

SCHEDULE OF BID DOCUMENTS

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**RFP FOR THE PROVISION OF SPECIALISED SERVICE FOR LOAD TESTING, NDT OF PLANT
LIFTING EQUIPMENT AT TRANSNET PORT TERMINAL- SALDANHA
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, A DIVISION TRANSNET SOC LTD							
BID NUMBER:	TPT/2025/08/0007/103519/RFP	ISSUE DATE:	14-08-2025	CLOSING DATE:	25-08-2025	CLOSING TIME:	16:00 PM
DESCRIPTION	FOR THE PROVISION OF SPECIALISED SERVICE FOR LOAD TESTING, NDT OF PLANT LIFTING EQUIPMENT AT TPT SALDANHA FOR A PERIOD OF THREE (3) YEARS.						
BID RESPONSE DOCUMENTS SUBMISSION INSTRUCTIONS							
<p>(please refer to section 2, paragraph 3 for a detailed process on how to upload submissions):</p> <p>https://transnetetenders.azurewebsites.net</p>							
BIDDING PROCEDURE / TECHNICAL ENQUIRIES MAY BE DIRECTED TO:							
CONTACT PERSON	THIZEKA MPENGEZI						
TELEPHONE NUMBER	022 703 4471						
FACSIMILE NUMBER	n/a						
E-MAIL ADDRESS	Thizeka.mpengezi@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							
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.							
	TCP PIN		OR	CSD NO			
SUPPLIER COMPLIANCE STATUS	<input type="checkbox"/> Yes <input type="checkbox"/> No		OR	BBEE STATUS LEVEL SWORN AFFIDAVIT			
If Yes, Who was the Certificate issued by?							
AN ACCOUNTING OFFICER AS CONTEMPLATED IN THE CLOSE CORPORATION ACT (CCA) AND NAME THE APPLICABLE IN THE TICK BOX	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>		AN ACCOUNTING OFFICER AS CONTEMPLATED IN THE CLOSE CORPORATION ACT (CCA) A VERIFICATION AGENCY ACCREDITED BY THE SOUTH AFRICAN ACCREDITATION SYSTEM (SANAS) A REGISTERED AUDITOR NAME:				

Respondent's Signature

Date & Company Stamp

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

1 ARE YOU THE ACCREDITED REPRESENTATIVE IN SOUTH AFRICA FOR THE GOODS /SERVICES /WORKS OFFERED?	<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]
Signature of the Bidder	Date:

QUESTIONNAIRE TO BIDDING FOREIGN SUPPLIERS

- IS THE BIDDER A RESIDENT OF THE REPUBLIC OF SOUTH AFRICA (RSA)? ☐ YES ☐ NO
- DOES THE BIDDER HAVE A BRANCH IN THE RSA? ☐ YES ☐ NO
- DOES THE BIDDER HAVE A PERMANENT ESTABLISHMENT IN THE RSA? ☐ YES ☐ NO
- DOES THE BIDDER HAVE ANY SOURCE OF INCOME IN THE RSA? ☐ YES ☐ NO

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

PART B

TERMS AND CONDITIONS FOR BIDDING

1. TAX COMPLIANCE REQUIREMENTS

- 1.1 BIDDERS MUST ENSURE COMPLIANCE WITH THEIR TAX OBLIGATIONS.
- 1.2 BIDDERS ARE REQUIRED TO SUBMIT THEIR UNIQUE PERSONAL IDENTIFICATION NUMBER (PIN) ISSUED BY SARS TO ENABLE THE ORGAN OF STATE TO VERIFY THE TAXPAYER'S PROFILE AND TAX STATUS.
- 1.3 APPLICATION FOR TAX COMPLIANCE STATUS (TCS) PIN MAY BE MADE VIA E-FILING THROUGH THE SARS WEBSITE WWW.SARS.GOV.ZA.
- 1.4 BIDDERS MAY ALSO SUBMIT A PRINTED TCS CERTIFICATE TOGETHER WITH THE BID.
- 1.5 IN BIDS WHERE UNINCORPORATED CONSORTIA / JOINT VENTURES / SUB-CONTRACTORS ARE INVOLVED, EACH PARTY MUST SUBMIT A SEPARATE TCS CERTIFICATE / PIN / CSD NUMBER.
- 1.6 WHERE NO TCS IS AVAILABLE BUT THE BIDDER IS REGISTERED ON THE CENTRAL SUPPLIER DATABASE (CSD), A CSD NUMBER MUST BE PROVIDED.
- 1.7 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. ONLY FOREIGN SUPPLIERS WITH NO LOCAL REGISTERED ENTITY NEED NOT REGISTER ON THE CSD. THE CSD CAN BE ACCESSED AT [HTTPS://SECURE.CSD.GOV.ZA/](https://secure.csd.gov.za/).

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:

.....

Respondent's Signature

Date & Company Stamp

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

DATE: _____

SECTION 2: NOTICE TO BIDDERS**1 INVITATION TO BID**

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

DESCRIPTION	FOR THE PROVISION OF SPECIALISED SERVICE FOR LOAD TESTING, NDT OF PLANT LIFTING EQUIPMENT AT TPT SALDANHA 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 only. If you receive tender adverts for Transnet in any other platform other than the ones mentioned, it is your duty to verify the authenticity, accuracy, latest updates and reliability of the information with the platforms mentioned. Should both 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 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 Portal at https://transnetetenders.azurewebsites.net (</p>
COMMUNICATION	<p>Transnet will publish the outcome of this RFP on the National Treasury e-tender portal and Transnet website with 10 days after the award has been finalised. All unsuccessful bidders have a right to request for reasons for their bid not being successful. This requested must be directed to the contact person stated in the SBD 1 form</p> <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>
BRIEFING SESSION	Not Applicable
CLOSING DATE	<p>25 August 2025, 16:00 pm</p> <p>Bidders must ensure that bids are uploaded timeously onto the system. Generally, if a bid is late, it will not be accepted for consideration.</p>

	<p>Respondents are to submit bid documents by uploading them onto the Transnet system against each tender selected. A Bidder can upload 30mb per upload and multiple uploads are permitted.</p> <p>Bidders should ensure that electronic bid submissions are submitted at least a day before the closing date and bidders should not wait for the last hour before the deadline to submit. This is to enable them to timeously address issues which they may encounter due to internet speed, bandwidth or the size of the number of uploads being submitted. Transnet will not be held liable for any challenges experienced by bidders as a result of their own technical challenges.</p> <p>NB! In accordance with Section 217 of the Constitution, the Preferential Procurement Policy Framework Act (PPPFA), the Preferential Procurement Regulations, the Public Finance Management Act (PFMA), and applicable National Treasury Instructions, each bidder is <u>strictly permitted to submit only one proposal or offer per bid invitation</u>, unless expressly stated otherwise in the bid documents.</p>
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>Should a bidder fail to respond to a request for extension of the validity period before it expires, that bidder will be excluded from tender process.</p> <p>With regard to the validity period of next highest ranked bidders, please refer to Section 2, paragraph 10.12</p>

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

2 FORMAL BRIEFING

Not Applicable

3 PROPOSAL SUBMISSION

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

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

- a) Log on to the Transnet eTenders management platform website/ Portal (transnetetenders.azurewebsites.net)
- b) Click on "ADVERTISED TENDERS" to view advertised tenders;
- c) Click on "SIGN IN/REGISTER –to register new bidder information and ensure that all mandatory information is completed) OR;
- d) to sign in if already registered;
- e) Toggle (click to switch) the "Log an Intent" button to submit a bid;
- f) Submit bid documents by uploading them into the system against each tender selected.

- g) Respondents are to submit bid documents by uploading them onto the Transnet system against each tender selected. A Bidder can upload 30mb per upload and multiple uploads are permitted.
- h) Bidders should ensure that electronic bid submissions are submitted at least a day before the closing date and bidders should not wait for the last hour before the deadline to submit. This is to enable them to timeously address issues which they may encounter due to internet speed, bandwidth or the size of the number of uploads being submitted. Transnet will not be held liable for any challenges experienced by bidders as a result of their own technical challenges.
- i) No late submissions will be accepted. The bidder guide can be found on the Transnet Portal transnetetenders.azurewebsites.net
- j) Each company must register its own profile using its company details and use the corresponding registered profile to log an intent to bid as well as submitting any bid.
- k) Transnet will not accept a bid or will disqualify a bidder who submits a bid in the Transnet e-tender submission through another bidders'/Company's profile. In other words, each bidder must register the intent to bid and submit its bid through its own profile under the same company name that will eventually bid for the tender. No company shall submit a bid on behalf of another company regardless of the company being a subsidiary or holding company.
- l) In case of a Joint Venture, any of the parties/companies to the Joint Venture may use its registered profile to submit a bid on behalf of the Joint Venture.
- m) A detailed bidder guide can be found on the Transnet Portal transnetetenders.azurewebsites.net

4 RFP INSTRUCTIONS

- 4.1 Please sign documents [sign, stamp and date the bottom of each page] before uploading them on the system. The person or persons signing the submission must be legally authorised by the respondent to do so.
- 4.2 **All returnable documents tabled in the Proposal Form [Section 5] must be returned with proposals.**
- 4.3 Unless otherwise expressly stated, all Proposals furnished pursuant to this RFP shall be deemed to be offers. Any exceptions to this statement must be clearly and specifically indicated.
- 4.4 Any additional conditions must be embodied in an accompanying letter. Subject only to clause 15 [Alterations made by the Respondent to Bid Prices] of the General Bid Conditions, paragraph 12 below (Legal Review) and Section 6 of the RFP, alterations, additions or deletions must not be made by the Respondent to the actual RFP documents.

5 JOINT VENTURES OR CONSORTIUMS

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

Transnet through this RFP process. This written confirmation must clearly indicate the percentage [%] split of business and the responsibilities of each party. In such cases, award of business will only take place once a signed copy of a JV or consortium agreement is submitted to Transnet.

Respondents are to note that for the purpose of Evaluation, a JV will be evaluated based on one consolidated B-BBEE score card (a consolidated B-BBEE Status Level verification certificate) Preference points will be awarded to a bidder for attaining the specific goals requirements in accordance with the table indicated in Section 4.1 of the specific goals Claim Form.

COMMUNICATION (CLARIFICATIONS AND COMPLAINTS)

- 5.1 For specific clarification relating to this RFP, an RFP Clarification Request Form should be submitted to [**Thizeka.mpengezi@transnet.net**] before 20 August 2025 **on 16:00 PM**, 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.
- 5.2 Specific complaints relating to this RFP before or after the closing date should be formally submitted by emailing to groupscmcomplaints@transnet.net. Once the complaint has been submitted, the Transnet SCM Complaints office will acknowledge your complaint and send you a complaint form for completion.
- 5.3 After the closing date of the RFP, a Respondent may only communicate with Thizeka Mpengezi (BEC chairperson), at telephone number 022 703 4471, email Thizeka.mpengezi@transnet.net on any matter relating to its RFP Proposal.
- 5.4 Respondents are to note that changes to its submission will not be considered after the closing date.
- 5.5 It is prohibited for Respondents to attempt, either directly or indirectly, to canvass any officer or employee of Transnet in respect of this RFP between the closing date and the date of the award of the business.
- 5.6 Respondents found to be in collusion with one another will be automatically disqualified and restricted from doing business with organs of state for a specified period.
- 5.7 Transnet will publish the outcome of this RFP in the National Treasury e-tender portal and Transnet website with 10 days after the award has been finalised. Respondents are required to check the National Treasury e-tender Portal and Transnet website for the results of the tender process. All unsuccessful bidders have a right to request Transnet to furnish reasons for their bid not being successful. This requested must be directed to the contact person stated in the SBD 1 form

6 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.

