have offered a discounted price(s), Transnet will only consider such price discount(s) in the final evaluation stage if offered on an unconditional basis.
- f) Delivery lead time calculated from date of receipt of purchase order: _____ weeks.
- g) Respondents, if awarded the contract, are required to indicate that their prices quoted would be kept firm and fixed for the contract duration. [Not to be confused with bid validity period Section 2, clause 1]

YES	
-----	--

1. DISCLOSURE OF CONTRACT INFORMATION

PRICES TENDERED

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

JOHANNESBURG STOCK EXCHANGE DEBT LISTING REQUIREMENTS

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

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

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

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

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

The below form contains personal information as defined in the Protection of Personal Information Act, 2013 (the "Act"). By completing the form, the signatory consents to the processing of her/his personal information in accordance with the requirements of the Act. Consent cannot unreasonably be withheld.						
Is the Respondent (Complete with a "Yes" or "No")						
A DPIP/FPPO		Closely Related to a DPIP/FPPO		Closely Associated to a DPIP/FPPO		
List all known business interests, in which a DPIP/FPPO may have a direct/indirect interest or significant participation or involvement.						
No	Name of Entity / Business	Role in the Entity / Business (Nature of interest/ Participation)	Shareholding %	Registration Number	Status (Mark the applicable option with an X)	
					Active	Non-Active
1						
2						
3						

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

2. SERVICE LEVELS

- 2.1 An experienced account representative(s) is required to work with Transnet's procurement department. [No sales representatives are needed for individual department or locations]. Additionally, there shall be a minimal number of people, fully informed and accountable for this agreement.
- 2.2 Transnet will have quarterly reviews with the Supplier/Service provider's account representative on an on-going basis.

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

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

- a) Random checks on compliance with quality/quantity/specifications
- b) On-time delivery

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

2.5 The Supplier/Service provider must provide a telephone number for customer service calls.

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

Acceptance of Service Levels:

YES	
------------	--

NO	
-----------	--

3. RISK

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

3.1 Quality and specification of Goods/Services delivered:

3.2 Continuity of supply:

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

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

SIGNED at _____ on this ____ day of _____ 20__

SIGNATURE OF WITNESSES

ADDRESS OF WITNESSES

1 _____
Name _____

2 _____
Name _____

SIGNATURE OF RESPONDENT'S AUTHORISED REPRESENTATIVE: _____

NAME: _____

DESIGNATION: _____

SECTION 5: PROPOSAL FORM AND LIST OF RETURNABLE DOCUMENTS

I/We _____
[name of entity, company, close corporation or partnership] of *[full address]*

carrying on business trading/operating as

represented by _____
in my capacity as

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

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

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

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

- (i) Master Agreement (which may be subject to amendment at Transnet's discretion if applicable);
- (ii) General Bid Conditions; and
- (iii) any other standard or special conditions mentioned and/or embodied in this Request for Proposal.

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

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

Respondent's Signature

Date & Company Stamp

I/We further agree that if, after I/we have been notified of the acceptance of my/our Proposal, I/we fail to enter into a formal contract if called upon to do so, or fail to commence the supply/provision of Goods/Services within 2 [two] weeks thereafter, Transnet may, without prejudice to any other legal remedy which it may have, recover from me/us any expense to which it may have been put in calling for Proposals afresh and/or having to accept any less favourable Proposal.

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

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

ADDRESS FOR NOTICES

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

Respondent to indicate the details of its *domicilium citandi et executandi* hereunder:

Name of Entity:

Facsimile:

Address:

NOTIFICATION OF AWARD OF RFP

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

VALIDITY PERIOD

Transnet requires a validity period of **90 working days** [from closing date] against this RFP, excluding the first day and including the last day.

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

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

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

Respondent's Signature

Date & Company Stamp

- (ii) Registered name of company / C.C. _____
- (iii) Full name(s) of director/member(s) Address/Addresses ID Number(s)
- _____
- _____
- _____

RETURABLE DOCUMENTS

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

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

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

a) Mandatory Returnable Documents

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

MANDATORY RETURABLE DOCUMENTS	SUBMITTED [Yes/No]
Section 1: SBD1 Form	
SECTION 4 : Pricing and Delivery Schedule	
ANNEXURE A : Technical Submission/Questionnaire	
Valid proof of Respondent's compliance to B-BBEE requirements stipulated in Section 9 of this RFP	

b) Returnable Documents Used for Scoring

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

<u>RETURNABLE DOCUMENTS USED FOR SCORING</u>	SUBMITTED [Yes or No]
Landfill Site Documentation	
Service Provider Registration	
Capacity to deliver adequate services Number of resources to be made available for the contract	
Relevant Employee Training	
Timeframes for Service Provision	
Operations & Maintenance Manual	
Emergency Preparedness	
Waste Management Awareness Initiatives	
Audits	
Supplier Development Initiatives(SDI)	

c) Essential Returnable Documents:

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

ESSENTIAL RETURNABLE DOCUMENTS & SCHEDULES	SUBMITTED [Yes or No]
In the case of Joint Ventures, a copy of the Joint Venture Agreement or written confirmation of the intention to enter into a Joint Venture Agreement	
Latest Financial Statements signed by your Accounting Officer or latest Audited Financial Statements plus 2 previous years	
SECTION 5 : Proposal Form and List of Returnable documents	
SECTION 6 : Certificate Of Acquaintance with RFP, Terms & Conditions & Applicable Documents	
SECTION 7 : RFP Declaration and Breach of Law Form	
SECTION 9 : B-BBEE Preference Claim Form	
SECTION 10 : Certificate of attendance of compulsory / non-compulsory Site Meeting / RFP Briefing	
SECTION 11 : SBD 9 - Certificate Of Independent Bid Determination	
SECTION 12: SBD 5	
SECTION 13: Protection of Personal Information	
SECTION 14: Contractor Management SHE Documentation	
SECTION 15: SECTION 37 (2)	
SECTION 16: MASTER AGREEMENT	
Entity's Financial Stability	

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

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

- (iv) Master Agreement (which may be subject to amendment at Transnet's discretion if applicable);
- (v) General Bid Conditions; and
- (vi) any other standard or special conditions mentioned and/or embodied in this Request for Proposal.

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

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

I/We further agree that if, after I/we have been notified of the acceptance of my/our Proposal, I/we fail to enter into a formal contract if called upon to do so, or fail to commence the supply/provision of Goods/Services within 2 [two] weeks thereafter, Transnet may, without prejudice to any other legal remedy which it may have, recover from me/us any expense to which it may have been put in calling for Proposals afresh and/or having to accept any less favourable Proposal.

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

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

CONTINUED VALIDITY OF RETURNABLE DOCUMENTS

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

SIGNED at _____ on this ____ day of _____ 20__

SIGNATURE OF WITNESSES

ADDRESS OF WITNESSES

1 _____

Name _____

2 _____

Name _____

SIGNATURE OF RESPONDENT'S AUTHORISED REPRESENTATIVE: _____

NAME: _____

DESIGNATION: _____

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

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

1	Transnet's General Bid Conditions
2	Master Agreement attached
3	Transnet's Supplier Integrity Pact
4	Non-disclosure Agreement
5	Specifications and drawings attached to this RFP

Note: Should a Respondent be successful and awarded the bid, they will be required to complete a Supplier Declaration Form for registration as a vendor in Transnet's system.

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

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

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

SIGNED at _____ on this ____ day of _____ 20__

SIGNATURE OF WITNESSES

ADDRESS OF WITNESSES

1 _____

Name _____

2 _____

Name _____

SIGNATURE OF RESPONDENT'S AUTHORISED REPRESENTATIVE: _____

NAME: _____ DESIGNATION: _____

Respondent's Signature

Date & Company Stamp

SECTION 7: RFP DECLARATION AND BREACH OF LAW FORM

NAME OF ENTITY: _____

We _____ do hereby certify that:

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

Respondent's Signature

Date & Company Stamp

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

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

ADDRESS:

Indicate nature of relationship with Transnet:

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

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

DECLARATION OF INTEREST REGARDING PERSONS EMPLOYED BY THE STATE (SBD4)

12. Any legal person, including persons employed by the state¹, or persons having a kinship with persons employed by the state, including a blood relationship, may make an offer or offers in terms of this invitation to bid (includes a price quotation, advertised competitive bid, limited bid or proposal). In view of possible allegations of favouritism, should the resulting bid, or part thereof, be awarded to persons employed by the state, or to persons connected with or related to them, it is required that the bidder or his/her authorised representative declare his/her position in relation to the evaluating/adjudicating authority where-

- the bidder is employed by the state; and/or
- the legal person on whose behalf the bidding document is signed, has a relationship with persons/a person who are/is involved in the evaluation and or adjudication of the bid(s), or where it is known that such a relationship exists between the person or persons for or on whose behalf the declarant acts and persons who are involved with the evaluation and or adjudication of the bid.

13. In order to give effect to the above, the following questionnaire must be completed and submitted with the bid:

- 13.1. Full Name of bidder or his or her representative:

¹ "State" means –

- (a) any national or provincial department, national or provincial public entity or constitutional institution within the meaning of the Public Finance Management Act, 1999 (Act No. 1 of 1999);
- (b) any municipality or municipal entity;
- (c) provincial legislature;
- (d) national Assembly or the national Council of provinces; or
- (e) Parliament.

