

**TRANSNET PORT TERMINALS**

an Operating Division of **TRANSNET SOC LTD**

[hereinafter referred to as **Transnet**]

[Registration No. 1990/000900/30]

REQUEST FOR PROPOSAL [RFP]

FOR THE PROVISION OF A FULL MAINTENANCE LEASE OF MATERIALS HANDLING EQUIPMENT FOR TRANSNET SOC LTD (REG. NO 1990/000900/30) OPERATING AS TRANSNET PORT TERMINALS AT THE PORT OF RICHARDS BAY TERMINALS FOR A PERIOD OF THREE (3) YEARS.

RFP NUMBER	iCLM HQ 628/TPT
ISSUE DATE:	02 July 2021
CLOSING DATE:	27 July 2021
CLOSING TIME:	10h00
BID VALIDITY PERIOD:	180 Business Days from Closing Date

PREFERENTIAL PROCUREMENT PREQUALIFICATION CRITERIA - ONLY THE FOLLOWING RESPONDENTS MAY RESPOND TO THIS RFP:

- RESPONDENTS WITH A MINIMUM B-BBEE STATUS LEVEL OF 1 - 3;**
- A RESPONDENT SUBCONTRACTING A MINIMUM OF 30% TO EME's or QSE's**

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**THE PROVISION OF A FULL MAINTENANCE LEASE OF MATERIALS HANDLING EQUIPMENT FOR
TRANSNET SOC LTD (REG. NO 1990/000900/30) OPERATING AS TRANSNET PORT TERMINALS AT THE
PORT OF RICHARDS BAY TERMINALS FOR A PERIOD OF THREE (3) YEARS.**

SECTION 1: SBD1 FORM

**PART A
INVITATION TO BID**

YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF TRANSNET PORT TERMINALS, A DIVISION TRANSNET SOC LTD							
BID NUMBER:	iCLM HQ 628/TPT	ISSUE DATE:	02 July 2021	CLOSING DATE:	27 July 2021	CLOSING TIME:	10h00
DESCRIPTION	THE PROVISION OF A FULL MAINTENANCE LEASE OF MATERIALS HANDLING EQUIPMENT FOR TRANSNET SOC LTD (REG. NO 1990/000900/30) OPERATING AS TRANSNET PORT TERMINALS AT THE PORT OF RICHARDS BAY TERMINALS FOR A PERIOD OF THREE (3) YEARS.						
BID RESPONSE DOCUMENTS MAY BE DEPOSITED IN THE BID BOX SITUATED AT (STREET ADDRESS)							
Transnet Port Terminals							
Ground Floor							
Kingsmead Office Park							
North Tower							
BIDDING PROCEDURE ENQUIRIES MAY BE DIRECTED TO				TECHNICAL ENQUIRIES MAY BE DIRECTED TO:			
CONTACT PERSON	Tender Administrator			CONTACT PERSON	Tender Administrator		
TELEPHONE NUMBER	iCLMHQ628@transnet.net			TELEPHONE NUMBER	iCLMHQ628@transnet.net		
FACSIMILE NUMBER	iCLMHQ628@transnet.net			FACSIMILE NUMBER	iCLMHQ628@transnet.net		
E-MAIL ADDRESS	iCLMHQ628@transnet.net			E-MAIL ADDRESS	iCLMHQ628@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							
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		

Respondent's Signature

Date & Company Stamp

[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			
IS THE ENTITY A RESIDENT OF THE REPUBLIC OF SOUTH AFRICA (RSA)?		<input type="checkbox"/> YES <input type="checkbox"/> NO	
DOES THE ENTITY HAVE A BRANCH IN THE RSA?		<input type="checkbox"/> YES <input type="checkbox"/> NO	
DOES THE ENTITY HAVE A PERMANENT ESTABLISHMENT IN THE RSA?		<input type="checkbox"/> YES <input type="checkbox"/> NO	
DOES THE ENTITY HAVE ANY SOURCE OF INCOME IN THE RSA?		<input type="checkbox"/> YES <input type="checkbox"/> NO	
IS THE ENTITY LIABLE IN THE RSA FOR ANY FORM OF TAXATION?		<input type="checkbox"/> YES <input type="checkbox"/> NO	
IF THE ANSWER IS "NO" TO ALL OF THE ABOVE, THEN IT IS NOT A REQUIREMENT TO REGISTER FOR A TAX COMPLIANCE STATUS SYSTEM PIN CODE FROM THE SOUTH AFRICAN REVENUE SERVICE (SARS) AND IF NOT REGISTER AS PER 1.3 BELOW.			

PART B TERMS AND CONDITIONS FOR BIDDING

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

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

SIGNATURE OF BIDDER:

CAPACITY UNDER WHICH THIS BID IS SIGNED:

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

DATE: _____

Respondent's Signature

Date & Company Stamp

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	THE PROVISION OF A FULL MAINTENANCE LEASE OF MATERIALS HANDLING EQUIPMENT FOR TRANSNET SOC LTD (REG. NO 1990/000900/30) OPERATING AS TRANSNET PORT TERMINALS AT THE PORT OF RICHARDS BAY TERMINALS FOR A PERIOD OF THREE (3) YEARS.
TENDER ADVERT	All Transnet tenders are advertised on the National Treasury's e-Tender Publication Portal and the Transnet website. Should one of these media (i.e. National Treasury's e-Tender Publication Portal or Transnet website) not be available, bidders are advised to check on the other media for advertised tenders.
RFP DOWNLOADING	<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 02 July 2021 until 27 July 2021
BRIEFING SESSION	<p>Yes - Non-compulsory</p> <p>Bidders are required to confirm their attendance and to send their contact details including the number of representatives to the following email address: iCLMHQ628@transnet.net on or before 09 July 2021</p> <p>This is to ensure that Transnet may make the necessary arrangements for the briefing session.</p> <p>Refer to paragraph 2 for details.</p>
CLOSING DATE	<p>10h00 on Tuesday 27 July 2020</p> <p>Bidders must ensure that bids are delivered timeously to the correct address.</p> <p>As a general rule, if a bid is late or delivered to the incorrect address, it will not be accepted for consideration.</p>

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>180 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 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>

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

2 FORMAL BRIEFING

A non-compulsory pre-proposal RFP briefing will be conducted on line on Microsoft teams on the **12th of July 2021** at 10h00 for a period of \pm 2 hours. Respondents must ensure that they send an email to iCLMHQ628@transnet.net on or before **09 July 2021** indicating their interest to attend the non-compulsory briefing session as only bidders who have shared their email addresses will be sent the meeting invitation with a link to the session

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

3 PROPOSAL SUBMISSION

Proposals must be addressed on the cover as follows:

The Secretariat, Transnet Divisional Acquisition Council
RFP No: iCLM HQ 628/TPT
Description: FOR THE PROVISION OF A FULL MAINTENANCE LEASE OF MATERIALS HANDLING EQUIPMENT TO TRANSNET SOC LTD OPERATING AS TRANSNET PORT TERMINALS, RICHARDS BAY TERMINALS FOR A PERIOD OF 36 MONTHS.
Closing date and time: 27 July 2021 at 10h00
Closing address: THE SECRETARIAT
DIVISIONAL ACQUISITION COUNCIL
TRANSNET PORT TERMINALS, NORTH TOWER BUILDING
KINGSMEAD OFFICE PARK
STALWART SIMELANE STREET
DURBAN
4001

4 RFP INSTRUCTIONS

4.1 The measurements of the "tender slot" are 350mm wide x 200mm high. Bid responses which are larger than the dimensions mentioned must be split into two or more files and clearly marked. **Transnet will not be held responsible if bid documents do not comply with the mentioned dimensions and Respondents experience difficulty in submitting their bids as a result.**

- 4.2 Respondents are to note that Transnet is utilising a two-envelope system for the purposes of receiving this bid. As such, Respondents are required to submit their technical and financial proposals in two separate envelopes. Respondents are required to place and seal the returnable documents listed in the Bid in an envelope marked "financial proposal" and place the remaining returnable documents in an envelope marked "technical proposal". **Failure to comply with these requirements will lead to disqualification of the Bid.**
- 4.3 Proposals must be submitted in duplicate hard copies [1 original and 1 copy] and must be bound.
- 4.4 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.
- 4.5 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.
- 4.6 A CD copy of the RFP Proposal must be submitted. Please provide files in MS Word / Excel format, not PDF versions, noting that the signed original set will be legally binding.
- 4.7 **All returnable documents tabled in the Proposal Form [Section 5] must be returned with proposals.**
- 4.8 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.
- 4.9 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.

6 PREFERENTIAL PROCUREMENT PREQUALIFICATION CRITERIA

6.1. Subcontracting

As prequalification criteria to participate in this RFP, Respondents are required to subcontract a minimum of 30% [thirty percent] of the value of the contract to one or more of the following designated groups:

- an EME or QSE;
- an EME or QSE which is at least 51% owned by Black People;
- an EME or QSE which is at least 51% owned by black people who are youth;
- an EME or QSE which is at least 51% owned by black people who are women;

- an EME or QSE which is at least 51% owned by black people with disabilities;
- an EME or QSE which is 51% owned by black people living in rural or underdeveloped areas or townships;
- an EME or QSE which is at least 51% owned by black people who are military veterans; or
- a cooperative which is at least 51% owned by black people;

A bid that fails to meet this pre-qualifying criterion will be regarded as an unacceptable bid. Refer to Section 11 to complete the required Subcontracting Pre-Qualification Criteria Form. Respondent/s are discouraged from subcontracting with their subsidiary companies as this may be interpreted as subcontracting with themselves and / or using their subsidiaries for fronting, that includes subcontracting to their relatives and employees.

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 1 to 3, 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 iCLMHQ628@transnet.net before **12:00 pm on 16 July 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 Transnet Acquisition Council, at telephone number at telephone number 031 308 8343, email clare.lottering@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 **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 three service providers, each service provider will be awarded 33% of the contract value. The split will be done based on the prices quoted i.e the lowest quoted bid will be allocated more equipment.
- 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: 0800 003 056

SECTION 3:**BACKGROUND AND SCOPE OF REQUIREMENTS****1 BACKGROUND**

Transnet Port Terminals (TPT) core business is the handling of bulk and break bulk commodities, either entering or exiting via the Richards Bay harbour premises. A network of conveyors, storage areas, transfer houses and galleries form the bulk of the infrastructure for the port operations. In addition, fleet, ship un-loaders, mobile stackers, re-claimers and ship loaders are some of the larger equipment that is used by the terminal to handle cargo.

In order to achieve the handling of volumes, the Port requires continuous operation and hence there is always a requirement for external services to be available timeously to support the continuous operation and to perform as per the set targets.

In order to achieve the required operational demand or to meet operational targets and for fast turnaround times on vessel loading and offloading, Transnet Port Terminals at Richards Bay requires additional fleet equipment to support the current available fleet.

The purpose of this project is to ensure that a service provider is appointed to provide a full maintenance leasing service of reliable second hand/new diesel Front-End Loaders, Articulated Dump Trucks, Excavator and a Front End Loader attached with a Pusher. The provision of these types of equipment leasing/rental services is essential in ensuring that operational demand, operational targets and fast turnaround times on cargo movement are achieved and the costs are controlled.

2 SCOPE OF REQUIREMENTS

Please refer to **Annexure C** for **scope of work**.

3 GREEN ECONOMY / CARBON FOOTPRINT

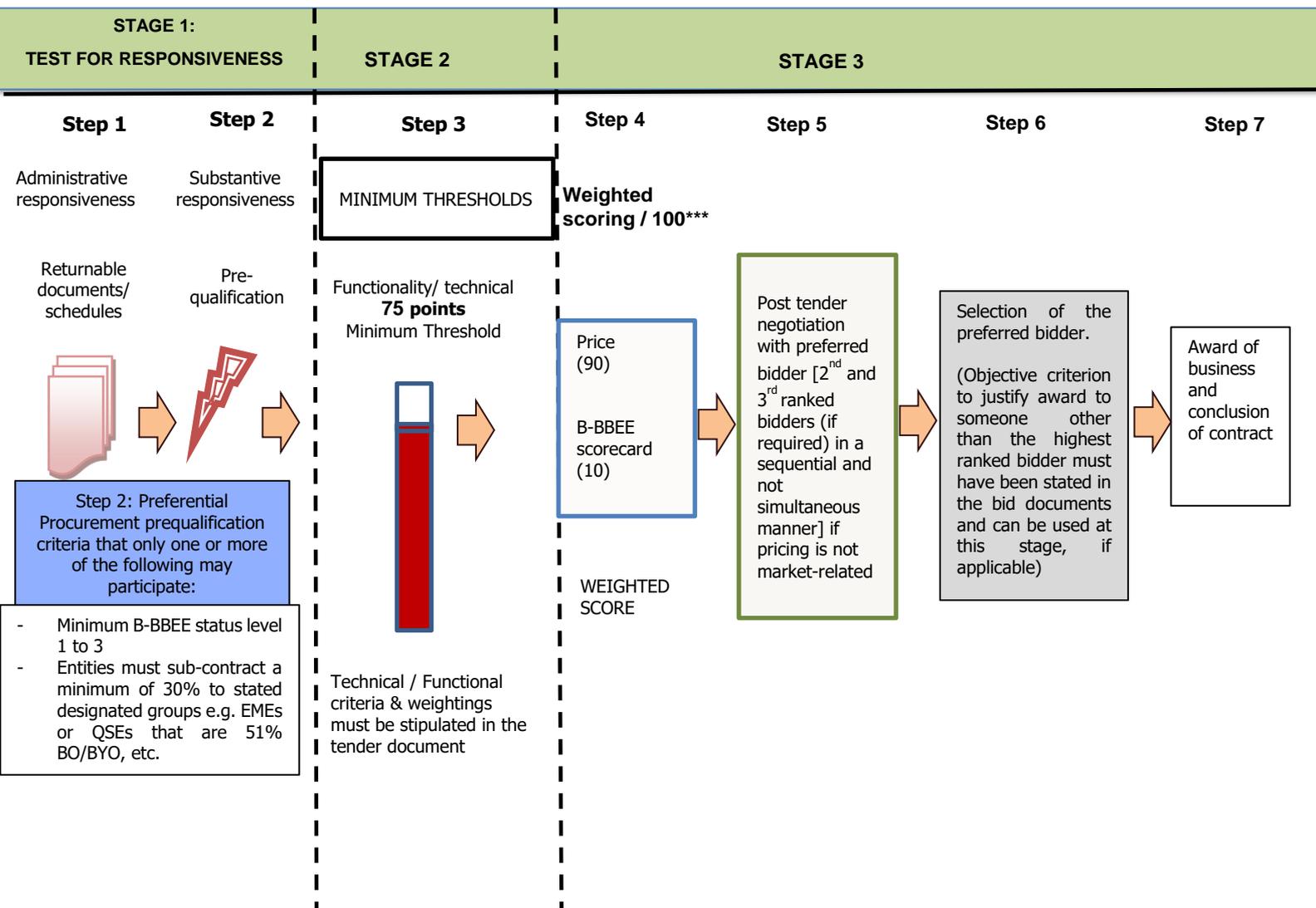
Transnet wishes to have an understanding of your company's position with regard to environmental commitments, including key environmental characteristics such as waste disposal, recycling and energy conservation. *Please submit details of your entity's policies in this regard.*

4 GENERAL SERVICE PROVIDER OBLIGATIONS

- 4.1 The Service provider(s) shall be fully responsible to Transnet for the acts and omissions of persons directly or indirectly employed by them.
- 4.2 The Service provider(s) must comply with the requirements stated in this RFP.

5 EVALUATION METHODOLOGY

Transnet will utilise the following methodology and criteria in selecting a preferred 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).

5.1 STEP ONE: Test for Administrative Responsiveness

The test for administrative responsiveness will include the following:

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

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

5.2 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 paragraphs 2.2, 6, 10.2, General Bid Conditions clause 20</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"> – Minimum B-BBEE status level 1 to 3 – Entities must sub-contract a minimum of 30% to stated designated groups e.g. EMEs or QSEs that are 51% BO/BYO, etc. 	<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

5.3 STEP THREE: Minimum Threshold 75 points for Technical Criteria

Refer to Annexure D or Technical evaluation criteria

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

5.4 STEP FOUR: Evaluation and Final Weighted Scoring

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

Evaluation Criteria	RFP Reference
<ul style="list-style-type: none"> • Commercial offer 	<i>Section 4</i>

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

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

Where:

Ps = Score for the Bid under consideration

Pt = Price of Bid under consideration

Pmin = Price of lowest acceptable Bid

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

- B-BBEE - current scorecard / B-BBEE Preference Points Claims Form
- Preference points will be awarded to a bidder for attaining the B-BBEE status level of contribution in accordance with the table indicated in Section 9 of the B-BBEE Preference Points Claim Form.

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

Thresholds	Minimum Threshold
Technical / functionality	75

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

5.6 **STEP FIVE: Post Tender Negotiations**

- 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 three highest ranked bidders or cancel the bid, should such negotiations fail,
- 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).

5.7 **STEP SIX: Objective Criteria**

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

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

5.8 **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 either by way of a Letter of Award or Letter of Intent where Transnet will negotiate any final terms and conditions of the contract with the successful Respondent(s). Thereafter the final contract will be concluded with the successful Respondent(s).
- Otherwise, a final contract will be concluded and entered into with the successful Bidder at the acceptance of a letter of award by the Respondent.

SECTION 4: PRICING AND DELIVERY SCHEDULE

Refer to Annexure F for Pricing Schedule

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) Any disbursement not specifically priced for will not be considered/accepted by Transnet.
- d) To facilitate like-for-like comparison bidders must submit pricing strictly in accordance with this pricing schedule and not utilise a different format. Deviation from this pricing schedule could result in a bid being declared non-responsive.
- e) 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) Respondents, if awarded the contract, are required to keep their prices quoted firm and fixed for the contract duration. [Not to be confused with bid validity period Section 2, clause 1].

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:

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.
- 2.2 Transnet will have regular reviews with the Service provider's account representative on an on-going basis.
- 2.3 Transnet reserves the right to request that any member of the 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

 Respondent's Signature

 Date & Company Stamp

2.5 Failure of the 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 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 Services delivered:

3.2 Continuity of supply:

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

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/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.

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.

Respondent's Signature

Date & Company Stamp

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 180 Business 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. _____

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

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

Respondent's Signature

Date & Company Stamp

RETURNABLE DOCUMENTS

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

Mandatory Returnable Documents	<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 RETURNABLE DOCUMENTS	SUBMITTED [Yes/No]
Section 1: SBD1 Form	
SECTION 4 : Pricing and Delivery Schedule, Annexure F	
SECTION 11: Subcontracting Prequalification Criteria Form Entities must sub-contract a minimum of 30% to stated designated groups e.g. EMEs or QSEs that are 51% BO/BYO, etc.	
Annexure B - Proof of subcontracting arrangement	
Valid B-BBEE certificate(s) or Sworn Affidavit(s) for proposed subcontractor(s)	
Annexure E2 Technical Returnable Eligibility Criteria – Service Records	

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]
Annexure E3 Technical Returnable Company's Experience	
Annexure E4 Technical Returnable Technical Back-up _ Support	
Annexure E5 Technical Returnable Business Continuity Plan for Managing of Risk	
Annexure E6 Technical Returnable Lead Time for delivery	

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	
Tax Compliance Certificate	
Copies of ID Documents of the directors of the company	
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: SBD 9- CERTIFICATE OF INDEPENDENT BID DETERMINATION	
SECTION 11: SUBCONTRACTING PREQUALIFICATION CRITERIA FORM	
SECTION 12: PROTECTION OF PERSONAL INFORMATION	
ANNEXURE G - MASTER AGREEMENT	
ANNEXURE H - DRAFT SERVICE LEVEL AGREEMENT	
ANNEXURE I - SUPPLIER DECLARATION FORM	
ANNEXURE M – DECLARATION OF INTEREST RETURNABLE	
Annexure N – SUPPLIERS DECLARATION RETURNABLE	
ANNEXURE O – LIABILITY AND INDEMNITY RETURNABLE	
ANNEXURE P - INSURANCE AND WARRANTEE RETURNABLE	

Respondent's Signature

Date & Company Stamp

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: _____

Respondent’s Signature

Date & Company Stamp

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

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

1	Transnet’s General Bid Conditions
2	Master Agreement
3	Transnet’s Supplier Integrity Pact
4	Non-disclosure Agreement
5	Specifications
6	Supplier Declaration Form and all supporting documents (first time vendors only). Alternatively, for all existing vendors, please complete the table below under the heading “Existing vendors”.

Existing vendors: existing vendors are required to confirm whether all the information (e.g. company address, contact details, banking details, etc.) relating to the existing vendor number is still correct at the time of submission of this bid failing which such Respondents are required to indicate so below and provide the updated information in their bid submission:

Transnet Operating Division [e.g. TFR, TE, etc.]	Vendor Number	Information still current [tick if applicable]	Information change [indicate detail of change/s & attach appropriate proof]

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.**

Respondent’s Signature

Date & Company Stamp

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

Respondent's Signature_____
Date & Company Stamp

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.]

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

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.

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.

13.5. 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
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:	.....

Respondent’s Signature

Date & Company Stamp

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

1.3 Preference points for this bid shall be awarded for:

- (a) Price; and
- (b) B-BBEE Status Level of Contribution.

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

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

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

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

2. DEFINITIONS

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

of state for the supply/provision of services, works or goods, through price quotations, advertised competitive bidding processes or proposals;

- (e) **"Broad-Based Black Economic Empowerment Act"** means the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);
- (f) **"EME"** means an Exempted Micro Enterprise as defines by Codes of Good Practice under section 9 (1) of the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);
- (g) **"functionality"** means the ability of a bidder to provide goods or services in accordance with specification as set out in the bid documents
- (h) **"Price"** includes all applicable taxes less all unconditional discounts.
- (i) **"Proof of B-BBEE Status Level of Contributor"**
- i) the B-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 EEnterprise as defines by Codes of Good Practice under section 9 (1) of the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);
- (k) **"rand value"** means the total estimated value of a contract in South African currency, calculated at the time of bid invitations, and includes all applicable taxes and excise duties.

3. POINTS AWARDED FOR PRICE

3.1 THE 90/10 PREFERENCE POINT SYSTEMS

A maximum of 90 points is allocated for price on the following basis:
90/10

$$P_s = 90 \left(1 - \frac{P_t - P_{\min}}{P_{\min}} \right)$$

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)
1	10
2	9
3	6
4	5
5	4
6	3
7	2
8	1
Non-compliant contributor	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 .]
EME³	Sworn Affidavit signed by the authorised EME representative and attested by a Commissioner of Oaths confirming annual turnover and black ownership Certificate issued by CIPC (formerly CIPRO) confirming annual turnover and black ownership Certificate issued by SANAS accredited verification agency only if the EME is being measured on the QSE scorecard

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

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

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

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

4.7 Bidders are to note that the rules pertaining to B-BBEE verification and other B-BBEE requirements may be changed from time to time by regulatory bodies such as National Treasury or the DTI. It is the Bidder's responsibility to ensure that his/her bid complies fully with all B-BBEE requirements at the time of the submission of the bid.

5. BID DECLARATION

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

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

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

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

7. SUB-CONTRACTING

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

(Tick applicable box)

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.

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

8. DECLARATION WITH REGARD TO COMPANY/FIRM

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

8.2 VAT registration number:.....

8.3 Company registration number:.....

8.4 TYPE OF COMPANY/ FIRM

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

[TICK APPLICABLE BOX]

8.5 DESCRIBE PRINCIPAL BUSINESS ACTIVITIES

.....
.....

8.6 COMPANY CLASSIFICATION

- Manufacturer
- Supplier
- Professional Service provider
- Other 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:

Respondent's Signature

Date & Company Stamp

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;
 - b. geographical area where product or service will be rendered (market allocation)
 - c. methods, factors or formulas used to calculate 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.

- 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: SUBCONTRACTING PREQUALIFICATION CRITERIA FORM

- a) As a prequalification criterion to participate in this RFP, Respondents are required to subcontract a minimum of 30% [thirty percent] of the value of the contract to one or more of the following designated groups:

Respondents are to note that Transnet will not round off subcontracting percentage for the purposes of determining whether the subcontracting condition has been met.

- b) A bid that fails to meet this pre-qualifying criterion will be regarded as an unacceptable bid.
- c) For a list of potential subcontractors, Respondents may refer to the National Treasury Central Database website and conduct a subcontractor search using the procurement reference number: iCLM HQ 628/TPT. The list must be accessed as follows:
- Log on to the CSD website (<https://secure.csd.gov.za/>);
 - Click on Search and select Subcontractor Search;
 - Enter the Procurement reference number iCLM HQ 628/TPT and
 - Click on "Run Search".
- d) Respondents have the discretion of identifying and selecting suppliers, who are registered on the National Treasury supplier database (CSD) but do not appear on the list provided by Transnet, for purposes of subcontracting.
- e) **Respondents are required to submit proof of the subcontracting arrangement between themselves and the subcontractor. Proof of the subcontracting arrangement may include a subcontracting agreement.**
- f) Respondents are to note that it is their responsibility to select competent subcontractors that meet all requirements of the bid so that their bid is not jeopardised by the subcontractor when evaluated.
- g) Respondents are responsible for all due diligence on their subcontractors.
- h) Respondent/s are discouraged from subcontracting with their subsidiary companies as this may be interpreted as subcontracting with themselves and / or using their subsidiaries for fronting. Where a Respondent intends to subcontract with their subsidiary this must be declared in their bid response.
- i) The successful Respondent awarded the contract may only enter into a subcontracting arrangement with Transnet's prior approval.
- j) The contract will be concluded between the successful Respondent and Transnet, therefore, the successful Respondent and not the sub-contractor will be held liable for performance in terms of its contractual obligations.

Attachments to this form

The Respondent is to ensure that the following is completed and attached to this form:

- a) Subcontractor's valid proof of B-BBEE status;
- b) Tax Clearance Pin and CSD Report;
- c) Company Organogram of Subcontractor(s) reflecting current staff complement;
- d) Each staff members' experience in years;

e) Name of subcontractor/s and Company Registration number:

Respondent's Signature

Date & Company Stamp

	Subcontractor Legal Name	Company Registration Number	EME/QSE	B-BBEE Level	CSD Number
1					
2					
3					
4					
5					

f) Work to be subcontracted:

Subcontractor	Work to be performed by subcontractor (Please specify)	Percentage of contract that will be subcontracted	Firm Experience (No. of Years)	Current Clients (Provide signed reference letters for each client listed)
1				
2				
3				
4				
5				

Note:

For the purpose of determining that the pre-qualification criteria has been complied with, Respondents must cumulatively meet the minimum 30% pre-qualification requirement and provide a valid B-BBEE certificate(s) or Sworn Affidavit(s) for the proposed subcontractor(s) listed above. **Failure to provide a valid B-BBEE certificate(s) or Sworn Affidavit(s) for proposed subcontractor(s) which makes up the minimum 30% pre-qualification requirement at the Closing Date and time of this RFP will result in a Respondent’s disqualification.**

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, 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

Respondent's Signature

Date & Company Stamp

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

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

Respondents are required to provide consent below:

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

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

Signature of Respondent's authorised representative: _____

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

ANNEXURE A

FOR THE PROVISION OF A FULL MAINTENANCE LEASE OF MATERIALS HANDLING EQUIPMENT FOR TRANSNET SOC LTD (REG. NO 1990/000900/30) OPERATING AS TRANSNET PORT TERMINALS AT THE PORT OF RICHARDS BAY TERMINALS FOR A PERIOD OF THREE (3) YEARS.
ICLM HQ 407/TPT

Preferential Procurement Pre-Qualification		
<i>Respondents are required to commit a minimum of 30% (thirty percent) sub-contracting prequalification requirement as condition of Tender with a BBBEE Threshold of Level 1 - 3</i>		
<i>The tender is strictly put as prequalification for Entities with a B-BBEE status level 1 – 3</i>	<i>B-BBEE Status</i>	<i>B-BBEE Level</i>
<p>The successful tenderer must sub-contractor a minimum of [30%] to the following enterprises (i) an EME or QSE which is at least 51% owned by black people;</p> <p>Note: A tender that fails to meet any pre-qualifying criteria stipulated in the tender documents is an unacceptable tender.</p>	% of Tender	Estimated Rand (ZAR)

Please note that an agreement / intention to subcontract between the bidder and the company it intends to subcontract to, must accompany the bid document . (refer to Annexure B for a subcontract template)

Bidder Signature / Company Stamp

Date : _____

SUB CONTRACT

BETWEEN

..... **LTD (“THE MAIN CONTRACTOR”)**

A company registered in terms of the Companies Act 58 of 2008 , with registration number, with its registered address at, herein represented by (Full names and ID number of company representative) in his/her capacity as CEO / General Manager / Director, who is duly authorized.

AND

THE **(“THE SUBCONTRACTOR”)**

A company registered in terms of the Companies Act 58 of 2008 , with registration number, with its registered address at, herein represented by (Full names and ID number of company representative) in his/her capacity as CEO / General Manager / Director, who is duly authorized.

1. PREAMBLE

1.1 The Transnet Port Terminals (TPT) has entered into a Main Master Agreement with for..... for a period ofyears effective.....and terminating on.....

1.2 A condition of the Master Agreement is that 30% of the value of the Services contracted for in terms of such Master Agreement be sub-contracted an EME or QSE which 51% owned by black people;to undertake a portion of the Services which shall include (where applicable) training and development costs of the EME OR QSE, set up costs and any loans, which shall be in terms of the Scope attached hereto as **Annexure "XXX."**

1.3 A due diligence has been performed and it has been determined that the Subcontractor has the necessary skills and expertise to carry out the portion of the work described herein and is registered on the National Treasury Central Service Provider Database and is in compliance with the requirements thereof.

1.4 It is understood that this subcontract is to be approved by TPT Legal Department in writing prior to sign-off between the Parties and is at all times made subject to the Main Agreement between Transnet Port Terminals

1.5 The Parties now therefore wish to enter into this Subcontract in order that the roles and responsibilities of the Parties can be clearly defined.