7 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.

8 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.

9 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:

- 9.1 modify the RFP's services.
- 9.2 award a contract in connection with this Proposal at any time after the RFP's closing date;
- 9.3 award a contract for only a portion of the proposed SERVICES which are reflected in the scope of this RFP;
- 9.4 split the award of the contract between more than one Service provider, as may be explicitly articulated in the conditions or objective criteria to this RFP;
- 9.5 cancel the bid process;
- 9.6 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;
- 9.7 request audited financial statements or other documentation for the purposes of a due diligence exercise;
- 9.8 not accept any changes or purported changes by the Respondent to the bid rates after the closing date and/or after the award of the business, unless the contract specifically provided for it;
- 9.9 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;
- 9.10 to award the business to the next ranked bidder, provided that he/she is still prepared to provide the required Goods at the quoted price, should the preferred bidder fail to sign or commence with the contract within a reasonable period after being requested to do so. Under such circumstances, the validity of the bids of the next ranked bidder(s) will be deemed to remain valid, irrespective of whether the outcome of the tender has been published the outcome of the bid process on the National Treasury e-tender Portal and Transnet website. Bidders may therefore be requested to advise whether they would still be prepared to provide the required Goods at their quoted price.
- 9.11 Request a bidder to furnish further information relating to its Environmental, Social and Governance (ESG) standing at any stage of the procurement or contracting process. This

information may not be used for purposes of evaluation and/or disqualify bidder, but may be use for purpose of record and analysis of ESG compliance.

- 9.12 Where sub-contracting is applied in a tender, conduct due diligence assessment on the sub-contractor(s) and this may entail requesting the bidder to provide further information relating to the sub-contractor(s) or directly requesting the information from the sub-contractor(s) as well as conducting any necessary investigations on the sub-contractor(s) to detect issues of "FRONTING".

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

10 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.

11 SECURITY CLEARANCE

Acceptance of this bid could be subject to the condition that the Successful Respondent, its personnel providing the 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.

TRANSNET URGES ITS CLIENTS, SUPPLIERS AND THE GENERAL PUBLIC TO REPORT ANY FRAUD OR CORRUPTION TO

IF YOU DON'T REPORT IT, YOU SUPPORT IT!



Email: Transnet.Reportit@outlook.com

Toll free: 0800 003 056

SMS: 0637867403

Please Call Me number: *120*0637867403

Website: <https://whistleblowersoftware.com/secure/Transnet>

SECTION 3: BACKGROUND, OVERVIEW AND SCOPE OF REQUIREMENTS

1 BACKGROUND

Transnet Port Terminals (TPT), Port of Saldanha requires a Service Provider(s) to provide specialised service for load testing, NDT of plant Lifting Equipment at TPT Saldanha or a period of thirty-six (36) months.

EXECUTIVE OVERVIEW

Whereas Transnet is seeking a partner(s) to provide solutions for its Transnet Port Terminals nationally, it also seeks to improve its current processes for providing these SERVICES to its end user community throughout its locations.

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

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

- 1.1 Transnet must receive reduced cost of acquisition and improved service benefits resulting from the Service provider's economies of scale and streamlined service processes.
- 1.2 Transnet must achieve appropriate availability that meets user needs while reducing costs for both Transnet and the chosen Service provider(s).
- 1.3 Transnet must receive proactive improvements from the Service provider with respect to supply/provision of SERVICES and related processes.
- 1.4 Transnet's overall competitive advantage must be strengthened by the chosen Service provider's leading-edge technology and service delivery systems.
- 1.5 Transnet end users must be able to rely on the chosen Service provider's personnel for service enquiries, recommendations and substitutions.
- 1.6 Transnet must reduce costs by streamlining its acquisition of SERVICES, including managed service processes on a Group basis.

2 SCOPE OF REQUIREMENTS

Refer to Annexure A- Scope of Work

3 GREEN ECONOMY / CARBON FOOTPRINT

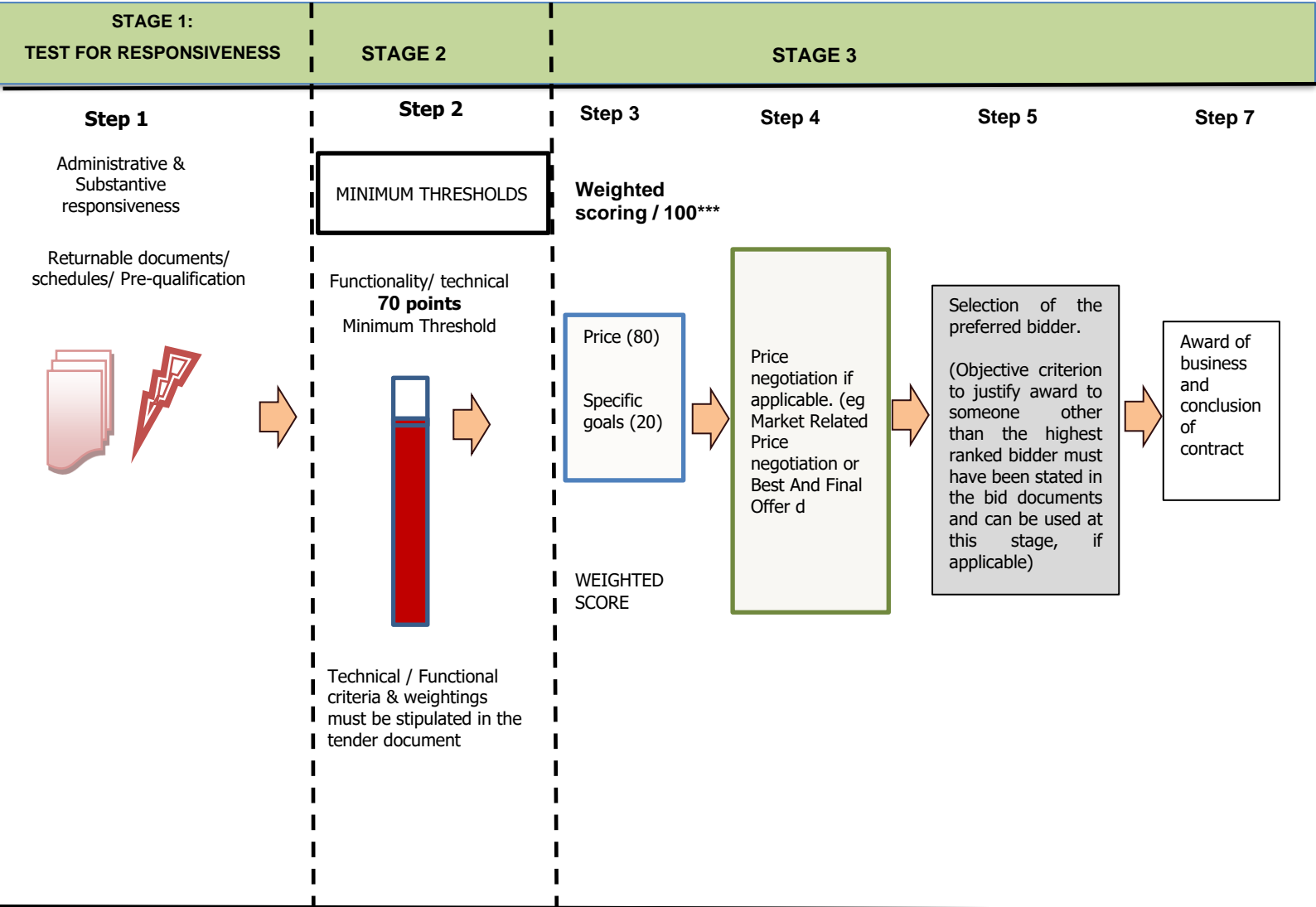
Transnet wishes to have an understanding of your company's position with regard to environmental commitments, including key environmental characteristics such as waste disposal, recycling and energy conservation. *Please submit details of your entity's policies in this regard.*

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 [INDICATE APPROPRIATE CRITERIA - REMOVE / ADD WHERE NECESSARY]

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 steps of the evaluation process in parallel. In such instances the evaluation of bidders at any given stage must not be interpreted to mean that bidders have necessarily passed any previous stage(s).

5.1 STEP ONE: Test for Administrative and Substantive Responsiveness

The test for administrative responsiveness will include the following:

Administrative responsiveness check	RFP Reference
• Whether the Bid has been lodged on time	<i>Section 1 paragraph 3</i>
• Whether all Returnable Documents and/or schedules [where applicable] were completed and returned by the closing date and time	<i>Section 5</i>
• Verify the validity of all returnable documents	<i>Section 5</i>
• Verify if the Bid document has been duly signed by the authorised respondent	<i>All sections</i>
• Whether any general and legislation qualification criteria set by Transnet, have been met	<i>All sections</i>
• Whether the Bid contains a priced offer	<i>Section 4 - Quotation Form</i>
• Whether the Bid materially complies with the scope and/or specification given	<i>All Sections</i>
• Entity's financial stability	
Check for substantive responsiveness	RFP Reference
• Whether any general and legislation qualification criteria set by Transnet, have been met	<i>All sections including: Section 2 paragraphs, 2.2, 6, 11.2, General Bid Conditions clause 20</i>
• Whether the Bid contains a priced offer as prescribed in the pricing and delivery schedule	<i>Section 4</i>
• Whether the Bid materially complies with the scope and/or specification given	<i>All Sections</i>

 Respondent's Signature

 Date & Company Stamp

Technical Evaluation Criteria	Points Weightings	Scoring guideline
Experience The Service Provider shall have three (3) years or more proven track record in in Load Testing and NDT services. Supporting documents: The Service Provider must provide reference letters from previous clients they provided with Load testing and NDT services. The reference letter must include the Clients name, contact persons details and duration of the contract.	40	40 points = More than three (3) years' experience with references issued by respondent's client for performing load testing and to carry out NDT (Non-destructive testing) on lifting equipment 30 points = Three (3) years' experience with references issued by respondent's client for performing load testing and to carry out NDT (Non-destructive testing) on lifting equipment 0 points = Less than three (3) years' experience with references issued by respondent's clients for performing load testing and to carry out NDT (Non-destructive testing) on lifting equipment or no references issued
Calibrated Equipment All measuring/testing equipment that will be used in executing the works should have valid calibration certification. Supporting Documents: SANAS accredited copies of the calibration certificates must be submitted to be used for calibration	30	30 points = SANAS accredited copies of calibration certificates submitted. 0 points = No certification submitted
Company Accreditation LME certification from Department of Labour LMI ECSA accreditation LMI letter of approved scope from ECSA Supporting documents SANAS accredited certification of the testing equipment	30	30 points = All certification documents submitted and in order. 0 points = no certification documents submitted.
Total Weighting:	100	
Minimum qualifying score required:	70	

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

5.2 STEP TWO: Minimum Threshold 70 points for Technical Criteria

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

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

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

5.3 STEP THREE Evaluation and Final Weighted Scoring**a) Price and TCO Criteria** [Weighted score 80 points]:

Evaluation Criteria	RFP Reference
• Commercial offer	<i>Section 4</i>

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

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

Where:

PS = Score for the Bid under consideration

Pt = Price of Bid under consideration

b) Specific Goals [Weighted score 20 point]

- Specific goals preference points claim form
- Preference points will be awarded to a bidder for attaining the specific goals requirements in accordance with the table indicated in Section 4.1 of the specific goals Claim Form.

5.4 SUMMARY: Applicable Thresholds and Final Evaluated Weightings

Thresholds	Minimum Threshold
Technical / functionality	70

Evaluation Criteria	Final Weighted Scores
Price and Total Cost of Ownership	80
Specific goals - Scorecard	20
TOTAL SCORE:	100

5.5 STEP FOUR: Price Negotiations (if applicable)

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

price has been achieved through negotiation, the contract will be awarded to the successful Respondent(s).