- 13.2. Identity Number:
- 13.3. Position occupied in the Company (director, trustee, shareholder²):
- 13.4. Company Registration Number:
- 13.5. Tax Reference Number:
- 13.6. VAT Registration Number:

13.7. Are you or any person connected with the bidder presently employed by the state?	YES / NO
13.7.1. If so, furnish the following particulars:	
Name of person / director / trustee / shareholder/ member:
Name of state institution at which you or the person connected to the bidder is employed :
Position occupied in the state institution:
Any other particulars:
13.8. If you are presently employed by the state, did you obtain the appropriate authority to undertake remunerative work outside employment in the public sector?	YES / NO
13.8.1. If yes, did you attached proof of such authority to the bid document? (Note: Failure to submit proof of such authority, where applicable, may result in the disqualification of the bid.	YES / NO
13.8.2. If no, furnish reasons for non-submission of such proof:
13.9. Did you or your spouse, or any of the company's directors / trustees / shareholders / members or their spouses conduct business with the state in the previous twelve months?	YES / NO
13.9.1. If so, furnish particulars:
13.10. Do you, or any person connected with the bidder, have any relationship (family, friend, other) with a person employed by the state and who may be involved with the evaluation and or adjudication of this bid?	YES / NO
13.10.1. If so, furnish particulars:
13.11. Are you, or any person connected with the bidder, aware of any relationship (family, friend, other) between any other bidder and any person employed by the state who may be involved with the evaluation and or adjudication of this bid?	YES / NO

² "Shareholder" means a person who owns shares in the company and is actively involved in the management of the enterprise or business and exercises control over the enterprise.

13.11.1. If so, furnish particulars:
13.12. Do you or any of the directors / trustees / shareholders / members of the company have any interest in any other related companies whether or not they are bidding for this contract?	YES / NO
13.12.1. If so, furnish particulars:

The names of all directors / trustees / shareholders / members, their individual identity numbers, tax reference numbers and, if applicable, employee / persal numbers must be indicated in paragraph 14 below.

14. Full details of directors / trustees / members / shareholders.

Full Name	Identity Number	Personal Tax Reference Number	State Employee Number / Persal Number

BREACH OF LAW

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

Where found guilty of such a serious breach, please disclose:

NATURE OF BREACH:

DATE OF BREACH: _____

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

SIGNED at _____ on this _____ day of _____ 20____

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

SECTION 8: RFP CLARIFICATION REQUEST FORM

RFP No: TNPA 2021/12/0024/RFP

RFP deadline for questions / RFP Clarifications: Before 10:00 pm on 21 December 2021

TO: TNPA

ATTENTION: Omashree (Vanessa) Balie or Zelda Bosman

EMAIL Omashree.Balie@transnet .net or Zelda.Bosman@transnet.net

DATE: _____

FROM: _____

RFP Clarification No [to be inserted by Transnet]

REQUEST FOR RFP CLARIFICATION

This image shows a blank sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

SECTION 9 : B-BBEE PREFERENCE POINTS CLAIM FORM

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

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

NB: BEFORE COMPLETING THIS FORM, BIDDERS MUST STUDY THE GENERAL CONDITIONS, DEFINITIONS AND DIRECTIVES APPLICABLE IN RESPECT OF B-BBEE, AS PRESCRIBED IN THE PREFERENTIAL PROCUREMENT REGULATIONS, 2017.

1. GENERAL CONDITIONS

- 1.1 The following preference point systems are applicable to all bids:
- the 80/20 system for requirements with a Rand value of up to R50 000 000 (all applicable taxes included); and
 - the 90/10 system for requirements with a Rand value above R50 000 000 (all applicable taxes included).
- 1.2 The value of this bid is estimated to **not exceed** R50 000 000 (all applicable taxes included) and therefore the 80/20 preference point system shall be applicable. Despite the stipulated preference point system, Transnet shall use the lowest acceptable bid to determine the applicable preference point system in a situation where all received acceptable bids are received outside the stated preference point system.
- 1.3 Preference points for this bid shall be awarded for:
- (a) Price; and
 - (b) B-BBEE Status Level of Contribution.
- 1.4 The maximum points for this bid are allocated as follows:

	POINTS
PRICE	80
B-BBEE STATUS LEVEL OF CONTRIBUTION	20
Total points for Price and B-BBEE must not exceed	100

- 1.5 Failure on the part of a bidder to submit proof of B-BBEE status level of contributor together with the bid will be interpreted to mean that preference points for B-BBEE status level of contribution are not claimed.
- 1.6 The purchaser reserves the right to require of a bidder, either before a bid is adjudicated or at any time subsequently, to substantiate any claim in regard to preferences, in any manner required by the purchaser.

2. DEFINITIONS

- (a) **"all applicable taxes"** includes value-added tax, pay as you earn, income tax, unemployment insurance fund contributions and skills development levies;
- (b) **"B-BBEE"** means broad-based black economic empowerment as defined in section 1 of the Broad-Based Black Economic Empowerment Act;
- (c) **"B-BBEE status level of contributor"** means the B-BBEE status received by a measured entity based on its overall performance using the relevant scorecard contained in the Codes of Good Practice on Black Economic Empowerment, issued in terms of section 9(1) of the Broad-Based Black

Economic Empowerment Act;

- (d) **"bid"** means a written offer in a prescribed or stipulated form in response to an invitation by an organ of state for the supply/provision of services, works or goods, through price quotations, advertised competitive bidding processes or proposals;
- (e) **"Broad-Based Black Economic Empowerment Act"** means the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);
- (f) **"EME"** means an Exempted Micro Enterprise as defines by Codes of Good Practice under section 9 (1) of the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);
- (g) **"functionality"** means the ability of a bidder to provide goods or services in accordance with specification as set out in the bid documents
- (h) **"Price"** includes all applicable taxes less all unconditional discounts.
- (i) **"Proof of B-BBEE Status Level of Contributor"**
 - i) the B-BBEE status level certificate issued by an authorised body or person;
 - ii) a sworn affidavit as prescribed by the B-BBEE Codes of Good Practice; or
 - iii) any other requirement prescribed in terms of the B-BBEE Act.
- (j) **"QSE"** means a Qualifying Small Enterprise as defines by Codes of Good Practice under section 9 (1) of the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);
- (k) **"rand value"** means the total estimated value of a contract in South African currency, calculated at the time of bid invitations, and includes all applicable taxes and excise duties.

3. POINTS AWARDED FOR PRICE

3.1 THE 80/20 PREFERENCE POINT SYSTEMS

A maximum of 80 points is allocated for price on the following basis:

80/20

$$P_s = 80 \left(1 - \frac{P_t - P_{\min}}{P_{\min}} \right)$$

Where

- P_s = Points scored for comparative price of bid under consideration
- P_t = Comparative price of bid under consideration
- P_{\min} = Comparative price of lowest acceptable bid

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

- 4.1 In terms of Regulation 6 (2) and 7 (2) of the Preferential Procurement Regulations, preference points must be awarded to a bidder for attaining the B-BBEE status level of contribution in accordance with the table below:

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

7	2	4
8	1	2
Non-compliant contributor	0	0

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

Enterprise	B-BBEE Certificate & Sworn Affidavit
Large	Certificate issued by SANAS accredited verification agency
QSE	Certificate issued by SANAS accredited verification agency Sworn Affidavit signed by the authorised QSE representative and attested by a Commissioner of Oaths confirming annual turnover and black ownership (only black-owned QSEs - 51% to 100% Black owned) [Sworn affidavits must substantially comply with the format that can be obtained on the DTI's website at www.dti.gov.za/economic_empowerment/bee_codes.jsp .]
EME ³	Sworn Affidavit signed by the authorised EME representative and attested by a Commissioner of Oaths confirming annual turnover and black ownership Certificate issued by CIPC (formerly CIPRO) confirming annual turnover and black ownership Certificate issued by SANAS accredited verification agency only if the EME is being measured on the QSE scorecard

- 4.3 A trust, consortium or joint venture (including unincorporated consortia and joint ventures) must submit a consolidated B-BBEE Status Level verification certificate for every separate bid.
- 4.4 Tertiary Institutions and Public Entities will be required to submit their B-BBEE status level certificates in terms of the specialized scorecard contained in the B-BBEE Codes of Good Practice.
- 4.5 A person will not be awarded points for B-BBEE status level if it is indicated in the bid documents that such a bidder intends sub-contracting more than 25% of the value of the contract to any other enterprise that does not qualify for at least the points that such a bidder qualifies for, unless the intended sub-contractor is an EME that has the capability and ability to execute the sub-contract.
- 4.6 A person awarded a contract may not sub-contract more than 25% of the value of the contract to any other enterprise that does not have an equal or higher B-BBEE status level than the person concerned, unless the contract is sub-contracted to an EME that has the capability and ability to execute the sub-contract.
- 4.7 Bidders are to note that the rules pertaining to B-BBEE verification and other B-BBEE requirements may be changed from time to time by regulatory bodies such as National Treasury or the DTI. It is the Bidder's responsibility to ensure that his/her bid complies fully with all B-BBEE requirements at the time of the submission of the bid.

5. BID DECLARATION

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

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

- 6.1 B-BBEE Status Level of Contribution: . = 4 (maximum of 20 points)

³ In terms of the Implementation Guide: Preferential Procurement Regulations, 2017, Version 2, paragraph 11.11 provides that in the Transport Sector, EMEs can provide a letter from accounting officer or get verified and be issued with a B-BBEE certificate by SANAS accredited professional or agency as the Transport Sector Code has not been aligned to the generic Codes. EMEs in the Transport Sector are not allowed to provide a sworn affidavit as the generic codes are not applicable to them.

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

7. SUB-CONTRACTING

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

(*Tick applicable box*)

YES		NO	
-----	--	----	--

7.1.1 If yes, indicate:

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

(*Tick applicable box*)

YES		NO	
-----	--	----	--

- v) Specify, by ticking the appropriate box, if subcontracting with an enterprise in terms of Preferential Procurement Regulations, 2017:

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

8. DECLARATION WITH REGARD TO COMPANY/FIRM

8.1 Name of company/firm:.....

8.2 VAT registration number:.....

8.3 Company registration number:.....

8.4 TYPE OF COMPANY/ FIRM

- ☐ Partnership/Joint Venture / Consortium
- ☐ One person business/sole propriety
- ☐ Close corporation
- ☐ Company
- ☐ (Pty) Limited

[TICK APPLICABLE BOX]

8.5 DESCRIBE PRINCIPAL BUSINESS ACTIVITIES

.....