NOW THEREFORE THE PARTIES AGREE TO THE FOLLOWING:

2. DEFINITIONS

In this Agreement unless the context indicates the contrary:

2.1. 'Agreement' means the contractual arrangements between the Parties specified herein together with any Annexes and/or Schedules hereto.

2.2. 'Business Day' means any day other than: a Saturday, Sunday, or official public holiday in South Africa

2.3. 'Commencement Date' means notwithstanding the date of signature hereof.

- 2.4. 'Confidential Information' means all generated, including but not limited to intellectual property, design of software systems, patient data, all information in databases, any and all information disclosed by the disclosing party to the recipient party of a technical or scientific nature identified as confidential, or by the very nature of the information is implied to be of a confidential nature or any information relating to the business or affairs of the Parties.
- 2.5. 'Equipment' means the Deliverables in terms of the Master Agreement, in terms of the machinery that is to be provided by the Main Contractor as per Annexure A of the Master Agreement
- 2.6. 'Parties' means the Main Contractor and the Subcontractor and Party means either one of them
- 2.7. Transnet Port Terminals means the Party who has entered into the Master Agreement with the Main Contractor
- 2.8. 'Term' means the period of Subcontract which commences on for a period of 3 years from the Commencement Date.
- 2.9. 'Services information' means information which either specifies and describes the subcontract works or states any constraints on how the value of the subcontract is to be made up in terms providing services, training and development, office costs or start-up costs in relation to the Services.
- 2.10. 'Strike' means any partial or complete refusal to perform work including overtime work, or the retardation or obstruction of such work, by employees of the Subcontractor engaged, directly or indirectly, in connection with the Subcontracted Services, whether or not such refusal, retardation or obstruction constitutes a strike for the purposes of the Labour Relation Act
- 2.11. Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.
- 2.12. The headings do not govern or affect the interpretation of this Agreement
- 2.13. If any provision in a definition confers rights, or imposes obligations on any Party, effect is given to it as a substantive provision of this Agreement.

- 2.14. Unless the context indicates otherwise an expression which denotes any gender includes all the others; reference to a natural person includes a juristic person; the singular includes the plural, and the plural includes the singular.
- 2.15. Any number of days prescribed in this Agreement excludes the first day and includes the last day.
- 2.16. Unless the context indicates otherwise if the day for payment of any amount or performance of any obligation falls on a day which is not a Business Day, that day will be the next Business Day.
- 2.17. The words "including" and "in particular" are without limitation.
- 2.18. The termination of this Agreement does not affect those of its provisions which expressly provide that they will operate after termination, or which must continue to have effect after termination, or which must by implication continue to have effect after termination.

2.19. Schedules

(1) The Schedules will upon being signed by the Parties, be attached to and form part of and are fully incorporated into this Agreement:

(a) Schedule 1: Master Agreement between TPT and regarding ICLM HQ 628/TPT inclusive of all annexures thereto

- 2.20. Where any term or condition of any Schedule (excluding the Master Agreement) conflicts with a term or condition of this Agreement, then the relevant term or condition in this Agreement will prevail unless the Master Agreement states otherwise, in which case the terms of the Master Agreement will apply.

3. COMMENCEMENT AND DURATION

- 3.1. This Agreement shall only become effective on the date of signature of this Agreement and shall continue for the Term, and for the avoidance of doubt shall terminate on unless terminated earlier in accordance with the terms of this Agreement.
- 3.2. This Agreement is conditional upon the Master Agreement remaining in full force and effect. Accordingly, should the Master Agreement terminate for any reason whatsoever this Subcontracting Agreement will terminate

contemporaneously as the subcontract cannot continue without the Master Agreement being in full force and effect.

- 3.3. This Agreement may also be extended by the mutual agreements of the Parties for a mutually agreed term to cover the funding and collaboration necessary to complete the Project, which extension shall be subject to the approval by Transnet Port Terminals.

4. GENERAL OBLIGATIONS/ CONDITIONS

- 4.1. The Main Contractor and the Subcontractor shall fulfill their obligations in terms of this subcontract in a spirit of mutual trust, co-operation and the utmost good faith.
- 4.2. Where appropriate or applicable the Main Contractor will provide skills development opportunities to the Subcontractor during the course of the contractual term in accordance with an agreed skills development plan.
- 4.3. Notwithstanding any provision contained in this Agreement, the Subcontractor or any of its employees shall not for any purpose be deemed to be employees or agents of the Main Contractor.
- 4.4. The Subcontractor warrants that the part or portion of the Services that will be provided by the Subcontractor are of a sufficiently high standard and quality to ensure the Main Contractor is able to fulfill its obligations to Transnet in terms of the Master Agreement:
 - (1) to enable the Main Contractor to achieve and improve upon its set productivity rates and service quality; and
 - (2) so as not to prejudice in any way the Main Contractor's obligations to Transnet under the Master Agreement.
- 4.5. The Main Contractor must ensure that the Subcontractor is enabled to ultimately earn a portion of the revenue from the Main Contractor's contract with Transnet.
- 4.6. The Subcontractor shall not under any circumstances sub-contract any portion of the Subcontracted Services to another party, a breach of this clause shall be regarded as a material breach of this agreement and the Main Contractors shall be entitled to cancel this Agreement on written notice with immediate effect.

4.7. Early Warning

4.7.1. The Main Contractor shall be entitled to serve an early warning notice on the Subcontractor notifying the Subcontractor as soon as it becomes aware of any matter which could:

- a) Increase the total of the prices, delay completion, delay meeting of key date/s, and impair the performance of the Services in terms of the Master Agreement.

4.7.2. The Subcontractor may in turn serve on the Main Contractor an early warning by notifying the Main Contractor of any matter which could increase its total cost.

4.8. The Subcontractor shall notify the Main Contractor as soon as it considers that the Subcontract Services requires it to do anything which is illegal or impossible. The Main Contractor shall provide the Subcontractor with an alternative instruction to change the Subcontract Services Information appropriately, to ensure that there is no illegality or impossibility in terms of performance of its obligations.

5. ROLE AND OBLIGATIONS OF THE MAIN CONTRACTOR

5.1 The Main Contractor shall ensure that it manages the Subcontractor to ensure delivery of the Subcontracted Services so as not to compromise acceptance of a communication from the Subcontractor or of his work does not change the Subcontractor's responsibility to provide the work.

5.2 The Main Contractor, shall ensure that the Subcontractor commences the Services in every respect from commencement of the Subcontract and shall afford the Subcontractor such assistance as may be reasonably necessary to perform its part or portion of the Subcontracted Services

5.3. The Main Contractor shall ensure that the Subcontractor has the necessary Equipment to perform the Services, failing which the Main Contractor shall be entitled to terminate this Agreement and appoint an alternative Subcontractor.

5.4. The Main Contractor shall make payment to the Subcontractor for the Subcontracted Services in accordance with the rates specified in Annexure A hereto up to only 30% of the contract value making up the revenue portion of the subcontract.

- 5.5. Payment shall only be made on a valid and undisputed invoice being rendered by the Subcontractor
- 5.5. The Main Contractor shall notify the Subcontractor of any dissatisfaction on its part relating to any invoice or monthly statement from the Subcontractor, within 7 (seven) days after the date of receipt of the invoice stating clearly the area of dissatisfaction, failing which the invoice will be taken to be undisputed. In the event the dissatisfaction is raised timeously, the Main Contractor shall not be obliged to pay any amount due in terms of any disputed invoice until its dissatisfaction has been resolved to its satisfaction in its sole discretion.
- 5.6. The Main Contractor reserves the right to withhold payment until discrepancies or claims raised by the Main Contractor have been addressed and/or resolved by the Subcontractor.
- 5.7. The Main Contractor also reserves the right to set off any monies owing by the Subcontractor to the Main Contractor, against any payment due to the Main Contractor to the Subcontractor
- 5.8. Payment shall be made within 30 (thirty) days from the date of receipt of a valid and undisputed invoice.
- 5.9. It is to be noted that the total value of this Subcontract is for 30% only of the value of the Master Agreement between in the event that the total funds of the Services in terms of the Master Agreement are exhausted prior to the contractual term coming to an end, this Subcontract shall terminate commensurately with the Master Agreement.
- 5.10. The Main Contractor shall afford the Subcontractor such assistance as may be reasonably required by it to perform the Subcontracted Services

6. Liability of the Subcontractor

- 6.1. To the extent that the Main Contractor incurs any liability to Transnet or any other party resulting from the performance by the Subcontractor of any of its obligations, the Subcontracting Services, or the performance of any aspect this Agreement, the Subcontractor undertakes to indemnify the Main Contractor in respect of such liability.
- 6.2. Notwithstanding the provisions of Clause 6.1 or as may elsewhere be set out in this Agreement, the liability of the Subcontractor to the Main Contractor shall be determined as follows:

(1) the Subcontractor shall be liable to the Main Contractor for any loss or damage of any nature whatsoever, and for the death of or the injury to any person, if such loss, damage, death or injury is attributable to an act or omission or the negligence of the Subcontractor, its servants, employees or permitted agents, or any person for whom the Subcontractor is vicariously liable; and

(2) the Subcontractor shall be liable to the Main Contractor for consequential losses reasonably incurred. Where special damages, demurrage or loss of profits, arise out of the negligence, non-performance or fraud or any other illegal act or illegal omission on the part of the Subcontractor, or any person for whom it is vicariously liable, or arises from a claim made against the Main Contractor by a third party as a consequence of any intentional act or delict committed by the Subcontractor, or any against such third party, for which the Main Contractor is entitled to claim a full indemnification from the Main Contractor.

7. Liability of the Subcontractor for Insurances

7.1. Without in any way limiting the provisions of the Insurance and Liability Agreement, the Subcontractor must, obtain and thereafter maintain the following liability insurance agreements with a reputable insurer approved of in writing by the Main Contractor in respect of:

- (1) Comprehensive All risk asset insurance to the value of at least R10 million for any incident or a series of incidents arising from the same cause; and
- (2) All claims up to extent of the value of the contract value or total Equipment value supplied to the Main Contractor
- (3) Liability for all negligent acts and omissions and its permitted agents and, together with the death or injury of any person, loss or damage of goods to property in the amounts that are stipulated in Insurance and Liability Agreement.

7.2 The Subcontractor must provide the Main Contractor with proof in writing acceptable to the Main Contractor of the existence of such insurance agreements and the payment by the Subcontractor of all the premiums applicable thereto.

7.3 All insurance agreements referred to in this clause shall expressly provide that they shall not be capable of being cancelled for any reason, including non-payment of premiums,

7.4 To the extent that the Main Contractor incurs any liability to Transnet or any other party as a result of the actions of the Subcontractor or non-performance by the Subcontractor of any of its obligations, the Subcontractor undertakes to indemnify the Main Contractor.

8. ROLE AND OBLIGATIONS OF THE SUBCONTRACTOR

8.1. The Subcontractor provides the Subcontract Works in accordance with the Subcontract Works Information.

8.2. The Subcontractor either employs each key person named to do the work or employs a replacement person who has been accepted by the Main Contractor. The Subcontractor submits the name, relevant qualifications and experience of a proposed replacement person to the Contractor for acceptance. A reason for not accepting the person is that his relevant qualifications and experience are not as good as those of the person who is to be replaced.

8.3. The Main Contractor may, having stated his reasons, instruct the Subcontractor to remove and employee. The Subcontractor then arranges that, after one day, the employee has no further connection with the work included in this subcontract.

8.4. The Subcontractor co-operates with others in obtaining and providing information which they need in connection with the Subcontract works. He/ she co-operates with others and shares the Working Areas with them as stated in the Subcontract Works Information.

8.6. Any cost incurred by the main contractor as a result of the Subcontractor not providing the services and other things he is to provide is assessed by the main contractor and paid by the Subcontractor.

8.7. If the Main contractor decides that the work does not meet the conditions stated and, as a result, the main contractor incurs additional costs either in carrying out work or by paying an additional amount to others in carrying out work, the additional cost which the main contractor has paid or will incur is paid by the Subcontractor. The Main Contractor's right to recover the additional cost is his only right in these circumstances.

8.8. The Subcontractor obeys an instruction which is in accordance with this subcontract and is given to him by the Main contractor

9. INSURANCE

- 9.1. The Subcontractor must, by no later than 30 days from the Subcontract becoming effective, obtain and thereafter maintain the following liability insurance agreements with an insurer approved of in writing by the Main Contractor in respect of:
- (1) Third party claims up to Five Million Rand (R 5 000 000) in respect of one incident or a series of incidents arising from the same cause; and
 - (2) All Risk Asset Insurance in respect of the Equipment the Subcontractor provides in respect of damage to or total loss, breakdown or theft of the Equipment.
 - (3) Liability for all negligent acts and omissions of itself and its permitted agents and permitted sub-contractors, together with the death or injury of any person, loss or damage of goods to property in the amounts that are stipulated in Insurance Agreement.
- 9.2. Each month the Subcontractor must provide the Main Contractor with proof in writing acceptable to the Main Contractor of the existence of such insurance agreements and the payment by the Subcontractor of all the premiums applicable thereto.
- 9.3. All insurance agreements referred to in this clause shall expressly provide that they shall not be capable of being cancelled for any reason, including non-payment of premiums, unless the Main Contractor is first given at least thirty (30) days' Notice of such cancellation being contemplated.
- 9.4. Details of all insurance agreements must be reflected in a Schedule that shall be annexed to this Agreement. Should any of these details change, the Subcontractor must immediately notify the Main Contractor of those changes in writing in order to update Schedule 3 accordingly.
- 9.4. In obtaining such insurance agreements, the Stevedore must take all necessary steps to ensure that the interests of the Main Contractor in the risks covered under those insurance agreements are specifically noted with the insurers and shall provide the Main Contractor with written proof thereof prior to the Commencement Date.

10. INDEMNITY

- 10.1. The Main Contractor indemnifies the Subcontractor against claims, proceedings, compensation and costs payable which are the unavoidable result of the Subcontract Services or of providing the Subcontracted Services or which arise from: fault, negligence, breach of statutory duty, infringement of or interference with a legal right by the Main Contractor or Transnet Port Terminals by a person employed by or contracted to the Main Contractor except the Subcontractor.
- 10.2. The Subcontractor indemnifies the Main Contractor against other losses and claims in respect of death of or injury to a person, and loss of and damage to property (other than the subcontract works) and claims, proceedings, compensation and costs payable arising from or in connection with the Subcontractor providing the Subcontracted Services.
- 10.3. The liability of one party to indemnify the other is reduced to the extent that events which are the other party's responsibility contributed to the losses, claims, proceedings, compensation and costs.

11. LIMITATION OF LIABILITY

- 11.1. For any one event, the liability of the Subcontractor to the Main Contractor for loss of or damage to the Main Contractor's property is limited to the amount for the actual loss suffered.

12. COMPLIANCE WITH LEGISLATION

- 12.1. This agreement will comply with the applicable legislation which shall include but not be limited to the Companies Act, the Labour Relations Act, The Income Tax Act, the VAT Act, and their respective Regulations as amended from time to time.
- 12.2. All financial statements and reports which the Subcontractor provides in terms of this Agreement shall comply with the minimum requirements of the Companies Act, and Generally Accepted Accounting Practices.

13. CONFIDENTIALITY

- 13.1. Each Party undertakes in favour of the other that it will treat all Confidential Information generated from the Project as confidential and will not disclose such information to any person, legal entity, or the media and will not use such information other than for the purposes of this Agreement, subject to any prior specific written consent by the other Party to make such use of Confidential Information.
- 13.2. For the avoidance of doubt the Subcontractor agrees to keep all documentation relating to this Subcontract and undertakes not to disclose such information to any third party without the prior written consent of the Main Contractor and Transnet.
- 13.3. The provisions of this clause shall not apply to information identified as Confidential Information in terms hereof which:
- i. Is in the public domain other than by default of any of the Parties hereto;
 - ii. Is obtained from a *bona fide* third party having a right to disseminate such information;
 - iii. Is or had already been independently generated by the recipient party;
 - iv. Is required to be disclosed by law or a valid order of a court competent jurisdiction, in which event the disclosing party shall use its reasonable endeavours to seek confidential treatment of such information as far as reasonably possible.
- 13.4. The obligations contained in this clause shall survive the termination or expiration of this Agreement without limit in time except and until any Confidential Information enters the public domain otherwise than through breach of this Agreement.

14. PUBLICATION, PRESS RELEASES AND MARKETING

- 14.1. Neither Party shall be entitled to publish or release any information regarding this Agreement or the Parties commercial arrangement in regard to the provision of the Subcontracted Services or in relation to the Master Agreement or in relation to Transnet as a whole.
- 14.2. The Sub-contractor shall not be entitled to make use of the name and/ or logo of Transnet under any circumstances without the prior written consent of Transnet in respect of any material that the Subcontractor or Main Contractor wishes to be published and the purpose for such publication being made known to the Transnet Port Terminals.

15. BREACH AND TERMINATION

15.1. If either Party ("the Defaulting Party") commits a breach of this Agreement and/or fails to comply with any of the provisions herein, the other Party ("the Aggrieved Party") shall be entitled to give the Defaulting Party fourteen (14) days' notice in writing to remedy such breach and/or failure. If the Defaulting Party fails to comply with such notice, the Aggrieved Party shall forthwith be entitled but not obliged without prejudice to any other rights or remedies which the Aggrieved Party may have in law including the right to claim the following:

15.1.1. Termination of this Agreement; or

15.1.2. To claim specific performance and/or payment of all the Defaulting Party's obligations in terms herein.

15.2 In the event that the Main Contractor terminates the Subcontractor's obligation to provide the Services, in the event of breach of this Agreement or non-performance of any of its obligations in terms hereof, The Main Contractor must notify the Subcontractor giving details of his reason for termination. The Main Contractor must issue the Subcontractor with a letter of termination promptly if the reason complies with this subcontract.

15.3. Should any of the Subcontractor's insurance agreements for any reason whatsoever be suspended, revoked, set aside or terminated by its insurances, such suspension, revocation, setting aside or termination shall be deemed to be a breach of this Agreement, entitling the Main Contractor to give notice as is prescribed herein.

15.3 Either party may terminate if the other party has become insolvent or its equivalent.

15.4 The Main Contractor may terminate this Agreement if the Main Contractor has notified the Subcontractor that the Subcontractor has defaulted in one of the following ways and the Subcontractor has not desisted from such conduct within two weeks of the notification:

16.4.1 Substantially failed to comply with this subcontract

16.4.2 Substantially hindered the Main contractor

16.4.3 Substantially broken a health or safety regulation

The Main Contractor may terminate for any other reason

15.5 The Subcontractor may terminate if:

- 15.5.1 The Main Contractor has not paid an amount due in terms of Services rendered in terms of the contract.
- 15.5.2 The Main Contractor has instructed the Subcontractor to stop or not to start any substantial work or all work for a reason which is not the Subcontractor's fault.
- 15.6 The Main Contractor may terminate if an event which the parties could not reasonably prevent has substantially affected the Subcontractor's work for a continuous period of more than 12 weeks.
- 15.7. The Agreement may be immediately terminable if:
- 15.7.1 Either Party is other than for the purposes of reconstruction or amalgamation placed under voluntary or compulsory liquidation or under judicial management or under receivership or under the equivalent of any of the foregoing; or
 - 15.7.2 Either party has a final and unappeasable judgement against the other Party and that judgement remains unsatisfied for a period of fourteen (14) days or more after it comes to the notice of the management of the other Party; or
 - 15.7.3 Either Party makes an arrangement or compromise with its creditors generally or ceases or threatens to cease to carry on business.
 - 15.7.4 Termination of this Agreement by a Party for any reason shall not affect the rights and obligations of the other Party accrued prior to the date of termination of this Agreement.
- 15.8. In the event of the Subcontractor failing promptly to commence performance of any obligation for which it is liable, or failing to carry out such obligation without delay, The Main Contractor shall be entitled to appoint an alternate Subcontractor to perform such obligation. Should the Main Contractor exercise the right to do so at any stage, it shall also be entitled to claim and recover all costs incurred thereby (directly or indirectly) from the defaulting Subcontractor, who hereby undertakes to pay such costs upon demand, and to Indemnify the Main Contractor and Transnet for any claims brought against either of them in terms of the Master Agreement.
- 15.9. The Main Contractor and the Subcontractor may terminate this Agreement at any time by mutual written agreement.

16. CONSEQUENCES OF TERMINATION

16.1. In the event of termination by either the Main Contractor or the Subcontractor:

16.1.1. The Main Contractor shall immediately cease making any further payments to the Subcontractor, except those payments that have already been committed in terms of validly rendered Services by the Subcontractor; and

16.1.2. All funding forwarded to the Subcontractor in terms of the subcontract and not expended or committed by the Subcontractor at the date of termination shall be immediately refunded / returned to the Main Contractor.

17. FORCE MAJUERE

17.1. A Party shall not be liable for a failure to perform any of its obligations in terms of this Agreement insofar as it is able to prove that such a failure was due to an impediment beyond its reasonable control and for the purposes of this clause, the following events (which enumeration shall not be exhaustive) shall be deemed to be impediments beyond the control of each of the Parties, namely:

17.1.1. War, whether declared or not, civil war, civil violence, riots and revolutions, acts of piracy, acts of sabotage; or

17.1.2. Natural disasters such as violent storms, cyclones, earthquakes, floods, and destruction by lightning; or

17.1.3. Explosions, fires and destruction of plant, equipment, machinery and machines and any kind of installations; or

17.1.4. Acts of authority, whether lawful or unlawful, apart from acts for which the Party seeking relief has assumed the risk; or

17.1.5. Boycotts, strikes and lock-outs of all kinds, go-slows, occupation of a Party's premises or work stoppages.

17.2. Relief from liability for non-performance by reason of the provisions of this clause shall commence on the date upon which the Party seeking relief gives notice of the impediment relied upon and shall terminate on the date upon which such impediment ceases to exist, provided that if that cause has not

ceased to operate within six (6) months from when it arose, this Agreement may be terminated by either Party.

18. DOMICILIA AND NOTICES

18.1. The Parties hereby choose *domicilium citandi et executandi* for all purposes in terms as follows:

MAIN CONTRACTOR:

Address:

Email:

Contact person:

SUB-CONTRACTOR:

Address:

Email:

Contact person:

18.2. A Party shall be entitled to change its *domicilium citandi et executandi* by giving written notice to the other, provided that no such change shall take effect until receipt and confirmation by such Party of such notice.

18.3. All notices to be given by the Parties to each other shall be given to the aforesaid addresses either by delivery or by posting via prepaid registered mail. In the event of such posting, unless the contrary is proved by the addressee, the notice shall be deemed to have been received by the addressee on the tenth day after such posting.

18.4. Where in terms of this Agreement any communication or notice is required to be in writing. The term "writing" shall include communications by facsimile or e-mail. Communications by facsimile or e-mail shall, unless the contrary is proved by the addressee, be deemed to have been received, one (1) hour after the time of the transmission thereof. In the case of e-mail, once the communication has entered the computer of the addressee.

19. DISPUTE RESOLUTION

19.1. All disputes arising out of or relating to this Agreement which cannot be resolved by direct negotiations between the Parties may be referred to mediation by an independent mediator at the request of any Party. If the Parties agree to mediation, the mediator shall be chosen by agreement between the Parties, failing which, the mediator shall be nominated by the Arbitration Foundation of South Africa (AFSA).

- 19.2. The mediation shall be administered in accordance with the rules and procedures of AFSA upon such terms agreed between the Parties and secretariat of AFSA.
- 19.3. The costs of mediation shall be borne equally by the Parties and shall be held in Durban.
- 19.4. If any Party does not wish to refer a dispute arising out of or relating to this Agreement to mediation, or such a dispute is referred to mediation and the mediator is unable to settle the dispute between the Parties, any Party may, by written notice to the other refer the matter to a competent court (taking into account where the cause of action arose) with jurisdiction to adjudicate the matter.
- 19.5. The costs of referring the matter to a competent court of law shall be borne by each Party subject to the rules of court relating to costs.

20. GENERAL

- 20.1. No alteration, cancellation, variation, or addition to this Agreement shall be of any force or effect unless reduced to writing as an addendum to this Agreement and signed by the Parties or their duly authorized representatives.
- 20.2. This document (including Annexes) contains the entire Agreement between the Parties, and the Parties shall not be bound by any undertaking, representation or warranty not recorded herein or added hereto otherwise than as provided herein.
- 20.3. No extension of time or indulgence granted by either Party to the other shall be deemed in any way to affect, prejudice, or derogate from the rights of such Party in any respect under this Agreement, nor shall it in any way be regarded as a waiver of any rights hereunder, or a notation of this Agreement.
- 20.4. The headings appearing in this Agreement have been used for reference purposes only and shall not affect the interpretation of this Agreement.
- 20.5. If any clause or term of this Agreement should be invalid, unenforceable or illegal, then the remaining terms and provisions of this Agreement shall be deemed to be severable there from and the Agreement shall continue in full force and effect.

20.6. The Parties respectively shall cause all resolutions to be passed and undertake to sign all such other documents and do such other things as shall be necessary or requisite to give proper and due effect to the terms of this Agreement, or any matter arising there from, according to its intent and purpose.

20.7. No partnership or principal/agent relationship is deemed to be constituted between the Parties by reason of this Agreement.

20.8. Neither this Agreement nor any rights or obligations of any Party hereunder shall be assigned, ceded or otherwise transferred by any Party without the prior written consent of the other Party.

20.9. This Agreement shall be construed and governed in accordance with the laws of the Republic of South Africa and shall in all respects be interpreted in terms of such laws.

THUS DONE SIGNED AND AGREED

Signed at _____ on this ____ day of _____ 2020

For the Main Contractor

Name : _____

Title : _____

Capacity: _____

For the Main Contractor

Name : _____

Title : _____

Capacity: _____

1. Witness

2. Witness

Signed at _____ on this ____ day of _____ 2021

Provision of materials handling equipment for
Transnet SOC LTD operating as Transnet Port
Terminals at the Port of Richards Bay – For a
period of thirty-six (36) months.

1. Overview

Transnet Port Terminals (TPT) core business is the handling of bulk and break bulk commodities, either entering or exiting via the Richards Bay harbour premises. A network of conveyors, storage areas, transfer houses and galleries form the bulk of the infrastructure for the port operations. In addition, fleet, ship un-loaders, mobile stackers, re-claimers and ship loaders are some of the larger equipment that is used by the terminal to handle cargo.

In order to achieve the handling of volumes, the Port requires continuous operation and hence there is always a requirement for external services to be available timeously to support the continuous operation and to perform as per the set targets.

In order to achieve the required operational demand or to meet operational targets and for fast turnaround times on vessel loading and offloading, Transnet Port Terminals at Richards Bay requires additional fleet equipment to support the current available fleet.

The purpose of this project/scope is to ensure that a service provider is appointed to provide a full maintenance leasing service of reliable second hand/new diesel Front-End Loaders, Articulated Dump Trucks, Excavator and a Front End Loader attached with a Pusher for Transnet Port Terminals at Richards Bay on an ad hoc basis (i.e. as an when required) for a fixed term of thirty-six (36) months.

The provision of these types of equipment leasing/rental services is essential in ensuring that operational demand, operational targets and fast turnaround times on cargo movement are achieved and the costs are controlled.

2. TPT's objective

The purpose of this scope is to implement a long-term contract for a full maintenance lease of diesel Front-End loaders, Articulated Dump Trucks, Excavators and Front-End Loaders attached with attached pusher attachments for a period of thirty-six (36) months."

3. Site Location

The site is located on the premises of Transnet Port Terminal (TPT) at the Port of Richards Bay, the contract will service the Richards Bay Terminal (MPT and DBT), and the equipment shall be kept at onsite.

4. The Scope

The service provider is required to provide the following services as minimum:

- 4.1 Provide the below equipment, to the Port of Richards Bay:
 - Diesel Articulated Dump Trucks (30 tons) x **fifty-two (52)**
 - Diesel Front-End Loaders x **thirty-two (32)**
 - Diesel Front End Loader attached with a Pusher x **two (2)**
 - Diesel Excavators x **two (2)**
 - Mobile diesel tankers (6000 lt.) x **two (2)**

The specification/sizes for the above equipment is listed in section twelve (12) of the scope.

To note:

Only the equipment is required (i.e. no drivers/operators are required) and services as per 4.3 & 4.4, TPT will provide drivers and fuel.

The monthly rate is applicable if the equipment is hired for thirty (30) days (i.e. continuously for 30 days) for a maximum of 24hrs per day.

- 4.2 The Service provider will be expected to ensure that all requested equipment are serviced timeously (i.e. on prescribed OEM service intervals)"
- 4.3 As a minimum, the equipment leased is to be covered by warranty insurance or any other insurance, to cover for mechanical and electrical breakdowns or failures. TPT requires the service provider to have such insurance, to limit or minimise operational disruptions.
- 4.4 Provide field support services, in cases where the leased equipment fails or breakdown.
- 4.5 The Service provider is required to make available support facilities services onsite (day shift) for their staff in order to ensure that we meet the required levels of supervision, administration and health and safety legal requirements. A suitable site (Area) office needs to be agreed upon. Electricity and potable water will be provided, these must be metered and will be charged for accordingly by TPT. No sewer connection will be made available and as such the Service provider is to provide mobile toilets.
- 4.6 The service provider will be 100% responsible for the cost of maintenance of equipment (due to normal wear and tear and prescribed maintenance, this includes oil top ups, brake pads, windscreen wipers, tyres etc.). Where it can be proven that the cost of damage is due to negligence of the part of Transnet Port Terminal, Transnet Port Terminals will be responsible for those costs.
- 4.7 The service provider must ensure that second-hand equipment has less than 10 000 hours on the equipment hour meter.