5.6 **STEP FIVE: Objective Criteria (if applicable)**

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

5.7 **STEP SIX : Award of business and conclusion of contract**

- Immediately after approval to award the contract has been received, the successful bidder(s) will be informed of the acceptance of his/their Bid by way of a Letter of Award. Thereafter the final contract will be concluded with the successful Respondent(s). where applicable.
- Alternatively, acceptance of a letter of award by the Successful Respondent. will constitute the final contract read together with their RFQ response and the Standard Terms and Conditions. This will be stated in the letter of award.

SECTION 4: PRICING AND DELIVERY SCHEDULE

Refer to Annexure B- Pricing Schedule

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) Rates proposed must be aligned with the Guide on Hourly Fee Rates for Consultants” by the Department of Public Service and Administration (DPSA);

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

1. DISCLOSURE OF CONTRACT INFORMATION

PRICES TENDERED

Respondents are to note that, on award of business, Transnet is required to publish the outcome of the RFQ and information of the successful Respondents *inter alia* on the National Treasury e-Tender Publication Portal, (www.etenders.gov.za), as required per National Treasury Instruction Note 09 of 2022/2023.

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, SERVICES provided by the company, the value and duration of the contract, etc. in compliance with the Johannesburg Stock Exchange (JSE) Debt Listing Requirements.

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

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

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

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

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

Respondent's Signature

Date & Company Stamp

		(Nature of interest/ Participation)				
1						
2						
3						

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

2. SERVICE LEVELS

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

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

- 2.5 The Service provider must provide a telephone number for customer service calls.
- 2.6 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:

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

SIGNED at _____ on this _____ day of _____ 20____

SIGNATURE OF WITNESSES

ADDRESS OF WITNESSES

1 _____

Name _____

2 _____

Name _____

SIGNATURE OF RESPONDENT'S AUTHORISED REPRESENTATIVE: _____

NAME: _____

DESIGNATION: _____

SECTION 5: PROPOSAL FORM AND LIST OF RETURNABLE DOCUMENTS

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

carrying on business trading/operating as

represented by _____

Respondent's Signature_____
Date & Company Stamp

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 SERVICES at the prices quoted in the schedule of prices in accordance with the terms set forth in the documents listed in the accompanying schedule of RFP documents.

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

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

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

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

I/We further agree that if, after I/we have been notified of the acceptance of my/our Proposal, I/we fail to enter into a formal contract if called upon to do so, or fail to commence the supply/provision of services within 2 [two] weeks thereafter, Transnet may, without prejudice to any other legal remedy which it may have,

Respondent's Signature

Date & Company Stamp

recover from me/us any expense to which it may have been put in calling for Proposals afresh and/or having to accept any less favourable Proposal.

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

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

ADDRESS FOR NOTICES

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

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

Name of Entity:

Facsimile:

Address:

NOTIFICATION OF AWARD OF RFP

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

VALIDITY PERIOD

Transnet requires a validity period of 180 Business Days [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. _____

Respondent's Signature

Date & Company Stamp

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

RETURNABLE DOCUMENTS

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

Mandatory Returnable Documents	<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 4: Pricing and Delivery Schedule	

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]
<p><i>Experience</i></p> <p>The Service Provider shall have three (3) years or more proven track record in in Load Testing and NDT services.</p> <p>Supporting documents:</p> <p>The Service Provider must provide reference letters from previous clients they provided with Load testing and NDT services. The reference letter must include the Clients name, contact persons details and duration of the contract.</p>	
<p><u>Calibrated Equipment</u></p> <p>All measuring/testing equipment that will be used in executing the works should have valid calibration certification.</p> <p>Supporting Documents: SANAS accredited copies of the calibration certificates must be submitted to be used for calibration</p>	
<p><u>Company Accreditation</u></p> <ul style="list-style-type: none"> • LME certification from Department of Labour • LMI ECSA accreditation • LMI letter of approved scope from ECSA <p><u>Supporting documents</u></p> <p>SANAS accredited certification of the testing equipment</p>	
<p>Valid proof of Respondent's compliance to Specific Goal requirements stipulated in Section 7 of this RFP (Valid B-BBEE certificate or Sworn- Affidavit as per DTIC guidelines)</p>	

c) Essential Returnable Documents:

, Respondents are further required to submit the following **Essential Returnable Documents** with their RFP and to confirm submission of these documents by so indicating [Yes or No] in the table below:

 Respondent's Signature

 Date & Company Stamp

CONTINUED VALIDITY OF RETURNABLE DOCUMENTS

ESSENTIAL RETURNABLE DOCUMENTS & SCHEDULES	SUBMITTED [Yes or No]
In the case of Joint Ventures, a copy of the Joint Venture Agreement or written confirmation of the intention to enter into a Joint Venture Agreement	
Latest Financial Statements signed by your Accounting Officer or latest Audited Financial Statements plus 2 previous years	
Section 1: SBD1 Form	
SECTION 5: Proposal Form and List of Returnable documents	
SECTION 6: Certificate of Acquaintance with RFP, Terms & Conditions & Applicable Documents	
SECTION 7: RFP Declaration and Breach of Law Form	
SECTION 8: RFP Clarification Request Form	
SECTION 9: Specific Goal Points Claim Form	
SECTION 10: Certificate of attendance of compulsory / non-compulsory Site Meeting / RFP Briefing	
SECTION 11: Protection of personal information	
ANNEXURE A: SCOPE OF WORK	
ANNEXURE C: MASTER AGREEMENT/ SERVICE LEVEL AGREEMENT	
ANNEXURE D: TRANSNET'S GENERAL BID CONDITIONS	
ANNEXURE E: SUPPLIER INTERGRITY PACT	
VALID PROOF OF REGISTRATION OF THE COMPENSATION FOR OCCUPATIONAL INJURIES AND DISEASES (COIDA) FROM THE DEPARTMENT OF LABOUR	
CENTRAL SUPPLIER DATABASE(CSD)	
TAX CLEARANCE CERTIFICATE WITH PIN	

The successful Respondent will be required to ensure the validity of all returnable documents, 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 _____

Respondent's Signature

Date & Company Stamp

Name _____

2 _____

Name _____

SIGNATURE OF RESPONDENT’S AUTHORISED REPRESENTATIVE: _____

NAME: _____

DESIGNATION: _____

**SECTION 6: RFQ DECLARATION CERTIFICATE OF ACQUAINTANCE & BREACH OF LAW
FORM WITH RFP**

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 and SLA attached
3	Transnet's Supplier Integrity Pact
4	Non-disclosure Agreement
5	Specifications and drawings attached to this RFP

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

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

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

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

SECTION 7: RFP DECLARATION AND BREACH OF LAW FORM

We 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 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

Respondent's Signature

Date & Company Stamp

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

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

Indicate nature of relationship with Transnet:

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

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

BIDDER'S DISCLOSURE (SBD4)

Respondent's Signature

Date & Company Stamp

12 PURPOSE OF THE FORM

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

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

13 Bidder's declaration

13.1 Is the bidder, or any of its directors / trustees / shareholders / members / partners or any person having a controlling interest¹ in the enterprise, employed by the state? **YES/NO**

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

Full Name	Identity Number	Name of State institution

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

13.2.1. If so, furnish particulars:

.....

¹ the power, by one person or a group of persons holding the majority of the equity of an enterprise, alternatively, the person/s having the deciding vote or power to influence or to direct the course and decisions of the enterprise.

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

13.3.1. If so, furnish particulars:
.....
.....

14 DECLARATION

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

- 14.1 I have read and I understand the contents of this disclosure;
- 14.2 I understand that the accompanying bid will be disqualified if this disclosure is found not to be true and complete in every respect;
- 14.3 The bidder has arrived at the accompanying bid independently from, and without consultation, communication, agreement or arrangement with any competitor. However, communication between partners in a joint venture or consortium² will not be construed as collusive bidding.
- 14.4 In addition, there have been no consultations, communications, agreements or arrangements with any competitor regarding the quality, quantity, specifications, prices, including methods, factors or formulas used to calculate prices, market allocation, the intention or decision to submit or not to submit the bid, bidding with the intention not to win the bid and conditions or delivery particulars of the products or services to which this bid invitation relates.
- 14.5 The terms of the accompanying bid have not been, and will not be, disclosed by the bidder, directly or indirectly, to any competitor, prior to the date and time of the official bid opening or of the awarding of the contract.
- 14.6 There have been no consultations, communications, agreements or arrangements made by the bidder with any official of the procuring institution in relation to this procurement process prior to and during the bidding process except to provide clarification on the bid submitted where so required by the institution; and the bidder was not involved in the drafting of the specifications or terms of reference for this bid.
- 14.7 I am aware that, in addition and without prejudice to any other remedy provided to combat any restrictive practices related to bids and contracts, bids that are suspicious will be reported to the Competition Commission for investigation and possible imposition of administrative penalties in

² 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.

terms of section 59 of the Competition Act No 89 of 1998 and or may be reported to the National Prosecuting Authority (NPA) for criminal investigation and or may be restricted from conducting business with the public sector for a period not exceeding ten (10) years in terms of the Prevention and Combating of Corrupt Activities Act No 12 of 2004 or any other applicable legislation.

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

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

BREACH OF LAW

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

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

NATURE OF BREACH:

DATE OF BREACH: _____

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

SIGNED at _____ on this ____ day of _____ 20__

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

SECTION 8: RFP CLARIFICATION REQUEST FORM

RFP No: TPT/2025/08/0007/103519/RFP

RFP deadline for questions / RFP Clarifications: Before 18 August 2025

TO: Transnet SOC Ltd
ATTENTION: The Tender Administrator
EMAIL Thizeka.mpengezi@transnet.net]
DATE: _____
FROM: _____

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

REQUEST FOR RFP CLARIFICATION

SECTION 9 : SPECIFIC GOALS 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 specific goals Contribution. Transnet will award preference points to companies who provide valid proof of evidence of as per the table below.

NB: BEFORE COMPLETING THIS FORM, BIDDERS MUST STUDY THE GENERAL CONDITIONS, DEFINITIONS AND DIRECTIVES APPLICABLE IN RESPECT OF SPECIFIC GOALS, AS PRESCRIBED IN THE PREFERENTIAL PROCUREMENT POLICY FRAMEWORK ACT, 2000.

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
- 1.2 The value of this bid is estimated to exceed R50 000 000 (all applicable taxes included) and therefore the 80/20 preference point system shall be applicable. Despite the stipulated preference point system, Transnet shall use the lowest acceptable bid to determine the applicable preference point system in a situation where all received acceptable bids are received outside the stated preference point system.
- 1.3 Preference points for this bid shall be awarded for:
- (a) Price;
 - (b) B-BBEE Status Level of Contribution; and
 - (c) Any other specific goal determined in Transnet preferential procurement policy.
- 1.4 The maximum points for this bid are allocated as follows:

		POINTS
PRICE		80
B-BBEE STATUS LEVEL OF CONTRIBUTION		20
Selected Specific Goal	Number of points allocated (80/20)	
B-BBEE Level of contributor (1 or 2)	10	
+50% Black Youth Owned Entities	10	
Non-Compliant and/or B-BBEE Level 3-8 contributors	0	
Total points for Price and Specific Goals must not exceed		100

- 1.5 Failure on the part of a bidder to submit proof of evidence for any of the specific goals together with the bid will be interpreted to mean that preference points 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

Respondent's Signature

Date & Company Stamp

- (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) **"Ownership"** means 51% black ownership
- (e) **"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;
- (f) **"Broad-Based Black Economic Empowerment Act"** means the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);
- (g) **"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);
- (h) **"functionality"** means the ability of a bidder to provide goods or services in accordance with specification as set out in the bid documents
- (i) **"Price"** includes all applicable taxes less all unconditional discounts.
- (j) **"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.
- (k) **"QSE"** means a Qualifying Small Enterprise as defines by Codes of Good Practice under section 9 (1) of the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);
- (l) **"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.
- (m) **"Specific goals"** means targeted advancement areas or categories of persons or groups either previously disadvantaged or falling within the scope of the Reconstruction and Development Programme identified by Transnet to be given preference in allocation of procurement contracts in line with section 2(1) of the PPPFA.