.....

8.6 COMPANY CLASSIFICATION

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

[TICK APPLICABLE BOX]

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

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

- i) The information furnished is true and correct;
- ii) The preference points claimed are in accordance with the General Conditions as indicated in paragraph 1 of this form;
- iii) In the event of a contract being awarded as a result of points claimed as shown in paragraph 1.4 and 6.1, the contractor may be required to furnish documentary proof to the satisfaction of the purchaser that the claims are correct;
- iv) If a bidder submitted false information regarding its B-BBEE status level of contributor, local production and content, or any other matter required in terms of the Preferential Procurement Regulations, 2017 which will affect or has affected the evaluation of a bid, or where a bidder has failed to declare any subcontracting arrangements or any of the conditions of contract have not been fulfilled, the purchaser may, in addition to any other remedy it may have
 - (a) disqualify the person from the bidding process;
 - (b) recover costs, losses or damages it has incurred or suffered as a result of that person's conduct;
 - (c) cancel the contract and claim any damages which it has suffered as a result of having to make less favourable arrangements due to such cancellation;
 - (d) if the successful bidder subcontracted a portion of the bid to another person without disclosing it, Transnet reserves the right to penalise the bidder up to 10 percent of the value of the contract;
 - (e) recommend that the bidder or contractor, its shareholders and directors, or only the shareholders and directors who acted on a fraudulent basis, be restricted by the National Treasury from obtaining business from any organ of state for a period not exceeding 10 years, after the audi alteram partem (hear the other side) rule has been applied; and
 - (f) forward the matter for criminal prosecution.

WITNESSES

- 1.
- 2.

.....
SIGNATURE(S) OF BIDDERS(S)

DATE:

ADDRESS.....

SECTION 10: SBD 9- CERTIFICATE OF INDEPENDENT BID DETERMINATION

1. Section 4(1)(b)(iii) of the Competition Act No. 89 of 1998, as amended, prohibits an agreement between, or concerted practice by, firms, or a decision by an association of firms, if it is between parties in a horizontal relationship and if it involves collusive bidding (or bid rigging). Collusive bidding is a per se prohibition meaning that it cannot be justified under any grounds. Bid rigging (or collusive bidding) occurs when businesses, that would otherwise be expected to compete, secretly conspire to raise prices or lower the quality of goods and / or services for purchasers who wish to acquire goods and / or services through a bidding process. Bid rigging is, therefore, an agreement between competitors not to compete.
2. Transnet will take all reasonable steps to prevent abuse of the supply chain management system and to:
 - a. disregard the bid of any bidder if that bidder, or any of its directors have abused the institution's supply chain management system and or committed fraud or any other improper conduct in relation to such system.
 - b. cancel a contract awarded to a supplier of goods and services if the supplier committed any corrupt or fraudulent act during the bidding process or the execution of that contract.
3. This SBD serves as a certificate of declaration that would be used by institutions to ensure that, when bids are considered, reasonable steps are taken to prevent any form of bid-rigging.
4. In order to give effect to the above, the following certificate of Bid Determination (SBD 9) must be completed and submitted with the bid:

CERTIFICATE OF INDEPENDENT BID DETERMINATION

I, the undersigned, in submitting the accompanying bid:

(Bid Number and Description)

in response to the invitation for the bid made by:

(Name of Institution)

do hereby make the following statements that I certify to be true and complete in every respect:

I certify, on behalf of: _____ that:
(Name of Bidder)

1. I have read and I understand the contents of this Certificate;
2. I understand that the accompanying bid will be disqualified if this Certificate is found not to be true and complete in every respect;
3. I am authorized by the bidder to sign this Certificate, and to submit the accompanying bid, on behalf of the bidder;
4. Each person whose signature appears on the accompanying bid has been authorized by the bidder to determine the terms of, and to sign the bid, on behalf of the bidder;
5. For the purposes of this Certificate and the accompanying bid, I understand that the word "competitor" shall include any individual or organization, other than the bidder, whether or not affiliated with the bidder, who:
 - a. has been requested to submit a bid in response to this bid invitation;
 - b. could potentially submit a bid in response to this bid invitation, based on their qualifications, abilities or experience; and
 - c. provides the same goods and services as the bidder and/or is in the same line of business as the bidder
6. The bidder has arrived at the accompanying bid independently from, and without consultation, communication, agreement or arrangement with any competitor. However communication between partners in a joint venture or consortium⁴ will not be construed as collusive bidding.
7. In particular, without limiting the generality of paragraphs 6 above, there has been no consultation, communication, agreement or arrangement with any competitor regarding:
 - a. prices;

⁴ Joint venture or Consortium means an association of persons for the purpose of combining their expertise, property, capital, efforts, skill and knowledge in an activity for the execution of a contract.

- b. geographical area where product or service will be rendered (market allocation)
 - c. methods, factors or formulas used to calculate prices;
 - d. the intention or decision to submit or not to submit, a bid;
 - e. the submission of a bid which does not meet the specifications and conditions of the bid; or
 - f. bidding with the intention not to win the bid.
8. In addition, there have been no consultations, communications, agreements or arrangements with any competitor regarding the quality, quantity, specifications and conditions or delivery particulars of the products or services to which this bid invitation relates.
9. The terms of the accompanying bid have not been, and will not be, disclosed by the bidder, directly or indirectly, to any competitor, prior to the date and time of the official bid opening or of the awarding of the contract.
10. I am aware that, in addition and without prejudice to any other remedy provided to combat any restrictive practices related to bids and contracts, bids that are suspicious will be reported to the Competition Commission for investigation and possible imposition of administrative penalties in terms of section 59 of the Competition Act No 89 of 1998 and or may be reported to the National Prosecuting Authority (NPA) for criminal investigation and or may be restricted from conducting business with the public sector for a period not exceeding ten (10) years in terms of the Prevention and Combating of Corrupt Activities Act No 12 of 2004 or any other applicable legislation.

.....
Signature

.....
Date

.....
Position

.....
Name of Bidder

SECTION 11: SBD 5

This document must be signed and submitted together with your bid

THE NATIONAL INDUSTRIAL PARTICIPATION PROGRAMME

INTRODUCTION

The National Industrial Participation Programme (NIPP), which is applicable to all government procurement contracts that have an imported content, became effective on the 1 September 1996. The NIP policy and guidelines were fully endorsed by Cabinet on 30 April 1997. In terms of the Cabinet decision, all state and parastatal purchases / lease contracts (for goods, works and services) entered into after this date, are subject to the NIPP requirements. NIPP is obligatory and therefore must be complied with. The Industrial Participation Secretariat (IPS) of the Department of Trade and Industry (DTI) is charged with the responsibility of administering the programme.

1. PILLARS OF THE PROGRAMME

- 1.1 The NIPP obligation is benchmarked on the imported content of the contract. Any contract having an imported content equal to or exceeding US\$5 million or other currency equivalent to US\$5 million will have a NIP obligation. This threshold of US\$5 million can be reached as follows:
 - (a) Any single contract with imported content exceeding US\$5 million.
 - or
 - (b) Multiple contracts for the same goods, works or services each with imported content exceeding US\$3 million awarded to one seller over a 2 year period which in total exceeds US\$5 million.
 - or
 - (c) A contract with a renewable option clause, where should the option be exercised the total value of the imported content will exceed US\$5 million.
 - or
 - (d) Multiple suppliers of the same goods, works or services under the same contract, where the value of the imported content of each allocation is equal to or exceeds US\$ 3 million worth of goods, works or services to the same government institution, which in total over a two (2) year period exceeds US\$5 million.
- 1.2 The NIP obligation applicable to suppliers in respect of sub-paragraphs 1.1 (a) to 1.1 (c) above will amount to 30% of the imported content whilst suppliers in respect of paragraph 1.1 (d) shall incur 30% of the total NIPP obligation on a *pro-rata* basis.
- 1.3 To satisfy the NIPP obligation, the DTI would negotiate and conclude agreements such as investments, joint ventures, sub-contracting, licensee production, export promotion, sourcing arrangements and research and development (R&D) with partners or suppliers.
- 1.4 A period of seven years has been identified as the time frame within which to discharge the obligation.

2. REQUIREMENTS OF THE DEPARTMENT OF TRADE AND INDUSTRY

- 2.1 In order to ensure effective implementation of the programme, successful bidders (contractors) are required to, immediately after the award of a contract that is in excess of **R10 million** (ten million Rands), submit details of such a contract to the DTI for reporting purposes.
- 2.2 The purpose for reporting details of contracts in excess of the amount of R10 million (ten million Rands) is to cater for multiple contracts for the same goods, works or services; renewable contracts and multiple suppliers for the same goods, works or services under the same contract as provided for in paragraphs 1.1.(b) to 1.1.(d) above.

3. BID SUBMISSION AND CONTRACT REPORTING REQUIREMENTS OF BIDDERS AND SUCCESSFUL BIDDERS (CONTRACTORS)

- 3.1 Bidders are required to sign and submit this Standard Bidding Document (SBD 5) together with their bid documentation at the closing date and time of the bid.
- 3.2 In order to accommodate multiple contracts for the same goods, works or services; renewable contracts and multiple suppliers for the same goods, works or services under the same contract as indicated in sub-paragraphs 1.1 (b) to 1.1 (d) above and to enable the DTI in determining the NIPP obligation, successful bidders (contractors) are required, immediately after being officially notified about any successful bid with a value in excess of R10 million (ten million Rands), to contact and furnish the DTI with the following information:
- Bid number;
 - Description of the goods or services;
 - Date on which the contract was awarded;
 - Name, address and contact details of the contractor;
 - Value of the contract; and
 - Imported content of the contract, if possible.
- 3.3 The information required in paragraph 3.2 above must be sent to the Department of Trade and Industry, Private Bag X 84, Pretoria, 0001 for the attention of Mr Elias Malapane within five (5) working days after award of the contract. Mr Malapane may be contacted on telephone (012) 394 1401, facsimile (012) 394 2401 or e-mail at Elias@thedti.gov.za for further details about the programme.