5. Contractors' Responsibilities.

The *Contractor* shall:

- 5.1 Provide all the necessary resources and expertise to carry out the service.
- 5.2 Provide servicing and maintenance (including inspections) of all leased equipment for full lease period.
- 5.3 Provision of onsite offices required facilities for the Service Providers staff to provide the required levels of supervision, administration and Health and Safety legal requirements.
- 5.4 The Service provider will be required to have a company office and workshop within a fifteen (15) kilometre radius from Transnet Port Terminals Richards Bay (i.e. proof of ownership/lease agreement is required and Transnet reserves the right to conduct site visits).
- 5.5 It is required that the service provider include a "container" type facility for the storage and management of consumables and spares on site.
- 5.6 Review, familiarize and understand the proposed site including all constraints and environmental factors.
- 5.7 Review, familiarize and understand the operational requirements of the facilities in the Port of Richards Bay.
- 5.8 Provide all necessary SHE compliance documentation as per Transnet Port Terminals SHE specifications, including the submission and approval of a Safety File and SHE Officer on site (on instances where the OHSAct requires one).
- 5.9 Make available any documentation that Transnet might require, this is to include equipment log sheets, inspection sheets and hour meter readings.

6. Governing Codes, Standards and Specifications

The *Contractor's* works must be in accordance with the requirements of the latest edition of the following specifications and codes:

Title	Document No.
National & International Standards	
Inspection and testing of non-fixed load-lifting attachments (2008 ver 1).	SANS 687
The inspection, examination and testing of lift trucks.	SANS10388:2008 Ed. 1
Occupational Health and Safety Act and Regulations	85 of 1993 Ed. 12
Transnet Port Terminals Standard Specifications	
General requirements and conditions (he9-2-9 ver 7) rev 1	EEAM-Q-016

7. Health and Safety Requirements

The Contractor shall comply with Transnet Port Terminals Health Safety and Environmental Specification number: Operations – SHE Contractor Specification SHEQ PRO 021.

8. Workmanship and Compliance to Regulations

The following is expected from the service provider to ensure compliance to the OHSAct and for good workmanship:

- 8.1. The use of certified or qualified/certified persons for the inspection, maintenance and troubleshooting of all leased equipment.
- 8.2. Use of equipment that is compliant to the applicable regulations.

9. Technical Back-up/Support

- 9.1. The service provider is expected to commit to a response times on callouts, in cases of breakdowns, this response time will be used to evaluate the service provider. This time will then be the contract time and the service provider will have to comply with it for the duration of the contract.

Ideally, Transnet is expecting the response times for callouts to be sixty (60) minutes, this is highly based on the operational requirements of the Port that is when there are delays and all efforts are put to ensure the delays are resolved in the shortest time.

- 9.2. Service provider is to ensure that a dedicated technical team is readily available (i.e. 24/7, 365 days to cover all the working times for the duration of the contract). The team must comprise of at least two (2) Technician/Artisan and two (2) assistance with the requisite knowledge of the equipment as part of this supply.

- Two (2) x Technician/Artisan requirements: Qualification (Trade Tested Diesel Mech/Mechanic.). Experience – Three (3) years and above post trade test.
- Two (2) x Assistant requirements: Qualification (Matric with Automotive/ Motor Mechanics N1 – N3). Experience – Three (3) years and above as a Diesel Mech/Mechanic trade hand.

The team must be equipped to deal with all possible problems on site (inclusive of a vehicle to attend to breakdowns). A plan of how the technical team will

operate/function on the 24-hour bases is to be submitted, this plan is to stipulate or address issues like fatigue, shift work or call out basis.

- 9.3.** Replacement equipment must be made available if the breakdown takes longer than two (2) hours (i.e. if the repair work on the breakdown will take two hours or more replacement equipment must be on site in an hour).

When the leased equipment is removed from operations by the service provider for maintenance purposes, the service provider is to ensure that there is a suitable replacement equipment available for the duration of the maintenance period.

10. Business Continuity Plan for managing risk

The service provider is expected to submit a business continuity plan in order to manage risk. This plan must state how the service provider will limit or minimise operational disruptions, this will require the following but not limited to:

- 10.2 A clearly defined business continuity team with their roles and contact details to be contacted in case of an emergency.
- 10.3 Critical services and equipment should be identified in the plan and how much time it will take to restore or replace each critical service or equipment in case of a disruption without compromising service level or operations.
- 10.4 Detailed business continuity risks and their mitigations and how long it will take to practically implement the mitigation.
- 10.5 How often the plan will be tested and the method of testing the plan e.g. desktop or live simulation.
- 10.6 Detailed crises communication plan in case of an emergency. The crises plan should cover the following topics: 1) What constitutes a crisis, 2) Crises team, 3) How will a crisis be communicated including timelines etc.
- 10.7 Continuity of operations / Contingency plan – The plan should be supported with back up contracts (*this can be draft contracts pending contract award*) with alternative suppliers who can supply equipment at short notice to prevent business disruption. The response time for the back-up support should be clearly defined in the contract.

11. Lead time for delivery

The service provider is expected to commit to a delivery time, of all equipment requirements from date of award. This time will be used to evaluate the service provider and will then be the contract time that the service provider will have to comply with.

The lead times are to range between one (1) week (i.e. 7 days or less) to two (2) weeks (i.e. 8 - 14 days), a sliding scale scoring will be used when evaluating service providers/bidders.

12. Equipment Specifications

All equipment used should be compliant to the applicable Standards, ACTS, Codes and regulations as listed in Section 6: *Governing Codes, Standards and Specifications*.

- 12.1. Diesel Front-End Loaders (FELs – 32 off) and Front-end loaders attached with a Pusher (2 off)**

The below is the minimum spec requirement for the diesel Front-End Loaders:

- This equipment must be fully automatic, air-conditioned and have a fully enclosed cabin. It must be able to negotiate speed bumps and work on uneven surfaces.
- This equipment is utilised for stacking of cargo in the “in-bound” leg to the stockpiles as well as the reclaiming of cargo during the “out-bound” leg.
- This equipment must be supplied and fitted with the buckets suited for the commodities to be handled as per table two (2).

Commodities	Density (ton/m ³)	Bucket size (m ³ SAE heaped)	Qty (Spare)
Heavy Density	3.0 – 3.5	3.0 – 3.5	1
Medium Density	2.5 – 2.8	3.7 - 3.9	1
Light Density	1.1 - 1.4	4.6 - 5.1	1

Table 2: Bucket sizes requirement

- The Service Provider to ensure that three (3) spare buckets as per table two (2) are supplied. These will be utilised as and when required.
- The service provider will be responsible for changing buckets as and when required.
- Payload/Safe working load (SWL) that the FEL must be able to handle throughout its operating range– Eight (8) tonnes.
- Tipping load straight – Sixteen (16) tonnes.
- The dump clearance at maximum lift, and 45° dump (vertical distance) to be least 3.1 metres.
- The reach at maximum dump height (horizontal distance from front of tyre to bucket leading edge) to be at least two (2) meters.
- Bucket attachment to the FEL to be via the pinned-on method
- Buckets to be supplied with a bolt on straight edge lip i.e. replaceable.
- Air-conditioner fitted to the Cab must be of the heavy-duty industrial type.
- Wiper/washer with intermittent control
- Retractable 3-point seat belt
- 12-volt power outlet
- Backlit sealed switch module functions: Wiper control/Lights/Heated mirrors/Retarding aggressiveness/Air-conditioner/Heater controls
- Forward work lights
- Rotating beacon
- High visibility mirrors
- Load lights: stack
- Pusher attachment: The pusher attachments are to be a nine (9) meter “boom” extension piece (100 mm pipe) with a “pad” at the front end (200mm x 800mm). The attaching mechanism required will be the same as the quick coupling pin arrangement. The Service Provider must take full design and operational accountability for this “pusher attachment” as it is a designed and fabricated aftermarket attachment. The attachment will not be subject to a design review; it is expected that the Lessor will ensure that all applicable legislative requirements are met

12.2. Articulated Dump Trucks 30 tons (ADTs – 52 off)

The follow is the minimum spec requirement for the diesel articulated dump trucks:

- This specification is for an automatic transmission, enclosed cabin, articulated dump truck. This vehicle must be able to negotiate speed bumps and work on uneven surfaces.
- The vehicle shall have a minimum operating load of 30 tons and shall be utilised for the handling of commodities such as Ferro alloys, Magnetite, Coal and Chrome Ore & Fines up to a maximum speed of 30km/hr. and up a gradient of 1:80.
- The dump hopper volume (heaped capacity) at 2:1 ratio (SAE heaped) shall be at least 21 cubic metres.
- The raising time of the dump hopper will not exceed 15 seconds.
- The tipping angle of the dump hopper will be at least 65 degrees.
- Air-conditioner fitted to the Cab must be of the heavy-duty industrial type.
- Rear window guard
- Wiper/washer with intermittent control
- 12-volt power outlet
- Backlit sealed switch module functions: Wiper control / Lights / Heated mirrors / Retarding aggressiveness / Transfer case differential lock / Transmission gear hold /Dump-body tip limit / Automatic dump-body tip settings / Air-conditioner / Heater controls / Preselected Speed Control
- Forward work lights
- Rotating beacon
- High visibility mirrors
- Partial up dump-body mechanical lock
- Fully up dump-body mechanical lock
- Automatic Traction Control (ATC)
- Load lights: stack

12.3. Mobile diesel tankers (2 – off)

The follow is the minimum spec requirement for the diesel mobile fuel diesel tankers:

The fuel bowser must refuel all materials handling equipment at any location in the stacks.

The bowser must be easily manoeuvrable in order to 'dock' next to the equipment that must be refuelled. It must not obstruct or have any influence on the normal operations in the stacks.

12.3.1. A truck mounted fuel bowser complete with either an electric motor driven pump, a diesel engine driven pump or a pump that is connected to a Power Take Off (PTO) unit on the vehicle. The truck mounted bowser will be limited to approximately 6000 litres in order to comply with axle loadings.

12.4. Excavators (2 – off)

The follow is the minimum spec requirement for the diesel excavators:

Selected Dimensions	
<u>Boom/Stick</u>	
Horizontal reach of bucket edge, with bucket edge touching wagon floor	5500mm
Maximum Digging depth	6650mm

<u>Dimensions</u>		
Overall width to outside of machine/Portal	5500mm maximum	
Overall width to inside of machine/Portal structure	3970mm	
Overall track length	4445mm	
<u>Swing Mechanism</u>		
Swing speed (slewing)	12 rpm minimum	
<u>Buckets</u>		
Bucket capacity	2.5m ³	
	Commodity	Density Range
	Magnetite	0.9 ton/m ³ to 3.0 ton /m ³
	Ferro Chrome	
	Chrome Ore	
	Coal	
	Pig Iron	
	Sulphate	
	Rock Phosphate	
Manganese Ore		
Bucket Edge	Bolt-on smooth cutting edge	

- Air-conditioner fitted to the Cab must be of the heavy-duty industrial type.
- Wiper/washer with intermittent control
- Retractable 3-point seat belt
- 12-volt power outlet
- Backlit sealed switch module functions: Wiper control/Lights/Heated mirrors/Retarding aggressiveness/Air-conditioner/Heater controls
- Forward work lights
- Rotating beacon
- High visibility mirrors
- Load lights: stack



ANNEXURE D - THE PROVISION OF A FULL MAINTENANCE LEASE OF MATERIALS HANDLING EQUIPMENT FOR TRANSNET SOC LTD (REG. NO 1990/000900/30) OPERATING AS TRANSNET PORT TERMINALS AT THE PORT OF RICHARDS BAY TERMINALS FOR A PERIOD OF THREE (3) YEARS.



CRITERIA	DESCRIPTION	WEIGHT (Points) %	SCORE BREAKDOWN AND DESCRIPTION	SCORE POINTS	Company #1		Company #2	
					Score	Comments	Score	Comments
ELIGIBILITY	1. Service Records	Y/N	Provided copies of service records for at least fifty-two (52) ADTs, thirty four (34) FELs, two (2) Mobile diesel tankers and two (2) Excavators or a confirmation letter from the Supplier/OEM for new equipment.	Y/N				
	2. Company's Experience	30	Provided five (5) or more detailed traceable references in the past three (3) years. 30 Point Provided two (2) - four (4) detailed traceable references in the past three (3) years. 20 Point Provided one (1) detailed traceable references in the past three (3) years. 10 Point No detailed traceable references provided in the past three (3) years. 0 Point					
MEASURED CRITERIA	3. Technical Back-up/Support	30	Response time less than or equal to 60 minutes and certificates and structure/oganogram indicating two (2) teams or more and proof of ownership/lease agreement. 30 Point					
			Response time between 61 - 90 minutes and certificates and structure/oganogram indicating two (2) teams or more and proof of ownership/lease agreement. 20 Point					
			Response time between 91 - 120 minutes and certificates and structure/oganogram indicating two (2) teams or more and proof of ownership/lease agreement. 10 Point					
			Response time of more than 120 minutes and certificates and structure/oganogram indicating two (2) teams or more and proof of ownership/lease agreement. 0 Point					
	4. Business Continuity Plan for Managing of Risk.	10	A clearly defined business continuity team with their roles and contact details to be contacted in case of an emergency. 1 Point					
			Critical services and equipment should be identified in the plan and how much time it will take to restore or replace each critical service or equipment in case of a disruption without compromising service level or operations. 1 Point					
Detailed business continuity risks and their mitigations and how long it will take to practically implement the mitigation. 1 Point								
How often the plan will be tested and the method of testing the plan e.g. desktop or live simulation. 1 Point								
Detailed crises communication plan in case of an emergency. The crises plan should cover the following topics: 1) What constitutes a crises, 2) Crises team, 3) How will a crises be communicated including timelines etc. 1 Point								
Continuity of operations / Contingency plan – The plan should be supported with back up contracts (this can be draft contracts pending contract award) with alternative suppliers who can supply equipment at short notice to prevent business disruption. The response time for the back-up support should be clearly defined in the contract. 5 Points								
5. Lead time for delivery	30	Lead times less than fourteen (14) days. 30 Point						
		Lead times between fourteen (14) to twenty-one (21) days. 15 Point						
		Lead time of more than twenty-one (21) days. 0 Point						
		100						

Technical Qualification Threshold = 75%. If no bidder(s) passes the predetermined threshold, they will be automatically disqualified.

TRANSNET PORT TERMINALS
TENDER NUMBER iCLM HQ 628/TPT
DESCRIPTION: THE PROVISION OF A FULL MAINTENANCE LEASE OF MATERIALS HANDLING EQUIPMENT FOR TRANSNET SOC LTD (REG. NO 1990/000900/30) OPERATING AS TRANSNET PORT TERMINALS AT THE PORT OF RICHARDS BAY TERMINALS FOR A PERIOD OF THREE (3) YEARS

List of Returnable Schedules

E1. Returnable Schedules

E2. Eligibility Criteria – Service Records	Mandatory Returnable Document
E3. Company's Experience	Returnable Document used for scoring purposes
E4. Technical Back-up/Support	Returnable Document used for scoring purposes
E5. Business Continuity Plan for Managing of Risk	Returnable Document used for scoring purposes
E6. Lead time for delivery	Returnable Document used for scoring purposes

Mandatory Returnable Documents: Failure to provide the Mandatory Returnable Document at the closing date and time of this RFP will result in a Respondent's disqualification.

Returnable Documents used for scoring: Failure to provide all Returnable Documents used for purposes of scoring a bid, by the closing date and time of this bid will not result in a Respondent's disqualification. However, Bidders will receive an automatic score of zero for the applicable evaluation criterion.

TRANSNET PORT TERMINALS
TENDER NUMBER iCLM HQ 628/TPT
DESCRIPTION: THE PROVISION OF A FULL MAINTENANCE LEASE OF MATERIALS HANDLING EQUIPMENT FOR TRANSNET SOC LTD (REG. NO 1990/000900/30) OPERATING AS TRANSNET PORT TERMINALS AT THE PORT OF RICHARDS BAY TERMINALS FOR A PERIOD OF THREE (3) YEARS

MATERIALS HANDLING EQUIPMENT	Eligibility Criteria – Service Records	Mandatory Returnable E3
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The service provider shall provide up to date service records for **at least** fifty-two (52) ADTs, thirty four (34) FELs, two (2) Mobile diesel tankers and two (2) Excavators, showing that the equipment was serviced as per OEM service manual, services records should not be older than twelve (12) months.

1. For new equipment, the service provider must provide a proof of purchase document from the Supplier/OEM, the letter must include the service providers details and equipment information/specifications purchased as per scope of work.	YES	NO
2. For second hand equipment a service record indicating the service hours and service history must be submitted. The equipment must not exceed 10000 hours.	YES	NO
3. If the service provider intends to lease equipment, a letter of intent to lease must be submitted from the lessor signed by both parties OR a lease agreement for the equipment leased signed by both parties. The letter submitted must included all the equipment intended to be leased.	YES	NO

TRANSNET PORT TERMINALS
TENDER NUMBER iCLM HQ 628/TPT
DESCRIPTION: THE PROVISION OF A FULL MAINTENANCE LEASE OF MATERIALS HANDLING EQUIPMENT
FOR TRANSNET SOC LTD (REG. NO 1990/000900/30) OPERATING AS TRANSNET PORT TERMINALS AT THE
PORT OF RICHARDS BAY TERMINALS FOR A PERIOD OF THREE (3) YEARS

Signed

Date

Name

Position

Tenderer:

TRANSNET PORT TERMINALS
 TENDER NUMBER iCLM HQ 628/TPT
 DESCRIPTION: THE PROVISION OF A FULL MAINTENANCE LEASE OF MATERIALS HANDLING EQUIPMENT FOR TRANSNET SOC LTD (REG. NO 1990/000900/30) OPERATING AS TRANSNET PORT TERMINALS AT THE PORT OF RICHARDS BAY TERMINALS FOR A PERIOD OF THREE (3) YEARS

MATERIALS HANDLING EQUIPMENT	Company's Experience	Mandatory Returnable E3
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Submit detailed and traceable references of similar work in relation to material handling/earth moving equipment in the past three (3) years.

1. The traceable references should be from different clients where the service provider leased out material handling/earth moving equipment, this should be for work of contractual in nature for a period of twelve (12) months or more

The traceable references should detail the work (i.e. work in line with bulk handling/moving) that was done, the company(s) where work was conducted, the period (i.e. this must be contractual in nature for a period of 12 months or more) and the contact persons/contact details

Signed

Date

Name

Position

Tenderer:

TRANSNET PORT TERMINALS
 TENDER NUMBER iCLM HQ 628/TPT
 DESCRIPTION: THE PROVISION OF A FULL MAINTENANCE LEASE OF MATERIALS HANDLING EQUIPMENT FOR TRANSNET SOC LTD (REG. NO 1990/000900/30) OPERATING AS TRANSNET PORT TERMINALS AT THE PORT OF RICHARDS BAY TERMINALS FOR A PERIOD OF THREE (3) YEARS

MATERIALS HANDLING EQUIPMENT	Technical Back-up/Support	Mandatory Returnable E4
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Provide dedicated Technical support to cover required maintenance, defects, breakdowns as well as supervision on a 24/7 basis and ideally to respond within sixty (60) minutes - The Service provider will be required to have a company office and workshop within a fifteen (15) kilometre radius from Transnet Port Terminals Richards Bay i.e. proof of ownership/lease agreement is required and Transnet reserves the right to conduct site visits.

1. The traceable references should be from different clients where the service provider leased out material handling/earth moving equipment, this should be for work of contractual in nature for a period of twelve (12) months or more

Supplier is required to submit a detailed and traceable reference confirming the service provider's response time, this is to be supported by the submission of the technical team's qualifications i.e. certificates and structure/organogram as per clause 9.2 of the scope. Qualifications i.e. certificates and structure/organogram should indicate at least two (2) teams.

Signed

Date

Name

Position

Tenderer:

TRANSNET PORT TERMINALS
TENDER NUMBER iCLM HQ 628/TPT
DESCRIPTION: THE PROVISION OF A FULL MAINTENANCE LEASE OF MATERIALS HANDLING EQUIPMENT FOR TRANSNET SOC LTD (REG. NO 1990/000900/30) OPERATING AS TRANSNET PORT TERMINALS AT THE PORT OF RICHARDS BAY TERMINALS FOR A PERIOD OF THREE (3) YEARS

MATERIALS HANDLING EQUIPMENT	Business Continuity Plan for Managing of Risk	Mandatory Returnable E5
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The service provider is to provide a detailed Business Continuity Plan which is to cover all the details requested in section ten (10) of the scope of work.

Signed

Date

Name

Position

Tenderer:

TRANSNET PORT TERMINALS
TENDER NUMBER iCLM HQ 628/TPT
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MATERIALS HANDLING EQUIPMENT	Lead time for delivery	Mandatory Returnable E6
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<p>Delivery of all material handling equipment as per the scope requirements from date of award.</p> <p>The lead times are to range between i.e. one (1) to twenty-one (21) days.</p>

Signed

Date

Name

Position

Tenderer:

ANNEXURE F – Pricing Schedule

Document reference	Title	No of pages
1.	Pricing assumptions	1
2.	Pricing Schedule	1

Pricing Assumptions

- The price reflected below must be fixed and firm. Failure to provide a fixed and firm price will declare the tender non responsive.
- The price must be rates in Rand, Exclusive of Vat.
- Invoicing and payment will be done monthly on all work completed in the previous months.
- The price must be for the full scope and include all requirements, if the service provider does not quote for all items listed in the pricing schedule, the bid will be considered incomplete and possible disqualification.
- The price must be for the full scope and include all requirements.
- Rates contained in this schedule shall include the following:
 - i. Call out costs.
 - ii. Any other item of expense that is necessary for the completion of the scope.

Pricing Schedule

1. Equipment rates

Refer to section 12 of the scope to align with the equipment requirement, to assist in quoting for the correct equipment type. The service provider is to indicate/include all rates as stipulated on the tables below, this is to cover equipment services etc. as stipulated on section 4.4 of the scope.

1.1. Articulated Dump Trucks

Equipment	Unit	Price
One (1) Articulated Dump Truck	Per month	
Mobilizing/transport one (1) x Articulated Dump Truck on site	Once off	
Demobilizing/transport one (1) x Articulated Dump Truck off site	Once off	

1.2. Front-End Loaders

Equipment	Unit	Price
One (1) Front-End Loader	Per month	
Mobilizing/transport one (1) x Front-End Loaders on site	Once off	
Demobilizing/transport one (1) x Front-End Loaders off site	Once off	

1.3. Excavators

Equipment	Unit	Price
One (1) Excavator	Per month	
Mobilizing/transport one (1) x Excavator on site	Once off	
Demobilizing/transport one (1) x Excavator off site	Once off	

1.4. Mobile diesel tankers

Equipment	Unit	Price
One (1) Mobile diesel tanker (6000 lt.)	Per month	

To note:

The monthly rate is applicable if the equipment is hired thirty (30) days (i.e. continuously for 30 days) for a maximum of 24hrs per day as stipulated on section 4.1 of the scope.

MASTER AGREEMENT

entered into by and between

TRANSNET SOC LTD

and

FOR THE PROVISION OF A FULL MAINTENANCE LEASE OF MATERIALS HANDLING EQUIPMENT FOR TRANSNET SOC LTD (REG. NO 1990/000900/30) OPERATING AS TRANSNET PORT TERMINALS AT THE PORT OF RICHARDS BAY TERMINALS FOR A PERIOD OF THREE (3) YEARS.

Agreement Number **iCLM HQ 628/TPT**

Commencement Date

Termination Date

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SCHEDULE 1 – Scope of Work

SCHEDULE 2 – CONFIDENTIALITY AGREEMENT

SCHEDULE 3 – NOTICES

Agreement between Transnet and

For the provision of a full maintenance lease of materials handling equipment for Transnet SOC Ltd (reg. no 1990/000900/30) operating as Transnet Port Terminals at the Port of Richards Bay Terminals for a period of three (3) years.

SCHEDULE 4 – S37(2) OHS Act Agreement

ANNEXURE A - PRICING SCHEDULE

ANNEXURE B - SUBCONTRACT AGREEMENT

ANNEXURE C - SERVICE LEVEL AGREEMENT

INTRODUCTION

This Agreement is entered into by and between:

Transnet SOC Ltd [Registration Number 1990/000900/30] through its operating division Transnet Port Terminals whose head office is Kingsmead Office Park Kingsmead 1 Stalwart Simelane Street Durban [“**Transnet**”]

and

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

NOW THEREFORE, IT IS AGREED:

- 1.1 Transnet hereby appoints the Service Provider to provide, and Transnet undertakes to accept the provision of Services provided for herein, as formally agreed between the Parties and in accordance with the Work Order(s) issued as schedules to this Agreement from time to time; and
- 1.2 the Service Provider hereby undertakes to render the Services provided for herein, as formally agreed between the Parties and in accordance with the Work Orders issued as schedules to this Agreement from time to time.

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, including the Work Order(s), specifications for the Services and such special conditions as shall apply to this Agreement, together with the General Tender Conditions and any additional provisions in the associated bid documents tendered by the Service Provider [as agreed in writing between the Parties], which collectively and exclusively govern the provision of Services by the 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, notwithstanding the signature date of this Agreement by the last signing party hereto;

- 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:
- a) information relating to methods of operation, data and plans of the disclosing Party;
 - b) the contents of this Agreement;
 - c) private and personal details of employees or clients of the disclosing Party or any other person where an onus rests on the disclosing Party to maintain the confidentiality of such information;
 - d) any information disclosed by either Party and which is clearly marked as being confidential or secret;
 - e) information relating to the strategic objectives and planning of the disclosing Party relating to its existing and planned future business activities;
 - f) information relating to the past, present and future research and development of the disclosing Party;
 - g) information relating to the business activities, business relationships, products, services, customers, clients and Subcontractors of the disclosing Party where an onus rests on the disclosing Party to maintain the confidentiality of such information;
 - h) information contained in the software and associated material and documentation belonging to the disclosing Party;
 - i) technical and scientific information, Know-How and trade secrets of a disclosing Party including inventions, applications and processes;
 - j) Copyright works;
 - k) commercial, financial and marketing information;
 - l) data concerning architecture, demonstrations, tools and techniques, processes, machinery and equipment of the disclosing Party;
 - m) plans, designs, concepts, drawings, functional and technical requirements and specifications of the disclosing Party;
 - n) information concerning faults or defects in goods, equipment, hardware or software or the incidence of such faults or defects; and
 - o) information concerning the charges, Fees and / or costs of the disclosing Party or its authorised Subcontractors, or their methods, practices or service performance levels actually achieved;
- 2.7 **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 **Default** means any breach of the obligations of either Party [including but not limited to fundamental breach or breach of a fundamental term] or any Default, act, omission, negligence or statement of either Party, its employees, agents or Subcontractors in connection with or in relation to the subject of this Agreement and in respect of which such Party is liable to the other;
- 2.10 **Deliverable(s)** means any and all Equipment required to be delivered and/or spare parts supplied in terms of this Agreement;
- 2.11 **Designs** mean registered Designs and/or Design applications and will include the monopoly right granted for the protection of an independently created industrial design including designs dictated essentially by technical or functional considerations as well as topographies of integrated circuits and integrated circuits;
- 2.12 **Fee(s)** shall mean the agreed Fees for the Services to be purchased from the Service Provider by Transnet, as detailed in the Work Order(s), issued in accordance with this Agreement, as amended by mutual agreement between the Parties and in accordance with the provisions of this Agreement from time to time;
- 2.13 **Foreground Intellectual Property** means all Intellectual Property developed by either Party pursuant to this Agreement;
- 2.14 **Intellectual Property** means Patents, Designs, Know-How, Copyright, Trade Marks, Design rights 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;
- 2.15 **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;
- 2.16 **Equipment** means the Deliverables, in terms of the machinery that is to be provided by the Service Provider which for purposes of this contract shall include Front end loaders, dump trucks, tipper trucks, mobile fuel bowsers and excavators.....;
- 2.17 **Parties** mean the Parties to this Agreement together with their subsidiaries, divisions, business units, successors-in-title and their assigns;
- 2.18 **Party** means either one of these Parties;
- 2.19 **Patents** mean registered Patents and Patent applications, once the latter have proceeded to grant, and includes a right granted for any inventions, products or processes in all fields of technology;

- 2.20 **Permitted Purpose** means any activity or process to be undertaken or supervised by Personnel or employees of one Party during the term of this Agreement, for which purpose authorised disclosure of the other Party's Confidential Information or Intellectual Property is a prerequisite in order to enable such activity or process to be accomplished;
- 2.21 **Personnel** means any partner, employee, agent, consultant, independent associate or supplier, , or other authorised representative of either Party;
- 2.22 **Purchase Order(s)** means official orders issued by an operating division of Transnet to the Service Provider for the provision of Services;
- 2.23 **Service(s)** means the provision of Equipment (as defined) together with maintenance of such Equipment on a full maintenance lease basis in accordance with Annexure 1 which Annexure identifies the type of equipment to be leased from the Service Provider together with the costing schedule of each piece of equipment leased over the contractual period;
- 2.24 **Service Level Agreement** or **SLA** means the processes, deliverables, key performance indicators and performance standards relating to the Services to be provided by the Service Provider;
- 2.25 **Subcontract** means any contract or agreement or proposed contract or agreement between the Service Provider and any third party/organisation whereby that third party agrees to provide to the Service Provider the Services or any part thereof;
- 2.26 **Subcontractor** means the third party with whom the Service Provider enters into a Subcontract;
- 2.27 **Service Provider Materials** means all equipment and or spares, products and materials [including, but not limited to, data, diagrams, charts, reports, specifications, inventions, software, 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;
- 2.28 **Tax Invoice** means the document as required by Section 20 of the VAT Act, , as may be amended from time to time;
- 2.29 **Incidental services** 13.1 The supplier may be required to provide any or all of the following services, including additional services, if any, specified in SCC: (a) performance or supervision of on-site assembly and/or commissioning of the supplied goods; (b) furnishing of tools required for assembly and/or maintenance of the supplied goods; (c) furnishing of a detailed operations and maintenance manual for each appropriate unit of the supplied goods; (d) performance or supervision or maintenance and/or repair of the supplied goods, for a period of time agreed by the parties, provided that this service shall not relieve the supplier of any warranty obligations under this contract; (e) training of the purchaser's personnel, at the supplier's plant and/or on-site, in assembly, start-up, operation, maintenance, and/or repair of the supplied goods. 13.2 Prices charged by the supplier for incidental services, if not included in the contract price for the goods, shall be agreed upon in advance by the parties and shall not exceed the prevailing rates charged to other parties by the supplier for similar services.