3. POINTS AWARDED FOR PRICE

3.1 THE 80/20 PREFERENCE POINT SYSTEMS

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

80/20

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

Where

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

In terms of Transnet Preferential Procurement Policy (TPPP) and Procurement Manuals, the following preference points must be awarded to a bidder who provides the relevant required evidence for claiming points

Selected Specific Goal	Number of points allocated (80/20)
B-BBEE Level of contributor (1 or 2)	10
+50% Black Youth Owned Entities	10
Non-Compliant and/or B-BBEE Level 3-8 contributors	0

4. EVIDENCE REQUIRED FOR CLAIMING SPECIFIC GOALS

4.1 In terms of Transnet Preferential Procurement Policy (TPPP) and Procurement Manuals, preference points must be awarded to a bidder for providing evidence in accordance with the table below:

Specific Goals	Acceptable Evidence
B-BBEE	B-BBEE Certificate / Sworn- Affidavit / B-BBEE CIPC Certificate (in case of JV, a consolidated scorecard will be accepted) as per DTIC guideline
30% Black Women Owned Entities	B-BBEE Certificate / Sworn- Affidavit / B-BBEE CIPC Certificate (in case of JV, a consolidated scorecard will be accepted) as per DTIC guideline
+50% Black Youth Owned Entities	Certified copy of ID Documents of the Owners and B-BBEE Certificate / Sworn- Affidavit / B-BBEE CIPC Certificate (in case of JV, a consolidated scorecard will be accepted) as per DTIC guideline
Entities Owned by People with Disability (PWD)	Certified copy of ID Documents of the Owners / Doctor's note and /or EEA1 form confirming the disability
Entities/Black People living in rural areas	Entity 's Municipal/ESKOM bill or letter from Induna/chief confirming residential address not older than 3 months.
South African Enterprises	CIPC Certificate
EME or QSE 51% Black Owned	B-BBEE Certificate / Sworn-Affidavit / CIPC Certificate
Entities that are 51 % Black Owned	CI B-BBEE Certificate / Sworn- Affidavit / B-BBEE CIPC Certificate (in case of JV, a consolidated scorecard will be accepted) as per DTIC guideline
Promoting exports Orientated for Job creation	Section.....Job Creation Schedule Returnable documents
Local Content and Local Production	Returnable Local Content and production Annexures
NIPP	NIPP Returnable documents
Creation of new jobs and labour intensification	Section.....Job Creation Schedule Returnable documents
The promotion of supplier development through sub-contracting or JV for a minimum of 30% of the value of a contract to South African Companies which are: I. 30% Black Women owned, 51% Black Youth and 51% Black people with disabilities II. Entities with a specified minimum B-BBEE level (1 and 2) III. EMEs and/or QSEs who are 51% black-owned	Sub-contracting agreements and Declaration / Joint Venture Agreement and CIPC – B-BBEE Certificate / Sworn- Affidavit / B-BBEE CIPC Certificate as per DTIC guideline
The promotion of enterprises located in a specific province/region/municipal area for work to be done or services to be rendered in that province/region/municipal	CIPC – B-BBEE Certificate / Sworn- Affidavit / B-BBEE CIPC Certificate (in case of JV, a consolidated scorecard will be accepted) as per DTIC guidelines and Proof Registered address of entity

area

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

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

- 4.3 A trust, consortium or joint venture (including unincorporated consortia and joint ventures) must submit a consolidated B-BBEE Status Level verification certificate for every separate bid.
- 4.4 Tertiary Institutions and Public Entities will be required to submit their B-BBEE status level certificates in terms of the specialized scorecard contained in the B-BBEE Codes of Good Practice.
- 4.5 A person will not be awarded points for B-BBEE status level if it is indicated in the bid documents that such a bidder intends sub-contracting more than 25% of the value of the contract to any other enterprise that does not qualify for at least the points that such a bidder qualifies for, unless the intended sub-contractor is an EME that has the capability and ability to execute the sub-contract.

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

- 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***)

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

- 7.1.1 If yes, indicate:

i) What percentage of the contract will be subcontracted.....%

- ii) The name of the sub-contractor.....
- iii) The B-BBEE status level of the sub-contractor.....
- iv) Whether the sub-contractor is an EME or QSE.

(Tick applicable box)

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

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

: 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 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;

Respondent's Signature

Date & Company Stamp

- iii) In the event of a contract being awarded as a result of points claimed as shown in paragraph 1.4 and 6.1, the contractor may be required to furnish documentary proof to the satisfaction of the purchaser that the claims are correct;
- iv) If a bidder submitted false information regarding its B-BBEE status level of contributor or any other matter required in terms of the Preferential Procurement Regulations, 2022 which will affect or has affected the evaluation of a bid the purchaser may, in addition to any other remedy it may have
 - (a) disqualify the person from the bidding process;
 - (b) recover costs, losses or damages it has incurred or suffered as a result of that person's conduct;
 - (c) cancel the contract and claim any damages which it has suffered as a result of having to make less favourable arrangements due to such cancellation;
 - (d) if the successful bidder subcontracted a portion of the bid to another person without disclosing it, Transnet reserves the right to penalise the bidder up to 10 percent of the value of the contract;
 - (e) recommend that the bidder or contractor, its shareholders and directors, or only the shareholders and directors who acted on a fraudulent basis, be restricted by the National Treasury from obtaining business from any organ of state for a period not exceeding 10 years, after the audi alteram partem (hear the other side) rule has been applied; and
 - (f) forward the matter for criminal prosecution.

WITNESSES

1.

2.

SIGNATURE(S) OF BIDDERS(S)

DATE:

ADDRESS.....

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

It is hereby certified that –

- 1. _____
- 2. _____

Representative(s) of _____ *[name of entity]*
attended the site meeting / RFP briefing in respect of the proposed SERVICES to be rendered in terms
of this RFP on _____ 20____

TRANSNET’S REPRESENTATIVE

RESPONDENT’S REPRESENTATIVE

DATE _____

DATE _____

EMAIL _____

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

SECTION 11: PROTECTION OF PERSONAL INFORMATION

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

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

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

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

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

Respondents are required to provide consent below:

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

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

Signature of Respondent's authorised representative: _____

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



Provision of Specialised Service for Load Testing, NDT of Plant Lifting Equipment at TPT Saldanha For a period of 3 years

**Document Reference Number:
SSLTNPLE-02062025**

Site:
Bulk Terminal Saldanha

Date: 02/06/2025

*Distribution of this document is restricted to Transnet and
Transnet approved entities only*

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1.DEFINITIONS

Commissioning:

The process of assuring that all systems and components of a building or industrial plant or product designed, installed, tested, operated, and maintained according to the operational requirements of the owner or final client.

Contract

An agreement with specific terms between two or more parties or entities based on mutual consent, which has legal effects and involves transfer of consideration – usually financial or some other type of benefit.

Contract Manager

Transnet employee who is authorised to represent Transnet in terms of the contract and appointed to supervise and/or liaise with the contractor to ensure that the specifications of the contract met (with special emphasis on technical specifications, inspection of quality, on health and safety, environment and quantity of work). A contract manager has the role of executing the plan to achieve the deliverables. This person receives all his authorisations from the project initiator and the stakeholders.

Contract Owner

The person who requires a specific product, goods or services and who is responsible to provide the budget and approval.

Contractor

An employer (organisation) or a person performing any work and has entered into a legal binding business agreement contract to supply a product or provide services to Transnet. This applies to the Suppliers, Vendors, and Consultants, Service providers and Contractors.

Contractor Execution Plan

A site, activity or project specific documented plan in accordance with the client's project requirements. The Contractor to Transnet submits a plan for approval prior to mobilization on site. The Contractor Execution Plan includes, inter alia: Health and Safety, Environmental, Energy, Quality, Delivery plans etc.

Contractor Compliance File a file or other record containing the information in writing required by Transnet.

NB: A file must be submitted for each discipline where applicable e.g. health and safety, environment file etc.

Job Owner:

Any permanent employee of BTS who been trained, tested and found competent, and appointed in writing for the purpose of carrying out or supervising work on plant, machinery and equipment.

Risk Assessment

A risk assessment in this procedure means the process where all risks associated with the contract and its execution identified, mitigated and managed.

Specification

A detailed prescription of the Integrated Management System (IMS) requirements to which equipment, construction, product or service has to comply with this includes various models, drawings and documents. It noted that the specification might even comprise of a multitude of different elements.

Lockout:

The fitting of a padlock (or calliper and padlocks) to an isolator switch so that it cannot be returned to an operating condition.

Permit Acceptor:

Any person who has been appointed in writing to receive a Permit to Work for the purposes of carrying out or supervising work on equipment.

Permit Issuer:

The operations shift manager will be responsible for the issuing of permits.

Permit Number:

A number issued by CCR that logs the work performed, the person responsible for the work and the approximate duration. Note: This is not the same as the sequential number on the Permit to Work.

Permit to Work:

A written document indicating the equipment to work on, the potential hazards, how and where these hazards negated, signatures indicating that equipment is safe and the names of all persons working on the equipment.

Responsible Supervisor:

The Operations and Maintenance Supervisor who been assigned responsibility for the operation and maintenance of a particular section/s of the plant.

2.ABBREVIATIONS

IMS:	Integrated Management System
ISO:	International Organization for Standardization
OHSAS:	Occupational Health and Safety Assessment Series
POM:	Policy Manual
PROC:	Procedure
SOP:	Safe Operating Procedure
QMS:	Quality Management System
SANS:	South African National Standard
SMS: System	Safety Management System / Service Management
TCC: Office	Transnet Corporate Centre which is the Transnet Head
SLD:	Saldanha

TPT: Transnet Port Terminals

WI: Work Instructions

3.BACKGROUND

The purpose of this work scope is to procure services from a Specialized Lifting Services Provider for Load Testing and to carry out NDT (Non-destructive testing) on plant lifting equipment utilized at TPT Saldanha for a period of 3 years

Objectives

To eliminate the risk of failure resulting in unwanted production stoppages and reduced equipment reliability.

- 3.1 Task to be executed on an as and when required or future equipment expiry date, service provider to be informed well in advance, which will happen on a yearly basis per piece of lifting equipment.