4. PROCESS TO SATISFY THE NIPP OBLIGATION

- 4.1 Once the successful bidder (contractor) has made contact with and furnished the DTI with the information required, the following steps will be followed:
- a. the contractor and the DTI will determine the NIPP obligation;
 - b. the contractor and the DTI will sign the NIPP obligation agreement;
 - c. the contractor will submit a performance guarantee to the DTI;
 - d. the contractor will submit a business concept for consideration and approval by the DTI;
 - e. upon approval of the business concept by the DTI, the contractor will submit detailed business plans outlining the business concepts;

- f. the contractor will implement the business plans; and
- g. the contractor will submit bi-annual progress reports on approved plans to the DTI.

4.2 The NIPP obligation agreement is between the DTI and the successful bidder (contractor) and, therefore, does not involve the purchasing institution.

Bid number Closing date:

Name of bidder.....

Postal address
.....

Signature..... Name (in print).....

Date.....

SECTION 12: PROTECTION OF PERSONAL INFORMATION

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

consent; data subject; electronic communication; information officer; operator; person; personal information; processing; record; Regulator; responsible party; special information; as well as any terms derived from these terms.
2. Transnet will process all information by the Respondent in terms of the requirements contemplated in Section 4(1) of the POPIA:

Accountability; Processing limitation; Purpose specification; Further processing limitation; Information quality; Openness; Security safeguards and Data subject participation.
3. The Parties acknowledge and agree that, in relation to personal information that will be processed pursuant to this RFP, the Responsible party is “Transnet” and the Data subject is the “Respondent”. Transnet will process personal information only with the knowledge and authorisation of the Respondent and will treat personal information which comes to its knowledge as confidential and will not disclose it, unless so required by law or subject to the exceptions contained in the POPIA.
4. Transnet reserves all the rights afforded to it by the POPIA in the processing of any of its information as contained in this RFP and the Respondent is required to comply with all prescripts as detailed in the POPIA relating to all information concerning Transnet.
5. In responding to this bid, Transnet acknowledges that it will obtain and have access to personal information of the Respondent. Transnet agrees that it shall only process the information disclosed by Respondent in their response to this bid for the purpose of evaluating and subsequent award of business and in accordance with any applicable law.
6. Transnet further agrees that in submitting any information or documentation requested in this RFP, the Respondent is consenting to the further processing of their personal information for the purpose of, but not limited to, risk assessment, assurances, contract award, contract management, auditing, legal opinions/litigations, investigations (if applicable), document storage for the legislatively required period, destruction, de-identification and publishing of personal information by Transnet and/or its authorised appointed third parties.
7. Furthermore, Transnet will not otherwise modify, amend or alter any personal data submitted by the Respondent or disclose or permit the disclosure of any personal data to any third party without the prior written consent from the Respondent. Similarly, Transnet requires the Respondent to process any personal information disclosed by Transnet in the bidding process in the same manner.
8. Transnet shall, at all times, ensure compliance with any applicable laws put in place and maintain sufficient measures, policies and systems to manage and secure against all forms of risks to any information that may be shared or accessed pursuant to this RFP (physically, through a computer or any other form of electronic communication).
9. Transnet shall notify the Respondent in writing of any unauthorised access to information, cybercrimes or suspected cybercrimes, in its knowledge and report such crimes or suspected crimes to the relevant authorities

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

10. The Respondent may, in writing, request Transnet to confirm and/or make available any personal information in its possession in relation to the Respondent and if such personal information has been accessed by third parties and the identity thereof in terms of the POPIA. The Respondent may further request that Transnet correct (excluding critical/mandatory or evaluation information), delete, destroy, withdraw consent or object to the processing of any personal information relating to the Respondent in Transnet's possession in terms of the provision of the POPIA and utilizing Form 2 of the POPIA Regulations.
11. In submitting any information or documentation requested in this RFP, the Respondent is hereby consenting to the processing of their personal information for the purpose of this RFP and further confirming that they are aware of their rights in terms of Section 5 of POPIA

Respondents are required to provide consent below:

YES		NO	
------------	--	-----------	--

12. Further, the Respondent declares that they have obtained all consents pertaining to other data subject's personal information included in its submission and thereby indemnifying Transnet against any civil or criminal action, administrative fines or other penalty or loss that may arise as a result of the processing of any personal information that the Respondent submitted.
13. The Respondent declares that the personal information submitted for the purpose of this RFP is complete, accurate, not misleading, is up to date and may be updated where applicable.

Signature of Respondent's authorised representative: _____

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

SECTION 13
CONTRACTOR MANAGEMENT SHE DOCUMENTATION
(TO BE SUBMITTED ON AWARD)

Project Manager:			
Project name:			
Client:	TNPA		
Contractor Details:			

No.	items	Approved	Not Approved
1	Principal Contractors Organogram		
2	Letter Of Good Standing With Compensation Fund		
3	Notification Letter Of Construction Work ~ Department Of Labour (If Applicable)		
4	Appointments		
5	Induction: Employees And Visitors: Staff Medical Certificates		
6	Principal Contractor's SHEQ Policy		
7	Health & Safety Plan, Integrated Legal Register, Client Specification.		
8	Fall Protection Plan (If Applicable)		
9	Risk Assessments: Method Statements: Safe Operating Procedures		
10	Incidents / Accidents Register And Investigation Reports		
11	Emergency Contact Telephone Numbers		
12	Business Continuity Plan Including Emergency Plan		
13	Documented Proof Of Daily Toolbox Safety Talks/ DSTI		
14	Inspections Checklist		
15	All Registers		
16	Welfare Facilities		
17	Electrical Compliance		
18	Mandatory Agreement		
19	Communication Plan		

20	Training Records and Competency Certificates		
21	General		
CONTRACTOR'S COMPLIANCE FILE REVIEW			
Date	Print Full Name	Designation	Signature
Status			
Approved			
Not Approved			
Reasons for not approving			

Abbreviations

- | | |
|----------|--|
| 1. SHE: | Safety, Health and Environment. |
| 2. OEMP: | Operational Environmental Management Plan. |
| 3. EMP: | Environmental Management Plan. |
| 4. OHS: | Occupational Health and Safety. |

Note:

- The contractor may only commence with work on site after all the above requirements have been met and employees have attended induction.
- This form as well as all the documentation received by the SHE Department from the contractor must be kept on the Contract SHE file.

SECTION 14**SECTION 37(2) OF THE OCCUPATIONAL HEALTH AND SAFETY ACT****WRITTEN AGREEMENT ON
OCCUPATIONAL HEALTH AND SAFETY**

**In accordance with the provision of Section 37(2)
of the Occupational Health and Safety Act 85 of 1993**

AS ENTERED INTO BY AND BETWEEN

**TRANSNET NATIONAL PORTS AUTHORITY
A DIVISION OF
TRANSNET SOC LIMITED
REGISTRATION NUMBER 1990/000900/30**

(hereinafter referred to as "the Employer")

AND

(hereinafter referred to as "the Mandatory")

Compensation Fund Number: _____

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1. REPORTING

- 1.1 The Mandatory and/or his designated person appointed in terms of Section 16(2) of the Occupational Health and Safety Act 85 of 1993 ("the OHS Act") shall report to the Risk Manager and/or a Project Manager and/or a representative designated by the Employer prior to commencing the work at the premises.

2. WARRANTY OF COMPLIANCE

- 2.1 In terms of this agreement the Mandatory warrants that he agrees to the arrangements and procedures as prescribed by the Employer and as provided for in terms of Section 37(2) of the OHS Act for the purposes of compliance with the Act.
- 2.2 The Mandatory further warrants that he and/or his employees undertake to maintain such compliance with the OHS Act. Without derogating from the generality of the above, or from the provisions of the said agreement, the Mandatory shall ensure that the clauses as hereunder described are at all times adhered to by himself and his employees.
- 2.3 The Mandatory hereby undertakes to ensure that the health and safety of any other person on the premises is not endangered by the conduct and/or his nominated Chief Executive Officer.

3. APPOINTMENTS AND TRAINING

- 3.1 The Mandatory shall appoint competent persons as per Section 16(2) of the OHS Act. Any such appointed person shall be trained on any occupational health and safety matter and the OHS Act provisions pertinent to the work is to be performed under his responsibility. Copies of any appointments made by the Mandatory shall immediately be provided to the Employer.
- 3.2 The Mandatory shall further ensure that all his employees are trained on the health and safety aspects relating to the work and that they understand the hazards associated with such work being carried out on the premises. Without derogating from the foregoing, the Mandatory shall, in particular, ensure that all his users or operators of any materials, machinery or equipment are properly trained in the use of such materials, machinery or equipment.
- 3.3 Notwithstanding the provisions of the above, the Mandatory shall ensure that he, his appointed responsible persons and his employees are at all times familiar with the provisions of the OHS Act, and that they comply with the provisions of the Act.

4. SUPERVISION, DISCIPLINE AND REPORTING

- 4.1 The Mandatory shall ensure that all work performed on the Employer's premises are done under strict supervision and that no unsafe or unhealthy work practices are permitted. Discipline regarding health and safety matters shall be strictly enforced against any of his employees regarding non-compliance by such employee with any health and safety matters.
- 4.2 The Mandatory shall further ensure that his employees report to him all unsafe or unhealthy work situations immediately after they become aware of the same and that he in turn immediately reports these to the Employer and/or his representative.