- 2.30 Spare parts: the supplier may be required to provide any or all of the following materials, notifications, and information pertaining to spare parts manufactured or distributed by the supplier: (a) such spare parts as the purchaser may elect to purchase from the supplier, provided that this election shall not relieve the supplier of any warranty obligations under the contract; and (b) in the event of termination of production of the spare parts: (i) Advance notification to the purchaser of the pending termination, in sufficient time to permit the purchaser to procure needed requirements; and (ii) following such termination, furnishing at no cost to the purchaser, the blueprints, drawings, and specifications of the spare parts, if requested.
- 2.31 **VAT** means Value-Added Tax chargeable in terms of the VAT Act, as may be amended from time to time;
- 2.32 **VAT Act** means the Value Added Tax Act, No 89 of 1991, as may be amended from time to time; and
- 2.33 **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, acronym or phrase used in this Agreement, other than those defined under the clause heading "Definitions" shall be given its plain English meaning, and those terms, words, acronyms, and phrases used in this Agreement will be interpreted in accordance with the generally accepted meanings accorded thereto.
- 3.3 A reference to the singular incorporates a reference to the plural and *vice versa*.
- 3.4 A reference to natural persons incorporates a reference to legal persons and *vice versa*.
- 3.5 A reference to a particular gender incorporates a reference to the other gender.

4 NATURE AND SCOPE

- 4.1 This Agreement is an agreement under the terms and conditions of which the Service Provider will arrange for the provision to Transnet of the Services which meet the requirements of Transnet, the delivery of which Services shall be in accordance with this contract and executed by the Service Provider, in accordance with this Agreement and work orders issued in relation thereto.
- 4.2 During the period of this Agreement, both Parties can make written suggestions for amendments to the Work Order(s), in accordance with procedures set out in clause 32 [*Amendment and Change Control*] below. A Party will advise the other Party within 14 [fourteen] Business Days, or such other period as mutually agreed, whether the amendment is acceptable.

- 4.3 Insofar as any term, provision or condition in the Work Order(s) conflicts with a like term, provision or condition in this Agreement and/or a Purchase Order, or where this Agreement is silent on the matter, the term, 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.
- 4.4 Time will be of the essence and the Service Provider will perform its obligations under this Agreement in accordance with the timeframe(s) [if any] set out in Annexure 1, save that the Service Provider will not be liable under this clause if it is unable to meet such obligation within the time required as a direct result of any act or omission by Transnet and it has used its best endeavours to advise Transnet of such act or omission. In the event of such delay, any time deadlines detailed in the relevant schedule shall be extended by a period equal to the period of that delay.

5 AUTHORITY OF PARTIES

- 5.1 Nothing in this Agreement will constitute or be deemed to constitute a partnership between the Parties, or constitute or be deemed to constitute the Parties as agents or employees of one another for any purpose or in any form whatsoever.
- 5.2 Neither Party shall be entitled to, or have the power or authority to enter into an agreement in the name of the other; or give any warranty, representation or undertaking on the other's behalf; or 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 of this Agreement is and the duration shall be for a three [3] year period, expiring on, unless:
- a) this Agreement is terminated by either Party in accordance with the provisions incorporated herein or in any schedules or annexures appended hereto, or otherwise in accordance with law or equity; or
- 6.2 Notwithstanding clause 24 [*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.
- 6.3 *If the breakdowns are excessive, TPT reserves the right source equipment from a third party and the service provider will bear the costs thereof.*

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 with the Transnet Contract Manager who is to be appointed on signature of this Agreement, or unless otherwise agreed between the Parties in writing. The purposes of these progress meetings shall be to capture the service 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.
- 7.3 Any non-conformance to the corrective actions agreed to between the parties by virtue of the contract/risk management meetings to be held in terms of clause 7.1 shall be kept in a register and where consistent non-conformance certificates are issued to the Service Provider over a period, this shall be regarded as material breach of this Agreement and Transnet shall be entitled to exercise its rights in accordance with clause 24.

8 WARRANTIES

- 8.1 The Service Provider warrants to Transnet that:
- a) it has full capacity, expertise and authority to enter into and to perform under this Agreement and that this Agreement is executed by a duly authorised representative of the Service Provider;
 - b) it will discharge its obligations under this Agreement and any annexure, appendix or schedule hereto with all due skill, care and diligence;
 - c) it will be solely responsible for the payment of remuneration and associated benefits, if any, of its Personnel and for withholding and remitting income tax for its Personnel in conformance with any applicable laws and regulations;
 - d) it will procure licences for Transnet in respect of all Third Party Material detailed in the Work Order(s), and further warrants that it is able to provide back up equipment in the event of failure of any equipment leased by Transnet in terms of this Agreement in terms of its disaster recovery plan; and
 - e) the use or possession by Transnet of any Materials will not subject Transnet to any claim for infringement of any Intellectual Property Rights or any other rights of any third party .
- 8.2 The Service Provider warrants that it will perform its obligations under this Agreement in accordance with the Service Levels as defined in the relevant SLA. 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 6.3 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 until and in the event that such service levels are met.

- 8.3 The Service Provider warrants that Equipment leased in terms of this Agreement is fit for purpose and conforms in all respects with the requirements of Transnet. The Service Provider will at its expense remedy any such non-conformance as soon as possible but in any event within 7 [seven] 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 charges or costs incurred by Transnet as a result shall be claimed from the Service Provider.
- 8.4 The Service Provider will remedy any defect with the Equipment within 48 hours of being notified of that defect by Transnet in writing (which shall include via e-mail), failing which the Service Provider must replace the equipment to ensure minimal disruption to Transnet's operation.
- 8.5 The Service Provider will not be liable to remedy any problem arising from or caused by any modification made by Transnet to the Equipment, or any part thereof, without the prior approval of the Service Provider.
- 8.6 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 32 *[Amendment and Change Control]*.
- 8.7 The Service Provider warrants that:
- a) it has, and will ensure comprehensive all risk asset as well as General Liability insurance is maintained throughout the contractual period in the event of loss or damage to the Equipment.
- 8.8 The Service Provider undertakes to comply with South Africa's general protection of personal and private information 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.
- 8.9 The Service Provider warrants that it has taken all reasonable precautions to ensure that, in the event of any disruption to Transnet's operation due to any cause whatsoever and howsoever arising, which negatively impacts 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 a documented recovery and business continuity arrangements in place, failing which Transnet shall be entitled to cancel this agreement on 30 (thirty) days notice to the Service Provider unless alternative arrangements can be made to restore Transnet's operational efficiency as soon as possible but at least within 72 hours of such disruption.

9 TRANSNET'S OBLIGATIONS

- 9.1 Transnet undertakes to ensure that the Service Provider is paid in accordance with this Agreement or any payment schedule agreed to by the Parties
- 9.2 Transnet shall ensure that it uses the Equipment in accordance with the purpose it is leased and that its operators use the Equipment in accordance with the safety standards required for the operation of such Equipment

- 9.3 Transnet shall appoint a Contracts Manager who shall oversee the contract and ensure that all service levels as contained in the Service Level Agreement are complied with, failing which a notice of breach shall be issued to the Service Provider.
- 9.4 The Equipment shall be inspected by Transnet on delivery thereof to the Transnet Richard's Bay Terminal and may be rejected if found not to comply with the requirements of the Equipment or machinery requested, and shall be removed immediately at the Service Provider's own cost and forthwith substitute them with the correct Equipment. Should the Service Provider fail to replace the rejected Equipment forthwith, Transnet may without giving further notice to the Service Provider replace the Equipment the cost of which shall be claimed from the Service Provider, as well as cancel any Agreement with the Service Provider

10 GENERAL OBLIGATIONS OF THE SERVICE PROVIDER

- 10.1 The Service Provider shall:
- a) Supply, deliver and inspect (onsite together with a Transnet representative) the Equipment listed in Annexure 1
 - b) Respond promptly within 24 hours to all complaints and enquiries from Transnet;
 - c) inform Transnet immediately of any dispute or complaint arising in relation to the provision of the Services;
 - d) conduct its business in a professional manner that will reflect positively upon the Service Provider and the Service Provider's Services;
 - e) keep full records clearly indicating all transactions concluded by the Service Provider relating to the performance of the Services and keep such records for at least 5 [five] years from the date of each such transaction;
 - f) obtain, and at all times maintain in full force and effect, any and all licences, permits and the like required under applicable laws for the provision of the Services and the conduct of the business and activities of the Service Provider;
 - g) 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;
 - h) comply with all applicable environmental legislation and regulations, and demonstrate sound environmental policies, management and performance; and
 - i) ensure the validity of all renewable certifications, including but not limited to its Tax Clearance Certificate and B-BBEE Verification Certificate, for the duration of this Agreement. Should the Service Provider fail to present Transnet with such renewals as they become due, Transnet shall be entitled, in addition to any other rights and remedies that it may have in terms of the Agreement, to terminate this Agreement forthwith without any liability and without prejudice to any claims which Transnet may have for damages against the Service Provider.
- 10.2 The Service Provider acknowledges and agrees that it shall at all times:

- a) render the Services and perform all its duties with honesty and integrity;
- b) communicate openly and honestly with Transnet and demonstrate a commitment to performing the Services timeously, efficiently and to the required standards;
- c) endeavour to provide the highest possible standards of service and professionalism, with a reasonable degree of care and diligence;
- d) use its best endeavours and make every diligent effort to meet agreed deadlines;
- e) treat its own Personnel, as well as all Transnet's officers, employees, agents and consultants, with fairness and courtesy and respect for their human rights;
- f) practice and promote its own internal policies aimed at prohibiting and preventing unfair discrimination [as further referred to in clause 26 – *Equality and Diversity*];
- g) treat all enquiries from Transnet in connection with the Services with courtesy and respond to all enquiries promptly and efficiently. Where the Service Provider is unable to comply with the provisions of this clause, the Service Provider will advise Transnet of the delay and the reasons therefor and will keep Transnet informed of progress made regarding the enquiry;
- h) when requested by Transnet, provide clear and accurate information regarding the Service Provider's own policies and procedures, excluding Know-How and other Confidential Information, except where a non-disclosure undertaking has been entered into between the Parties;
- i) not allow a conflict of interest to develop between its own interests [or the interests of any of its other customers] and the interests of Transnet;
- j) not accept or offer, nor allow, induce or promote the acceptance or offering of any gratuity, enticement, incentive or gift that could reasonably be regarded as bribery or an attempt to otherwise exert undue influence over the recipient;
- k) not mislead Transnet or its officers, employees and stakeholders, whether by act or omission;
- l) not otherwise act in an unethical manner or do anything which could reasonably be expected to damage or tarnish Transnet's reputation or business image;
- m) immediately report to Transnet any unethical, fraudulent or otherwise unlawful conduct of which it becomes aware in connection with Transnet or the provision of Services; and
- n) ensure that at all times, during the currency of this Agreement, it complies with all obligations and commitments in terms of the provisions of the Income Tax Act, No 58 of 1962, the VAT Act or any other tax legislation relating to their liability for Income Tax, VAT, Pay as You Earn or any other tax. The Service provider shall further ensure the validity of its Tax Clearance Certificate, for the duration of this Agreement.
- o) not victimise, harass or discriminate against any employee of either Party to this Agreement or any applicant for employment with either Party to this Agreement due to their gender, race, disability, age, religious belief, sexual orientation or part-time status.

This provision applies, but is not limited to employment, upgrading, work environment, demotion, transfer, recruitment, recruitment advertising, termination of employment, rates of pay or other forms of compensation and selection for training.

- p) shall ensure that its employees, agents and Subcontractors will not breach any applicable discrimination legislation and any amendments and re-enactments thereof.
- 10.3 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.
- 104 In compliance with the Income Tax Act, 58 of 1962 (as amended), , the Service Provider shall ensure that Transnet is placed in possession of an original, valid and unexpired Tax Clearance Certificate issued by the South African Revenue Services, over the duration of this Agreement.
- 105 Notwithstanding anything contrary thereto in this Agreement, until the Service Provider complies fully with its obligations under clause 9.3 above, Transnet has the right to withhold payment of any unpaid amounts provided for in this Agreement without prejudice to any other rights which Transnet may have in terms of this Agreement or in law; and without interest accruing on the amount or amounts withheld.
- 106 A breach by the Service Provider of its obligations under clause 9.3 above is a material breach which will entitle Transnet, at its sole election, to cancel this Agreement forthwith, without prejudice to any other rights which Transnet may have in terms of this Agreement or in law.
- 107 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.

11 SUBCONTRACTING

- 121 The Supplier/Service Provider may only enter into a subcontracting arrangement or replace a subcontractor with the approval of Transnet.
- 122 In the event that consent is given in terms of clause 11 .1, and for whatever reason the Service Provider terminates the subcontract and replaces it with another subcontractor. The Service Provider shall obtain the consent of Transnet for the replacement of such

subcontractor, which consent shall not be unreasonably withheld.

- 123 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.
- 124 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.
- 125 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 and shall not absolve the Service Provider from any responsibility or accountability for achieving the required service levels in terms of this Agreement.
- 126 No such sub-contracting arrangement shall have any effect on the rates payable by Transnet to the Service Provider in terms of this Agreement.
- 127 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.
- 128 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:
1. Receipt of an undisputed invoice from the sub-contractor; and
 2. 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

- a) Transnet fully endorses and supports the Broad-Based Black Economic Empowerment Programme and is strongly of the opinion that all South African business enterprises have an equal obligation to redress the imbalances of the past. It is also a fundamental requirement of the RFP that the Service Provider also contributes to the Supplier Development Programme, as applied by Transnet.
- b) In response to this requirement, the Service Provider shall submit to Transnet's Contract Manager or such other designated person details of its B-BBEE status in terms of the latest Codes of Good Practice issued in terms of the B-BBEE Act and proof thereof at the beginning of March each year during the currency of this Agreement.
- c) The Service Provider undertakes to notify and provide full details to Transnet in the event there is:
- (i) a change in the Service Provider's B-BBEE status which is less than what it was at the time of its appointment including the impact thereof; and
 - (ii) a corporate or internal restructure or change in control of the Service Provider which has or likely to impact negatively on the Service Provider's B-BBEE status.
- d) Notwithstanding any other reporting requirement in terms hereof, the Service Provider undertakes to provide any B-BBEE data (underlying data relating to the Service Provider which has been relied upon or utilised by a verification agency or auditor for the purposes of issuing a verification certificate in respect of the Service Provider B-BBEE status) which Transnet may request on written notice within 30 (thirty) calendar days of such request. A failure to provide such data shall constitute a Service Provider Default and may be dealt with in accordance with the provisions of clause 23.
- e) In the event there is a change in the Service Provider's B-BBEE status, then the provisions of clause 23 shall apply.

13.2 B-BBEE Improvement Plan

- a) Transnet encourages its suppliers to constantly strive to improve their B-BBEE levels. To this end, the Service Provider undertakes to provide Transnet with a B-BBEE Improvement Plan to indicate the extent to which their B-BBEE status will be maintained or improved over the contract period, as per Annexure A of the RFP.

- b) The Service Provider shall, for the duration of this Agreement, comply with the B-BBEE Improvement Plan.
- c) The terms of the B-BBEE Improvement Plan and monetary value of the commitments thereunder shall not (unless otherwise agreed in writing) be less or less favourable than the commitments made by the Service Provider in such B-BBEE Improvement Plan.
- d) Breach of B-BBEE Improvement Plan obligations also provide Transnet cause to terminate the contract in certain cases where material milestones are not being achieved.

13.3 **Supplier Development Implementation Plan**

- a) In addition to the Supplier Development Plan which the Service Provider provided as part of its bid, the Service Provider undertakes, as stipulated in the RFP, to provide Transnet with a Supplier Development Implementation Plan [**the Implementation Plan**] setting out the nature, extent and monetary value of the Service Provider's commitments which the Service Provider shall undertake, as well as mechanisms and procedures to allow for access to information and verification of the Service Provider's compliance with the Implementation Plan, as shall be agreed with Transnet but in any event no later than 45 (forty five) calendar days from the signature date of the Letter of Intent (LOI) / Letter of Award (LOA).
- b) The Parties undertake to negotiate in good faith with a view to agreeing the content of the Implementation Plan by no later than 45 (forty five) calendar days as aforesaid (or such later date as Transnet may consent to in writing).
- c) If the Parties acting reasonably and in good faith with due consideration to the Supplier Development Plan proposed by the Service Provider in response to the RFP fail to reach agreement on the Supplier Development Implementation Plan within the time limit stipulated in the clause above, it shall constitute a Service Provider Default and Clause 23 shall apply.
- d) The Supplier's Implementation Plan shall include, but not be limited to New skills development, Job creation, Job preservation, Small business promotion and Rural integration and regional development.
- e) The terms of the Implementation Plan's and the monetary value of the commitments thereunder shall not (unless otherwise agreed in writing) be less or less favourable than the commitments made by the Service Provider in the Supplier Development Implementation Plan.

13.4 **Green Economy/Carbon Footprint**

- a) In addition to the Supplier Development and B-BBEE commitments that the Service Provider makes, the Service Provider has in its bid provided Transnet with an understanding of the Service Provider's position with regard to issues such as waste disposal, recycling and energy conservation.

13.5 Reporting

- a) The Service Provider shall monitor, audit, and record in an auditable manner, its own implementation and compliance with the B-BBEE Improvement Plan and the Supplier Development Implementation Plan and provide the Contract Manager with such information as the Contract Manager may reasonably request concerning the implementation of the B-BBEE Improvement Plan and the Supplier Development Implementation Plan.
- b) The Service Provider shall, on a monthly basis from the Commencement Date and within 7 (seven) calendar days of the end of the previous calendar month, provide Transnet with a report (for monitoring purposes only) in respect of each of the undertakings stipulated in this clause 10.5.
- c) Transnet, through its Supplier Development division, shall, every 6 (six) months from the Commencement Date, review and verify the Service Provider's undertakings stipulated in this clause with respect to B-BBEE and Supplier Development commitments, based on the Service Provider's report.
- d) The Service Provider shall provide adequate proof to enable Transnet to verify compliance with the B-BBEE Improvement Plan and Supplier Development Implementation Plan. Such proof shall include, but not be limited to, the following:
.....
- e) Post verification of the submitted report to Transnet, Transnet shall engage with the Service Provider on the findings. The Contract Manager, assisted by the relevant specialist from Transnet's Supplier Development division, must report to the Service Provider at the end of every 6 (six) months as to whether or not the Contract Manager and/or the Supplier Development specialist reasonably considers, based on the information available to it, that the Service Provider has during such time complied with the B-BBEE Improvement Plan and the Supplier Development Implementation Plan and the extent, if any, to which the Service Provider has not so complied.
- f) Without prejudice to the Transnet's rights under this Agreement:
 - (i) if the Contract Manager and/or Transnet's Supplier Development specialist reasonably considers that the Service Provider is not at any time complying with its B-BBEE Improvement Plan and/or the Supplier Development Implementation Plan, the Contract Manager and/or the Supplier Development specialist may make such recommendations as is considered reasonably appropriate to the Service Provider as to the steps he reasonably considers should be taken by the Service Provider in order for the Service Provider to remedy such non-compliance and the time period within which such steps must be taken;
 - (ii) If such recommendations are not implemented by the Service Provider in accordance with such recommendations, then the provisions of clause 11 shall apply; and

- (iii) Transnet may at any time request a meeting with the Service Provider to consider any non-compliance reported to it by the Supplier Development specialist of Transnet and/or the Contract Manager or which otherwise comes to its attention. Both Parties must attend such a meeting and negotiate in good faith with a view to reach agreement on the steps or actions that the Service Provider must undertake in order to remedy that non-compliance.
- g) In the event the Service Provider is found not to have met the B-BBEE and/or Supplier Development requirements agreed upon in the B-BBEE Improvement Plan and the Supplier Development Implementation Plan, and/or is found to be fraudulent in submitting the reports, then Transnet shall impose a non-compliance penalty as provided for in clause 11 or shall be entitled to terminate in terms of clauses 22 and 23.
- h) For the sake of completion of its contractual obligations, the Service Provider shall be obliged to complete all the undertakings made under the B-BBEE Improvement Plan and the Supplier Development Implementation Plan 3 to 6 months before the Termination Date.

14 PENALTIES

14.1 Non-Compliance Penalties for Supplier Development:

- a) If the Service Provider fails, at any agreed milestone, to achieve its commitments under and in accordance with the Supplier Development Implementation Plan (“a **Non-Compliance**”), the Service Provider shall pay a Non-Compliance penalty (“Non-compliance Penalty”) to Transnet in respect of such Non-compliance as set out in Clause (e) below. The penalties shall be imposed per milestone measurement or for non-delivery of committed values.
- b) Respondents are to note that Transnet will determine the size of the entity (i.e. EME, QSE and Large) and the applicable Non-compliance Penalties annually based on the Service Provider’s turnover in the year the penalty applies.

Applicable Rates of Non-compliance Penalties for Supplier Development:

- c) Failure to adhere to the milestones and targets defined in an Implementation Plan may result in the invocation of financial penalties. To the extent that the ①Actual Supplier Development Spend is lower than the ②Required Supplier Development Spend (or the ③Adjusted Required Supplier Development Spend, as the case may be), the Service Provider shall be liable for Penalties which is the difference in value between the Actual Supplier Development Spend and the Required Supplier Development Spend (or the Adjusted Required Supplier Development Spend, as the case may be plus an additional percentage as indicated in the Table under Clause e) below. Such Non-compliance Penalties shall be calculated and levied at the relevant milestones as stipulated in the Supplier Development Implementation Plan in accordance with the table below.
- d) Breach of SD obligations also provide Transnet cause to terminate the contract in certain cases where material milestones are not being achieved.

e) Table: SD Non Compliance Penalties

In relation to Supplier Development Implementation Plan, Non Compliance Penalties shall apply as follows:

Company Size	SD Penalty
Large Measured Entities (LME)	The difference in value between the committed and delivered SD value (i.e. 100% of the undelivered portion of the committed SD value) plus an additional 10% (ten per cent) of such difference
Qualifying Small Enterprise (QSE)	The difference in value between the committed and delivered SD value (i.e. 100% of the undelivered portion of the committed SD value) plus an additional 5% (five per cent) of such difference
Exempted Micro Enterprises(EME)	The difference in value between the committed and delivered SD value (i.e. 100% of the undelivered portion of the committed SD value) plus an additional 3% (three per cent) of such difference

For the purposes of this clause –

- ① Actual Supplier Development Spend means the monetary value of SD initiatives actually delivered by the Service Provider during the period under review;
- ② Required Supplier Development Spend means the monetary value of SD obligations that the Service Provider has agreed to deliver during the period under review;
- ③ Adjusted Required Supplier Development Spend means any adjustment to the Required SD spend as agreed to between the parties, reduced to writing and signed by the parties.

Non-compliance Penalty Certificate:

- f) If any Non-compliance Penalty arises, the Supplier Development Manager shall issue a Non-compliance Penalty Certificate on the last day of each month during such Non-compliance indicating the Non-compliance Penalties which have accrued during that period.
- g) A Non-compliance Penalty Certificate shall be prima facie proof of the matters to which it relates. If the Service Provider disputes any of the amounts set out in a Non-compliance Penalty Certificate:
 - the dispute shall be resolved in accordance with the provisions of the Agreement; and
 - if pursuant to that referral, it is determined that the Service Provider owes any amount to Transnet pursuant to the Non-compliance Penalty Certificate, then the Service Provider

shall pay such amount to Transnet within 10 (ten) Business Days of the determination made pursuant to such determination and an accompanying valid Tax Invoice.

Payment of Non-compliance Penalties:

- h) Subject to Clause (g) above, the 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 Service Provider for the amount set out in that certificate. If Transnet does not issue a valid Tax Invoice to the Service Provider for Non-compliance Penalties accrued during any relevant period, those Non-compliance Penalties shall be carried forward to the next period.
- i) The 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.
- j) Should the 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 Service Provider from the account of the Service Provider in the ensuing month.
- k) 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 Service Provider.

14.2 Non-compliance Penalties for the B-BBEE Improvement Plan:

- a) If the Service Provider fails, at any agreed milestone, to achieve its commitments under and in accordance with the B-BBEE Improvement Plan (“a **Non-compliance**”), the Service Provider shall pay a Non-compliance penalty (“Non-compliance Penalty”) to Transnet in respect of such Non-compliance. The penalties shall be imposed per milestone measurement.
- b) Respondents are to note that Transnet will determine the size of the entity (i.e. EME, QSE and Large) and the applicable Non-compliance Penalties annually based on the Service Provider’s turnover in the year the penalty applies.

Applicable Rates of Non-compliance Penalties in respect of B-BBEE Improvement plan:

- c) The Non-compliance Penalty shall be based on a percentage of the cumulative amount paid to the Service Provider by Transnet during the preceding year of a contract. Penalties shall only apply in respect of contracts lasting 3 years or more and shall be imposed at the Applicable Rates mentioned in Table 1 below.
- d) In order to ensure that payment of any applicable Non-compliance penalty is guaranteed, Transnet is entitled to make stipulated monthly/milestone deductions from amounts due to the Service Provider. These amounts shall be retained as security to ensure that the Service Provider will be able to discharge its obligations in respect of any applicable Non-compliance Penalty and shall be the “BBBEE Retention Amount”. The relationship between the Non-compliance Penalty and the B-BBEE Retention Amount is illustrated in Table 2 below. The deduction of the B-BBEE Retention Amount shall be based on the following:

- i. Transnet shall be entitled to deduct a stipulated percentage from each monthly/milestone payment based on the penalty percentage stipulated in the next year as indicated in Table 1 below.
- ii. By way of illustration, in respect of EMEs, in year 2 Transnet shall deduct 0,5% of each monthly/milestone payment to ensure that the Service Provider will be able to meet its obligations in respect of any applicable Non-compliance Penalty due at the end of year 3. The same approach in calculation of the B-BBEE Retention Amount applies in respect of years 3 and beyond, based on the penalty percentage as stipulated in Table 2 below.

Table 1 : 5 Year Contracts (General Commodities)

Year	QSEs and EMEs other than Black Owned EMEs	Large Enterprises	51% Black Owned Large Enterprise	Designated Groups (51% Ownership): BWO, BYO, BDO & BO EMEs
1	Not Applicable (Engagement with Transnet-M&E)	Not Applicable (Engagement with Transnet-M&E)	Not Applicable (Engagement with Transnet-M&E)	Not Applicable (Engagement with Transnet-M&E)
2	Not Applicable (Engagement with Transnet-M&E)	Not Applicable (Engagement with Transnet-M&E)	Not Applicable (Engagement with Transnet-M&E)	Not Applicable (Engagement with Transnet-M&E)
3	0.5% of the preceding year's monthly/milestone payments	1% of the preceding year's monthly/milestone payments	0.75% of the preceding year's monthly/milestone payments	0.5% of the preceding year's monthly/milestone payments
4	1% of the preceding year's monthly/milestone payments	1.5% of the preceding year's monthly/milestone payments	1% of the preceding year's monthly/milestone payments	0.75% of the preceding year's monthly/milestone payments
5 **	1% of the preceding year's monthly/milestone payments	2.5% of the preceding year's monthly/milestone payments	2% of the preceding year's monthly/milestone payments	1% of the preceding year's monthly/milestone payments

**This includes contracts in excess of 5 years in duration.

Table 2: Relationship between Non-compliance Penalty and B-BBEE Retention amount

Year	B-BBEE Retention Amount	Non-compliance Penalty
1	Not Applicable	Not Applicable
2	Deduction from monthly/milestone payments based on the penalty percentage stipulated for year 3	Not Applicable
3	Deduction from monthly/milestone payments based on the penalty percentage stipulated for year 4	B-BBEE Retention Amount deducted in year 2 will be used to discharge any applicable Non-compliance Penalty due at the end of year 3
4	Deduction from monthly/milestone payments based on the penalty percentage stipulated for year 5	B-BBEE Retention Amount deducted in year 3 will be used to discharge any applicable Non-compliance Penalty due at the end of year 4
5 **	Deduction from monthly/milestone payments based on the penalty percentage stipulated for year 5 and subsequent years	B-BBEE Retention Amount deducted in year 4 will be used to discharge any applicable Non-compliance Penalty due at the end of year 5

**The B-BBEE Retention Amount and applicable Non-compliance Penalties will apply similarly to contracts in excess of 5 years in duration.

- e) The BBBEE Retention Amount shall be retained by Transnet as security for the obligations of the Service Provider in terms of the BBBEE Improvement Plan.
- f) Should there be a change in the status of the Service Provider between the year the B-BBEE Retention Amount is deducted and the year the penalty is imposed, Transnet will be entitled to recover any shortfall between the B-BBEE Retention Amount and Non-compliance Penalty imposed, withhold payment due to the Service Provider in lieu of payment of the remaining shortfall or deduct (set off) the amount not paid by the Service Provider from the account of the Service Provider in the ensuing month.
- g) Should the Service Provider's obligations:
 - be met in terms of the BBBEE Improvement Plan, the BBBEE Retention Amount shall be released within 30 (thirty) days of the date of verification of compliance by the Service Provider of its obligations in terms of the BBBEE Improvement Plan, at which time the monies shall be paid over to the Service Provider; and
 - not be met, unless such failure is attributable to the occurrence of a Force Majeure Event, the Service Provider shall forfeit the BBBEE Retention Amount and shall have no further claim against Transnet for the repayment of such amount.