Shackles		
Item description	Weight	Quantity
Bow - Shackle SWL	25000kg	10
Bow - Shackle SWL	17000kg	8
Bow - Shackle SWL	12000kg	16
Bow - Shackle SWL	9500kg	8
Bow - Shackle SWL	8500kg	13
Bow - Shackle SWL	6500kg	9
Bow - Shackle SWL	4750kg	3
Bow - Shackle SWL	3250kg	8
Bow - Shackle SWL	2000kg	1
DEE - Shackle SWL	17000kg	4
DEE - Shackle SWL	8500kg	1
DEE - Shackle SWL	3000kg	15
DEE - Shackle SWL	6000kg	17
DEE - Shackle SWL	6500kg	4
DEE - Shackle SWL	5000kg	1
DEE - Shackle SWL	4750kg	4
DEE - Shackle SWL	3750kg	7
DEE - Shackle SWL	750kg	4
DEE - Shackle SWL	1500kg	6
DEE - Shackle SWL	500kg	1
DEE - Shackle SWL	1400kg	2
DEE - Shackle SWL	2000kg	9
DEE - Shackle SWL	3250kg	17
Crosby – Shackle SWL	6500kg	1
Crosby – Shackle SWL	4750kg	1
Crosby – Shackle SWL	12000kg	8

Crosby – Shackle SWL	8500kg	1
Crosby – Shackle SWL	3250kg	6

Lever hoist		
Item description	Weight/Length	Quantity
Lever hoist SWL	3000kg	44
Lever hoist SWL	3000kg 3 metre chain	3
Lever hoist SWL	3200kg 3 metre chain	8
Lever hoist SWL	6000kg	20

Chain Slings		
Item description	Weight/Length	Quantity
Chain sling SWL	3000kg 1 metre	1
Chain sling SWL	3200kg 1 metre	44
Chain sling SWL	3200kg 1.5 metre	12
Chain sling SWL	3200kg 2 metres	10
Chain sling SWL	3200kg 3 metres	14
Chain sling SWL	3200kg 4 metres	14
Chain sling SWL	5400kg 1 metre	20
Chain sling SWL	5400kg 2 metres	14
Chain sling SWL	5400kg 4 metres	10
Chain sling SWL	6720kg 9 metres	2
Chain sling SWL	15500kg 3 metres	4
Chain sling SWL	32000kg	1
Drum chain sling SWL	1600kg 1 metre	1
Drum chain sling SWL	300kg 1 metre	1
4 legged drum chain sling SWL	3400kg 1.5 metre	4
3 legged drum chain sling SWL	3200kg	1
3 legged drum chain sling SWL	6720kg 3 metre	2
3 legged drum chain sling SWL	6700kg 3 metre	3
2 legged drum chain sling SWL	5400kg 3.5 metres	4
2 legged drum chain sling SWL	5400kg 4 metres	1 (only for gearboxes)
2 legged drum chain sling SWL	7420kg 4 metres	3
2 legged drum chain sling SWL	7600kg 3.5 metres	8
1 legged chain sling SWL	3200kg 1 metre	2
1 legged chain sling SWL	3200kg 1.5 metre	1
1 legged chain sling SWL	3200kg 1.7 metre	10
1 legged chain sling SWL	3200kg 1.8 metre	10
1 legged chain sling SWL	3200kg 2 metres	12
1 legged chain sling SWL	3200kg 3 metres	7

1 legged chain sling SWL	3200kg 3.5 metres	10
1 legged chain sling SWL	5400kg 2 metres	12
Single leg chain sling SWL	3200kg 1 metre	10
Single leg chain sling SWL	3200kg 2 metre	4
Single leg chain sling SWL	5400kg 1 metre	4
Belt pipe chain sling SWL	5300kg 13 x 2000mm	6
Belt pipe chain sling SWL	5400kg 13 x 2000mm	4
Chain sling Grap hook SWL	3200kg 3 metre	4

Chain Block		
Item description	Weight/Length	Quantity
Chain block SWL	1000kg	2
Chain block SWL	1000kg 5 metres	4
Chain block SWL	2000kg 5 metres	5
Chain block SWL	3000kg	3
Chain block SWL	3000kg 5 metres	5
Chain block SWL	5000kg	1
Chain block SWL	5000kg 5 metres	11
Chain block SWL	10 tons	12

Eye Bolts		
Item description	Weight/Size	Quantity
Eye nut SWL	3600kg M30	1
Eye nut SWL	1800kg M24	1
Eye bolt SWL	3600kg M30	5
Eye bolt SWL	3200kg M30	2
Eye bolt SWL	3000kg M30	1
Eye bolt SWL	1800kg M24	9
Eye bolt SWL	1500kg M22	1
Eye bolt SWL	1200kg M20	5
Eye bolt SWL	700kg M16	3
Eye bolt SWL	500kg M16	1
Eye bolt SWL	490kg M14	2
Eye bolt SWL	340kg M10	2
Eye bolt SWL	230kg M10	2

Snatch Blocks		
Item description	Weight/Size	Quantity
Snatch block SWL	7500kg	1
Snatch block SWL	8000kg	3

Snatch block SWL	12000kg	2
Snatch Block Bow shackle	12000kg	2

Plate grabs		
Item description	Weight/Size	Quantity
Plate Grab SWL	1000kg	2
Plate Grab SWL	1200kg	2
Plate Grab SWL	2000kg L.T Crane	1

Tirfors		
Item description	Weight/Size	Quantity
Tirfor SWL	800kg cable 8,3 x 30 meter+ handle	1
Tirfor SWL	1600kg cable 11 x 30 meter + handle	2
Tirfor SWL	3000kg cable 16 x 30 meter + handle	1

Hydraulic Jack		
Item description	Weight/Size	Quantity
Hydraulic Jack SWL	560 tons	4
Hydraulic Jack SWL	350 tons	3
Hydraulic Jack SWL	200 tons	7
Hydraulic Jack SWL	100 tons	9
Hydraulic Jack SWL	90 tons	4
Hydraulic Jack SWL	60 tons	4
Hydraulic Jack SWL	50 tons	2
Hydraulic Jack SWL	30 tons	6
Hydraulic Jack SWL	25 tons	4
Hydraulic Jack SWL	20 tons	4
Hydraulic Jack SWL	15 tons	3
Hydraulic Jack SWL	10 tons	5

Lifting Beams		
Item description	Weight/Size	Quantity
Lifting Beam	10 Ton	3

Overhead Cranes		
Tipler Cranes		
Item description	Weight/Size	Quantity

Tippler 1		
South		
O.E.T Crane SWL	20000kg	1
Crane hook SWL	20000kg	1
North		
O.E.T Crane SWL	10000kg	1
Crane hook SWL	10000kg	1
Tippler 2		
South		
O.E.T Crane SWL	20000/5000kg	1
Crane Hook SWL	5000kg	1
Crane Hook SWL	20000kg	1
North		
O.E.T Crane SWL	20000/5000kg	1
Crane Hook SWL	5000kg	1
Crane Hook SWL	20000kg	1
Workshop 17 Cranes		
Millwright Shop		
O.E.T Crane SWL	20000/5000kg	1
Crane Hook SWL	5000kg	1
Crane Hook SWL	20000kg	1
Boiler Shop		
O.E.T Crane SWL	10000kg	1
Crane Hook SWL	10000kg	1
Material Store		
O.E.T Crane SWL	10000kg	1
Crane Hook SWL	10000kg	1
Tool Store		
O.E.T Crane SWL	8000kg	1
Crane Hook SWL	8000kg	1
Steam Cleaning Bay		
O.E.T Crane SWL	8000kg	1
Crane Hook SWL	8000kg	1
Pre-Cleaning Bay		
Crane hook SWL	8000kg	1
Crawl Beam SWL	8000kg	1
R.O Plant		
Single Girder Overhead Crane	5000kg	1
Reservoir Pump Station Crawler Beam	5000kg	1

BTS Machinery		
Item description	Size	Quantity
Forklift lifting attachment SWL	1090kg	1
Forklift	8000kg	1

Forklift	4000kg	1
Hyundai Forklift	13000kg	1
Mobile Work Platform (Genie) SWL (2 People)	277kg	1

MPT Machinery		
Item description	Size	Quantity
Forklifts		
Terex forklift	32 tons	1
Terex forklift	42 tons	1
Sany forklift	32 tons	6
Sany forklift	18 tons	2

3.2

4. SCOPE OF REQUIREMENTS

4.1 The service provider to perform Load Testing and Check for the Following Defects.

4.1.1 Cracks, nicks, and gouges.

4.1.2 Deformation

4.1.3 Latch engagement, damage to or malfunction of latch

4.2 The following testing loads is required from Transnet Code of Practice No.29:

Steel chain slings	SWL + 10%
	SWL + 10%

Steel wharf crane hook and chain assemblies, steel chain fitted on cranes, steel chains on grabs.	SWL + 10%
Steel, foundry ladle lifting beam assemblies, lifting beams and spreaders, plate and girder clamps, turnbuckles.	
Steel lifting tackle components (i.e. hooks, cross heads, shackles, rings, links, eyebolts, armature lifting caps, etc.) Up to and including 50 000-kilogram capacity.	SWL + 10%
Over 50 000-kilogram capacity but under 100 000-kilogram capacity	SWL + 10%
100 000-kilogram capacity and over	SWL + 10%

4.3 The service provider shall supply a handover data book on completion of the works, which contains the following:

4.3.1 Full report on faults found and rectified

4.3.2 Test Certificates

4.4 The service provider shall supply a test report for the NDT done which shall contain the following information:

4.4.1 Information on the part tested:

4.4.1.1 Designation

4.4.1.2 Dimensions

4.4.1.3 Material

4.4.1.4 surface condition

4.4.1.5 production stage

4.4.2 Purpose of testing;

4.4.3 Designation of the penetrant system used, giving the manufacturer's name and product designation as well as the batch number;

4.4.3.1 Test instructions;

4.4.3.2 Any deviations from the test instructions;

4.4.3.3 Test results (description of discontinuities detected);

4.4.3.4 Test location and the date of testing

- 4.4.3.5 Name, certification and signature of the competent person conducting the test and signature of the supervisor
- 4.5 The service provider shall supply the load test certificates, which include the following data:
 - 4.5.1 SWL of the crane and hook
 - 4.5.2 Mass of test load used
 - 4.5.3 Date of test
 - 4.5.4 Whether test was satisfactory or not
 - 4.5.5 Competent person name and signature
 - 4.5.6 LME no. of company conducting the test
 - 4.5.7 Any comments he might have

5. TESTING & COMMISSIONING

After completion of the work, the service provider shall satisfy himself that the works is complete in all respects. After successful completion of the service provider pre-commissioning inspections, the cranes to be tested as a means of approving the quality of the work done.

6. SERVICE PROVIDER CONSTRAINTS FOR PROVIDING THE SERVICE

- 6.1 The service provider shall schedule his work such that it does not interfere with the terminal existing operations.
- 6.2 The work must be planned around the 12 hour maintenance windows each week (subject to change) to be communicated by the technical supervisor.
- 6.3 The service provider may be working where other Service Providers and maintenance personnel perform other works, which are in the same area during the duration period of this contract. The service provider shall co-ordinate his work with the Project technician to maintain harmonious working conditions on site.
- 6.4 During the progress of the service provider's works, the service provider shall provide access to others who also execute work in the same area, on an as and when basis.
- 6.5 The service provider shall make his own assessment of the problems and difficulties which may be encountered for providing access to and interfacing with others (this includes access difficulties experienced during construction or commissioning phase)

- 6.6 All Sub-Service Providers to be approved by TPT before commencing of services.
- 6.7 The service provider shall supply TPT Saldanha with a QC Plan with holding points; to be supplied to TPT within 14 days after the purchase order has been awarded.

7. QUALITY AND SERVICE

- 7.1 All services supplied and delivered to Transnet must be of excellent quality in compliance with the specifications. Should the goods or service(s) not be in conformity with the specifications, Transnet reserves the right to reject them, obtain the goods or service(s) from other sources of its free choice and debit the difference in cost, if any, to the Service Provider.
- 7.2 The Service Provider shall ensure that its employees tasked with providing the required services to Transnet are competent, and experienced in carrying out its responsibilities as set out in the scope of work herein.
- 7.3 The Service Provider must have roadworthy and licenced vehicles.
- 7.4 The Service Provider must have a permanently manned telephone (place of business/cell phone) and fax machine, to ensure that immediate contact can be made in case of emergency.