5. ACCESS TO THE OHS ACT

- 5.1 The Mandatory shall ensure that he has an updated copy of the OHS Act on site at all times and that this is accessible to his appointed responsible persons and employees, save that the parties may make arrangements for the Mandatory and his appointed responsible persons and employees to have access to the Employer's updated copy/copies of the Act.

6. COOPERATION

- 6.1 The Mandatory and/or his responsible persons and employees shall provide full co-operation and information if and when the Employer or his representative inquiries into occupational health and safety issues concerning the Mandatory. It is hereby recorded that the Employer and his representative shall at all times be entitled to make such inquiry.
- 6.2 Without derogating from the generality of the above, the Mandatory and his responsible persons shall make available to the Employer and his representative, on request, all and any checklists and inspection registers required to be kept by him in respect of any of his materials, machinery or equipment.

7. WORK PROCEDURES

- 7.1 The Mandatory shall, after having established the dangers associated with the work performed, develop and implement mitigation measures to minimize or eliminate such dangers for the purpose of ensuring a healthy and safe working environment. The Mandatory shall then ensure that his responsible persons and employees are familiar with such mitigation measures.
- 7.2 The Mandatory shall implement any other safe work practices as prescribed by the Employer and shall ensure that his responsible persons and employees are made conversant with and adhere to such safe work practices.
- 7.3 The Mandatory shall ensure that work for which a permit is required by the Employer is not performed by his employees prior to the obtaining of such a permit.

8. HEALTH AND SAFETY MEETINGS

- 8.1 If required in terms of the OHS Act, the Mandatory shall establish his own health and safety committee(s) and ensure that his employees, being the committee members, hold health and safety representatives to attend the Employer's health and safety committee meetings.

9. COMPENSATION REGISTRATION

- 9.1 The Mandatory shall ensure that he has a valid proof of registration with the Compensation Commissioner, as required in terms of the Compensation for Occupational injuries and Diseases Act 130 of 1993, and that all payments owing to the Commissioner are discharged. The Mandatory shall further ensure that the cover remain in force while any such employee is present on the premises.

10.MEDICAL EXAMINATIONS

- 10.1 The Mandatory shall ensure that all his employees undergo routine medical examinations and that they are medically fit for the purposes of the work they are to perform.

11.INCIDENT REPORTING AND INVESTIGATION

- 11.1 All incidents referred to in Section 24 of the OHS Act shall be reported by the Mandatory to the Department of Labour and to the Employer. The Employer shall further be provided with copies of any written documentation relating to any incident.
- 11.2 The Employer retains an interest in the reporting of any incident as described above as well as in any formal investigation and/or inquiry conducted in terms of section 32 of the OHS-Act into such incident.

12.SUBCONTRACTORS

- 12.1 The Mandatory shall notify the Employer of any subcontractor he may wish to perform work on his behalf on the Employer's premises. It is hereby recorded that all the terms and provisions contained in this clause shall be equally binding upon the subcontractor prior to the subcontractor commencing with the work. Without derogating from the generality of this paragraph:
 - 12.1.1 The Mandatory shall ensure that training as discussed under appointments and training, is provided prior to the subcontractor commencing work on the Employer's premises.
 - 12.1.2 The Mandatory shall ensure that work performed by the subcontractor is done under his strict supervision, discipline and reporting.
 - 12.1.3 The Mandatory shall inform the Employer of any health and safety hazards and/or issue that the subcontractor may have brought to this attention.
 - 12.1.4 The Mandatory shall inform the Employer of any difficulty encountered regarding compliance by the subcontractor with any health and safety instruction, procedure and/or legal provision applicable to the work the subcontractor performs on the Employer's premises.

13. SECURITY AND ACCESS

- 13.1 The Mandatory and his employees shall enter and leave the premises only through the main gate(s) and/or checkpoint(s) designated by the Employer. The Mandatory shall ensure that employees observe the security rules of the Employer at all times and shall not permit any person who is not directly associated with the work from entering the premises.
- 13.2 The Mandatory and his employees shall not enter any area of the premises that is not directly associated with their work.
- 13.3 The Mandatory shall ensure that all materials, machinery or equipment brought by him onto the premises are recorded at the main gate(s) and/or checkpoint(s). Failure to do this may result in a refusal by the Employer to allow the materials, machinery or equipment to be removed from the premises.

14.FIRE PRECAUTIONS AND FACILITIES

- 14.1 The Mandatory shall ensure that an adequate supply of fire-protection and first-aid facilities are provided for the work to be performed on the Employer's premises, save that the parties may mutually make arrangements for the provision of such facilities.
- 14.2The Mandatory shall further ensure that all his employees are familiar with fire precautions at the premises, which included fire-alarm signals and emergency exits, and that such precautions are adhered to.

15.ABLUTION FACILITIES

- 15.1 The Mandatory shall ensure that an adequate supply of ablution facilities are provided for his employees performing work on the Employer's premises, save that the parties may mutually make arrangements for the provision of such facilities.

16.HYGIENE AND CLEANLINESS

- 16.1 The Mandatory shall ensure that the work site and surround area is at all times maintained to the reasonably practicable level of hygiene and cleanliness. In this regard, no loose materials shall be left lying about unnecessarily and the work site shall be cleared of waste material regularly and on completion of the work.

17.NO NUISANCE

- 17.1 The Mandatory shall ensure that neither he nor his employees undertake any activity that may cause environmental impairment or constitute any form of nuisance to the Employer and/or his surroundings.
- 17.2 The Mandatory shall ensure that no hindrance, hazard, annoyance or inconvenience is inflicted on the Employer, another Mandatory or any tenants. Where such situations are unavoidable, the Mandatory shall give prior notice to the Employer.

18.INTOXICATION NOT ALLOWED

- 18.1 No intoxicating substance of any form shall be allowed on site. Any person suspected of being intoxicated shall not be allowed on the site. Any person required to take medication shall notify the relevant responsible person thereof, as well as the potential side effects of the medication.

19.PERSONAL PROTECTIVE EQUIPMENT

- 19.1 The Mandatory shall ensure that his responsible persons and employees are provided with adequate personal protective equipment (PPE) for the work they may perform and in accordance with the requirements of General Safety Regulation 2 (1) of the OHS Act. The Mandatory shall further ensure that his responsible persons and employees wear the PPE issued to them at all material times.

20.PLANT, MACHINERY AND EQUIPMENT

- 20.1 The Mandatory shall ensure that all the plant, machinery, equipment and/or vehicles he may wish to utilize on the Employer's premises is/are at all times of sound order and fit for the purpose for which it/they is/are attended to, and that it/they complies/comply with the requirements of Section 10 of the OHS Act.
- 20.2 In accordance with the provisions of Section 10(4) of the OHS Act, the Mandatory hereby assumes the liability for taking the necessary steps to ensure that any article or substance that it erects or installs at the premises, or manufactures, sells or supplies to or for the Employer, complies with all the prescribed requirements and will be safe and without risks to health and safety when properly used.

21.NO USAGE OF THE EMPLOYER'S EQUIPMENT

- 21.1 The Mandatory hereby acknowledge that his employees are not permitted to use any materials, machinery or equipment of the Employer unless the prior written consent of the Employer has been obtained, in which case the Mandatory shall ensure that only those persons authorized to make use of same, have access thereto.

22.TRANSPORT

- 22.1 The Mandatory shall ensure that all road vehicles used on the premises are in a roadworthy condition and are licensed and insured. All drivers shall have relevant and valid driving licenses and vehicle shall carry passengers unless it is specifically designed to do so. All drivers shall adhere to the speed limits and road signs on the premises at all times.
- 22.2 In the event that any hazardous substances are to be transported on the premises, the Mandatory shall ensure that the requirements of the Hazardous Substances Act 15 of 1973 are complied with fully all times.

23.CLARIFICATION

- 23.1 In the event that the Mandatory requires clarification of any of the terms or provisions of this agreement, he should contact the Risk Manager of the Employer.

24.DURATION OF AGREEMENT

- 24.1 This agreement shall remain in force for the duration of the work to be performed by the Mandatory and/or while any of the Mandatory's employees are present on the Employer's premises.

25. HEADINGS

The headings as contained in this agreement are for reference purposes only and shall not be construed as having any interpretative value in themselves or as giving any indication as to the meaning of the contents of the paragraphs contained in this agreement.

Thus done and signed at _____ on the _____ day of _____ 20_____

For and on behalf of the Employer

For and on behalf of the Mandatory

Witnesses:

1. _____

2. _____

SECTION 15

**Please review as signing on this agreement constitutes agreement to all terms and conditions
indicted (non-negotiable)**

MASTER AGREEMENT

entered into by and between

TRANSNET SOC LTD

trading through its operating division, **TRANSNET NATIONAL PORTS AUTHORITY**

[Registration No. 1990/000900/30]

[hereinafter referred to as **TNPA**]

and

.....

Registration No.