Non-compliance Penalty Certificate:

- h) If any Non-compliance Penalty arises, the Supplier Development Manager shall issue a Non-compliance Penalty Certificate on the last day of each month during such Non-compliance indicating the Non-compliance Penalties which have accrued during that period.
- i) A Non-compliance Penalty Certificate shall be prima facie proof of the matters to which it relates. If the Service Provider disputes any of the amounts set out in a Non-compliance Penalty Certificate:
- the dispute shall be resolved in accordance with the provisions of the Agreement; and
 - if pursuant to that referral, it is determined that the Service Provider owes any amount to Transnet pursuant to the Non-compliance Penalty Certificate, then the Service Provider shall pay such amount to Transnet within 10 (ten) Business Days of the determination made pursuant to such determination and an accompanying valid Tax Invoice.

Payment of Non-compliance Penalties:

- j) Subject to Clause (i) above, the 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 Service Provider for the amount set out in that certificate. If Transnet does not issue a valid Tax Invoice to the Service Provider for Non-compliance Penalties accrued during any relevant period, those Non-compliance Penalties shall be carried forward to the next period.
- k) The 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.
- l) Should the 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 Service Provider from the account of the Service Provider in the ensuing month.
- m) The Non Compliance Penalties set forth in this Clause are stated exclusive of VAT. Any VAT payable on Non Compliance Penalties will be for the account of the Service Provider.

15 FEES AND EXPENSES

- 15.1 In consideration of the provision of the Services, Transnet will pay to the Service Provider the Fees detailed in the relevant schedule.
- 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 writing in the form of a schedule or Work Order, Transnet will not reimburse to the Service Provider any other fees and/or expenses in relation to the provision of the Services.

16 INVOICING AND PAYMENT

- 16.1 Transnet shall pay the Service Provider the amounts stipulated in the relevant schedule or Work Order, subject to the terms and conditions of this Agreement.
- 16.2 Transnet shall pay such amounts to the Service Provider, upon receipt of a valid and undisputed Tax Invoice together with the supporting documentation as specified in the Work Order appended hereto, once the valid and undisputed Tax Invoices, or such portion of the Tax Invoices which are valid and undisputed become due and payable to the Service Provider for the provision of the Services, in terms of clause 13.4 below.
- 16.3 All Fees and other sums payable under this Agreement are exclusive of VAT, which will be payable at the applicable rate in ZAR.
- 16.4 Unless otherwise provided for in the Work Order(s) 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 statement together with all valid and undisputed Tax Invoices and supporting documentation.
- 16.5 In the event that any invoice is disputed by Transnet, the parties shall meet to discuss the reasons for the dispute and attempt to reach agreement as to same, failing which the matter shall be referred to the Parties respective Chief Executive Officers to reach agreement. In the event agreement cannot be reached at that level the matter may be referred to an Adjudicator that will be agreed between the parties to make an independent decision regarding such dispute. In the event that an Adjudicator cannot be agreed to the Arbitration Foundation of South Africa will appoint an Adjudicator whose decision shall be final and binding on the parties
- 16.6 Where the payment of any Tax Invoice, or any part thereof which is not in dispute, is not made in accordance with this clause 13, the Service Provider shall be entitled to charge interest on the outstanding amount, at The Standard Bank of South Africa's prime rate of interest in force, for the period from the due date of payment until the outstanding amount is paid.

17 FEE ADJUSTMENTS

- 17.1 Fees for Services rendered in terms of this Agreement shall be fixed for the duration of the Contractual Term.
- 17.2 Pursuant to clause 17.1 .above, the Service Provider shall keep full and accurate records of all costs associated with the provision of the Services to Transnet, in a form to be approved in writing by Transnet. The Service Provider shall produce such records to Transnet for inspection at all reasonable times on request and such records may, at Transnet's option, be audited by Transnet or its designated representatives.

- 17.3 Should Transnet and the Service Provider fail to reach an agreement on Fees for the successive period, either Party shall be entitled to submit this matter to dispute resolution in accordance with clause 29 of this Master Agreement [*Dispute Resolution*].
- 17.4 If during the period of this Agreement Transnet can purchase similar Services of a like quality from another service provider at a lower fee than the Service Provider, Transnet may notify the Service Provider accordingly and the Service Provider shall have an opportunity to adjust the Fee of the Services purchased hereunder accordingly within 30 [thirty] calendar days of such notice. If the Service Provider fails to do so or cannot legally do so, Transnet may (i) purchase the Services from such other service provider in which case the obligations, including, but not limited to, any purchase and sale requirements and/or commitments, if any, of Transnet and the Service Provider hereunder shall be reduced accordingly; (ii) terminate this Agreement without any penalty, liability or further obligation; or (iii) continue purchases under this Agreement.
- 17.5 If during the period of this Agreement the Service Provider sells any services which are the same as, equivalent to, or substantially similar to the Services herein to a third party lower than the fee charged to Transnet, then the Service Provider has an opportunity to adjust its Fees for the Services purchased hereunder within 30 [thirty] calendar days so that the Fee is the same or lower than the fees charged to such third party. If the Service Provider fails to do so or cannot legally do so, Transnet may (i) purchase the Services from such other service provider in which case the obligations, including, but not limited to, any purchase and sale requirements and/or commitments, if any, of Transnet and the Service Provider hereunder shall be reduced accordingly; or (ii) terminate this Agreement without any penalty, liability or further obligation. Within 30 [thirty] calendar days of the Commencement Date of this Agreement or at any time Transnet so requests, the Service Provider shall certify in writing to Transnet that it is in compliance with this clause and shall provide all information that Transnet reasonably requests in order to verify such compliance.
- 17.6 Should Transnet and the Service Provider fail to reach an agreement on Fees for the successive period, either Party shall be entitled to submit this matter to dispute resolution in accordance with clause 29 of this Master Agreement [*Dispute Resolution*].

18 INTELLECTUAL PROPERTY RIGHTS

18.1 Title to Confidential Information

- a) Transnet will retain all right, title and interest in and to its Confidential Information and Intellectual Property and the Service Provider acknowledges that it has no claim of any nature in and to the Confidential Information and Intellectual Property that is proprietary to Transnet.

18.2 Unauthorised Use of Confidential Information

The Service Provider shall not authorise any party to act on or use in any way any Confidential Information belonging to Transnet whether or not such party is aware of such Confidential Information, and shall promptly notify Transnet of the information if it becomes aware of any

party so acting, and shall provide Transnet the information with such assistance as Transnet reasonably requires, at Transnet's cost and expense, to prevent such third party from so acting.

19 SERVICE PROVIDER'S PERSONNEL

- 19.1 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.
- 19.2 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.
- 19.3 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.
- 19.4 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.
- 19.5 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.

20 INSPECTION APPLICABLE TO GOODS

- 20.1 Transnet reserves the right to arrange for the inspection of all Goods forming the subject of any Purchase Order, at any stage before final acceptance and by any means it may think fit, and when such inspection is to be carried out, the relevant Purchase Order(s) shall be endorsed accordingly.
- 20.2 When inspection at the Supplier's works or warehouse is specified, Transnet's authorised inspector shall have free access to the premises of the Supplier at all times during working hours on a Business Day; shall have liberty to inspect work which is the subject of the Purchase Order at any stage of manufacture, and may reject any Goods which are found to be incomplete, defective or

in any way not in conformity with the terms and specifications of this Agreement; and the Supplier shall afford all reasonable facilities for such access and inspection.

- 20.3 The Supplier shall provide inspection gauges, measuring and test equipment to ensure that the requirements of this Agreement are satisfied. All gauges, templates, tools and other equipment required to check the accuracy of the work shall be calibrated at regular and reasonable intervals by a laboratory which has been approved in writing by Transnet. This certificate shall not be more than 12 [twelve] months old.
- 20.4 The Supplier shall prepare and supply, without charge to Transnet, all test pieces, samples and specimens; shall provide all labour and apparatus for carrying out tests and analyses in accordance with the terms of this Agreement or Purchase Order, and render all reasonable assistance in making such tests and analyses.
- 20.5 All special rules governing gauging, testing, analysis and other inspection procedures shall be adhered to strictly in accordance with the terms of this Agreement or Purchase Order and the conditions of any specifications and drawings quoted therein.
- 20.6 Inspection will be arranged by the Staff of Transnet, as indicated in the Purchase Order(s).
- 20.7 When Goods are ready for inspection, the Supplier shall apply promptly to the appropriate authority for instructions regarding such inspection. All applications for inspection shall quote Transnet's Agreement or Purchase Order number. 7 [seven] Business Days' notice of readiness from the Supplier shall be given to the authorised inspector appointed by Transnet to carry out such inspection.
- 20.8 Transnet shall have the right to recover from the Supplier the cost of inspection of any Goods that have been rejected by its authorised inspector in terms of this clause 22.

21 DEFECTIVE GOODS

- 21.1 Notwithstanding any certificate and/or receipt that may have been issued by or on behalf of Transnet either in South Africa or overseas, Goods will be accepted at the place of delivery or at the port of shipment, as specified in this Agreement, only as regards outward condition of packages and Transnet retains the right to reject the Goods supplied, on or after arrival at the place to which they are consigned, or after they have been placed in use in South Africa, should they be found defective.
- 21.2 If Goods are rejected owing to latent defects becoming apparent during machining operations or other preparation necessary on the part of Transnet before they can be put into use, the Supplier shall bear all expenses incurred by Transnet in carrying out such necessary operations.
- 21.3 If such Goods are rejected, the Supplier will pay the following costs:
- a) for Goods purchased in South Africa on an ex works basis, the cost of transport from the Supplier's works in South Africa to the named destination where the Goods have been rejected by Transnet, plus handling charges and storage, if leviable; or
 - b) for Goods manufactured overseas, the Supplier shall pay all replacement costs including the overseas inland transport cost, freight and insurance charges incurred plus railage or

other inland transport costs from the South African port to the place where the Goods have been rejected by Transnet, including handling charges, storage, landing charges, customs duty and surcharges, if leviable.

- 21.4 If Transnet requires rejected Goods to be replaced, the Supplier shall, when called upon to do so, arrange prompt replacement of the Goods within the prescribed manufacturing lead times for such Goods, as indicated in Schedule 1.
- 21.5 If Goods are found to be defective but the defects are, in the opinion of Transnet, not of so serious a nature as to warrant total rejection of the Goods, the Supplier shall, when called upon to do so, remedy or make good such defects at its own cost, or Transnet may remedy or make good such defects at the request of the Supplier and recover from the Supplier all costs or expenses reasonably incurred by it in doing so.
- 21.6 Should the Supplier fail, when called upon to remedy or make good such defects within a reasonable time or to request Transnet to do so, Transnet may proceed to remedy or make good such defects and thereafter recover from the Supplier all such costs and expenses as aforementioned.
- 21.7 Any amount recoverable from the Supplier in terms of this clause may, without prejudice to any other legal remedies available to Transnet, be deducted in whole or in part from any monies in the hands of Transnet which are due for payment to the Supplier.

22 LIMITATION OF LIABILITY

- 22.1 The Service Provider's liability under this clause 17 shall be in addition to any warranty or condition of any kind, express or implied by law or otherwise, relating to the Goods or ancillary Services, including the quality of the Goods or ancillary Services or any materials delivered pursuant to this Agreement.
- 22.2 Neither Party excludes or limits liability to the other Party for:
- a) death or personal injury caused by its negligence, [including its employees', agents' or Subcontractors' negligence]; or
 - b) fraud or theft.
- 22.3 The Service Provider shall indemnify and keep Transnet indemnified from and against liability for damage to any Transnet property [whether tangible or intangible] or any other loss, costs or damage suffered by Transnet to the extent that it results from any act of or omission by the Service Provider or its Personnel in connection with this Agreement.
- 22.4 Transnet shall not be liable to the Service Provider 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.

23 INSURANCES

- 23.1 The Service Provider shall take out comprehensive All Risk Asset insurance as well as Third Party Liability insurance in respect of all risks for which it is prudent for the Service Provider to insure against, including any liability it may have as a result of its activities under this Agreement for theft, destruction, death or injury to any person and damage to property.
- 23.2 A certificate of insurance is to be provided to Transnet on signature of this Agreement, which insurance shall remain in place for the duration of the contractual term, failing which the Service Provider will be held to be in breach of this Agreement and Transnet shall be entitled to cancel same in accordance. The level of insurance will be kept under review by Transnet, on an annual basis, to ensure its adequacy.
- 23.3 The Service Provider shall arrange insurance with reputable insurers and will produce to Transnet evidence of the existence of the policies on an annual basis immediately after date of policy renewals.
- 23.4 In the event that the Service Provider receives written notice from its insurers advising of the termination of its insurance cover referred to in clause 23.1 above or if the insurance ceases to be available upon commercially reasonable terms, the Service Provider shall immediately notify Transnet in writing of such termination and/or unavailability, whereafter either the Service Provider or Transnet may terminate this Agreement on giving the other Party not less than 30 [thirty] calendar days prior written notice to that effect.

24 PROTECTION OF PERSONAL DATA

- 24.1 The Parties agree that they may obtain and have access to personal data for the duration of the Agreement 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:
- a) they process data only for the express purpose for which it was obtained;
 - b) once processed for the purposes for which it was obtained, all data will be destroyed to an extent that it cannot be reconstructed to its original form;
 - c) data is provided only to authorised personnel who strictly require the personal data to carry out the Parties' respective obligations under this Agreement;
 - d) they do not disclose personal data of the other Party, other than in terms of this Agreement;
 - e) they have all reasonable technical and organisational measures in place to protect all personal data from unauthorised access and/or use;
 - f) they have appropriate technical and organisational measures in place to safeguard the security, integrity and authenticity of all data in its possession or under its control in terms of this Agreement;
 - g) such personal data is protected against unauthorised or unlawful processing, accidental loss, destruction or damage, alteration, disclosure or access.

- 24.2 The Parties agree that if personal data 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 further processing.
- 24.3 Should it be necessary for either Party to disclose or otherwise make available the personal data to any third party (including sub-contractors and employees), it may do so only with the prior written permission of the other Party. The Party requiring such permission shall require of all such third parties, appropriate written undertakings to be provided, containing similar terms to that set forth in this clause 1918.1, and dealing with that third party's obligations in respect of its processing of the personal data. Following approval by the other Party, the Party requiring permission agrees that the provisions of this clause 19 shall *mutatis mutandis* apply to all authorised third parties who process personal data.
- 24.4 The Parties shall ensure that any persons authorized to process data on their behalf (including employees and third parties) will safeguard the security, integrity and authenticity of all data and shall remain liable to the other of them at all time. Where necessary to meet this requirement, the Parties shall keep all personal data and any analyses, profiles, or documents derived therefrom logically separated from all other data and documentation held by it.
- 24.5 The Parties shall carry out regular assessments to identify all reasonably foreseeable internal and external risks to the personal data 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 has been effectively implemented.
- 24.6 The Parties agree that they will promptly return or destroy any personal data 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 data. The information will be destroyed in such a manner that it cannot be reconstructed to its original form, linking it to any particular individual or organisation.
- 24.7 Personal Information security breach: Service Provider's Obligations
- a) The Service Provider shall notify the Contract Manager at Transnet, in writing as soon as possible after it becomes aware of or suspects any loss, unauthorised access or unlawful use of any personal data and shall, at its own cost, take all necessary remedial steps to mitigate the extent of the loss or compromise of personal data and to restore the integrity of the affected Goods as quickly as is possible. The Service Provider shall also be required to provide Transnet 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 data.
 - b) The Service Provider shall provide on-going updates on its progress in resolving the compromise at reasonable intervals until such time as the compromise is resolved.

- c) Where required, the Service Provider may be required to notify the South African Police Service; and/or the State Security Agency and where applicable, the relevant regulator and/or 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 Service Provider undertakes to co-operate in any investigation relating to security which is carried out by or on behalf of Transnet including providing any information or material in its possession or control and implementing new security measures.

25 CONFIDENTIALITY

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

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

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

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

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

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 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 TOTAL OR PARTIAL FAILURE TO PERFORM THE SCOPE OF SERVICES

Should the Service Provider fail or neglect to execute the work or to deliver any portion of the Service, as required by the terms of this Agreement or Work Order, Transnet may cancel this Agreement or Work Order forthwith notwithstanding any other clause contained in this Agreement or any schedule thereto.

27 RIGHTS ON CANCELLATION

27.1 If this Agreement or Purchase Order is cancelled in whole or in part in terms of clause 26 [*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.

27.2 Any amount which may be recoverable from the Supplier/Service Provider in terms of clause 27.1 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.

28 BREACH AND CONSEQUENCE OF TERMINATION

28.1 Termination in accordance with clause 22 [*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.

28.2 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.

28.3 To the extent that any of the Deliverables and property referred to in clause 23.2 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.

28.4 In the event that this Agreement is terminated by the Service Provider under clause 22.2 [*Term and Cancellation*], or in the event that a Work Order is terminated by Transnet under clause 23.5 [*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.

- 28.5 If either Party [**the Defaulting Party**] commits a material breach of this Agreement and fails to remedy such breach within seven [7] 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.
- 28.6 Either Party may terminate this Agreement forthwith by notice in writing to the other Party when the other Party is unable to pay its debts as they fall due or commits any act or omission which would be an act of insolvency in terms of the Insolvency Act, 24 of 1936 [as amended from time to time], or if any action, application or proceeding is made with regard to it for:
- a) a voluntary arrangement or composition or reconstruction of its debts;
 - b) its winding-up or dissolution;
 - c) the appointment of a liquidator, trustee, receiver, administrative receiver or similar officer;
 - d) any similar action, application or proceeding in any jurisdiction to which it is subject.
- 28.7 Transnet may terminate this Agreement at any time within 2 [two] months of becoming aware of a change of control of the Service Provider by notice in writing to the Service Provider. For the purposes of this clause, **control** means the right to direct the affairs of a company whether by ownership of shares, membership of the board of directors, agreement or otherwise.
- 28.8 Notwithstanding this clause 23, Transnet may cancel this Agreement:
- (a) without cause by giving 30 [thirty] calendar days prior written notice thereof to the Service Provider, or
 - (b) by notice in writing to the Service Provider, where the Service Provider fails to provide Transnet with a valid Tax Clearance Certificate issued by the South African Revenue Service at any time during the currency of this Agreement.
- 28.9 The provisions of clauses 2 [*Definitions*], 6 [*Warranties*], 15 [*Intellectual Property Rights*], 17 [*Limitation of Liability*], 20 [*Confidentiality*], 23 [*Breach and Consequence of Termination*], 29 [*Dispute Resolution*] and 33 [*Governing Law*] shall survive termination or expiry of this Agreement.

29 CESSION

- 29.1 Upon written notice to the Service Provider, Transnet shall be entitled to cede, assign or novate this Agreement to any third party.
- 29.2 The 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.

30 FORCE MAJEURE

- 29.1 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.
- 29.2 In the event of a Force Majeure Event arising which results in non-performance by a Party of its obligations in terms hereof, such party shall be required to declare such Force Majeure Event within twelve (12) hours of the Force Majeure Event arising to the other Party and provide the supporting documentation and/or information reasonably necessary to assess whether in fact the event claimed is to be regarded as a Force Majeure Event. The Party claiming the occurrence of a Force Majeure Event must further indicate to the other what reasonable steps it has taken or aims to take in order to remedy the Force Majeure Event and to minimise the effect of such circumstances upon the performance of its obligations under these Standard Trading Terms and Conditions.
- 29.3 An event or circumstance which results in non-performance by a Party, caused by the usual consequences of external forces will not be regarded as a Force Majeure Event if such event or circumstance is reasonably foreseeable notwithstanding that its occurrence may be beyond the direct or indirect control of the non-performing Party.
- 29.4 To enable the other Party to assess the validity, nature and extent of any claim of the occurrence of a Force Majeure Event, the Party claiming that a Force Majeure Event has occurred is required to disclose to the other Party all supporting documentation and information reasonably requested by the other Party to enable the other Party to undertake its own investigation into the alleged Force Majeure Event.
- 29.5 If either Party is prevented from, or delayed in performing any of its obligations under these Standard Trading Terms and Conditions as a consequence of a Force Majeure Event, such Party shall, to the extent so prevented or delayed by the Force Majeure Event, be relieved of the liability for the delay or failure to perform its obligations under these Standard Trading Terms and Conditions and the consequences of such delay or failure, provided that, if a Party is delayed in performing its obligations by a Force Majeure Event, it must immediately perform the relevant obligation as soon as it is able to do so.
- 29.6 If a Force Majeure Event occurs, the Party affected by the Force Majeure Event must take all reasonable steps to remedy the Force Majeure Event and to minimise the effect of such circumstances upon the performance of its obligations under these Standard Trading Terms and Conditions.
- 29.7 In the event that the period of the Force Majeure Event prevails longer than a period of one (1) month from date of commencement of the Force Majeure Event then, provided that the Parties have consulted with one another to evaluate any practical means of overcoming the effect of the

Force Majeure Event and what effect this may have on any tariff payable hereunder, and have failed to reach written agreement on such matters prior to the expiry of the one (1) month period mentioned above, the relevant commercial agreement/s concluded between the Parties shall terminate with immediate effect upon written notice from any one Party to the other, in light of the impossibility of performance of its obligations.

31 EQUALITY AND DIVERSITY

- 31.1 The Service Provider will 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.
- 31.2 Both Parties to this Agreement undertake that they will not, and shall ensure that its employees, agents and Subcontractors will not breach any applicable discrimination legislation and any amendments and re-enactments thereof.

32 NON-WAIVER

- 32.1 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.
- 32.2 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.

33 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.

34 DISPUTE RESOLUTION

- 37.1 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.
- 37.2 If the dispute has not been resolved by such negotiation, either of the Parties may refer the dispute to mediation by a mutually appointed mediator and notify the other Party accordingly, which proceedings shall be held in Durban.
- 37.3 In the event that the dispute cannot be resolved by employing the mechanisms set out in 37.1 and 37.2 above, such dispute shall be finally resolved by either party approaching a competent Court, for which purpose the parties irrevocably submit to the jurisdiction of High Court.
- 37.4 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 37.

37.5 This clause 37 is severable from the rest of this Agreement and shall remain in effect even if this Agreement is terminated for any reason.

37.6 This clause 37 shall not preclude either Party from seeking urgent relief in a court of appropriate jurisdiction, where grounds for urgency exist by way of interdict or mandamus pending finalisation of the dispute.

35 ADDRESSES FOR NOTICES

35.1 The Parties to this Agreement select the physical addresses 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, as may be, by written notice to the other:

a) **Transnet**

(i) For legal notices: Acting Chief Procurement Officer
Kingsmead Office Park
South Towers
Attention: Ms Thandi Sabelo

b) **The Service Provider**

(i) For legal notices:
.....
Attention:.....

35.2 Any notice shall be addressed to a Party at its physical address or delivered by hand.

35.3 Any notice shall be deemed to have been given:

a) if hand delivered, on the day of delivery

36 WHOLE AND ONLY AGREEMENT

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

36.2 The Parties hereby confirm that this Agreement replaces all other agreements which exist or may have existed in any form whatever between them, with regard to the subject matter dealt with in this Agreement, including any annexures, appendices, schedules or Work Order(s) appended hereto.

37 AMENDMENT AND CHANGE CONTROL

- 37.1 Any requirement for an amendment or change to this Agreement or to a Work Order shall only be valid if it is in writing, signed by both Parties and added to this Agreement as an addendum hereto.

38 GENERAL

38.1 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.

38.2 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 Service Provider and Transnet cannot reach agreement on the nature of the changes required or on modification of Fees, Deliverables, warranties, or other terms and conditions, this Agreement may be cancelled in accordance with clause 22.

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.

39 DATABASE OF RESTRICTED SUPPLIERS

- 39.1 The process of restriction is used to exclude a company/person from conducting future business with Transnet and other organs of state for a specified period. No Bid shall be awarded to a Bidder whose name (or any of its members, directors, partners or trustees) appear on the Register of Tender Defaulters kept by National Treasury, or who have been placed on National Treasury's List of Restricted Suppliers. Transnet reserves the right to withdraw an award, or cancel a contract concluded with a Bidder should it be established, at any time, that a bidder has been restricted with National Treasury by another government institution.
- 39.2 All the stipulations on Transnet's restriction process as laid down in Transnet's Supply Chain Policy and Procurement Procedures Manual are included herein by way of reference. Below follows a condensed summary of this restriction procedure.
- 39.3 On completion of the restriction procedure, Transnet will submit the restricted entity's details (including the identity number of the individuals and registration number of the entity) to National Treasury for placement on National Treasury's Database of Restricted Suppliers for the specified

period of exclusion. National Treasury will make the final decision on whether to restrict an entity from doing business with any organ of state for a period not exceeding 10 years and place the entity concerned on the Database of Restricted Suppliers published on its official website

39.4 The decision to restrict is based on one of the grounds for restriction. The standard of proof to commence the restriction process is whether a "*prima facie*" (i.e. on the face of it) case has been established.

39.5 Depending on the seriousness of the misconduct and the strategic importance of the Goods/Services, in addition to restricting a company/person from future business, Transnet may decide to terminate some or all existing contracts with the company/person as well.

39.6 A supplier or contractor to Transnet may not subcontract any portion of the contract to a restricted company.

39.7 Grounds for restriction include: If any person/Enterprise which has submitted a Bid, concluded a contract, or, in the capacity of agent or subcontractor, has been associated with such Bid or contract:

- a) Has, in bad faith, withdrawn such Bid after the advertised closing date and time for the receipt of Bids;
- b) has, after being notified of the acceptance of his Bid, failed or refused to sign a contract when called upon to do so in terms of any condition forming part of the bid documents;
- c) has carried out any contract resulting from such bid in an unsatisfactory manner or has breached any condition of the contract;
- d) has offered, promised or given a bribe in relation to the obtaining or execution of the contract;
- e) has acted in a fraudulent or improper manner or in bad faith towards Transnet or any Government Department or towards any public body, Enterprise or person;
- f) has made any incorrect statement in a certificate or other communication with regard to the Local Content of his Goods or his B-BBEE status and is unable to prove to the satisfaction of Transnet that:
 - (i) he made the statement in good faith honestly believing it to be correct; and
 - (ii) before making such statement he took all reasonable steps to satisfy himself of its correctness;
- g) has submitted false information regarding any other matter required in terms of the Preferential Procurement Regulations, 2017 issued in terms of the Preferential Procurement Policy Framework Act which will affect the evaluation of a Bid or where a Bidder has failed to declare any subcontracting arrangements;
- h) caused Transnet damage, or to incur costs in order to meet the contractor's requirements and which could not be recovered from the contractor;
- i) has litigated against Transnet in bad faith.

39.8 Transnet recognizes that trust and good faith are pivotal to its relationship with its suppliers/service providers. When a dispute arises between Transnet and its supplier/service

provider, the parties should use their best endeavours to resolve the dispute in an amicable manner, whenever possible. Litigation in bad faith negates the principles of trust and good faith on which commercial relationships are based. Accordingly, Transnet will not do business with a company that litigates against it in bad faith or is involved in any action that reflects bad faith on its part. Litigation in bad faith includes, but is not limited to the following instances:

- b) Vexatious proceedings. These are frivolous proceedings which have been instituted without proper grounds;
- c) Perjury. Where a supplier/service provider commits perjury either in giving evidence or on affidavit;
- d) Scurrilous allegations. Where a supplier/service provider makes allegations regarding a senior Transnet employee which are without a proper foundation, scandalous, abusive or defamatory.
- e) Abuse of court process. When a supplier/service provider abuses the court process in order to gain a competitive advantage during a bid process.

39.9 Where any person or Enterprise has been found guilty by a court of law, tribunal or other administrative body of a serious breach of any law, during the preceding 5 Years, such person/Enterprise may also be restricted. Serious breaches of the law would include but are not limited to corruption, fraud, theft, extortion, or contraventions of the Competition Act 89 of 1998 (e.g. collusive tendering). This process excludes minor convictions such as traffic offences or personal disagreements between parties which have no bearing on the business operations of the person or Enterprise.

43 PROPRIETARY RIGHTS LIABILITY

- 43.1 If any allegations should be made or any claim asserted against Transnet that ownership of, or any act or omission by Transnet in relation to Goods or any written material provided to Transnet relating to any Goods or pursuant to an Order being a violation or infringement of any third party's contractual, industrial, commercial or intellectual property rights including but not limited to any patent, registered design, design right, trade mark, copyright or service mark on any application thereof, the Supplier hereby indemnifies Transnet against and hold it harmless from any and all losses, liabilities, costs, claims, damages and expenses [including any legal fees] arising directly or indirectly from such allegation or claim provided that this indemnity shall not apply where the allegation or claim arises solely as a result of the Supplier following a design or process originated and furnished by Transnet.
- 43.2 The Supplier shall either:
- a) procure for Transnet the right to continue using the infringing Goods; or
 - b) modify or replace the Goods so that they become non-infringing,

provided that in both cases the Goods shall continue to meet Transnet's requirements and any specifications stipulated in the Order. Should neither option be possible, the Supplier may remove, with Transnet's prior written consent, such Goods and will pay to Transnet a sum equivalent to the purchase price. If Transnet refuses to give such consent, the Supplier shall have no liability in respect of any continued use of the infringing Goods after Supplier's prior written request to remove the same.

44 PROPRIETARY INFORMATION

All information which Transnet has divulged or may divulge to the Supplier and any information relating to Transnet's business which may have come into the Supplier's possession whilst carrying out an Order, and the existence of the Order, shall be treated by the Supplier as confidential information and shall not, without Transnet's prior written consent, be disclosed to any third party, or be used or copied for any purposes other than to perform the Order. This clause does not apply to information which is public knowledge or available from other sources other than by breach of this Term. Upon request by Transnet, the Supplier shall return all materials issued pursuant to the Order and, pending this, shall protect Transnet's rights in any such materials. Such confidential information shall at all material times be the property of Transnet.