8. GENERAL SAFETY AND COMPLAINT SPECIFICATIONS

- The Contractor must submit a detailed Contractor Execution Plan (CEP) to the Contractor Manager for approval as per **TRN-IMS-GRP-GDL 014.5 Contractor Execution Plan minimum requirements.**
- Contractor must submit **TRN-IMS-GRP-TMP 014.3 Employee Personal Profile Dossier** to contractor Manager for approval before induction training confirmed. Approved Employee Profile Dossiers includes certified copies of medicals, identity documents, competencies etc. submitted via email correspondence to **TPTSLD-Induction-booking@transnet.net.**
- Contractor Compliance SHE File within accordance with File Contractor Compliance File and in line with relevant applicable specifications as per respective **TRN-IMS-GRP-GDL 014.2 Contractor Specification Guidelines, TRN-IMS-GRP-GDL 014.4 Contractor Environmental and Sustainable Specification Guideline, TRN-IMS-GRP-GDL 014.6 Contractor Quality Specification Guideline and TRN-IMS-GRP-GDL 014.5 Contractor Security Specification Guidelines**

- Principle contractor approve **Mandatory Agreement** in terms of **section 37(2) TRN-IMS-GRP-TMP-014.1** of the Occupational Health and Safety Act (OHS Act) and submit to Contractor Manager to agree.
- The Principle Contractor must **submit written request** to the Contractor Manager for permission for sub-contract to provide any work or services to TPT and ensure that all **37.2 Agreement between Principle contractor and Sub Contractor** submitted to Contractor Manager.
- Contractor must **submit** completed **SHE File Electronic** to Contractor Manager for approval.
- Contractor undergoes induction training prior to handing over the site to the Contractor as **TRN-IMS-GRP-GDL 014.6 Contractor Induction Minimum Requirements**.
- SITE ESTABLISHMENT:
All relevant permits and authorisations is as per **TRN-IMS-GRP-TMP 014.7 List of Legal Permits and Authorisations** shared and completed prior to site access. **Contractor appointed** within accordance with **TRN-IMS-GRP-TMP-001.1** prior to site access by TPT.
- Contractor Manager will conduct **TRN-IMS GRP TMP 014.8 Pre-site handover inspection** prior to Site Access granted with Service Provider.
- **No work will commence with approved TRN-IMS-GRP-TMP-014.10 Operational Safe Work Permit** issue to the contractor by Contractor Manager.
- CLOSE OUT PHASE
Contractor Manager and the Contractor must co-sign the **TRN-IMS-GRP-TMP-014.13 Final Handover and Closeout Inspection Checklist**.
- TESTING AND COMMISSIONING:
The Contractor Manager will **develop a test and commissioning plan of the project** and communicate it to the contractor.
- The service provider will be responsible for obtaining Hot work permit from TNPA (phone no: 022 703 4331) within conjunction with Fire Safety Management Manual GRM/SHEQ/MAN 001.
- The service provider must have a Fire watch on duty during Hot Work and a Fire extinguisher as per required within Fire Safety Management Manual GRM/SHEQ/MAN 001.
- Service provider will ensure compliance to **TPT SLDT SHEQ-RS PRO 021_Lock Out Procedure** and lock out and isolation done by Trained and competent employees with conjunction with TPT competent.
- Service provider shall implement and maintain applicable Health, Safety, Quality and Environmental regulations and other relevant standards and regulation, example: applicable SANS codes; OHS Act of 1993 , other legislation, ISO 9001, ISO 14001 and ISO 45001, etc.
- Service provider to ensure that all employees involved in activity is informed of the Hazards and risk they exposed to and all other relevant applicable Safety

Work Procedures, Fall protections Plans, Environmental Plans, Emergency Plans and any other relevant procedures, etc. proof to be submitted as part of the SHE File.

- Service Provider will ensure that On the Job HIRAS is completed prior to start of activity to ensure that any additional Risks been identified.
- Service provider must ensure that when required to off-load or load any heavy equipment and machinery on the plant that they comply with that equipment or machinery will not be physically operated by an employee when required to off-loaded or load from any flatbed or low bed.
- Principle Contractor will be responsible to ensure that Sub Contractor SHE File compiled within conjunction with TPT Requirements and Approved prior to submission to Contractor Manager.
- Service Providers are liable to collect and remove all waste generated during the contract/project. Generated Waste will not allowed being disposed within TPT waste skips. Removal of Hazardous waste will be contractor's responsibility and Disposal Certificate submitted to SHEQ after waste has been disposed safely.

Pricing schedule for the provision of Service for condition monitoring services Table 1

Nr.	Equipment Type	Specification	Unit	Estimated Quantity per year	Total price year 1	Total price year 2	Total price year 3	Total
1	Bow - Shackle SWL	25000kg	each	10				
2	Bow - Shackle SWL	17000kg	each	8				
3	Bow - Shackle SWL	12000kg	each	16				
4	Bow - Shackle SWL	9500kg	each	8				
5	Bow - Shackle SWL	8500kg	each	13				
6	Bow - Shackle SWL	6500kg	each	9				
7	Bow - Shackle SWL	4750kg	each	3				
8	Bow - Shackle SWL	3250kg	each	8				
9	Bow - Shackle SWL	2000kg	each	1				
10	DEE - Shackle SWL	17000kg	each	4				
11	DEE - Shackle SWL	8500kg	each	1				
12	DEE - Shackle SWL	3000kg	each	15				
13	DEE - Shackle SWL	6000kg	each	17				
14	DEE - Shackle SWL	6500kg	each	4				
15	DEE - Shackle SWL	5000kg	each	1				
16	DEE - Shackle SWL	4750kg	each	4				
17	DEE - Shackle SWL	3750kg	each	7				
18	DEE - Shackle SWL	750kg	each	4				
19	DEE - Shackle SWL	1500kg	each	6				
20	DEE - Shackle SWL	500kg	each	1				
21	DEE - Shackle SWL	1400kg	each	2				
22	DEE - Shackle SWL	2000kg	each	9				
23	DEE - Shackle SWL	3250kg	each	17				
24	Crosby – Shackle SWL	6500kg	each	1				
25	Crosby – Shackle SWL	4750kg	each	1				
26	Crosby – Shackle SWL	12000kg	each	8				
27	Crosby – Shackle SWL	8500kg	each	1				
28	Crosby – Shackle SWL	3250kg	each	6				
29	Lever hoist SWL	3000kg	each	44				
30	Lever hoist SWL	3000kg 3 metre chain	each	3				
31	Lever hoist SWL	3200kg 3 metre chain	each	8				
32	Lever hoist SWL	6000kg	each	20				
33	Chain sling SWL	3000kg 1 metre	each	1				
34	Chain sling SWL	3200kg 1 metre	each	44				
35	Chain sling SWL	3200kg 1.5 metre	each	12				
36	Chain sling SWL	3200kg 2 metres	each	10				
37	Chain sling SWL	3200kg 3 metres	each	14				
38	Chain sling SWL	3200kg 4 metres	each	14				

39	Chain sling SWL	5400kg 1 metre	each	20				
40	Chain sling SWL	5400kg 2 metres	each	14				
41	Chain sling SWL	5400kg 4 metres	each	10				
42	Chain sling SWL	6720kg 9 metres	each	2				
43	Chain sling SWL	15500kg 3 metres	each	4				
44	Chain sling SWL	32000kg	each	1				
45	Drum chain sling SWL	1600kg 1 metre	each	1				
46	Drum chain sling SWL	300kg 1 metre	each	1				
47	4 legged drum chain sling SWL	3400kg 1.5 metre	each	4				
48	3 legged drum chain sling SWL	3200kg	each	1				
49	3 legged drum chain sling SWL	6720kg 3 metre	each	2				
50	3 legged drum chain sling SWL	6700kg 3 metre	each	3				
51	2 legged drum chain sling SWL	5400kg 3.5 metres	each	4				
52	2 legged drum chain sling SWL	5400kg 4 metres	each	1				
53	2 legged drum chain sling SWL	7420kg 4 metres	each	3				
54	2 legged drum chain sling SWL	7600kg 3.5 metres	each	8				
55	1 legged chain sling SWL	3200kg 1 metre	each	2				
56	1 legged chain sling SWL	3200kg 1.5 metre	each	1				
57	1 legged chain sling SWL	3200kg 1.7 metre	each	10				
58	1 legged chain sling SWL	3200kg 1.8 metre	each	10				
59	1 legged chain sling SWL	3200kg 2 metres	each	12				
60	1 legged chain sling SWL	3200kg 3 metres	each	7				
61	1 legged chain sling SWL	3200kg 3.5 metres	each	10				
62	1 legged chain sling SWL	5400kg 2 metres	each	12				
63	Single leg chain sling SWL	3200kg 1 metre	each	10				
64	Single leg chain sling SWL	3200kg 2 metre	each	4				
65	Single leg chain sling SWL	5400kg 1 metre	each	4				

66	Belt pipe chain sling SWL	5300kg 13 x 2000mm	each	6				
67	Belt pipe chain sling SWL	5400kg 13 x 2000mm	each	4				
68	Chain sling Grap hook SWL	3200kg 3 metre	each	4				
69	Chain block SWL	1000kg	each	2				
70	Chain block SWL	1000kg 5 metres	each	4				
71	Chain block SWL	2000kg 5 metres	each	5				
72	Chain block SWL	3000kg	each	3				
73	Chain block SWL	3000kg 5 metres	each	5				
74	Chain block SWL	5000kg	each	1				
75	Chain block SWL	5000kg 5 metres	each	11				
76	Chain block SWL	10 tons	each	12				
77	Eye nut SWL	3600kg M30	each	1				
78	Eye nut SWL	1800kg M24	each	1				
79	Eye bolt SWL	3600kg M30	each	5				
80	Eye bolt SWL	3200kg M30	each	2				
81	Eye bolt SWL	3000kg M30	each	1				
82	Eye bolt SWL	1800kg M24	each	9				
83	Eye bolt SWL	1500kg M22	each	1				
84	Eye bolt SWL	1200kg M20	each	5				
85	Eye bolt SWL	700kg M16	each	3				
86	Eye bolt SWL	500kg M16	each	1				
87	Eye bolt SWL	490kg M14	each	2				
88	Eye bolt SWL	340kg M10	each	2				
89	Eye bolt SWL	230kg M10	each	2				
90	Snatch block SWL	7500kg	each	1				
91	Snatch block SWL	8000kg	each	3				
92	Snatch block SWL	12000kg	each	2				
93	Snatch Block Bow shackle	12000kg	each	2				
94	Plate Grab SWL	1000kg	each	2				
95	Plate Grab SWL	1200kg	each	2				
96	Plate Grab SWL	2000kg L.T Crane	each	1				
97	Tirfor SWL	800kg cable 8,3 x 30 meter+ handle	each	1				
98	Tirfor SWL	1600kg cable 11 x 30 meter + handle	each	2				
99	Tirfor SWL	3000kg	each	1				
100	Hydraulic Jack SWL	560 tons	each	4				
101	Hydraulic Jack SWL	350 tons	each	3				
102	Hydraulic Jack SWL	200 tons	each	7				
103	Hydraulic Jack SWL	100 tons	each	9				
104	Hydraulic Jack SWL	90 tons	each	4				
105	Hydraulic Jack SWL	60 tons	each	4				

106	Hydraulic Jack SWL	50 tons	each	2				
107	Hydraulic Jack SWL	30 tons	each	6				
108	Hydraulic Jack SWL	25 tons	each	4				
109	Hydraulic Jack SWL	20 tons	each	4				
110	Hydraulic Jack SWL	15 tons	each	3				
111	Hydraulic Jack SWL	10 tons	each	5				
112	Lifting Beam	10 Ton	each	3				
113	O.E.T Crane SWL	20000kg	each	5				
114	Crane hook SWL	20000kg	each	2				
115	O.E.T Crane SWL	10000kg	each	1				
116	Crane hook SWL	10000kg	each	1				
117	O.E.T Crane SWL	5000kg	each	3				
118	Crane Hook SWL	5000kg	each	3				
119	Crane Hook SWL	20000kg	each	3				
120	O.E.T Crane SWL	10000kg	each	2				
121	Crane Hook SWL	10000kg	each	2				
122	O.E.T Crane SWL	8000kg	each	2				
123	Crane Hook SWL	8000kg	each	3				
124	Crawl Beam SWL	8000kg	each	1				
125	Single Girder Overhead Crane	5000kg	each	1				
126	Reservoir Pump Station Crawler Beam	5000kg	each	1				
127	Forklift lifting attachment SWL	1090kg	each	1				
128	Forklift	8000kg	each	1				
129	Forklift	4000kg	each	1				
130	Hyundai Forklift	13000kg	each	1				
131	Mobile Work Platform (Genie) SWL (2 People)	277kg	each	1				
132	Terex forklift	32 tons	each	1				
133	Terex forklift	42 tons	each	1				
134	Sany forklift	32 tons	each	6				
135	Sany forklift	18 tons	each	2				
	Subtotal per year (VAT Exclusive)							
	VAT							
	Total (VAT Inclusive)							



MASTER AGREEMENT

Entered into by and between

TRANSNET SOC LTD

And

.....