[hereinafter referred to as **Service Provider**]

FOR THE PROVISION OF SERVICES:

**SHEQ DEPARTMENT – GENRAL AND HAZARDOUNS WASTE MANAGEMENT
SERVICES FOR 36 MONTHS**

Agreement Number **TNPA 2021/12/0024/RFP**

Commencement Date _____

Expiry Date _____

Contract Value **R** _____

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1. INTRODUCTION

This Agreement is entered into by and between:

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

and

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

NOW THEREFORE, IT IS AGREED:

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

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 Supplier/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 Supplier/Service Provider to Transnet;
- 2.3 **Background Intellectual Property** means all Intellectual Property introduced and required by either Party to give effect to their obligations under 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;
- 2.4 **Business Day(s)** means Mondays to Fridays between 07:30 and 16:00, excluding public holidays as proclaimed in South Africa;
- 2.5 **Commencement Date** means [REDACTED], notwithstanding the signature date of this Agreement;
- 2.6 **Confidential Information** means any information or other data, whether in written, oral, graphic or in any other form such as in documents, papers, memoranda, correspondence, notebooks, reports, drawings, diagrams, discs, articles, samples, test results, prototypes, designs, plans, formulae, patents,

or inventor's certificates, which a Party discloses or provides to the other Party [intentionally or unintentionally, or as a result of one Party permitting the representative of the other Party to visit any of its premises], or which otherwise becomes known to a Party, and which is not in the public domain and includes, without limiting the generality of the term:

- 2.6.1 information relating to methods of operation, data and plans of the disclosing Party;
 - 2.6.2 the contents of this Agreement;
 - 2.6.3 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;
 - 2.6.4 any information disclosed by either Party and which is clearly marked as being confidential or secret;
 - 2.6.5 information relating to the strategic objectives and planning of the disclosing Party relating to its existing and planned future business activities;
 - 2.6.6 information relating to the past, present and future research and development of the disclosing Party;
 - 2.6.7 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;
 - 2.6.8 information contained in the software and associated material and documentation belonging to the disclosing Party;
 - 2.6.9 technical and scientific information, Know-How and trade secrets of a disclosing Party including inventions, applications and processes;
 - 2.6.10 Copyright works;
 - 2.6.11 commercial, financial and marketing information;
 - 2.6.12 data concerning architecture, demonstrations, tools and techniques, processes, machinery and equipment of the disclosing Party;
 - 2.6.13 plans, designs, concepts, drawings, functional and technical requirements and specifications of the disclosing Party;
 - 2.6.14 information concerning faults or defects in Goods, equipment, hardware or software or the incidence of such faults or defects; and
 - 2.6.15 information concerning the charges, fees and/or costs of the disclosing Party or its authorised Subcontractors, or their methods, practices or service performance levels actually achieved;
- 2.7 **Copyright** means the right in expressions, procedures, methods of operations or mathematical concepts, computer program codes, compilations of data or other material, literary works, musical works, artistic works, sound recordings, broadcasts, program carrying signals, published editions, photographic works, or cinematographic works of the copyright owner to do or to authorise the doing of certain acts specified in respect of the different categories of works;
- 2.8 **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;

- 2.9 **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;
- 2.10 **Expiry Date** means [REDACTED];
- 2.11 **Foreground Intellectual Property** means all Intellectual Property developed by either Party pursuant to this Agreement;
- 2.12 **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>;
- 2.13 **Intellectual Property** means Patents, Designs, Know-How, Copyright and Trade Marks and all rights having equivalent or similar effect which may exist anywhere in the world and includes all future additions and improvements to the Intellectual Property;
- 2.14 **Know-How** means all Confidential Information of whatever nature relating to the Intellectual Property and its exploitation as well as all other Confidential Information generally relating to Transnet's field of technology, including technical information, processing or manufacturing techniques, Designs, specifications, formulae, systems, processes, information concerning materials and marketing and business information in general;
- 2.15 **Parties** mean the Parties to this Agreement together with their subsidiaries, divisions, business units, successors-in-title and assigns;
- 2.16 **Party** means either one of these Parties;
- 2.17 **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;
- 2.18 **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;
- 2.19 **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;
- 2.20 **Purchase Order(s)** means official orders issued by an operating division of Transnet to the Supplier/Service Provider for the supply of Goods or Services;
- 2.21 **Service(s)** means general and hazardous waste management services for 36 months, the Service(s) provided to Transnet by the Service Provider, pursuant to the Work Order(s) in terms of this Agreement;

- 2.22 **Service Level Agreement** or **SLA** means the processes, deliverables, key performance indicators and performance standards relating to the Services to be provided by the Supplier/Service Provider;
- 2.23 **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;
- 2.24 **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;
- 2.25 **Schedule of Requirements** means Schedule 1 hereto;
- 2.26 **Subcontract** means any contract or agreement or proposed contract or agreement between the Supplier/Service Provider and any third party whereby that third party agrees to provide to the Supplier the Goods or related Services or any part thereof or material used in the manufacture of the Goods or any part thereof;
- 2.27 **Subcontractor** means the third party with whom the Supplier/Service Provider enters into a Subcontract;
- 2.28 **Tax Invoice** means the document as required by Section 20 of the VAT Act, as may be amended from time to time;
- 2.29 **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;
- 2.30 **VAT** means Value-Added Tax chargeable in terms of the VAT Act, 89 of 1991, as may be amended from time to time; and
- 2.31 **VAT Act** means the Value Added Tax Act, No 89 of 1991, as may be amended from time to time.
- 2.32 **Work Order(s)** means a detailed scope of work for a Service required by Transnet, including **timeframes**, Deliverable, Fees and costs for the supply of the Service to Transnet, which may be appended to 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 Supplier/Service Provider will arrange for the supply/provision to Transnet of the Goods/Services which meet the requirements and specifications of Transnet, the delivery of which is controlled by means of Purchase Orders to be issued by Transnet and executed by the Supplier/Service Provider in accordance with this Agreement.
- 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 Requirements/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 Requirements/Work Orders in accordance with procedures set out in clause 34 *[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 Requirements/Work Order conflicts with a like term, provision or condition in this Agreement and/or a Purchase Order, the term or provision or condition in this Master Agreement shall prevail, unless such term or provision or condition in this Master Agreement has been specifically revoked or amended by mutual written agreement between the Parties.
- 4.6 Time will be of the essence and the Supplier/Service Provider will perform its obligations under this Agreement in accordance with the timeframe(s) [if any] set out in the relevant schedule, save that the Supplier/Service Provider will not be liable under this clause if it is unable to meet such obligation within the time required as a direct result of any act or omission by Transnet and it has used its best endeavours to advise Transnet of such act or omission. In the event of such delay, any time deadlines detailed in the relevant schedule shall be extended by a period equal to the period of that delay.

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 and the duration shall be for a 36 months [3] year period, expiring on, unless:

- 6.1.1 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
- 6.1.2 this Agreement is extended at Transnet's option for a further period to be agreed by the Parties.
- 6.2 Notwithstanding clause 21 [*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 Supplier/Service Provider for information, including information concerning Transnet's operations and activities, that relates to the Goods/Services as may be necessary for the Supplier/Service Provider to provide the Goods/Services, but for no other purpose. However, Transnet's compliance with any request for information is subject to any internal security rules and requirements and subject to the observance by the Supplier/Service Provider of its confidentiality obligations under this Agreement.
- 8.2 The Supplier/Service Provider shall give Transnet reasonable notice of any information it requires.
- 8.3 Transnet agrees to provide the Supplier/Service Provider or its Personnel such access to and use of its facilities as is necessary to allow the Supplier/Service Provider to perform its obligations under this Agreement.

9 GENERAL OBLIGATIONS OF THE SUPPLIER/SERVICE PROVIDER

- 9.1 The Supplier/Service Provider shall:
 - 9.1.1 respond promptly to all complaints and enquiries from Transnet;
 - 9.1.2 inform Transnet immediately of any dispute or complaint arising in relation to the storage or delivery of the Goods;
 - 9.1.3 conduct its business in a professional manner which will reflect positively upon the Supplier/Service Provider and the Supplier's/Service Provider's products/services;

- 9.1.4 keep full records clearly indicating all transactions concluded by the Supplier/Service Provider relating to the delivery of the Goods/Services and keep such records for at least 5 [five] years from the date of each such transaction;
 - 9.1.5 obtain, and at all times maintain in full force and effect, any and all licences, permits and the like required under applicable laws for the provision of the Goods/Services and ancillary Services and the conduct of the business and activities of the Supplier/Service Provider;
 - 9.1.6 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;
 - 9.1.7 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;
 - 9.1.8 comply with all applicable environmental legislation and regulations, demonstrate sound environmental performance and have an environmental management policy which ensures that its products, including the Goods/Services or ancillary Services are procured, produced, packaged, delivered and are capable of being used and ultimately disposed of in a way that is environmentally appropriate; and
 - 9.1.9 ensure the validity of all renewable certifications, including but not limited to its B-BBEE Verification Certificate, throughout the entire term of this Agreement. Should the Supplier/Service Provider fail to present Transnet with such renewals as they become due, Transnet shall be entitled, in addition to any other rights and remedies that it may have in terms of the Agreement, to terminate this Agreement forthwith without any liability and without prejudice to any claims which Transnet may have for damages against the Supplier/Service Provider.
- 9.2 The Supplier/Service Provider acknowledges and agrees that it shall at all times:
- 9.2.1 render the supply of the Goods/Services and ancillary Services (if applicable) and perform all its duties with honesty and integrity;
 - 9.2.2 communicate openly and honestly with Transnet regarding the supply and performance of the Goods/Services and demonstrate a commitment to effecting the supply and performing ancillary Services timeously, efficiently and at least to the required standards;
 - 9.2.3 endeavour to provide the highest possible standards of service and workmanship, with a reasonable degree of care and diligence;
 - 9.2.4 use its best endeavours and make every diligent effort to meet agreed deadlines;
 - 9.2.5 treat its own Staff, as well as all Transnet's Staff, with fairness and courtesy and respect for their human rights;
 - 9.2.6 practice and promote its own internal policies aimed at prohibiting and preventing unfair discrimination;