45 DEVELOPMENT WORK IN THE PRODUCTION OF GOODS

If the production or provision of any Goods involves research and/or development which are wholly or partly funded by Transnet, then all intellectual property or other rights as a result thereof shall be the property of Transnet on creation.

46 PUBLICITY

The Supplier shall not name Transnet or use its trademarks, service marks [whether registered or not] or Goods in connection with any publicity without Transnet's prior written consent.

47 ACCESS

The Supplier shall be liable for the acts, omissions and defaults of its personnel or agents who, for the purposes of the Order, shall be treated as if they are the Supplier's employees. The Supplier shall ensure that any such personnel or agents, whilst on Transnet's premises, shall comply with Transnet's health and safety, security and system security rules and procedures as and where required.

48 INSOLVENCY

If the Supplier shall have a receiver, manager, administrator, liquidator or like person appointed over all or any part of its assets or if the Supplier compounds with its creditors or passes a resolution for the writing up

or administration of the Supplier, Transnet is at liberty to terminate the Order or Orders forthwith, or at its option, to seek performance by any such appointed person.

49 DEVELOPMENT WORK IN THE PRODUCTION OF GOODS

If the production or provision of any Goods involves research and/or development which are wholly or partly funded by Transnet, then all intellectual property or other rights as a result thereof shall be the property of Transnet on creation.

50 ANTI CORRUPTION

- 50.1. In the event that the service provider is alleged to be involved in any corrupt, unlawful or illegal activities, or is being investigated for any alleged corrupt, unlawful or illegal activity in relation to Transnet or any other party with whom the service provider does business, or if Transnet learns that:
- a) Improper payments are being or have been made or offered to Transnet officials or any other person by the service provider or those acting on behalf of the service provider with respect to the Services;
 - b) or the supplier or those acting on behalf of the service provider has accepted any payment or benefit, regardless of value, as an improper inducement to award, obtain or retain business or otherwise gain or grant an improper business advantage from or to any other person or entity; then
- 50.2. Transnet reserves the right to terminate, by giving immediate written notice to that effect, all or any Agreements it may have with the service provider or any and all Awards made to the service provider for breach of this clause. Further, in the event of such termination, the service provider shall not be entitled to any further payment, regardless of any activities undertaken or agreements with additional third parties entered into by the service provider prior to such termination, and the service provider shall be liable to Transnet for any actual damages or remedies as provided either in the Agreement that is to be signed or in law.

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:

SCHEDULE 1: Scope of Services

THE PROVISION OF A FULL MAINTENANCE LEASE OF MATERIALS HANDLING EQUIPMENT FOR TRANSNET SOC LTD (REG. NO 1990/000900/30) OPERATING AS TRANSNET PORT TERMINALS AT THE PORT OF RICHARDS BAY TERMINALS FOR A PERIOD OF THREE (3) YEARS.

With reference to the Master Agreement, Reference Number iCLM HQ 628/TPT [the **Agreement**] between Transnet SOC Ltd operating as Transnet Port Terminals [TPT] and [the **Supplier**] pursuant to which the Supplier has agreed to lease equipment to TPT, subject to such Agreement, the defined terms in the Master Agreement will, unless otherwise indicated, have the same meaning in this Schedule 1.

In consideration of the mutual covenant and agreements contained in the Agreement and in this Schedule 1, it is agreed as follows:

1 DESCRIPTION OF THE GOODS

1.1 The scope of the Goods to be supplied is described more fully in the Annexures and Schedules referred to below:

- Annexure C – Price Schedule
- Annexure A – Scope of Work

- Annexure B - Subcontract agreement

- Schedule 2 – Confidentiality Agreement
- Schedule 3 – Notices
- Schedule 4 - S37 (2) OHSA Agreement

2 REPRESENTATIVE'S

TPT	.....
Designation	.....
Operating Division	.....
Address	..........
Cell Phone	.....
Telephone	.....

Fax	.....
Email	.....

Supplier	.....
Designation	.....
Address	..........
Cell Phone	.....
Telephone	.....
Fax	.....
Email	.....

3 ACCEPTANCE CRITERIA FOR DELIVERABLES

3.1 TPT's Representative or his/her nominated delegate will sign off the authorisation approval for Deliverables as detailed above maintain a minimum an overall service level score (to be agreed with the Supplier at the first service level meeting) for each month. Failure of the Supplier to achieve this agreed service level score, gives TPT the right to either cancel the Agreement in whole without penalty, giving thirty (30) days written notice of its intention to do so and/or; impose a 5% (ten percent) on the invoiced amount dues to the Supplier for the month

4 FEES AND DISBURSEMENTS

4.1 The Supplier hereby agrees to perform the service for the term of the agreement as per the Pricing Schedule (Annexure C).

5. BUSINESS CONTINUITY PLAN

- 5.1 The Supplier hereby agrees that it will ensure that it has adequate business continuity measures in place to avoid a disruption and mitigate risk to this Agreement in the event of an unforeseen incident.
- 5.2 In the event of an incident taking place which invokes TPT's Business Continuity Plan, the Supplier will implement its measures referred to in clause 5.1 above.
- 5.3 Implementation of the Supplier's Business Continuity measures will be more fully described in the SLA and monitored accordingly. The service provider will be required to implement the measures as indicated in the business continuity plan submitted as part of the bid under the technical evaluation criteria.

6. PENALTIES

6.1 TPT shall be entitled to impose/levy penalties upon the Supplier in the event that the Supplier does not comply with the quality standards and requirements stipulated in this Agreement. TPT shall be entitled to deduct such penalties from the monthly amount due to the Supplier by TPT. The Supplier agrees to the imposition of such penalties and authorises TPT to apply set-off as is contemplated in this clause 6.1.

6.2 Notwithstanding the provision of this penalty clause, TPT shall not:-

6.2.1 be precluded from exercising its right to terminate the Agreement; and/or

6.2.2 be stopped from claiming damages from the Supplier, should damages be suffered by TPT or any third party (who claims from TPT) as a result of any conduct or failure on the part of the Supplier or any of its employees arising out of a breach by the Supplier of this Agreement; and/or

6.2.3 be in anyway prevented from exercising any or all of its rights in terms of the Agreement

6.3 The following penalties shall be levied upon the Supplier for non-compliance by the Supplier of its specified obligations as set out below:

6.3.1 The Supplier guarantees that it will achieve an 80% service level on the following measures. If the supplier does not achieve this level per month, Transnet will withhold 10% (ten percent) of the invoiced amount.

- (a) The lease of equipment, as per Annexure A;
- (b) Compliance with the agreed lead time for the lease of Equipment;
- (c) Regular meetings with TPT Supply Chain Management Department
- (d) Excessive equipment breakdowns

Notwithstanding any other provision of this Agreement, the total penalty deduction per month shall be limited to a maximum of 5% (five percent) of the monthly contract value which may become payable to TPT by the Service Provider.

Any penalty imposed in terms of this clause 6 shall be set-off against the invoiced (vatable) amount (as declared in the Supplier's Tax Invoice) to which the penalty has attached, and the VAT payable by TPT to the Supplier shall be calculated on the invoiced amount, less the service-related penalty imposed.

7. COMPLIANCE TO LABOUR AND ENVIRONMENTAL LAWS

7.1 The Supplier shall comply with the following requirements from TPT with regard to labour and environmental laws:

- 7.1.1 The Supplier shall not permit any persons who are or who appear to be under the influence of intoxicating substances to enter or remain at the workplace;
- 7.1.2 No person at the workplace shall, be under the influence of, have in his or her possession or partake or offer any other person intoxicating substances;
- 7.2 Fuel and oil spillage shall be cleared by the Supplier in accordance with Environmental requirements, within 24 hours.
- Should the Supplier fail to do so, TPT shall appoint an appropriate organisation to do so, and the cost shall be transferred to the Supplier.
- 7.3 In the Event that the Supplier fails to comply with all applicable environmental legislation, the Supplier shall be liable for and bear all costs of making good any damage or harm caused by it to any person, area within the Terminal, public road, path or street, private or third party property, environment including but not limited to fauna and flora. The Supplier indemnifies TPT in respect of any damage or harm caused by the Supplier

8. CONTINUOUS IMPROVEMENT

- 8.1 The Supplier shall immediately advise TPT of any decision taken to discontinue or in any way change the provision of any services stipulated in this Agreement.
- 8.2 The Parties will jointly and continually investigate and search for opportunities to improve on specifications, technology, procedures and management of the services supplied in order to reduce TPT's overall costs.
- 8.3 The representative(s) of the Supplier as well as the TPT Commercial Specialist and other identified TPT Staff shall conduct regular meetings. Such meetings will be scheduled by the TPT Commercial Specialist where, amongst others, the following aspects shall be addressed:
- 8.3.1 problem solving and generating of savings ideas for implementation to reduce the total cost of the provision of this service as well as other services relating thereto;
- 8.3.2 considering and/or developing of savings ideas for implementation and specific reports submitted by either Party on aspects related to the operation, application, and management of the services as provided for in this Agreement;
- 8.3.3 discussion of all current aspects relating to the Agreement between the Parties. To this end the Parties in general undertake to take all steps to enhance the relationship between the Parties;
- 8.3.4 identification of cost saving and efficiency improvement opportunities, maintenance applications and operational practices;

- 8.3.5 development of initiative proposals;
 - 8.3.6 obtaining buy-in from all users/stakeholders;
 - 8.3.7 implementation of cost savings initiatives / action plans;
 - 8.3.8 continuous measuring and benchmarking;
 - 8.3.9 quantification of savings (impact and cost);
 - 8.3.10 correction of deviations; and
- 8.4 Discussion of demand tendencies and fluctuations. The meeting shall be coordinated by TPT and TPT shall keep proper minutes of the proceedings.
- 8.5 In the event of any disagreement between the Parties, the matter shall be dealt with in terms of the dispute resolution mechanisms as provided for in the Master Agreement.
- 8.6 The meeting type and frequency will be as follows:
- 8.6.1 Monthly meetings (and extended members where needed) with a set agenda to address continuous improvement issues as indicated herein.
 - 8.6.2 Monthly technical meetings at TPT's facilities, between the representatives from each Party.
- 8.7 The Parties agree that in the event that scope of work / price needs to be amended due to the outcomes of the above-mentioned program or for any other reason, a formal amendment to the Agreement will be reduced to writing to formalise such changes.

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

SIGNED for and on behalf of:	SIGNED for and on behalf of: Transnet SOC Ltd operating as Transnet Port Terminals
Signature	Signature
Name:	Name:
Position:	Position:
Date:	Date:
Place:	Place:

SCHEDULE 2 – Confidentiality Agreement

I [*name*]
of [*address*]
.....
.....
.....

Undertake to Transnet SOC Ltd [**Transnet**] that:

I shall keep confidential and not disclose to or make available to any third party, except with the express prior written consent of Transnet, any Confidential Information relating to Transnet's business, assets, customers or staff which is disclosed to me or to which I may have access during the course of providing services to Transnet [**my assignment**]; and upon termination of my assignment, I shall return to Transnet all documents, books, discs, tapes or other records [in whatever medium] which I may have in my possession, custody or control and which are the property of Transnet, its customers, staff or agents and any copies thereof.

For the purposes of this Confidentiality Agreement, **Confidential Information** shall mean any information in whatever form including, without limitation, any information relating to systems, operations, plans, intentions, market opportunities, know-how, trade secrets and business affairs of the Transnet Group or its customers, whether in writing, conveyed orally or by machine-readable medium.

I understand that this Confidentiality Agreement shall survive the termination of my assignment.

SIGNED at _____ on _____ 20__

[*Signature*]

in the presence of:

Witness name:

Witness Signature:

SCHEDULE 3 – Notices

Any notice or communications between the Parties to be given under this Agreement shall be deemed to have been received at the following times:

- (i) by hand or physical delivery - immediately upon receipt by the recipient.

Any notice or communications between the Parties shall be delivered to the addresses set out below:

NOTICES

The Service Provider	TPT
<u>Addressee:</u>	<u>Addressee:</u> Transnet SOC Ltd Operating as Transnet Port Terminals Attention: Chief Procurement Officer
<u>Physical Address:</u>	<u>Physical Address:</u> Kingsmead Office Park Stalwart Simelane Street South Tower – Supply Chain Management Durban 4001

Either Party may, by a notice given in accordance with this Schedule 3, change its address for the purpose of this Schedule 3.

SCHEDULE 4 – OHS ACT SECTION 37(2) OHS Agreement

ARRANGEMENTS AND PROCEDURES FOR CONTRACTORS ON THE PREMISES

INTRODUCTION

OCCUPATIONAL HEALTH AND SAFETY ACT 85 OF 1993 AND ITS REGULATIONS

In terms of Section 37(2) of the Occupational Health and Safety Act 85 of 1993 and its regulations, henceforth referred to as the OHS Act, the provision of Section 37(1) of the same act apply to the Service Provider henceforth referred to as the Service Provider, in as far as, Transnet Port Terminals (TPT) shall not be responsible or liable for the actions or inaction's whatsoever in contravention of the OHS Act taken by the employees of the contractor, in the fulfilment of the Agreement undertaken by the Service Provider.

As an **employer in your own right**, you, the Service Provider are obliged to comply with all the provisions of the OHS Act while on the premises of TPT, you shall also be required to comply with the conditions and safety procedures of TPT

TPT hereby reserves the right to cause all work undertaken by the Service Provider, that is in contravention of the OHS Act and that has come to the attention of TPT to cease, until satisfied that such contravention has been rectified. Non-compliance to TPT arrangements and procedures will adversely affect future contracts, while serious non-compliance may lead to immediate expulsion from the premises.

REQUIREMENTS, ARRANGEMENTS AND PROCEDURES FOR SERVICE PROVIDERS

It is a condition of this contract that your employees, and any sub-contractors, be covered in terms of the Compensation for Occupational Injuries and diseases Act 130 of 1993 as amended. A copy of good standing with the Compensation Commissioner shall be attached to the signed copy of this legal document. Furthermore, the Service Provider or sub-contractor certifies that such cover will not expire during the execution of the task nor wills the contractor become in arrears with any payment due to the Commissioner or any other documentation required by the Commissioner.

The Service provider furthermore agrees to the following health and safety rules of TPT:

- The Service Provider shall have available a copy of the OHS Act on request.
- Any Service Provider with more than five employees at any time on the premises shall have available a first aid box for prompt first aid.
- Any Service Provider with ten or more employees shall have at least one competent and valid first aider on the premises at their workplace. Should there be fifty or more employees on the premises a further first aider for every fifty employees or part thereof shall be available.
- Any Service Provider with less than ten employees on the premises shall ensure that such employees are made conversant with the first-aider at their workplace.
- The Service Provider shall keep up to date and available for inspection all applicable legally required registers.
- The Service Provider shall make himself and his employees conversant with TPT emergency and evacuation procedures.
- The Service Provider shall not misuse anything, which is supplied in the interest of health and safety.
- The contractor shall adhere to all Transnet Port Terminal (TPT) safe working procedures.
- The Service Provider shall be subject to the health and safety and security rules of TPT.
- No intoxicating drugs or liquor will be consumed on or brought onto the premises and no person under the influence or who appears to be under the influence will be permitted to come onto or remain on the premises or at a workplace.
- The Service Provider shall report all health and safety incidents involving its employees to TPT SHEQ immediately
- The Service Provider shall conduct joint investigations of health and safety incidents involving its employees with TPT
- The Service Provider shall provide TPT with medical certificates indicating that its employees are fit for work

INDEMNIFICATION

The Service Provider hereby certifies that all contracting workmen recognize the inherent hazards that exist on the premises of TPT and that the Service Provider:

- Enters the property entirely at his/her own risk and therefore the Service Provider waives any claim of whatsoever nature against TPT its employees, agents and/or mandatory in respect of any loss, damage and/or injury whether same is the result of any negligent act or omission on the part of TPT its employees, agents and/or mandatory or other independent contractors or by a third person or by way of defective equipment or materials supplied by the company, and further the Service Provider;
- Hereby indemnifies TPT, its employees, agents and/or mandatory against any claims from the Service Provider's employees and/or from any other person, arising and being caused in the manner set out above.

I, (Mbuso Thabethe) on behalf of the Service Provider, do hereby declare that my company (Dunlop Industrial Africa (Pty) Ltd) acknowledge having read and understood the conditions contained in this legal document and furthermore, our employees agree to abide by these conditions.

_____ NAME OF AUTHORIZED PERSON	_____ DATE
_____ NAME OF Service Provider's COMPANY	_____ DATE
_____ SIGNATURE OF AUTHORIZED PERSON	_____ DATE
_____ WITNESS 1	_____ DATE
_____ WITNESS 2	_____ DATE

ANNEXURE H - SERVICE LEVEL AGREEMENT - THE PROVISION OF A FULL MAINTENANCE LEASE OF MATERIALS HANDLING EQUIPMENT FOR TRANSNET SOC LTD (REG. NO 1990/00900/30) OPERATING AS TRANSNET PORT TERMINALS AT THE PORT OF RICHARDS BAY TERMINALS FOR A PERIOD OF THREE (3) YEARS

No.	PARTY	WHEN	FREQUENCY	KPI	MEASUREMENT	COMMUNICATION MODE / FORMAT	SENT TO	MEASUREMENT		COMMENTS	
								WEIGHT	MONTHLY RATING		
2	Health, Safety & Environmental Requirements	a) Ensure that all equipment operating within TPT RCB complies with Road Operations and Port Authority Safety and Environmental Regulations	Operation start date	Throughout the lease agreement period	Safety reports, safety briefing, risk assessment minutes reports	Safety Reports, Fleet Safety Assessment reports	Email	TPT	Eligibility	Compliant/Not Compliant	Non compliance will result in stop certificate, seize operation, and may lead to termination of contract
		b) The contractor to ensure equipment is uniquely marked to ensure it is easily identifiable	On arrival to TPT site	Ongoing	Clearly identifiable branding	Name and equipment number to be clearly visible on each piece of equipment at all times	list of all equipment to be included in Annexure A to the Master Agreement	TPT			Non compliance will result in stop certificate, seize operation, and may lead to termination of contract
		c) Contractor and TPT to ensure a equipment movement sheet to be developed and Standard Operating Procedure on asset movement in and out of the terminal. All movement of equipment either in or out of the terminal is to be signed out and signed in by the operations supervisor on shift and handed to security on either exit or entry to the terminal	Equipment movement sheet to be developed within 30 days of signature of the Master Agreement	Each time equipment is moved into or out of the terminal	Log of equipment movement to be kept by operations on site and filed by the contracts manager	Equipment movement log		TPT and Contractor			Non compliance will result in stop certificate, seize operation, and may lead to termination of contract
		d) Contractor to provide two (2) sets of keys for each piece of equipment supplied to TPT. TPT shall ensure that both sets of keys are kept in a lockable cabinet with an access control procedure put in place	On delivery of equipment	Ongoing	Access control procedure and equipment allocation procedure to be completed with at all times	Compliance with access control procedures and equipment allocation procedure to be completed with and assessed by contracts manager	SLA reports	TPT & Contractor			Non compliance will result in stop certificate, seize operation, and may lead to termination of contract
		e) Ensure all Contractor technicians and all other personnel on TPT site are inducted and fit to be exposed and work at TPT RCB Premises	Prior to site visit	Annually as per training procedure	Safety reports	100% number of employees inducted and fit to work at TPT premises vs. total number of actual employees for the job	N/A	N/A			No operator or employee shall start work without induction.
3	Maintenance (10% weight)	a) Contractor to generate a checklist of maintenance tasks, based on the specific requirements of each piece of equipment on TPT's site.	Acquisition date of Equipment	Once off	Maintenance task report	Available Maintenance Checklist vs. Required Maintenance Checklist	N/A		3%		
		b) Contractor to generate a maintenance plan as to when these tasks should be performed which is to be agreed with TPT engineering manager and signed off.	After every inspection report review	Contractor scheduled maintenance plan	Maintenance task report	Available Maintenance Checklist vs. Required Maintenance Checklist	N/A		2%		
		c) A contractor to generate a convenient system or checklist for operators to record inspection details and possible complaints about the equipment	Prior to commencement of operation	Once off	Maintenance task report	Available Maintenance Checklist vs. Required Maintenance Checklist	N/A		3%		
		d) Operators to conduct daily inspection according to check list and any possible fault. Operators to record any complaint regarding the equipment	Per shift	Every shift	Number of shift per month vs. checklist conducted	%checked documents submitted/number of operational shifts per month	Email/Hard Copy submission/collection		2%		
		e) Contractor to carry out Planned Maintenance on all equipment leased to TPT in their premises following the approved book-out procedure by TPT material handling fleet manager. Contractor to ensure that planned maintenance does not interrupt business planned operation. Maintenance reports to be provided to TPT Project Manager on a monthly basis.	OEM/Contractor scheduled/planned maintenance periods	OEM/Contractor scheduled maintenance periods	Planned maintenance percentage	% time of planned maintenance activities carried out/unplanned maintenance activities carried out (breakdown/corrective actions)	Email/Hard Copy submission/collection	TPT and contractor fleet and maintenance managers	5%		Breakdowns affects operations KPI, compliance to equipment delivery can lead to contract termination
		f) Contractor shall keep spares of all critical components on site to ensure breakdowns are dealt with within the turnaround time allowed.	At the beginning of the contract	As in and when required	Unplanned maintenance percentage	% ratio of time of unplanned maintenance activities carried out/ Estimated time (Any value estimated to be above needs a redundancy)	Email/Hard Copy submission/collection		5%		
		g) Contractor shall attend to all equipment leased to TPT, incidents or accidents reported cases immediately, assess the equipment and the extent of damage, recommend whether the equipment can be used for operation, subject to maintenance less than 2 hours or a redundancy plan needs to be put in place. Contractor to ensure that all incident and accident related issues shall be dealt with as so to minimise down time, and ensure that business operation resumes as soon as possible.	When required to do so	As in and when required	downtime of incident and corrective action.	% downtime/allowable time downtime (2 hours allowable down time)	Email/Hard Copy submission/collection		5%		
		h) Contractor shall carry the responsibility of removal of any equipment leased to TPT in a case where failure has caused total shutdown of the equipment at maximum reasonable time of 2 hours	When required to do so	As in and when required	Min-time between incident and corrective action	% downtime/allowable time downtime (2 hours allowable down time)	Email/Hard Copy submission/collection		5%		
		i) Contractor to ensure that all TPT operators are trained and certified on the operation of each type of equipment supplied to TPT. Certificates of competence is to be provided to TPT	Training to be undertaken within the first month of the effective date of the Master Agreement	Refresher training on request by TPT	Training competency certificates	No accidents and incidents and damage to equipment	Provide copy of competency certificates to TPT contracts manager	Contractor training manager/personnel and TPT contracts manager	2%		
		j) Contractor in consultation with TPT to generate overall effectiveness report of each piece of equipment and total effectiveness of the entire fleet. Reports shall be compared by material handling manager.	Commencement of operation	Monthly	Availability, Reliability, and Performance	% Availability x Reliability x Performance	Email/Hard Copy submission/collection	Operations Manager	3%		
4	Damage & Claims (8% weight)	a) Report any accidents and notifiable incident on or to the equipment to the Contractor.	Immediately	As in and when required	Timely notification of details of damages and/or incidents	100% notification of damages and incidents	E-Mail	TPT Fleet Manager	2%		Failure to adhere to claims process may result in reputation
		b) Provide Damage Report within forty eight (48) hours of incident.	As per claims procedure	As and when required	Timely notification of details of damages and/or loss and countermeasures	100% accuracy and details pertaining damage	E-Mail / Text	Material Handling Contracts Manager	2%		
		c) Provide written notification of claims within twenty four (24) hours of the incident and within 30 days of the claim being lodged.	As per claims procedure	Monthly	Accurate Measuring of the damage ratio	100% accuracy and details pertaining damage ratio	E-Mail / Text	Service Provider - Claims Dept.	4%		
5	Planning (10% weight)	a) Schedule and ensure attendance of Service Provider at all Pre-Plan meetings, as and when required	Per Shift	for every shift	Availability vs. Planned Actuals	%Planned/Available & %Actual/Planned per shift	Fax/Email		5%		Abuse of adhoc may lead to contract termination
		b) For additional adhoc equipment, ensure the compliance to SOP	Per Shift	for every shift	Availability vs. Planned Actuals	%Planned/Available & %Actual/Planned per shift	Fax/Email	Contractor and Terminal operations planning team	5%		
6	Compliance Requirements (10% weight)	a) Risk and Safety Management - Safety and risk management programs to be conducted to reduce accidents, avoiding fines, higher insurance costs and legal fees. Proper repository must be created to contain essential details about drivers and particular equipment assigned to them. Accuracy collate and report on near incident misses and other incidents which can support compliance by creating awareness and create an opportunity to review risk management and safety programs.	Start of each shift	Every shift	Risk meetings minutes, safety tasks reports	quantity of reports submitted/ number of shifts per month	E-Mail and/or Hand delivery	Material Handling Contracts Manager	3%		
		b) Fleet and Maintenance - Any equipment leased to TPT for business operation purposes must be properly inspected and maintained regularly. Service team to adhere to maintenance schedules and required replacement parts or spares.	Planned Maintenance period	OEM/Contractor scheduled maintenance periods	Availability, Reliability, and Performance	% Availability x Reliability x Performance	E-Mail and/or Hand delivery	TPT Fleet Manager	2%		
		c) Drivers and Operators - Any employee who operates a vehicle or equipment for business (TPT RCB) purposes must be trained, certified and in good health. They also need to have a valid license and relevant driver training for the type of vehicle or equipment they are operating. Drivers or operators are required to comply with agreed company routes plans and work schedules to minimise risk and lower fuel costs unless otherwise stated.	At the inception of the contract	All the time	Risk - Non conformance issued	Risk - Non conformance issued	Safety Reports	Safety manager	1%		
		d) The Contractor shall ensure that they have a business continuity plan in place to be completed to TPT on signature of the Agreement. The plan must ensure the following: i. Technicians are to be on site 24/7 ii. Equipment breakdowns are resolved within 2 hours, failing which replacement equipment is to be provided to ensure continuous operation iii. As soon as TPT reports a breakdown the Contractor's technicians are expected to respond within a period of 30 mins failing which a non-conformance is to be issued	At the inception of the contract	All the time	Nil - Non conformance issued ii - Non conformance issued i. equipment availability at all times ii. Meeting of KPIs	Meeting of business targets	Performance reports	Terminal manager and General Manager	3%		
7	Reporting (10% weight)	a) Provide reports on downtime of equipment	Per shift	Ongoing	Reporting of all non-performance issues regarding individual performance or Equipment failure	Planned vs. Actuals, delays and resolutions	E-Mail/Fax	Material Handling Contracts Manager	3%		
		b) Report Fuel Expenditure	Per shift	Daily	total fuel consumption vs. actual	% of actual fuel cost vs. Rated	E-Mail/Fax/Hand over	Material Contracts Handling Manager	3%		
		c) Report any potential damage or fault noticed on the equipment	Per shift	As in and when required	Asset care management	%checked documents submitted/number of operational shifts per month		TPT Fleet Manager	3%		
8	Subcontractor (10% weight)	a) Provide feedback of disciplinary action and/or Corrective measures taken	5 days after reported date	Ongoing	Feedback reports on corrective action taken	100% feedback reports	E-Mail/Fax	Material Contracts Handling Manager	3%		
		b) Ensure information is provided to ensure supplier development commitments are adhered to	SLA Meeting	Monthly	Service Provider to ensure that the supplier development commitments are adhered to	100% adherence	Email	Procurement	3%		
9	Insurance (5%)	a) The Contractor to ensure it has comprehensive All Risk Asset Insurance in place for the duration of the contract to cover damage to equipment	Certificate of insurance to be provided to the Project Manager within 30 days of signature of the Master Agreement	Insurance to be in place for the duration of the contract	Insurance to be in place for the duration of the contract	100% adherence	renewed annually	Project Manager	5%		
		b) The Contractor to ensure it has third party general liability insurance in place for the duration of the contract to cover any third party damages	Certificate of insurance to be provided to the Project Manager within 30 days of signature of the Master Agreement	Insurance to be in place for the duration of the contract	Insurance to be in place for the duration of the contract	100% adherence	renewed annually	Project Manager	5%		
10	Cleaning of equipment (5%)	a) TPT operators are to ensure that equipment is cleaned before removal of the different commodities	with movement of the different commodities	with movement of the different commodities	prevention of contamination	100% adherence	SOP adherence	Overseen by risk and compliance but day to day management by operations manager	7%		
		b) Invoice TPT and submit with supporting documentation for all approved works covered	30 days	Monthly or After Delivery of Services	Submit accurate invoice(s) with clear item details, and supporting documentation. Provide a monthly statement to reflect all payments made and outstanding	100% on time submission of invoices with accurate and reconciled supporting documents. Monthly statement to support invoices.	Monthly statement and hard copy of invoice(s) with supporting documentation hand delivered monthly.	Relevant Finance Department	3%		
11	Invoicing and Payments (10% weight)	a) Receive and check documentation, arrange electronic payment, and TPT Finance to advise Service Provider via remittance advice of payment details.	Documents submitted during the month will be paid 30 days from date of payment.	Monthly or After Delivery of Services	Authorization of invoices for payment within 30 days.	Monthly statement to confirm payment of invoices.	Telephonic and e-mail to facilitate payment queries.	Service Providers Finance Dept.			
		Legends :	1 = Poor	2 = Not Acceptable	3 = Acceptable	4 = Excellent			100%	100%	

SERVICE LEVEL AGREEMENT - REVIEW OF MEASUREMENT

Between TPT (the Client) and Xxxxxxxx (the Service Provider)



The purpose of this SLA team is to manage the contract per terminal and to report all findings on a monthly basis

Summary of the supply service level agreement

Chairperson: Xxxxxx Xxxxxx Telephone : 021 449 xxxx E-mail : XXXXXXXXXX

2012

SERVICE	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar
Date of Meeting												
1 Planning												
2 Delivery												
3 Invoicing & Payments												
4 Reporting												
5 Documentation												
6 Training												
7 Damage & Claims												
SERVICE AGGREGATE (%)												

SERVICE LEVEL ACCEPTANCE GUIDE

<65% Not Acceptable **>65%** Room for improvement **>85%** Acceptable **100%** Excellent

ACTIONS TO IMPROVE THE SERVICE

No	What should be improved?	How do we improve it?	By whom?	By when?	Rate
1					
2					

DISTRIBUTION	
TPT	
Service Provider:	
Additional / CC	

ANNEXURE I: SUPPLIER DECLARATION FORM

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

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

General Terms and Conditions:

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

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

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

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

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

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

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

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

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

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

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

Supplier Declaration Form

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

CSD Number (MAAA xxxxxx):

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

Did your company previously operate under another name?