**FOR THE PROVISION OF SPECIALISED SERVICE FOR LOAD TESTING, NDT OF PLANT
LIFTING EQUIPMENT AT TPT SALDANHA FOR A PERIOD OF THREE (3) YEARS**

Agreement Number

Commencement Date

Expiry Date

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SCHEDULE 1 – WORK ORDER / SCHEDULE OF REQUIREMENTS

1 INTRODUCTION

This Agreement is entered into by and between:

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

and

.....
[Registration Number 2001/017248/07] 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 supply of Goods / provision of Services provided for herein, as formally agreed between the Parties and in accordance with the Schedule of Requirements / Work Orders issued as a schedule to this Agreement; and
- 1.2** The Service Provider hereby undertakes to provide the Services provided for herein, as formally agreed between the Parties and in accordance with the Schedule of Requirements issued as a schedule to this Agreement.

2 DEFINITIONS

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

- 2.1 AFSA** means the Arbitration Foundation of South Africa;
- 2.2 Agreement** means this Agreement and its associated schedules and/or annexures and/or appendices, and/or schedules, including the Schedule of Requirements, the technical specifications for the Services and such special conditions as shall apply to this Agreement, together with the General Tender Conditions and any additional provisions in the associated bid documents tendered by the Service Provider [as agreed, in writing, between the Parties], which collectively and exclusively govern the supply of Goods / provision of Services and provision of ancillary 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;
- 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 authorized Subcontractors, or their methods, practices or service performance levels actually achieved;

2.7 Copyright means the right in expressions, procedures, methods of operations or mathematical concepts, computer program codes, compilations of data or other material, literary works, musical works, artistic works, sound recordings, broadcasts, program carrying signals, published editions, photographic works, or cinematographic works of the copyright owner to do or to authorise the doing of certain acts specified in respect of the different categories of works;

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

- 2.9 Designs** mean registered Designs and/or Design applications and will include the monopoly right granted for the protection of an independently created industrial design including designs dictated essentially by technical or functional considerations as well as topographies of integrated circuits and integrated circuits;
- 2.10 Expiry Date** means
- 2.11 Foreground Intellectual Property** means all Intellectual Property developed by either Party pursuant to this Agreement;
- 2.12 ICC Incoterms** means the the latest version of commercial trade terms as published by the International Chamber of Commerce, Paris [ICC], which are otherwise referred to as purchase terms and which define precisely the responsibilities, costs and risks of the buyer [**Transnet**] and the seller [**the Supplier**]. Incoterms are only applicable to contracts involving the import or export of Goods from one country to another and for the purpose of this Agreement, if applicable, shall mean the designated Incoterm as stipulated in Schedule 1 hereto. Further details of the Incoterm [purchase terms] for this Agreement, if applicable, can be viewed at the International Business Training website - <http://www.i-b-t.net/incoterms.html>;
- 2.13 Intellectual Property** means Patents, Designs, Know-How, Copyright and Trade Marks and all rights having equivalent or similar effect which may exist anywhere in the world and includes all future additions and improvements to the Intellectual Property;
- 2.14 Know-How** means all Confidential Information of whatever nature relating to the Intellectual Property and its exploitation as well as all other Confidential Information generally relating to Transnet's field of technology, including technical information, processing or manufacturing techniques, Designs, specifications, formulae, systems, processes, information concerning materials and marketing and business information in general;
- 2.15 Local content** means that portion of the bid price which is not included in the imported content, provided that local manufacture does take place;
- 2.16 Parties** mean the Parties to this Agreement together with their subsidiaries, divisions, business units, successors-in-title and assigns;
- 2.17 Party** means either one of these Parties;
- 2.18 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;
- 2.19 Permitted Purpose** means any activity or process to be undertaken or supervised by a Staff member of one Party during the term of this Agreement, for which purpose authorized 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;

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

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 or phrase used in this Agreement, other than those defined under the clause heading "Definitions" shall be given its plain English meaning, and those terms, words, acronyms, and phrases used in this Agreement will be interpreted in accordance with the generally accepted meanings accorded thereto.
- 3.3** A reference to the singular incorporates a reference to the plural and vice versa.
- 3.4** A reference to natural persons incorporates a reference to legal persons and vice versa.
- 3.5** A reference to a particular gender incorporates a reference to the other gender.

4 NATURE AND SCOPE

- 4.1** This Agreement is an agreement under the terms and conditions of which the Service Provider will arrange for the provision to Transnet of the Services which meet the requirements and specifications of Transnet, the delivery of which is controlled by means of Purchase Orders to be issued by Transnet and executed by the Service Provider in accordance with this Agreement.
- 4.2** Such Purchase Orders and deliveries to Transnet shall be agreed between the Parties from time to time, subject to the terms of the Schedule of Requirements.
- 4.3** Each properly executed Purchase Order forms an inseparable part of this Agreement as if it were fully incorporated into the body of this Agreement.
- 4.4** During the period of this Agreement, both Parties can make written suggestions for amendments to the Schedule of Requirements in accordance with procedures set out in clause 42 [Amendment and Change Control]. A Party will advise the other Party within 14 [fourteen] Business Days, or such other period as mutually agreed, whether the amendment is acceptable.
- 4.5** Insofar as any term, provision or condition in the Schedule of Requirements conflicts with a like term, provision or condition in this Agreement and/or a Purchase Order, the term or provision or condition in this Master Agreement shall prevail, unless such term or provision or condition in this Master Agreement has been specifically revoked or amended by mutual written agreement between the Parties.
- 4.6** Time will be of the essence and the Service Provider will perform its obligations under this Agreement in accordance with the timeframe(s) [if any] set out in the relevant schedule, save that the Service Provider will not be liable under this clause if it is unable to meet such obligation within the time required as a direct result of any act or omission by Transnet and it has used its best endeavors to advise Transnet of such act or omission. In the event of such delay, any

Time deadlines detailed in the relevant schedule shall be extended by a period equal to the period of that delay.

5 AUTHORITY OF PARTIES

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

6 DURATION/TERM AND CANCELLATION

- 6.1** Notwithstanding the date of signature hereof, the Commencement Date if this Agreement is..... And the duration shall be for aperiod, expiring on....., unless:
- a) this Agreement is terminated by either Party in accordance with the provisions incorporated herein or in any schedules or annexures appended hereto, or otherwise in accordance with law or equity; or
 - b) This Agreement is extended at Transnet's option for a further period to be agreed by the Parties.
- 6.2** Notwithstanding clause 29 [Breach and Termination], either Party may cancel this Agreement without cause by giving 30 [thirty] calendar days prior written notice thereof to the other Party, provided that in such instance, this Agreement will nevertheless be applicable in respect of all Purchase Orders which have been placed prior to the date of such cancellation.

7 RISK MANAGEMENT

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

8 TRANSNET'S OBLIGATIONS

- 8.1** Transnet undertakes to promptly comply with any reasonable request by the Service Provider for information, including information concerning Transnet's operations and activities, that relates to the Services as may be necessary for the Service Provider to provide the Goods/Services, but for no other purpose. However, Transnet's compliance with any request for

Information is subject to any internal security rules and requirements and subject to the observance by the Service Provider of its confidentiality obligations under this Agreement.

8.2 The Service Provider shall give Transnet reasonable notice of any information it requires.

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

9 GENERAL OBLIGATIONS OF THE SERVICE PROVIDER

9.1 The Service Provider shall:

- a) respond promptly to all complaints and enquiries from Transnet;
- b) inform Transnet immediately of any dispute or complaint arising in relation to the storage or delivery of the Goods;
- c) conduct its business in a professional manner which will reflect positively upon the Service Provider and the Supplier's/Service Provider's products/services;
- d) keep full records clearly indicating all transactions concluded by the Service Provider relating to the delivery of the Services and keep such records for at least 5 [five] years from the date of each such transaction;
- e) obtain, and at all times maintain in full force and effect, any and all licenses, permits and the like required under applicable laws for the provision of the Services and ancillary Services and the conduct of the business and activities of the Service Provider;
- f) observe and ensure compliance with all requirements and obligations as set out in the labour and related legislation of South Africa, including the Occupational Health and Safety Act, 85 of 1993, as may be amended from time to time;
- g) Observe and ensure compliance with all requirements and objectives of the Transnet Supplier Integrity Pact as agreed to in response to the RFP. The general purpose of the Supplier Integrity Pact is to agree to avoid all forms of dishonesty, fraud and corruption by following a system that is fair, transparent and free from any undue influence prior to, during and subsequent to the currency of the procurement event leading to this Agreement and this Agreement itself;
- h) comply with all applicable environmental legislation and regulations, demonstrate sound environmental performance and have an environmental management policy which ensures that its products, including the Services or ancillary Services are procured, produced, packaged, delivered and are capable of being used and ultimately disposed of in a way that is environmentally appropriate; and
- i) Ensure the validity of all renewable certifications, including but not limited to its B-BBEE Verification Certificate, throughout the entire term of this Agreement. Should the Service Provider fail to present Transnet with such renewals as they become due, Transnet shall be entitled, in addition to any other rights and remedies that it may have in terms of the Agreement, to terminate this Agreement forthwith without any liability and without prejudice to any claims which Transnet may have for damages against the Service Provider.

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

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

Race, disability, age, religious belief, sexual orientation or part-time status. This provision applies, but is not limited to employment, upgrading, work environment, demotion, transfer, recruitment, recruitment advertising, termination of employment, rates of pay or other forms of compensation and selection for training.

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

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

10 SERVICE PROVIDER'S PERSONNEL

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

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

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

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

10.5 The Service Provider agrees to use all reasonable endeavors 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 caliber and experience, and any such replacement shall be approved by Transnet prior to commencing provision of the Services, such approval not to be unreasonably withheld or delayed.