- 9.2.7 treat all enquiries from Transnet in connection with the supply of the Goods/Services and/or ancillary Services with courtesy and respond to all enquiries promptly and efficiently. Where the Supplier/Service Provider is unable to comply with the provisions of this clause, the Supplier/Service Provider will advise Transnet of the delay and the reasons therefor and will keep Transnet informed of progress made regarding the enquiry;
 - 9.2.8 when requested by Transnet, provide clear and accurate information regarding the Supplier's/Service Provider's own policies and procedures, excluding Know-How and other Confidential Information, except where a non-disclosure undertaking has been entered into between the Parties;
 - 9.2.9 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;
 - 9.2.10 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;
 - 9.2.11 not mislead Transnet or its officers, employees and stakeholders, whether by act or omission;
 - 9.2.12 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;
 - 9.2.13 immediately report to Transnet any unethical, fraudulent or otherwise unlawful conduct of which it becomes aware in connection with Transnet or the supply of Goods/Services or ancillary Services to Transnet;
 - 9.2.14 ensure that at all times, during the currency of this Agreement, it complies with all obligations and commitments in terms of the provisions of the Income Tax Act, No 58 of 1962, the VAT Act or any other tax legislation relating to their liability for Income Tax, VAT, Pay as You Earn or any other tax. The Supplier/Service Provider shall further ensure Tax Clearance Compliance, for the duration of this Agreement;
 - 9.2.15 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.
 - 9.2.16 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 Goods/Services and ancillary Services, to be supplied to Transnet under the terms and conditions of this Agreement, comply fully with the Specifications as set forth in Schedule 1 hereto, and shall thereby adhere [as applicable] to railway safety requirements and/or regulations. Permission for the engagement of a Subcontractor by the Supplier, as applicable, shall be subject to a review of the capability of the proposed Subcontractor to comply with the specified railway safety requirements and/or regulations. The Supplier and/or its Subcontractor shall grant Transnet

access, during the term of this Agreement, to review any safety-related activities, including the coordination of such activities across all parts of its organisation.

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 Supplier/Service Provider may only enter into a subcontracting arrangement or replace a subcontractor with the approval of Transnet.
- 11.2 If the Supplier/Service Provider subcontracts a portion of the contract to another person without declaring it to Transnet reserves the right to penalise the Supplier/Service Provider up to 10% of the value of the contract.
- 11.3 Where the Supplier/Service Provider seeks to replace a subcontractor Transnet shall be entitled to obtain representations or input from the initial subcontractor who was part of the tender process whose credentials were used in the Supplier/Service Provider's tender submission. Transnet shall consider input from all parties concerned, in order to take a decision on the proposed replacement of the subcontractor.

The subcontracting arrangement or contract remains between the Supplier/Service Provider (main contractor) and the subcontractor.

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

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

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

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 Supplier/Service Provider, subject to the following conditions:

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

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 Supplier/Service provider to demand that Transnet pay its sub-contractor directly. The decision to pay any sub-contractor directly, remains that of Transnet alone.

12.3 The Supplier/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 Supplier/Service Provider, whatsoever.

13 B-BBEE AND SOCIO-ECONOMIC OBLIGATIONS

13.1 B-BBEE Scorecard

- c) 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.
- d) In response to this requirement, the Supplier/Service Provider shall submit to Transnet's Contract Manager or such other designated person details of its B-BBEE status in terms of the latest Codes of Good Practice issued in terms of the B-BBEE Act and proof thereof at the beginning of March each year during the currency of this Agreement.
- e) The Supplier/Service Provider undertakes to notify and provide full details to Transnet in the event there is:

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

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

- f) Notwithstanding any other reporting requirement in terms hereof, the Supplier Service Provider undertakes to provide any B-BBEE data (underlying data relating to the Supplier /Service Provider which has been relied upon or utilised by a verification agency or auditor for the purposes of issuing a verification certificate in respect of the Supplier/Service Provider B-BBEE status) which Transnet may request on written notice within 30 (thirty) calendar days of such request. A failure to provide such data shall constitute a Supplier/ Service Provider Default and may be dealt with in accordance with the provisions of clause 21.
- g) In the event there is a change in the Supplier's/ Service Provider's B-BBEE status, then the provisions of clause 21 shall apply.

13.2 Green Economy/Carbon Footprint

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

14 PENALTIES

14.1 Penalties for Non-compliance to Service Level Agreement

Where the Supplier/Service Provider fails to deliver the 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 **1.5% rebate quarterly on costs payable**.

Payment of Non-compliance Penalties:

- 14.1.1 Subject to Clause (e) above, the Supplier/Service Provider shall pay the Non-compliance Penalty indicated in the Non-compliance Penalty Certificate within 10 (ten) Business Days of Transnet issuing a valid Tax Invoice to the Supplier/Service Provider for the amount set out in that certificate. If Transnet does not issue a valid Tax Invoice to the Supplier/Service Provider for Non-compliance Penalties accrued during any relevant period, those Non-compliance Penalties shall be carried forward to the next period.
- 14.1.2 The Supplier/Service Provider shall pay the amount due within 10 (ten) days after receipt of a valid Tax Invoice from Transnet, failing which Transnet shall, without prejudice to any other rights of Transnet under this Agreement, be entitled to call for payment which may be in any form Transnet deems reasonable and/or appropriate.
- 14.1.3 Should the Supplier/Service Provider fail to pay any Non Compliance Penalties within the time indicated above (as applicable), Transnet shall be entitled to deduct (set off) the amount not paid by the Supplier/Service Provider from the account of the Supplier/Service Provider in the ensuing month.

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

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:
- 15.3.1 are agreed by Transnet in advance;
 - 15.3.2 are incurred in accordance with Transnet's standard travel and expenses policies;
 - 15.3.3 are passed on to Transnet at cost with no administration fee; and
 - 15.3.4 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 Supplier/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 Supplier/Service Provider upon receipt of a valid and undisputed Tax Invoice together with the supporting documentation, as specified in the Schedule of Requirements appended hereto, once the valid and undisputed Tax Invoices or such portions of the Tax Invoices which are valid and undisputed become due and payable to the Supplier/Service Provider for the delivery of the Goods/Services ordered, in terms of clause 16.5 below.
- 16.3 Transnet may, pending an investigation, withhold any payments to the Supplier/Service Provider, in the case where irregular expenditure has been identified in the particular contract and that there is reasonable suspicion that the Supplier/Service Provider is involved or was aware that the contract transgressed any legislation.
- 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 Supplier's/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 Supplier/Service Provider shall be entitled to charge interest on the outstanding amount, at The Standard Bank of South Africa's prime rate of interest in force, for the period from the due date of payment until the outstanding amount is paid.
- 16.7 The Supplier/Service Provider shall remain the owner of all plant, material, machinery, equipment and the like [collectively, **the Supplier's Goods**] provided to Transnet until Transnet has paid in full for the Supplier's Goods, it being specifically agreed that Transnet shall acquire no rights [including liens] of whatsoever nature in such Supplier's Goods until date of final payment by Transnet. Subject to the 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 WARRANTIES APPLICABLE TO SERVICES

17.1 The Service Provider warrants to Transnet that:

- 17.1.1 it has full capacity and authority to enter into and to perform this Agreement and that this Agreement is executed by a duly authorised representatives of the Service Provider;
- 17.1.2 it will discharge its obligations under this Agreement and any annexure, appendix or schedule hereto with all due skill, care and diligence;
- 17.1.3 it will be solely responsible for the payment of remuneration and associated benefits, if any, of its Personnel and for withholding and remitting income tax for its Personnel in conformance with any applicable laws and regulations;
- 17.1.4 it will procure licences for Transnet in respect of all Third Party Material detailed in the Work Order(s), and will procure the right for Transnet to take such copies [in whole or in part] of such Third Party Materials as it may reasonably require for the purposes of back-up for archiving and disaster recovery; and
- 17.1.5 the use or possession by Transnet of any Materials will not subject Transnet to any claim for infringement of any Intellectual Property Rights of any third party.

17.2 The Service Provider warrants that it will perform its obligations under this Agreement in accordance with the Service Levels as defined in the relevant schedule. Transnet may at its discretion audit compliance with the Service Levels, provided that any such audit is carried out with reasonable prior notice and in a reasonable way so as not to have an adverse effect on the performance of the Services. Without prejudice to clause 17.3 below, in the event that the Service Provider fails to meet the Service Levels, Transnet may claim appropriate service credits or invoke a retention of Fees as detailed in the relevant schedule and/or Work Order.

17.3 The Service Provider warrants that for a period of 90 [ninety] calendar days from Acceptance of the Deliverables they will, if properly used, conform in all material respects with the requirements set out in the relevant schedule. The Service Provider will at its expense remedy any such non-conformance as soon as possible but in any event within 30 [thirty] calendar days of notification by Transnet. In the event that the Service Provider fails or is unable to remedy such non-conformance within such time-

scale, Transnet will be entitled to employ a third party to do so in place of the Service Provider and any excess charges or costs incurred by Transnet as a result shall be paid by the Service Provider.

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

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

17.6 The Service Provider shall advise Transnet of the effects of any steps proposed by Transnet pursuant to clause 17.5 above, including but not limited to any cost implications or any disruption or delay in the performance of the Services. The Parties agree that any changes to the Services, including the charges for the Services or any timetables for delivery of the Services, will be agreed in accordance with the change control procedure, as set out in clause 34 *[Amendment and Change Control]*.

17.7 The Service Provider warrants that:

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

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

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

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

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

17.10 In compliance with the National Railway Safety Regulator Act, 16 of 2002, the Service Provider shall ensure that the Services, to be supplied to Transnet under the terms and conditions of this Agreement, comply fully with the specifications as set forth in Schedule 1 hereto, and shall thereby adhere [as applicable] to railway safety requirements and/or regulations. Permission for the engagement of a Subcontractor by the Service Provider [as applicable] shall be subject to a review of the capability of the proposed Subcontractor to comply with the specified railway safety requirements and/or regulations. The Service Provider and/or its Subcontractor shall grant Transnet access, during the term of this Agreement, to review any safety-related activities, including the coordination of such activities across all parts of its organisation.

18 THIRD PARTY INDEMNITY

The Supplier/Service Provider hereby indemnifies and shall hold Transnet harmless against any direct damages suffered by or claims arising against Transnet in respect of clause **Error! Reference source not found.** above.