Yes

No

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

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

Your Current Company's VAT Registration Status

VAT Registration Number

If **Exempted from VAT registration**, state reason and submit proof from SARS in confirming the exemption status

If your business entity is not VAT Registered, please submit a current original sworn affidavit (see example in Appendix I). Your Non VAT Registration must be confirmed annually.

Company Banking Details		Bank Name
Universal Branch Code		Bank Account Number

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

Company Contact Person Name	
Designation	
Telephone	
Email	

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

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

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

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

Name		Designation	
Signature		Date	

Stamp And Signature Of Commissioner Of Oaths

Name		Date	
Signature		Telephone No	

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

Affidavit or Solemn Declaration

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

Signature: _____

Designation: _____

Date: _____

Commissioner of Oaths

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

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

Commissioner of Oaths

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

Affidavit or Solemn Declaration

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

Signature: _____

Designation: _____

Date: _____

Commissioner of Oaths

Thus signed and sworn to before me at _____ on this the _____ day of ____
_____ 20_____,

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

Commissioner of Oaths

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

SWORN AFFIDAVIT – B-BBEE EXEMPTED MICRO ENTERPRISE

I, the undersigned,

Full Name & Surname	
Identity Number	

Hereby declare under oath as follows:

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

Enterprise Name	
Trading Name	
Registration Number	
Enterprise Address	

3. I hereby declare under oath that:

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

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

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

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

Deponent Signature: _____

Date: _____

**Commissioner of Oaths
Signature & stamp**

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

SWORN AFFIDAVIT – B-BBEE QUALIFYING SMALL ENTERPRISE

I, the undersigned,

Full Name & Surname	
Identity Number	

Hereby declare under oath as follows:

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

Enterprise Name	
Trading Name	
Registration Number	
Enterprise Address	

3. I hereby declare under oath that:

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

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

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

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

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

Deponent Signature: _____

Date: _____

**Commissioner of Oaths
Signature & stamp**



ANNEXURE J: TRANSNET SUPPLIER INTEGRITY PACT

Important Note: All potential bidders must read this document and certify in the RFP Declaration Form that they have acquainted themselves with, and agree with the content. The contract with the successful bidder will automatically incorporate this Integrity Pact as part of the final concluded contract.

INTEGRITY PACT

Between

TRANSNET SOC LTD

Registration Number: 1990/000900/30

("Transnet")

And The Bidder / Supplier/ Service Provider / Contractor (hereinafter referred to as the "Bidder / Supplier")

PREAMBLE

Transnet values full compliance with all relevant laws and regulations, ethical standards and the principles of economical use of resources, fairness and transparency in its relations with its Bidders / Suppliers.

In order to achieve these goals, Transnet and the Bidder / Supplier hereby enter into this agreement hereinafter referred to as the "Integrity Pact" which will form part of the Bidder's / Supplier's application for registration with Transnet as a vendor.

The general purpose of this Integrity Pact is to agree on avoiding all forms of dishonesty, fraud and corruption by following a system that is fair, transparent and free from any undue influence prior to, during and subsequent to the currency of any procurement and / or reverse logistics event and any further contract to be entered into between the Parties, relating to such event.

All Bidders / Suppliers will be required to sign and comply with undertakings contained in this Integrity Pact, should they want to be registered as a Transnet vendor.

1 OBJECTIVES

- 1.1 Transnet and the Bidder / Supplier agree to enter into this Integrity Pact, to avoid all forms of dishonesty, fraud and corruption including practices that are anti-competitive in nature, negotiations made in bad faith and under-pricing by following a system that is fair, transparent and free from any influence / unprejudiced dealings prior to, during and subsequent to the currency of the contract to be entered into with a view to:
 - a) Enable Transnet to obtain the desired contract at a reasonable and competitive price in conformity to the defined specifications of the works, goods and services; and
 - b) Enable Bidders / Suppliers to abstain from bribing or participating in any corrupt practice in order to secure the contract.

2 COMMITMENTS OF TRANSNET

Transnet commits to take all measures necessary to prevent dishonesty, fraud and corruption and to observe the following principles:

- 2.1 Transnet hereby undertakes that no employee of Transnet connected directly or indirectly with the sourcing event and ensuing contract, will demand, take a promise for or accept directly or through intermediaries any bribe, consideration, gift, reward, favour or any material or immaterial benefit or any other advantage from the Bidder, either for themselves or for any person, organisation or third party related to the contract in exchange for an advantage in the bidding process, bid evaluation, contracting or implementation process related to any contract.
- 2.2 Transnet will, during the registration and bidding process treat all Bidders / Suppliers with equity, transparency and fairness. Transnet will in particular, before and during the registration process, provide to all Bidders / Suppliers the same information and will not provide to any Bidders / Suppliers confidential / additional information through which the Bidders / Suppliers could obtain an advantage in relation to any bidding process.
- 2.3 Transnet further confirms that its employees will not favour any prospective bidder in any form that could afford an undue advantage to a particular bidder during the tendering

stage, and will further treat all Bidders / Supplier participating in the bidding process in a fair manner.

- 2.4 Transnet will exclude from the bidding process such employees who have any personal interest in the Bidders / Suppliers participating in the bidding process.

3 OBLIGATIONS OF THE BIDDER / SUPPLIER

- 3.1 The Bidder / Supplier commits itself to take all measures necessary to prevent corrupt practices, unfair means and illegal activities during any stage of its bid or during any ensuing contract stage in order to secure the contract or in furtherance to secure it and in particular the Bidder / Supplier commits to the following:

- a) The Bidder / Supplier will not, directly or through any other person or firm, offer, promise or give to Transnet or to any of Transnet's employees involved in the bidding process or to any third person any material or other benefit or payment, in order to obtain in exchange an advantage during the bidding process; and
- b) The Bidder / Supplier will not offer, directly or through intermediaries, any bribe, gift, consideration, reward, favour, any material or immaterial benefit or other advantage, commission, fees, brokerage or inducement to any employee of Transnet, connected directly or indirectly with the bidding process, or to any person, organisation or third party related to the contract in exchange for any advantage in the bidding, evaluation, contracting and implementation of the contract.

- 3.2 The acceptance and giving of gifts may be permitted provided that:

- a) the gift does not exceed R1 000 (one thousand Rand) in retail value;
- b) many low retail value gifts do not exceed R 1 000 within a 12 month period;
- c) hospitality packages do not exceed R5 000 in value or many low value hospitality packages do not cumulatively exceed R5 000;
- d) a Bidder / Supplier does not give a Transnet employee more than 2 (two) gifts within a 12 (twelve) month period, irrespective of value;
- e) a Bidder / Supplier does not accept more than 1 (one) gift in excess of R750 (seven hundred and fifty Rand) from a Transnet employee within a 12 (twelve) month period, irrespective of value;
- f) a Bidder / Supplier may under no circumstances, accept from or give to, a Transnet employee any gift, business courtesy, including an invitation to a business meal and /or drinks, or hospitality package, irrespective of value, during any bid evaluation process, including a period of 12 (twelve) months after such tender has been awarded, as it may be perceived as undue and improper influence on the evaluation process or reward for the contract that has been awarded; and
- g) a Bidder / Supplier may not offer gifts, goods or services to a Transnet employee at artificially low prices, which are not available to the public at those prices.

- 3.3 The Bidder / Supplier will not collude with other parties interested in the contract to preclude a competitive bid price, impair the transparency, fairness and progress of the bidding process, bid evaluation, contracting and implementation of the contract. The Bidder / Supplier further commits itself to delivering against all agreed upon conditions as stipulated within the contract.

- 3.4 The Bidder / Supplier will not enter into any illegal or dishonest agreement or understanding, whether formal or informal with other Bidders / Suppliers. This applies in particular to certifications, submissions or non-submission of documents or actions that are restrictive or to introduce cartels into the bidding process.
- 3.5 The Bidder / Supplier will not commit any criminal offence under the relevant anti-corruption laws of South Africa or any other country. Furthermore, the Bidder /Supplier will not use for illegitimate purposes or for restrictive purposes or personal gain, or pass on to others, any information provided by Transnet as part of the business relationship, regarding plans, technical proposals and business details, including information contained or transmitted electronically.
- 3.6 A Bidder / Supplier of foreign origin shall disclose the name and address of its agents or representatives in South Africa, if any, involved directly or indirectly in the registration or bidding process. Similarly, the Bidder / Supplier of South African nationality shall furnish the name and address of the foreign principals, if any, involved directly or indirectly in the registration or bidding process.
- 3.7 The Bidder / Supplier will not misrepresent facts or furnish false or forged documents or information in order to influence the bidding process to the advantage of the Bidder / Supplier or detriment of Transnet or other competitors.
- 3.8 Transnet may require the Bidder / Supplier to furnish Transnet with a copy of its code of conduct. Such code of conduct must address the compliance programme for the implementation of the code of conduct and reject the use of bribes and other dishonest and unethical conduct.
- 3.9 The Bidder / Supplier will not instigate third persons to commit offences outlined above or be an accessory to such offences.
- 3.10 The Bidder/Supplier confirms that they will uphold the ten principles of the United Nations Global Compact (UNGC) in the fields of Human Rights, Labour, Anti-Corruption and the Environment when undertaking business with Transnet as follows:
- a) Human Rights
 - Principle 1: Businesses should support and respect the protection of internationally proclaimed human rights; and
 - Principle 2: make sure that they are not complicit in human rights abuses.
 - b) Labour
 - Principle 3: Businesses should uphold the freedom of association and the effective recognition of the right to collective bargaining;
 - Principle 4: the elimination of all forms of forced and compulsory labour;
 - Principle 5: the effective abolition of child labour; and
 - Principle 6: the elimination of discrimination in respect of employment and occupation.
 - c) Environment

- Principle 7: Businesses should support a precautionary approach to environmental challenges;
 - Principle 8: undertake initiatives to promote greater environmental responsibility; and
 - Principle 9: encourage the development and diffusion of environmentally friendly technologies.
- d) Anti-Corruption
- Principle 10: Businesses should work against corruption in all its forms, including extortion and bribery.

4 INDEPENDENT BIDDING

- 4.1 For the purposes of this undertaking in relation to any submitted Bid, the Bidder declares to fully understand that the word "competitor" shall include any individual or organisation, other than the Bidder, whether or not affiliated with the Bidder, who:
- a) has been requested to submit a Bid in response to this Bid invitation;
 - b) could potentially submit a Bid in response to this Bid invitation, based on their qualifications, abilities or experience; and
 - c) provides the same Goods and Services as the Bidder and/or is in the same line of business as the Bidder.
- 4.2 The Bidder has arrived at his submitted Bid independently from, and without consultation, communication, agreement or arrangement with any competitor. However communication between partners in a joint venture or consortium will not be construed as collusive bidding.
- 4.3 In particular, without limiting the generality of paragraph 4.2 above, there has been no consultation, communication, agreement or arrangement with any competitor regarding:
- a) prices;
 - b) geographical area where Goods or Services will be rendered [market allocation];
 - c) methods, factors or formulas used to calculate prices;
 - d) the intention or decision to submit or not to submit, a Bid;
 - e) the submission of a Bid which does not meet the specifications and conditions of the RFP; or
 - f) bidding with the intention of not winning the Bid.
- 4.4 In addition, there have been no consultations, communications, agreements or arrangements with any competitor regarding the quality, quantity, specifications and conditions or delivery particulars of the Goods or Services to which his/her Bid relates.
- 4.5 The terms of the Bid as submitted have not been, and will not be, disclosed by the Bidder, directly or indirectly, to any competitor, prior to the date and time of the official Bid opening or of the awarding of the contract.

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

5 DISQUALIFICATION FROM BIDDING PROCESS

- 5.1 If the Bidder / Supplier has committed a transgression through a violation of paragraph 3 of this Integrity Pact or in any other form such as to put its reliability or credibility as a Bidder / Supplier into question, Transnet may reject the Bidder's / Supplier's application from the registration or bidding process and remove the Bidder / Supplier from its database, if already registered.
- 5.2 If the Bidder / Supplier has committed a transgression through a violation of paragraph 3, or any material violation, such as to put its reliability or credibility into question, Transnet may after following due procedures and at its own discretion also exclude the Bidder / Supplier from future bidding processes. The imposition and duration of the exclusion will be determined by the severity of the transgression. The severity will be determined by the circumstances of the case, which will include amongst others the number of transgressions, the position of the transgressors within the company hierarchy of the Bidder / Supplier and the amount of the damage. The exclusion will be imposed for up to a maximum of 10 (ten) years. However, Transnet reserves the right to impose a longer period of exclusion, depending on the gravity of the misconduct.
- 5.3 If the Bidder / Supplier can prove that it has restored the damage caused by it and has installed a suitable corruption prevention system, or taken other remedial measures as the circumstances of the case may require, Transnet may at its own discretion revoke the exclusion or suspend the imposed penalty.

6 DATABASE OF RESTRICTED SUPPLIERS

- 6.1 The process of restriction is used to exclude a company/person from conducting future business with Transnet and other organs of state for a specified period. No Bid shall be awarded to a Bidder whose name (or any of its members, directors, partners or trustees) appear on the Register of Tender Defaulters kept by National Treasury, or who have been placed on National Treasury's List of Restricted Suppliers. Transnet reserves the right to withdraw an award, or cancel a contract concluded with a Bidder should it be established, at any time, that a bidder has been restricted with National Treasury by another government institution.
- 6.2 All the stipulations on Transnet's restriction process as laid down in Transnet's Supply Chain Policy and Procurement Procedures Manual are included herein by way of reference. Below follows a condensed summary of this restriction procedure.
- 6.3 On completion of the restriction procedure, Transnet will submit the restricted entity's details (including the identity number of the individuals and registration number of the entity) to National Treasury for placement on National Treasury's Database of Restricted

Suppliers for the specified period of exclusion. National Treasury will make the final decision on whether to restrict an entity from doing business with any organ of state for a period not exceeding 10 years and place the entity concerned on the Database of Restricted Suppliers published on its official website.

- 6.4 The decision to restrict is based on one of the grounds for restriction. The standard of proof to commence the restriction process is whether a "*prima facie*" (i.e. on the face of it) case has been established.
- 6.5 Depending on the seriousness of the misconduct and the strategic importance of the Goods/Services, in addition to restricting a company/person from future business, Transnet may decide to terminate some or all existing contracts with the company/person as well.
- 6.6 A supplier or contractor to Transnet may not subcontract any portion of the contract to a restricted company.
- 6.7 Grounds for restriction include: If any person/Enterprise which has submitted a Bid, concluded a contract, or, in the capacity of agent or subcontractor, has been associated with such Bid or contract:
 - a) Has, in bad faith, withdrawn such Bid after the advertised closing date and time for the receipt of Bids;
 - b) has, after being notified of the acceptance of his Bid, failed or refused to sign a contract when called upon to do so in terms of any condition forming part of the bid documents;
 - c) has carried out any contract resulting from such bid in an unsatisfactory manner or has breached any condition of the contract;
 - d) has offered, promised or given a bribe in relation to the obtaining or execution of the contract;
 - e) has acted in a fraudulent or improper manner or in bad faith towards Transnet or any Government Department or towards any public body, Enterprise or person;
 - f) has made any incorrect statement in a certificate or other communication with regard to the Local Content of his Goods or his B-BBEE status and is unable to prove to the satisfaction of Transnet that:
 - (i) he made the statement in good faith honestly believing it to be correct; and
 - (ii) before making such statement he took all reasonable steps to satisfy himself of its correctness;
 - g) has submitted false information regarding any other matter required in terms of the Preferential Procurement Regulations, 2017 issued in terms of the Preferential Procurement Policy Framework Act which will affect the evaluation of a Bid or where a Bidder has failed to declare any subcontracting arrangements;
 - h) caused Transnet damage, or to incur costs in order to meet the contractor's requirements and which could not be recovered from the contractor;
 - i) has litigated against Transnet in bad faith.

7 PREVIOUS TRANSGRESSIONS

- 7.1 The Bidder / Supplier hereby declares that no previous transgressions resulting in a serious breach of any law, including but not limited to, corruption, fraud, theft, extortion and

contraventions of the Competition Act 89 of 1998, which occurred in the last 5 (five) years with any other public sector undertaking, government department or private sector company that could justify its exclusion from its registration on the Bidder's / Supplier's database or any bidding process.

- 7.2 If it is found to be that the Bidder / Supplier made an incorrect statement on this subject, the Bidder / Supplier can be rejected from the registration process or removed from the Bidder / Supplier database, if already registered, for such reason (refer to the Breach of Law Form contained in the applicable RFX document.)

8 SANCTIONS FOR VIOLATIONS

8.1 Transnet shall also take all or any one of the following actions, wherever required to:

- a) Immediately exclude the Bidder / Supplier from the bidding process or call off the pre-contract negotiations without giving any compensation to the Bidder / Supplier. However, the proceedings with the other Bidders / Suppliers may continue;
- b) Immediately cancel the contract, if already awarded or signed, without giving any compensation to the Bidder / Supplier;
- c) Recover all sums already paid by Transnet;
- d) Encash the advance bank guarantee and performance bond or warranty bond, if furnished by the Bidder / Supplier, in order to recover the payments, already made by Transnet, along with interest;
- e) Cancel all or any other contracts with the Bidder / Supplier;
- f) Exclude the Bidder / Supplier from entering into any bid with Transnet and other organs of state in future for a specified period; and
- g) If the Supplier subcontracted a portion of the bid to another person without declaring it to Transnet, Transnet must penalise the Supplier up to 10% of the value of the contract.

9 CONFLICTS OF INTEREST

9.1 A conflict of interest includes, inter alia, a situation in which:

- a) A Transnet employee has a personal financial interest in a bidding / supplying entity; and
- b) A Transnet employee has private interests or personal considerations or has an affiliation or a relationship which affects, or may affect, or may be perceived to affect his / her judgment in action in the best interest of Transnet, or could affect the employee's motivations for acting in a particular manner, or which could result in, or be perceived as favouritism or nepotism.

9.2 A Transnet employee uses his / her position, or privileges or information obtained while acting in the capacity as an employee for:

- a) Private gain or advancement; or
- b) The expectation of private gain, or advancement, or any other advantage accruing to the employee must be declared in a prescribed form.

Thus, conflicts of interest of any bid committee member or any person involved in the sourcing process must be declared in a prescribed form.

9.3 If a Bidder / Supplier has or becomes aware of a conflict of interest i.e. a family, business and / or social relationship between its owner(s) / member(s) / director(s) / partner(s) / shareholder(s) and a Transnet employee / member of Transnet's Board of Directors in respect of a bid which will be considered for the bid process, the Bidder / Supplier:

- a) must disclose the interest and its general nature, in the Request for Proposal (“RFX”) declaration form; or
 - b) must notify Transnet immediately in writing once the circumstances has arisen.
- 9.4 The Bidder / Supplier shall not lend to or borrow any money from or enter into any monetary dealings or transactions, directly or indirectly, with any committee member or any person involved in the sourcing process, where this is done, Transnet shall be entitled forthwith to rescind the contract and all other contracts with the Bidder / Supplier.

10 DISPUTE RESOLUTION

- 10.1 Transnet recognises that trust and good faith are pivotal to its relationship with its Bidders / Suppliers. When a dispute arises between Transnet and its Bidder / Supplier, the parties should use their best endeavours to resolve the dispute in an amicable manner, whenever possible. Litigation in bad faith negates the principles of trust and good faith on which commercial relationships are based. Accordingly, following a restriction process as mentioned in paragraph 6 above, Transnet will not do business with a company that litigates against it in bad faith or is involved in any action that reflects bad faith on its part. Litigation in bad faith includes, but is not limited to the following instances:
- a) **Vexatious proceedings:** these are frivolous proceedings which have been instituted without proper grounds;
 - b) **Perjury:** where a supplier make a false statement either in giving evidence or on an affidavit;
 - c) **Scurrilous allegations:** where a supplier makes allegations regarding a senior Transnet employee which are without proper foundation, scandalous, abusive or defamatory; and
 - d) **Abuse of court process:** when a supplier abuses the court process in order to gain a competitive advantage during a bid process.

11 GENERAL

- 11.1 This Integrity Pact is governed by and interpreted in accordance with the laws of the Republic of South Africa.
- 11.2 The actions stipulated in this Integrity Pact are without prejudice to any other legal action that may follow in accordance with the provisions of the law relating to any civil or criminal proceedings.
- 11.3 The validity of this Integrity Pact shall cover all the bidding processes and will be valid for an indefinite period unless cancelled by either Party.
- 11.4 Should one or several provisions of this Integrity Pact turn out to be invalid the remainder of this Integrity Pact remains valid.
- 11.5 Should a Bidder / Supplier be confronted with dishonest, fraudulent or corruptive behaviour of one or more Transnet employees, Transnet expects its Bidders / Suppliers to report this behaviour directly to a senior Transnet official / employee or alternatively by using Transnet’s “Tip-Off Anonymous” hotline number 0800 003 056, whereby your confidentiality is guaranteed.

The Parties hereby declare that each of them has read and understood the clauses of this Integrity Pact and shall abide by it. To the best of the Parties' knowledge and belief, the information provided in this Integrity Pact is true and correct.

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NON DISCLOSURE AGREEMENT

[April 2020]

THIS AGREEMENT is made between

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

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

and

the Company as indicated in the RFP bid response hereto

WHEREAS

Transnet and the Company wish to exchange Information [as defined below] and it is envisaged that each party may from time to time receive Information relating to the other in respect thereof. In consideration of each party making available to the other such Information, the parties jointly agree that any dealings between them shall be subject to the terms and conditions of this Agreement which themselves will be subject to the parameters of the Bid Document.

IT IS HEREBY AGREED

1. INTERPRETATION

In this Agreement:

- 1.1 **Agents** mean directors, officers, employees, agents, professional advisers, contractors or sub-contractors, or any Group member;
- 1.2 **Bid or Bid Document** means Transnet's Request for Information [**RFI**] Request for Proposal [**RFP**] or Request for Quotation [**RFQ**], as the case may be;
- 1.3 **Confidential Information** means any information or other data relating to one party [the **Disclosing Party**] and/or the business carried on or proposed or intended to be carried on by that party and which is made available for the purposes of the Bid to the other party [the **Receiving Party**] or its Agents by the Disclosing Party or its Agents or recorded in agreed minutes following oral disclosure and any other information otherwise made available by the Disclosing Party or its Agents to the Receiving Party or its Agents, whether before, on or after the date of this Agreement, and whether in writing or otherwise, including any information, analysis or specifications derived from, containing or reflecting such information but excluding information which:
 - 1.3.1 is publicly available at the time of its disclosure or becomes publicly available [other than as a result of disclosure by the Receiving Party or any of its Agents contrary to the terms of this Agreement]; or
 - 1.3.2 was lawfully in the possession of the Receiving Party or its Agents [as can be demonstrated by its written records or other reasonable evidence] free of any restriction as to its use or disclosure prior to its being so disclosed; or

- 1.3.3 following such disclosure, becomes available to the Receiving Party or its Agents [as can be demonstrated by its written records or other reasonable evidence] from a source other than the Disclosing Party or its Agents, which source is not bound by any duty of confidentiality owed, directly or indirectly, to the Disclosing Party in relation to such information;
- 1.4 **Group** means any subsidiary, any holding company and any subsidiary of any holding company of either party; and
- 1.5 **Information** means all information in whatever form including, without limitation, any information relating to systems, operations, plans, intentions, market opportunities, know-how, trade secrets and business affairs whether in writing, conveyed orally or by machine-readable medium.

2. CONFIDENTIAL INFORMATION

- 2.1 All Confidential Information given by one party to this Agreement [the **Disclosing Party**] to the other party [the **Receiving Party**] will be treated by the Receiving Party as secret and confidential and will not, without the Disclosing Party's written consent, directly or indirectly communicate or disclose [whether in writing or orally or in any other manner] Confidential Information to any other person other than in accordance with the terms of this Agreement.
- 2.2 The Receiving Party will only use the Confidential Information for the sole purpose of technical and commercial discussions between the parties in relation to the Bid or for the subsequent performance of any contract between the parties in relation to the Bid.
- 2.3 Notwithstanding clause 2.1 above, the Receiving Party may disclose Confidential Information:
- 2.3.1 to those of its Agents who strictly need to know the Confidential Information for the sole purpose set out in clause 2.2 above, provided that the Receiving Party shall ensure that such Agents are made aware prior to the disclosure of any part of the Confidential Information that the same is confidential and that they owe a duty of confidence to the Disclosing Party. The Receiving Party shall at all times remain liable for any actions of such Agents that would constitute a breach of this Agreement; or
- 2.3.2 to the extent required by law or the rules of any applicable regulatory authority, subject to clause 2.4 below.
- 2.4 In the event that the Receiving Party is required to disclose any Confidential Information in accordance with clause 2.3.2 above, it shall promptly notify the Disclosing Party and cooperate with the Disclosing Party regarding the form, nature, content and purpose of such disclosure or any action which the Disclosing Party may reasonably take to challenge the validity of such requirement.
- 2.5 In the event that any Confidential Information shall be copied, disclosed or used otherwise than as permitted under this Agreement then, upon becoming aware of the same, without prejudice to any rights or remedies of the Disclosing Party, the Receiving Party shall as soon as practicable notify the Disclosing Party of such event and if requested take such steps [including the institution of legal proceedings] as shall be necessary to remedy [if capable of remedy] the default and/or to prevent further unauthorised copying, disclosure or use.
- 2.6 All Confidential Information shall remain the property of the Disclosing Party and its disclosure shall not confer on the Receiving Party any rights, including intellectual property rights over the Confidential Information whatsoever, beyond those contained in this Agreement.

3. RECORDS AND RETURN OF INFORMATION

- 3.1 The Receiving Party agrees to ensure proper and secure storage of all Information and any copies thereof.
- 3.2 The Receiving Party shall keep a written record, to be supplied to the Disclosing Party upon request, of the Confidential Information provided and any copies made thereof and, so far as is reasonably practicable, of the location of such Confidential Information and any copies thereof.
- 3.3 The Company shall, within 7 [seven] days of receipt of a written demand from Transnet:
- 3.3.1 return all written Confidential Information [including all copies]; and
- 3.3.2 expunge or destroy any Confidential Information from any computer, word processor or other device whatsoever into which it was copied, read or programmed by the Company or on its behalf.
- 3.4 The Company shall on request supply a certificate signed by a director as to its full compliance with the requirements of clause 3.3.2 above.

4. ANNOUNCEMENTS

- 4.1 Neither party will make or permit to be made any announcement or disclosure of its prospective interest in the Bid without the prior written consent of the other party.
- 4.2 Neither party shall make use of the other party's name or any information acquired through its dealings with the other party for publicity or marketing purposes without the prior written consent of the other party.

5. DURATION

The obligations of each party and its Agents under this Agreement shall survive the termination of any discussions or negotiations between the parties regarding the Bid and continue thereafter for a period of 5 [five] years.

6. PRINCIPAL

Each party confirms that it is acting as principal and not as nominee, agent or broker for any other person and that it will be responsible for any costs incurred by it or its advisers in considering or pursuing the Bid and in complying with the terms of this Agreement.

7. ADEQUACY OF DAMAGES

Nothing contained in this Agreement shall be construed as prohibiting the Disclosing Party from pursuing any other remedies available to it, either at law or in equity, for any such threatened or actual breach of this Agreement, including specific performance, recovery of damages or otherwise.

8. PRIVACY AND DATA PROTECTION

- 8.1 The Receiving Party undertakes to comply with South Africa's general privacy protection in terms Section 14 of the Bill of Rights in connection with this Bid and shall procure that its personnel shall observe the provisions of such Act [as applicable] or any amendments and re-enactments thereof and any regulations made pursuant thereto.
- 8.2 The Receiving Party warrants that it and its Agents have the appropriate technical and organisational measures in place against unauthorised or unlawful processing of data relating to the Bid and against accidental loss or destruction of, or damage to such data held or processed by them.

9. GENERAL

- 9.1 Neither party may assign the benefit of this Agreement, or any interest hereunder, except with the prior written consent of the other, save that Transnet may assign this Agreement at any time to any member of the Transnet Group.
- 9.2 No failure or delay in exercising any right, power or privilege under this Agreement will operate as a waiver of it, nor will any single or partial exercise of it preclude any further exercise or the exercise of any right, power or privilege under this Agreement or otherwise.
- 9.3 The provisions of this Agreement shall be severable in the event that any of its provisions are held by a court of competent jurisdiction or other applicable authority to be invalid, void or otherwise unenforceable, and the remaining provisions shall remain enforceable to the fullest extent permitted by law.
- 9.4 This Agreement may only be modified by a written agreement duly signed by persons authorised on behalf of each party.
- 9.5 Nothing in this Agreement shall constitute the creation of a partnership, joint venture or agency between the parties.
- 9.6 This Agreement will be governed by and construed in accordance with South African law and the parties irrevocably submit to the exclusive jurisdiction of the South African courts.