19 TOTAL OR PARTIAL FAILURE TO PERFORM

- 19.1 In the case of Goods to be specially manufactured for it, if Transnet at any time ascertains that:
- 19.1.1 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
 - 19.1.2 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.

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

- 19.3 Whenever, in any case not covered by clause 19.1 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.** [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.

20 RIGHTS ON CANCELLATION

- 20.1 If this Agreement or Purchase Order is cancelled in whole or in part in terms of clause 19 [*Total or Partial Failure to Perform*], Transnet may execute or complete this Agreement with any other entity and do so on such terms as it may deem proper, or may procure other comparable Goods/Services in substitution for those neglected to be manufactured or supplied or rejected as aforesaid, and may recover from the Supplier the difference between the cost of such Goods/Services and the Price [if the latter was lower] as well as any costs and expenses [including any additional transport costs] which Transnet may have had to incur in consequence of the Supplier's/Service Provider's default.

20.2 Any amount which may be recoverable from the Supplier/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 Supplier/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.** [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:

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

21.6.2 its winding-up or dissolution;

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

21.6.4 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 Supplier/Service Provider by notice in writing to the Supplier/Service Provider. For the purposes of this clause, **control** means the right to direct the affairs of a company whether by ownership of shares, membership of the board of directors, agreement or otherwise.

21.8 Notwithstanding this clause 21, Transnet may cancel this Agreement without cause by giving 30 [thirty] calendar days prior written notice thereof to the Supplier/Service Provider, or

21.9 The provisions of clauses 2 [Definitions], **Error! Reference source not found.** [Warranties], 20 [Rights on Cancellation], 242 [Confidentiality], 27 [Limitation of Liability], 28 [Intellectual Property Rights], 31 [Dispute Resolution] and 35.1 [Governing Law] shall survive termination or expiry of this Agreement.

22 CESSION

22.1 Upon written notice to the Supplier/Service Provider, Transnet shall be entitled:

22.1.1 to appoint Transnet's financier of the Goods/Services as first payer under this Agreement, without transferring the ultimate responsibility for payment which will remain with Transnet; and

22.1.2 to cede, assign and transfer its right, title and interest in the Goods/Services to such financier as part of the funding consideration for the Goods/Services.

22.2 The Supplier/Service Provider is not entitled to cede, delegate, assign, Subcontract or in any other manner dispose of any of its rights or obligations in terms of this Agreement without the prior written consent of Transnet, which consent shall not be withheld or delayed unreasonably.

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 Supplier/Service Provider consents to the processing of their personal information for the purpose of, but not limited to, risk assessment, contract award, contract management, auditing, legal opinions/litigation, investigations (if applicable), document storage for the legislatively required period, destruction, de-identification and publishing of personal information by Transnet and/or its authorised appointed third parties.
- d) The Parties agree that they may obtain and have access to personal information for the fulfilment of the rights and obligations contained herein. In performing the obligations as set out in this Agreement, the Parties shall at all times ensure that:
- i. they process personal information only for the express purpose for which it was obtained;
 - ii. once processed for the purposes for which it was obtained, all personal information will be destroyed to an extent that it cannot be reconstructed to its original form, subject to any legal retention requirements;
 - iii. Personal information is provided only to authorised personnel who strictly require the personal information to carry out the Parties' respective obligations under this Agreement;
 - iv. they do not disclose personal information of the other Party, other than in terms of this Agreement;
 - v. they have all reasonable technical and organisational measures in place to protect all personal information from unauthorised access and/or use;
 - vi. they have appropriate technical and organisational measures in place to safeguard the security, integrity and authenticity of all information in their possession or under their control in terms of this Agreement;
 - vii. they identify all reasonably foreseeable internal and external risks to personal information in their possession or under their control; establish and maintain appropriate safeguards against the risks identified; regularly verify that the safeguards are effectively implemented; and ensure that the safeguards are continually updated in response to new risks or deficiencies in previously implemented safeguards;
 - viii. such personal information is protected against unauthorised or unlawful processing, accidental loss, destruction or damage, alteration, disclosure or access.

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:

- 25.1.1 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;
- 25.1.2 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;
- 25.1.3 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;
- 25.1.4 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;
- 25.1.5 not to exercise less care to safeguard Transnet Confidential Information than the Party exercises in safeguarding its own competitive, sensitive or Confidential Information;
- 25.1.6 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;
- 25.1.7 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;
- 25.1.8 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;

- 25.1.9 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;
 - 25.1.10 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
 - 25.1.11 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 25 shall not apply where:
- 25.2.1 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
 - 25.2.2 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
 - 25.2.3 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
 - 25.2.4 is independently developed by a Party as proven by its written records.
- 25.3 This clause 25 shall survive termination for any reason of this Agreement and shall remain in force and effect from the Commencement Date of this Agreement and 5 [five] years after the termination of this Agreement. Upon termination of this Agreement, all documentation furnished to the Supplier/Service Provider by Transnet pursuant to this Agreement shall be returned to Transnet including, without limitation, all corporate identity equipment including dyes, blocks, labels, advertising matter, printing matter and the like.

26 INSURANCES

- 26.1 Without limiting the liability of the Supplier/Service Provider under this Agreement, the Supplier/Service Provider shall take out insurance in respect of all risks for which it is prudent for the Supplier/Service Provider to insure against, including any liability it may have as a result of its activities under this Agreement for theft, destruction, death or injury to any person and damage to property. The level of insurance will be kept under review by Transnet, on an annual basis, to ensure its adequacy, provided that any variation to the level of such insurance shall be entirely at the discretion of the Supplier/Service Provider.
- 26.2 The Supplier/Service Provider shall arrange insurance with reputable insurers and will produce to Transnet evidence of the existence of the policies on an annual basis within 30 [thirty] calendar days after date of policy renewals.
- 26.3 Subject to clause 26.4 below, if the Supplier/Service Provider fails to effect adequate insurance under this clause 26, it shall notify Transnet in writing as soon as it becomes aware of the reduction or inadequate cover and Transnet may arrange or purchase such insurance on behalf of the Supplier/Service Provider. The Supplier/Service Provider shall promptly reimburse Transnet for any

premiums paid provided such insurance protects the Supplier/Service Provider's liability. Transnet assumes no responsibility for such insurance being adequate to protect all of the Supplier/Service Provider's liability.

26.4 In the event that the Supplier/Service Provider receives written notice from its insurers advising of the termination of its insurance cover referred to in clause 26.1 above or if the insurance ceases to be available upon commercially reasonable terms, the Supplier/Service Provider shall immediately notify Transnet in writing of such termination and/or unavailability, whereafter either the Supplier/Service Provider or Transnet may terminate this Agreement on giving the other Party not less than 30 [thirty] calendar days prior written notice to that effect.

27 LIMITATION OF LIABILITY

27.1 The Supplier/Service Provider's liability under this clause 27 shall be in addition to any warranty or condition of any kind, express or implied by law or otherwise, relating to the Goods/Services or ancillary Services, including the quality of the Goods/Services or ancillary Services or any materials delivered pursuant to this Agreement.

27.2 Neither Party excludes or limits liability to the other Party for:

27.2.1 death or personal injury caused by its negligence, [including its employees', agents' or Subcontractors' negligence]; or

27.2.2 fraud or theft.

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

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 27 shall be taken as limiting the liability of the Parties in respect of clauses 242 [Confidentiality] and 28 [Intellectual Property Rights].

28 INTELLECTUAL PROPERTY RIGHTS

28.1 Title to Confidential Information

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

28.2 Title to Intellectual Property

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

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

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

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 Supplier/Service Provider shall disclose promptly to Transnet all such improvements, developments, adaptations and/or modifications, inventions or discoveries. The Supplier/Service Provider hereby undertakes to sign all documents and do all things as may be necessary to effect, record and perfect the assignment of such improvements, developments, adaptations and/or modifications, inventions or discoveries to Transnet and the Supplier/Service Provider shall reasonably assist Transnet in attaining, maintaining or documenting ownership and/or protection of the improved Foreground Intellectual Property.

28.4 Unauthorised Use of Confidential Information

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

28.5 Unauthorised Use of Intellectual Property

- 28.5.1 The Supplier/Service Provider agrees to notify Transnet in writing of any conflicting uses of, and applications of registrations of Patents, Designs and Trade Marks or any act of infringement, unfair competition or passing off involving the Intellectual Property of Transnet of which the Supplier/Service Provider acquires knowledge and Transnet shall have the right, as its own option, to proceed against any party infringing its Intellectual Property.
- 28.5.2 It shall be within the sole and absolute discretion of Transnet to determine what steps shall be taken against the infringer and the Supplier/Service Provider shall co-operate fully with Transnet, at Transnet's cost, in whatever measure including legal action to bring any infringement of illegal use to an end.
- 28.5.3 The Supplier/Service Provider shall cooperate to provide Transnet promptly with all relevant ascertainable facts.
- 28.5.4 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 31 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 31 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:

32.1.1 Transnet

32.1.1.1 For legal notices:

Omashree (Vanessa) Balie
TNPA Procurement Department
Fleming Street Entrance
PE Harbour
Port Elizabeth
6000

32.1.1.2 For commercial notices: Omashree (Vanessa) Balie
 TNPA Procurement Department
 Fleming Street Entrance
 PE Harbour
 Port Elizabeth
 6000

32.1.2 The Supplier/Service Provider

32.1.2.1 For legal notices:

.....

Fax No.

Attention:

32.1.2.2 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:

32.3.1 if hand delivered, on the day of delivery;

32.3.2 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

32.3.3 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 31 [*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 31 [*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 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:

Annexures attached:

- Annexure A – Scope of Works, Pricing Schedule & Technical Evaluation (47 Pages)

Respondent's Signature

Date & Company Stamp