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GENERAL BID CONDITIONS

[April 2020]

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1 DEFINITIONS

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

- 1.1 **Bid** shall mean a Respondent's tendered response / proposal to a Transnet RFP or RFQ;
- 1.2 **Bid Document(s)** shall mean a reference to a Request for Proposal or Request for Quotation;
- 1.3 **Business Day** shall mean any day other than a Saturday, Sunday or public holiday;
- 1.4 **Goods** shall mean the goods required by Transnet as specified in its Bid Document;
- 1.5 **Parties** shall mean Transnet and the Respondents to a Bid Document;
- 1.6 **Respondent(s)** shall mean a respondent/bidder to a Bid Document;
- 1.7 **RFP** shall mean Request for Proposal;
- 1.8 **RFQ** shall mean Request for Quotation;
- 1.9 **RFX** shall mean RFP or RFQ, as the case may be;
- 1.10 **Services** shall mean the services required by Transnet as specified in its Bid Document;
- 1.11 **Service Provider or Supplier** shall mean the successful Respondent;
- 1.12 **Tax Invoice** shall mean the document as required by Section 20 of the Value-Added Tax Act, 89 of 1991, as may be amended from time to time;
- 1.13 **Transnet** shall mean Transnet SOC Ltd, a State Owned Company; and
- 1.14 **VAT** shall mean Value-Added Tax in terms of the Value-Added Tax Act, 89 of 1991, as may be amended from time to time.

2 GENERAL

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

3 SUBMITTING OF BID DOCUMENTS

- 3.1 A Bid, which shall hereinafter include reference to an RFP or RFQ, shall be submitted to Transnet no later than the closing date and time specified in accordance with the directions issued in the Bid Documents. Late Bids will not be considered.
- 3.2 The Bid Documents must be completed in their entirety and Respondents are required to complete their Bid submissions legibly in non-erasable ink.
- 3.3 Bids shall be delivered in a sealed envelope in accordance with the instructions indicated in the Bid Documents with the Bid number and subject marked on the front of the envelope.
- 3.4 The Respondent's return address must be stated on the reverse side of the sealed envelope.

4 USE OF BID FORMS

- 4.1 Where special forms and/or formats are issued by Transnet for the submission of Bids, Respondents are required to submit their Bids by completion of the appropriate sections on such official forms and/or formats and not in other forms and/or formats or documents bearing their own terms and conditions of contract. Non-compliance with this condition may result in the rejection of a Bid.
- 4.2 Respondents must note that the original Bid forms and/or formats must be completed for submission and not a reprocessed copy or other format thereof.
- 4.3 Only if insufficient space has been allocated to a particular response may a Respondent submit additional information under separate cover using the Company's letterhead. This must be duly cross-referenced in the RFX.

5 BID FEES

- 5.1 A non-refundable fee may be charged for Bid Documents, depending on the administrative cost of preparing and issuing the Bid Document provided the Bid Documents are also made available free of charge on the National Treasury eTender Publication Portal.

6 VALIDITY PERIOD

- 6.1 The Respondents must hold their Bid valid for acceptance by Transnet at any time within the requested validity period after the closing date of the bid.
- 6.2 Respondents may be requested to extend their validity period for a specified additional period. In such instances, Respondents will not be allowed to change any aspect of their Bid, unless they are able to demonstrate that the proposed change/s is as a direct and unavoidable consequence of Transnet's extension of the validity period.

7 SITE VISITS / BRIEFING SESSIONS

Respondents may be requested to attend a site visit or briefing session where it is necessary to view the site in order to prepare their Bids, or where Transnet deems it necessary to provide Respondents with further information to allow them to complete their Bids properly. Where such visits or sessions are indicated as compulsory in the RFX Document, Respondents are obliged to attend these meetings as failure to do so will result in their disqualification.

8 CLARIFICATION BEFORE THE CLOSING DATE

Should clarification be required on any aspect of the Bid before the closing date, the Respondent must direct such queries to the contact person listed in the RFX Document in the stipulated manner.

9 COMMUNICATION AFTER THE CLOSING DATE

After the closing date of a Bid (i.e. during the evaluation period) the Respondent may only communicate with the Chairperson or the Secretary of the relevant Acquisition Council.

10 UNAUTHORISED COMMUNICATION ABOUT BIDS

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

11 RETURNABLE DOCUMENTS

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

12 DEFAULTS BY RESPONDENTS

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

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

Transnet may, in any such case, without prejudice to any other legal remedy which it may have, proceed to accept any other Bid or, if it is necessary to do so, call for Bids afresh, and may recover from the defaulting Respondent any additional expense incurred by Transnet in calling for new offers or in accepting a less favourable offer.

13 CURRENCY

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

14 PRICES SUBJECT TO CONFIRMATION

- 14.1 Prices which are quoted subject to confirmation will not be considered.
- 14.2 Firm prices quoted for the duration of any resulting order and/or contract will receive precedence over prices which are subject to fluctuation if this is in Transnet's best interests.

15 ALTERATIONS MADE BY THE RESPONDENT TO BID PRICES

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

result in the particular item(s) concerned being excluded in the matter of the award of the business.

16 EXCHANGE AND REMITTANCE

- 16.1 The Respondent should note that where the whole or a portion of the contract or order value is to be remitted overseas, Transnet shall, if requested to do so by the Supplier/Service Provider, effect payment overseas directly to the foreign principal or manufacturer of such percentage of the contract or order value as may be stipulated by the Respondent in its Bid Documents.
- 16.2 It is Transnet's preference to enter into Rand-based agreements. Transnet would request, therefore, that the Respondent give favourable consideration to obtaining forward exchange cover on the foreign currency portion of the Agreement at a cost that is acceptable to Transnet to protect itself against any currency rate fluctuation risks for the duration of any resulting contract or order.
- 16.3 The Respondent who desires to avail itself of the aforementioned facility must at the time of bidding furnish the information called for in the Exchange and Remittance section of the Bid Documents and also furnish full details of the principals or manufacturer to whom payment is to be made.
- 16.4 The South African Reserve Bank's approval is required before any foreign currency payments can be made to or on behalf of Respondents.
- 16.5 Transnet will not recognise any claim for adjustment of the order and/or contract price if the increase in price arises after the date on which the Goods/Services were to be delivered, as set out in the order and/or contract, or any subsequent agreement between the parties.
- 16.6 Transnet reserves the right to request a pro-forma invoice/tax invoice in order to ensure compliance with the contract and Value-Added Tax Act no. 89 of 1991 [VAT Act].

17 ACCEPTANCE OF BID

- 17.1 Upon the acceptance of a Bid by Transnet, the parties shall be bound by these General Bid Conditions and any contractual terms and/or any schedule of "Special Conditions" or otherwise which form part of the Bid Documents.
- 17.2 Where the Respondent has been informed by Transnet of the acceptance of its Bid, the acknowledgement of receipt transmitted shall be regarded as proof of delivery to the Respondent.

18 NOTICE TO UNSUCCESSFUL RESPONDENTS

- 18.1 Unsuccessful Respondents shall be advised in writing that their Bids have not been accepted as soon as possible after the closing date of the Bid. On award of business to the successful Respondent all unsuccessful Respondents must be informed of the name of the successful Respondent and of the reason as to why their Bids had been unsuccessful.

19 TERMS AND CONDITIONS OF CONTRACT

- 19.1 The Supplier/Service Provider shall adhere to the Terms and Conditions of Contract issued with the Bid Documents, together with any schedule of "Special Conditions" or otherwise which form part of the Bid Documents.
- 19.2 Should the Respondent find any conditions unacceptable, it should indicate which conditions are unacceptable and offer amendments/ alternatives by written submission on a company letterhead. Any such submission shall be subject to review by Transnet's Legal Counsel who shall determine whether the proposed amendments /alternative(s) are acceptable or otherwise, as the case may be.

20 CONTRACT DOCUMENTS

- 20.1 The contract documents will comprise these General Bid Conditions, the Terms and Conditions of Contract and any schedule of "Special Conditions" which form part of the Bid Documents.
- 20.2 The abovementioned documents together with the Respondent's Bid response will constitute the contract between the parties upon receipt by the Respondent of Transnet's letter of acceptance / intent, subject to all additional amendments and/or special conditions thereto as agreed to by the parties.
- 20.3 Should Transnet inform the Respondent that a formal contract will be signed, the abovementioned documents together with the Respondent's Bid response [and, if any, its covering letter and any subsequent exchange of correspondence] as well as Transnet's Letter of Acceptance/Intent, shall constitute a binding contract until the final contract is signed.

21 LAW GOVERNING CONTRACT

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

22 IDENTIFICATION

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

23 RESPONDENT'S SAMPLES

- 23.1 If samples are required from Respondents, such samples shall be suitably marked with the Respondent's name and address, the Bid number and the Bid item number and must be despatched in time to reach the addressee as stipulated in the Bid Documents on or before the closing date of the Bid. Failure to submit samples by the due date may result in the rejection of a Bid.
- 23.2 Transnet reserves the right to retain samples furnished by Respondents in compliance with Bid conditions.
- 23.3 Payment will not be made for a successful Respondent's samples that may be retained by Transnet for the purpose of checking the quality and workmanship of Goods/Services delivered in execution of a contract.
- 23.4 If Transnet does not wish to retain unsuccessful Respondents' samples and the Respondents require their return, such samples may be collected by the Respondents at their own risk and cost.

24 SECURITIES

- 24.1 The successful Respondent, when called upon to do so, shall provide security to the satisfaction of Transnet for the due fulfilment of a contract or order. Such security shall be in the form of a Deed of Suretyship [Deed of Suretyship] furnished by an approved bank, building society, insurance or guarantee corporation carrying on business in South Africa.
- 24.2 The security may be applied in whole or part at the discretion of Transnet to make good any loss or damage which Transnet may incur in consequence of a breach of the contract or any part thereof.
- 24.3 Such security, if required, shall be an amount which will be stipulated in the Bid Documents.
- 24.4 For the purpose of clause 25.125.1 above, Transnet will supply a Deed of Suretyship form to the successful Respondent for completion and no guarantee in any other form will be accepted. A copy of such form will be supplied to Respondents on request. For this purpose a Deed of Suretyship form will be provided which shall be completed and returned to Transnet or a designated official by the successful Respondent within 30 [thirty] calendar days from the date of the letter of acceptance. No payment will be made until the form, duly completed, is delivered to Transnet. Failure to return the Deed of Suretyship within the prescribed time shall, save where prior extension has been granted, entitle Transnet without notice to the Supplier/Service Provider to cancel the contract with immediate effect.
- 24.5 Additional costs incurred by Transnet necessitated by reason of default on the part of the Supplier/Service Provider in relation to the conditions of this clause 25 will be for the account of the Supplier/Service Provider.

25 PRICE AND DELIVERY BASIS FOR GOODS

- 25.1 Unless otherwise specified in the Bid Documents, the prices quoted for Goods must be on a Delivered Duty Paid [ICC Incoterms 2010] price basis in accordance with the terms and at the delivery point or points specified in Transnet's Bid Documents. Bids for supply on any other basis of delivery are liable to disqualification. The lead time for delivery stated by the Respondent must be inclusive of all non-working days or holidays, and of periods occupied in stocktaking or in effecting repairs to or overhauling plant, which would ordinarily occur within the delivery period given by the Respondent.
- 25.2 Respondents must furnish their Bid prices in the Price Schedule of the Bid Documents on the following basis:
- a) Local Supplies - Prices for Goods to be manufactured, produced or assembled in the Republic of South Africa, or imported supplies held in South Africa, to be quoted on a Delivered RSA named destination basis.
 - b) Imported Supplies - Prices for Goods to be imported from all sources to be quoted on a Delivered Duty Paid [ICC Incoterms 2010] basis, to end destination in South Africa, unless otherwise specified in the Bid Price Schedule.

26 EXPORT LICENCE

The award of a Bid for Goods to be imported may be subject to the issue of an export licence in the country of origin or supply. If required, the Supplier/Service Provider's manufacturer or forwarding agent shall be required to apply for such licence.

27 QUALITY OF MATERIAL

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

28 DELETION OF ITEMS EXCLUDED FROM BID

The Respondent must delete items for which it has not tendered or for which the price has been included elsewhere in its Bid.

29 VALUE-ADDED TAX

- 29.1 In respect of local supplies, i.e. Goods to be manufactured, produced or assembled in the Republic of South Africa, or imported supplies held or already in transit to South Africa, the prices quoted by the Respondent are to be exclusive of VAT which must be shown separately at the standard rate on the Tax Invoice.
- 29.2 In respect of foreign Services rendered:
- a) the invoicing by a South African Service Provider on behalf of its foreign principal rendering such Service represents a Service rendered by the principal; and
 - b) the Service Provider's Tax Invoice(s) for the local portion only [i.e. the "commission" for the Services rendered locally] must show the VAT separately.

30 IMPORTANT NOTICE TO RESPONDENTS REGARDING PAYMENT

30.1 Method of Payment

- a) The attention of the Respondent is directed to the Terms and Conditions of Contract which set out the conditions of payment on which Bid price(s) shall be based.
- b) However, in addition to the foregoing the Respondent is invited to submit offers based on alternative methods of payment and/or financing proposals.
- c) The Respondent is required to give full particulars of the terms that will be applicable to its alternative offer(s) and the financial merits thereof will be evaluated and taken into consideration when the Bid is adjudicated.
- d) The Respondent must, therefore, in the first instance, tender strictly in accordance with clause 31.1 (a) above. Failure to comply with clause 31.1 (a) above may preclude a Bid from further consideration.

NOTE: The successful Respondent [the **Supplier/Service Provider**] shall, where applicable, be required to furnish a guarantee covering any advance payments.

30.2 Conditional Discount

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

31 CONTRACT QUANTITIES AND DELIVERY REQUIREMENTS

31.1 Contract Quantities

- a) It must be clearly understood that although Transnet does not bind itself to purchase a definitive quantity under any contract which may be entered into pursuant to this Bid, the successful Respondent nevertheless undertakes to supply against the contract such quantities as may be ordered against the contract, which orders are posted or delivered by hand or transmitted electronically on or before the expiry date of such contract.
- b) It is furthermore a condition that Transnet will not accept liability for any material/stocks specially ordered or carried by the Respondent with a view to meeting the requirements under any such contract.
- c) The estimated planned quantities likely to be ordered by Transnet per annum are furnished in relevant section of the Bid Documents. For avoidance of doubt the

estimated quantities are estimates and Transnet reserves the right to order only those quantities sufficient for its operational requirements.

31.2 Delivery Period

a) Period Contracts and Fixed Quantity Requirements

It will be a condition of any resulting contract/order that the delivery period embodied therein will be governed by the provisions of the Terms and Conditions of Contract.

b) Progress Reports

The Supplier/Service Provider may be required to submit periodical progress reports with regard to the delivery of the Goods/Services.

c) Emergency Demands as and when required

If, due to unforeseen circumstances, supplies of the Goods/Services covered by the Bid are required at short notice for immediate delivery, the Supplier/Service Provider will be given first right of refusal for such business. If it is unable to meet the desired critical delivery period, Transnet reserves the right to purchase such supplies as may be required to meet the emergency outside the contract if immediate delivery can be offered from any other source. The *Total or Partial Failure to Perform the Scope of Supply* section in the Terms and Conditions of Contract will not be applicable in these circumstances.

32 PLANS, DRAWINGS, DIAGRAMS, SPECIFICATIONS AND DOCUMENTS

32.1 Copyright

Copyright in plans, drawings, diagrams, specifications and documents compiled by the Supplier/Service Provider for the purpose of contract work shall be governed by the Intellectual Property Rights section in the Terms and Conditions of Contract.

32.2 Drawings and specifications

In addition to what may be stated in any Bid Document, the Respondent should note that, unless notified to the contrary by Transnet or a designated official by means of an official amendment to the Bid Documents, it is required to tender for Goods/Services strictly in accordance with the drawings and/or specifications supplied by Transnet, notwithstanding that it may be aware that alterations or amendments to such drawings or specifications are contemplated by Transnet.

32.3 Respondent's drawings

Drawings required to be submitted by the Respondent must be furnished before the closing time and date of the Bid. The non-receipt of such drawings by the appointed time may disqualify the Bid.

32.4 Foreign specifications

The Respondent quoting for Goods/Services in accordance with foreign specifications, other than British and American standards, is to submit translated copies of such specifications with the Bid. In the event of any departures or variations between the foreign specification(s) quoted in the Bid Documents, full details regarding such departures or variations must be furnished by the Respondent in a covering letter attached to the Bid. Non-compliance with this condition may result in disqualification.

33 BIDS BY OR ON BEHALF OF FOREIGN RESPONDENTS

- 33.1 Bids submitted by foreign principals may be forwarded directly by the principals or by its South African representative or agent to the Secretary of the Acquisition Council or to a designated official of Transnet according to whichever officer is specified in the Bid Documents.
- 33.2 In the case of a representative or agent, written proof must be submitted to the effect that such representative or agent has been duly authorised to act in that capacity by the principal. Failure to submit such authorisation by the representative or agent shall disqualify the Bid.
- 33.3 When legally authorised to prepare and submit Bids on behalf of their principals not domiciled in the Republic of South Africa, representatives or agents must compile the Bids in the names of such principals and sign them on behalf of the latter.
- 33.4 South African representatives or agents of a successful foreign Respondent must when so required enter into a formal contract in the name of their principals and must sign such contract on behalf of the latter. In every such case a legal Power of Attorney from their principals must be furnished to Transnet by the South African representative or agents authorising them to enter into and sign such contract.
 - a) Such Power of Attorney must comply with Rule 63 (Authentication of documents executed outside the Republic for use within the Republic) of the Uniform Rules of Court: Rules regulating the conduct of the proceedings of the several provincial and local divisions of the Supreme Court of South Africa.
 - b) The Power of Attorney must be signed by the principal under the same title as used in the Bid Documents.
 - c) If a Power of Attorney held by the South African representative or agent includes matters of a general nature besides provision for the entering into and signing of a contract with Transnet, a certified copy thereof should be furnished.
 - d) The Power of Attorney must authorise the South African representative or agent to choose the *domicilium citandi et executandi*.
- 33.5 If payment is to be made in South Africa, the foreign Supplier/Service Provider [i.e. the principal, or its South African agent or representative], must notify Transnet in writing whether, for payment by electronic funds transfer [EFT]:

- a) funds are to be transferred to the credit of the foreign Supplier/Service Provider's account at a bank in South Africa, in which case the name and branch of such bank shall be furnished; or
- b) funds are to be transferred to the credit of its South African agent or representative, in which case the name and branch of such bank shall be furnished.

33.6 The attention of the Respondent is directed to clause 25 above [Securities] regarding the provision of security for the fulfilment of contracts and orders and the manner and form in which such security is to be furnished.

34 DATABASE OF RESTRICTED SUPPLIERS

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

35 PROTECTION OF PERSONAL DATA

35.1 Both Parties agree that they may obtain and have access to personal data as a result of the Bid process. The Parties shall at all times ensure that:

- a) they process data only for the express purpose for which it was obtained;
- b) once processed for the purposes for which it was obtained, all data will be destroyed to an extent that it cannot be reconstructed to its original form;
- c) data is provided only to authorised personnel who strictly require the personal data to carry out the Parties' respective obligations in terms of the Bid process;
- d) they do not disclose personal data of the other Party, other than as agreed in paragraph 37.3 below;
- e) they have all reasonable technical and organisational measures in place to protect all personal data from unauthorised access and/or use;
- f) they have appropriate technical and organisational measures in place to safeguard the security, integrity and authenticity of all data in its possession or under its control as a result of the Bid process;
- g) such personal data is protected against unauthorised or unlawful processing, accidental loss, destruction or damage, alteration, disclosure or access.

35.2 The Parties agree that if personal data 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 further processing.

- 35.3 Should it be necessary for either Party to disclose or otherwise make available the personal data to any third party (including sub-contractors and employees), it may do so only with the prior written permission of the other Party. The Party requiring such permission shall require of all such third parties, appropriate written undertakings to be provided, containing similar terms to that set forth in this paragraph 37, and dealing with that third party's obligations in respect of its processing of the personal data. Following approval by the other Party, the Party requiring permission agrees that the provisions of this clause 37 shall *mutatis mutandis* apply to all authorised third parties who process personal data.
- 35.4 The Parties shall ensure that any persons authorized to process data on their behalf (including employees and third parties) will safeguard the security, integrity and authenticity of all data. Where necessary to meet this requirement, the Parties shall keep all personal data and any analyses, profiles, or documents derived therefrom logically separated from all other data and documentation held by it.
- 35.5 The Parties shall carry out regular assessments to identify all reasonably foreseeable internal and external risks to the personal data 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 has been effectively implemented.
- 35.6 The Parties agree that they will promptly return or destroy any personal data 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 the Bid process, 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 data. The information will be destroyed in such a manner that it cannot be reconstructed to its original form, linking it to any particular individual or organisation.
- 35.7 Personal Information security breach: Respondent's Obligations
- a) The Respondent is required to notify the Information Officer of Transnet, in writing as soon as possible after it becomes aware of or suspects any loss, unauthorised access or unlawful use of any personal data and shall, at its own cost, take all necessary remedial steps to mitigate the extent of the loss or compromise of personal data as quickly as is possible. The Respondent shall also be required to provide Transnet 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 data.
 - b) The Respondent shall provide on-going updates on its progress in resolving the compromise at reasonable intervals until such time as the compromise is resolved.
 - c) Where required, the Respondent may be required to notify the South African Police Service; and/or the State Security Agency and where applicable, the relevant regulator and/or 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 Respondent undertakes to co-operate in any investigation relating to security which is carried out by or on behalf of Transnet including providing any information or material in its possession or control and implementing new security measures.

36 CONFLICT WITH ISSUED RFX DOCUMENT

- 36.1 Should a conflict arise between these General Bid Conditions and the issued RFX document, the conditions stated in the RFX document shall prevail.

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DECLARATION OF INTEREST

1. 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.

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

- 2.1 Full Name of bidder or his or her representative:
- 2.2 Identity Number:
- 2.3 Position occupied in the Company (director, trustee, shareholder²):
- 2.4 Company Registration Number:
- 2.5 Tax Reference Number:
- 2.6 VAT Registration Number:
- 2.6.1 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 3 below.

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.

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.

2.7 Are you or any person connected with the bidder presently employed by the state? **YES / NO**

2.7.1 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:

.....

.....

.....

2.7.2 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**

2.7.2.1 If yes, did you attached proof of such authority to the bid document? **YES / NO**

(Note: Failure to submit proof of such authority, where applicable, may result in the disqualification of the bid.

2.7.2.2 If no, furnish reasons for non-submission of such proof:

.....

.....

.....

2.8 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**

2.8.1 If so, furnish particulars:

.....

.....

.....

2.9 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**

2.9.1 If so, furnish particulars.

.....

.....

.....

2.10 Are you, or any person connected with the bidder, aware of any relationship (family, friend, other) between **YES/NO**

any other bidder and any person employed by the state who may be involved with the evaluation and or adjudication of this bid?

2.10.1 If so, furnish particulars.

2.10 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**

2.11.1 If so, furnish particulars:

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

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

4 DECLARATION

I, THE UNDERSIGNED (NAME).....

CERTIFY THAT THE INFORMATION FURNISHED IN PARAGRAPHS 2 and 3 ABOVE IS CORRECT. I ACCEPT THAT THE STATE MAY REJECT THE BID OR ACT AGAINST ME IN TERMS OF PARAGRAPH 23 THE GENERAL CONDITIONS OF CONTRACT SHOULD THIS DECLARATION PROVE TO BE FALSE.

.....
 Signature

.....
 Date

.....
Position

.....
Name of bidder

May 2011

DECLARATION OF BIDDER'S PAST SUPPLY CHAIN MANAGEMENT PRACTICES

- 1 This Standard Bidding Document must form part of all bids invited.
- 2 It serves as a declaration to be used by institutions in ensuring that when goods and services are being procured, all reasonable steps are taken to combat the abuse of the supply chain management system.
- 3 The bid of any bidder may be disregarded if that bidder, or any of its directors have-
 - a. abused the institution's supply chain management system;
 - b. committed fraud or any other improper conduct in relation to such system; or
 - c. failed to perform on any previous contract.
- 4 **In order to give effect to the above, the following questionnaire must be completed and submitted with the bid.**

Item	Question	Yes	No
4.1	Is the bidder or any of its directors listed on the National Treasury's Database of Restricted Suppliers as companies or persons prohibited from doing business with the public sector? (Companies or persons who are listed on this Database were informed in writing of this restriction by the Accounting Officer/Authority of the institution that imposed the restriction after the <i>audi alteram partem</i> rule was applied). The Database of Restricted Suppliers now resides on the National Treasury's website(www.treasury.gov.za) and can be accessed by clicking on its link at the bottom of the home page.	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.1.1	If so, furnish particulars:		
4.2	Is the bidder or any of its directors listed on the Register for Tender Defaulters in terms of section 29 of the Prevention and Combating of Corrupt Activities Act (No 12 of 2004)? The Register for Tender Defaulters can be accessed on the National Treasury's website (www.treasury.gov.za) by clicking on its link at the bottom of the home page.	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.2.1	If so, furnish particulars:		
4.3	Was the bidder or any of its directors convicted by a court of law (including a court outside of the Republic of South Africa) for fraud or corruption during the past five years?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.3.1	If so, furnish particulars:		
4.4	Was any contract between the bidder and any organ of state terminated during the past five years on account of failure to perform on or comply with the contract?	Yes <input type="checkbox"/>	No <input type="checkbox"/>

4.4.1	If so, furnish particulars:
-------	-----------------------------

SBD 8

CERTIFICATION

**I, THE UNDERSIGNED (FULL NAME).....
 CERTIFY THAT THE INFORMATION FURNISHED ON THIS DECLARATION FORM IS TRUE
 AND CORRECT.**

**I ACCEPT THAT, IN ADDITION TO CANCELLATION OF A CONTRACT, ACTION MAY BE
 TAKEN AGAINST ME SHOULD THIS DECLARATION PROVE TO BE FALSE.**

.....
Signature

.....
Date

.....
Position

.....
Name of Bidder

ANNEXURE O – LIABILITY AND INDEMNITY RETURNABLE

INDEMNITY AND LIABILITY RETURNABLE

LIABILITY AND INDEMNITY

1. The Service provider (hereinafter abbreviated to '**SP**') shall at all times be held strictly liable and accepts responsibility for all damage of whatsoever nature (including consequential and special damage) due to any acts or omissions of its employees, servants, agents, assigns, contractors, independent contractors and sub-contractors.
2. The **SP** shall ensure it has the relevant professional indemnity cover at all times.
3. The **SP** shall at all times be held strictly liable and accepts responsibility for all harm and any loss of or damage to or caused by any Vehicles, Equipment, or other material used by the Contractor in respect of the Service provided in terms of this Agreement, including consequential losses.
4. The **SP** irrevocably and unconditionally undertakes to indemnify and keep TPT indemnified, holding TPT harmless against and in respect of all and any loss or damage incurred by TPT, the **SP** or any other third party as a result of, arising out of or connected with any failure, act or omission or breach of this undertaking by the **SP** or any of its employees, servants, agents, assigns, contractors, independent or otherwise, or occurring during or as a result of the provision of the Service by the **SP**.
5. It is the absolute obligation of the **SP** to indemnify TPT on a full indemnity basis against all claims shall include but not be limited to any claim by TPT against the **SP**, by any of the Contractor's Employee's against TPT or against TPT by **any third party**, arising out of or connected with the Service Providers (and or including its employees/contractors/agents) performance of the Service, including any claim of any nature made against TPT.
6. Without derogating from or limiting any liability in terms hereof, the **SP** shall, at the its sole cost, comply with the Compensation for Occupational Injuries and Diseases Act No 130 of 1993("COIDA") in respect of each workman engaged by the **SP** in connection with this undertaking, and shall on request therefore by TPT from time to time furnish documentary proof that it has complied with COIDA or other relevant applicable legislation.
7. Full and further terms of the indemnity to TPT by the contractor is contained in the Master agreement to which the service provider of the Scaffolding agrees as part of the bid conditions and award.

ANNEXURE P - INSURANCE AND WARRANTEE RETURNABLE

INSURANCE AND WARRANTEE RETURNABLE

1 INSURANCES

- 1.1 The Service Provider shall take out comprehensive All Risk Asset insurance as well as Third Party Liability insurance in respect of all risks for which it is prudent for the Service Provider to insure against, including any liability it may have as a result of its activities under this Agreement for theft, destruction, death or injury to any person and damage to property.
- 1.2 A certificate of insurance is to be provided to Transnet within 30 (thirty) days of signature of this Agreement, which insurance shall remain in place for the duration of the contractual term, failing which the Service Provider will be held to be in breach of this Agreement and Transnet shall be entitled to cancel same. The level of insurance will be kept under review by Transnet, on an annual basis, to ensure its adequacy.
- 1.3 The Service Provider shall arrange insurance with reputable insurers and will produce to Transnet evidence of the existence of the policies on an annual basis immediately after date of policy renewals. In the event that the Service Provider receives written notice from its insurers advising of the termination of its insurance cover above or if the insurance ceases to be available upon commercially reasonable terms, the Service Provider shall immediately notify Transnet in writing of such termination and/or unavailability, whereafter either the Service Provider or Transnet may terminate this Agreement on giving the other Party not less than 30 [thirty] calendar days prior written notice to that effect.

2. WARRANTIES

- 2.1 The Service Provider warrants to Transnet that:
- 2.1.1 it has full capacity, expertise and authority to enter into and to perform the Services bidded for in terms of this RFP and that this undertaking is executed by a duly authorised representative of the Service Provider;
- 2.1.1.1 this includes: all employees or contractors used by the Service Provider performing services of this RFP are fully qualified, trained, vetted and experienced personnel who have valid work permits where applicable.
- 2.1.2 it will discharge its obligations under this RFP and any annexure, appendix or schedule hereto with all due skill, care and diligence;
- 2.1.3 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;

- 2.1.4 it will procure the requisite licences in order to perform according to the Scope of work and where required by Law to do so.
- 2.1.5 The Service provider warrants that it holds the relevant professional indemnity at all times during the performance of the services of this RFP.