11 SUBCONTRACTING

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

12 PAYMENT TO SUB-CONTRACTORS

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

13 B-BBEE AND SOCIO-ECONOMIC OBLIGATIONS

13.1 B-BBEE Scorecard

- a) Transnet fully endorses and supports the Broad-Based Black Economic Empowerment Programme and is strongly of the opinion that all South African business enterprises have an equal obligation to redress the imbalances of the past.
- b) In response to this requirement, the Service Provider shall submit to Transnet's Contract Manager or such other designated person details of its B-BBEE status in terms of the latest Codes of Good Practice issued in terms of the B-BBEE Act and proof thereof at the beginning of March each year during the currency of this Agreement.
- c) The Service Provider undertakes to notify and provide full details to Transnet in the event there is:
 - (i) a change in the Supplier's/Service Provider's B-BBEE status which is less than what it was at the time of its appointment including the impact thereof; and
 - (ii) a corporate or internal restructure or change in control of the Service Provider which has or likely to impact negatively on the Supplier's/ Service Provider's B-BBEE status.
- d) Notwithstanding any other reporting requirement in terms hereof, the Supplier Service Provider undertakes to provide any B-BBEE data (underlying data relating to the Supplier /Service Provider which has been relied upon or utilized by a verification agency or auditor for the purposes of issuing a verification certificate in respect of the Service ProviderB-BBEE status) which Transnet may request on written notice within 30 (thirty) calendar days of such request. A failure to provide such data shall constitute a Supplier/ Service Provider Default and may be dealt with in accordance with the provisions of clause 299.
- e) In the event there is a change in the Supplier's/ Service Provider's B-BBEE status, then the provisions of clause 299 shall apply.

13.2 Green Economy/Carbon Footprint

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

14 PENALTIES

14.1 Penalties for Non-compliance to Service Level Agreement

Where the Service Provider fails to deliver the Services within the agreed and accepted milestone timelines and provided that the cause of the delay was not due to a fault of Transnet, penalties shall be imposed at 10%.

Non-compliance Penalty Certificate:

- a) 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.
- b) A Non-compliance Penalty Certificate shall be prima facie proof of the matters to which it relates. If the Supplier disputes any of the amounts set out in a Non-compliance Penalty Certificate:
 - the dispute shall be resolved in accordance with the provisions of the Agreement; and
 - if pursuant to that referral, it is determined that the Supplier owes any amount to Transnet pursuant to the Non-compliance Penalty Certificate, then the Supplier shall pay such amount to Transnet within 10 (ten) Business Days of the determination made pursuant to such determination and an accompanying valid Tax Invoice.

Payment of Non-compliance Penalties:

- c) Subject to Clause i) above, the Supplier shall pay the Non-compliance Penalty indicated in the Non-compliance Penalty Certificate within 10 (ten) Business Days of Transnet issuing a valid Tax Invoice to the Supplier for the amount set out in that certificate. If Transnet does not issue a valid Tax Invoice to the Supplier for Non-compliance Penalties accrued during any relevant period, those Non-compliance Penalties shall be carried forward to the next period.
- d) The Supplier shall pay the amount due within 10 (ten) days after receipt of a valid Tax Invoice from Transnet, failing which Transnet shall, without prejudice to any other rights of Transnet under this Agreement, be entitled to call for payment which may be in any form Transnet deems reasonable and appropriate.

- e) It is agreed that Transnet, the DTI, the South African Bureau of Standards and/or any of their appointed agents shall be entitled to monitor, evaluate and audit the Contractor's compliance with its obligations under the Local Content Plan. To this end, the Contractor shall provide its full cooperation to the respective bodies referred to in this clause to ensure that effective monitoring, evaluation and auditing takes place.
- f) The Non Compliance Penalties set forth in this Clause are stated exclusive of VAT. Any VAT payable on Non Compliance Penalties will be for the account of the Supplier.

14.2 Non-compliance penalties for subcontracting

- a) Breach of subcontracting obligations provides Transnet cause to terminate the contract in certain cases where there is a material Non-compliance.
- b) If the Service Provider fails to achieve its subcontracting commitments as per their bid submission ("a **Non-Compliance**"), the Service Provider shall pay a Non- Compliance penalty ("Non-compliance Penalty") to Transnet in respect of such Non- compliance.
- c) Such penalty shall be calculated based on the difference in value between the committed and delivered subcontracting value (i.e. 100% of the undelivered subcontracting value) plus an additional 10% (ten per cent) of such difference.

Non-compliance Penalty Certificate:

- d) If any Non-compliance Penalty arises, the Supplier Development Manager shall issue a Non-compliance Penalty Certificate 90 business days before the expiry of the contract indicating the Non-compliance Penalties which have accrued during that period.
- e) A Non-compliance Penalty Certificate shall be prima facie proof of the matters to which it relates. If the 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:

- f) Subject to Clause (e) 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.
- g) 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.

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

Payment of Non-compliance Penalties:

- j) Subject to Clause (e) 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.

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 RELATING TO SERVICES

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

15.2 Transnet will not be invoiced for materials used in the provision of the Services save for those materials [if any] set out in the Work Order and accepted by Transnet or in any relevant Work Order [which will be invoiced to Transnet at cost].

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

- a) are agreed by Transnet in advance;
- b) are incurred in accordance with Transnet's standard travel and expenses policies;
- c) are passed on to Transnet at cost with no administration fee; and
- d) Will only be reimbursed if supported by relevant receipts.

15.4 All Tax Invoices relating to Fees, out of pocket expenses and, if applicable, travel and accommodation costs, will provide the detail for each of the Personnel carrying out the Services and incurring the expenses, and the Tax Invoice will, where appropriate, include VAT as a separate item.

16 INVOICES AND PAYMENT

- 16.1** Transnet shall pay the Service Provider the amounts stipulated in each Purchase Order/Work Order, subject to the terms and conditions of this Agreement.
- 16.2** Transnet shall pay such amounts to the Service Provider upon receipt of a valid and undisputed Tax Invoice together with the supporting documentation, as specified in the Schedule of Requirements appended hereto, once the valid and undisputed Tax Invoices or such portions of the Tax Invoices which are valid and undisputed become due and payable to the Service Provider for the delivery of the Services ordered, in terms of clause 19.5 below.
- 16.3** Transnet may, pending an investigation, withhold any payments to the Service Provider, in the case where irregular expenditure has been identified in the particular contract and that there is reasonable suspicion that the Service Provider is involved or was aware that the contract transgressed any legislation.
- 16.4** All Prices set out in this Agreement and the Schedule of Requirements hereto are to be indicated inclusive and exclusive of VAT, which will be payable at the applicable rate in ZAR.
- 16.5** Unless otherwise provided for in the Schedule of Requirements appended to this Agreement, Tax Invoices shall be submitted together with a month-end statement. Payment against such month-end statement shall be made by Transnet within 30 [thirty] calendar days after date of receipt by Transnet of the Supplier's/Service Provider's statement together with the relevant valid and undisputed Tax Invoice(s) and supporting documentation.
- 16.6** Where the payment of any Tax Invoice, or any part of a Tax Invoice which is not in dispute, is not made in accordance with this clause, the Service Provider shall be entitled to charge interest on the outstanding amount, at The Standard Bank of South Africa's prime rate of interest in force, for the period from the due date of payment until the outstanding amount is paid.
- 16.7** The Service Provider shall remain the owner of all plant, material, machinery, equipment and the like [collectively, **the Supplier's Goods**] provided to Transnet until Transnet has paid in full for the Supplier's Goods, it being specifically agreed that Transnet shall acquire no rights [including liens] of whatsoever nature in such Supplier's Goods until date of final payment by Transnet. Subject to the foregoing, all risk and benefit to the Supplier's Goods shall pass from the Supplier to Transnet on delivery of the Supplier's Goods by the Supplier to Transnet.

17 PRICE ADJUSTMENTS

- 17.1** N/A

18 WARRANTIES APPLICABLE TO GOODS

The Supplier warrants that:

- 18.1** pursuant to clause 9.3 [General Obligations of the Supplier], the Goods will be manufactured in accordance with the specifications appended hereto at Schedule 1, or the manufacturer's specifications, as agreed in writing by both Parties;
- 18.2** the execution and performance of this Agreement by the Supplier does not infringe any rights of a third party or breach any obligation of the Supplier to any third party; and
- 18.3** it has taken all reasonable precautions to ensure that, in the event of a disaster, the impact of such disaster on the ability of the Supplier to comply with its obligations under this Agreement will be reduced to the greatest extent possible, and that the Supplier shall ensure that it has appropriate, tested and documented recovery arrangements in place.

19 WARRANTIES APPLICABLE TO SERVICES

19.1 The Service Provider warrants to Transnet that:

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

19.2 The Service Provider warrants that it will perform its obligations under this Agreement in accordance with the Service Levels as defined in the relevant schedule. Transnet may at its discretion audit compliance with the Service Levels, provided that any such audit is carried out with reasonable prior notice and in a reasonable way so as not to have an adverse effect on the performance of the Services. Without prejudice to clause 22.3 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.

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

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

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

19.6 The Service Provider shall advise Transnet of the effects of any steps proposed by Transnet pursuant to clause 22.5 above, including but not limited to any cost implications or any disruption or delay in the performance of the Services. The Parties agree that any changes to the Services, including the charges for the Services or any timetables for delivery of the Services, will be agreed in accordance with the change control procedure, as set out in clause 422 [Amendment and Change Control].

19.7 The Service Provider warrants that:

- a) it has, using the most up-to-date software available, tested for [and deleted] all commonly known viruses in the Materials and for all viruses known by the Service Provider at the date of the relevant Work Order; and
- b) at the time of delivery to Transnet, the Materials do not contain any trojan horse, worm, logic bomb, time bomb, back door, trap door, keys or other harmful components.

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

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

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

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

20 THIRD PARTY INDEMNITY

The Service Provider hereby indemnifies and shall hold Transnet harmless against any direct damages suffered by or claims arising against Transnet in respect of clause 21.2 above.

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 TOTAL OR PARTIAL FAILURE TO PERFORM

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

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

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

22.3 Whenever, in any case not covered by clause 26.1 above, the Supplier fails or neglects to execute the work or to deliver any portion of the Services as required by the terms of this Agreement or Purchase Order, or if any Services are rejected on any of the grounds mentioned in clause 25.5 [Defective Goods], Transnet may cancel this Agreement or Purchase Order in so far as it relates to the unexecuted work or the undelivered or rejected portion of the Goods/Services, and in such event, the supply of the remaining portion shall remain subject in all respects to these conditions.

23 NON CONFORMANCE OF SERVICES PROCURED

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

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

24 RIGHTS ON CANCELLATION

24.1 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 Services in substitution for those neglected to be manufactured or supplied or rejected as aforesaid, and may recover from the Supplier the difference between the cost of such Services and the Price [if the latter was lower] as well as any costs and expenses [including any additional transport costs] which Transnet may have had to incur in consequence of the Supplier's/Service Provider's default.

24.2 Any amount which may be recoverable from the Service Provider in terms of clause 28.1 above, without prejudice to any other legal remedies available to Transnet, may be deducted in whole or in part from any monies in the hands of Transnet and due for payment to the Service Provider.

25 BREACH AND TERMINATION

25.1 Termination in accordance with clause 6 [Term and Cancellation] shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to either Party and all provisions which are to survive this Agreement or impliedly do so shall remain in force and in effect.

- 25.2** 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.
- 25.3** To the extent that any of the Deliverables and property referred to in clause 29.2 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.
- 25.4** In the event that this Agreement is terminated by the Service Provider under clause [Term and Cancellation], or in the event that a Work Order is terminated by Transnet under clause 9 [Breach and Consequences of Termination], Transnet will pay to the Service Provider all outstanding Fees [apportioned on a pro rata basis] relating to the work undertaken by the Service Provider up until the date of such termination. Transnet will also pay the costs of any goods and materials ordered by the Service Provider in relation to 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.
- 25.5** If either Party [**the Defaulting Party**] commits a material breach of this Agreement and fails to remedy such breach within 30 [thirty] calendar days of written notice thereof, the other Party [hereinafter **the Aggrieved Party**], shall be entitled, in addition to any other rights and remedies that it may have in terms of this Agreement, to terminate this Agreement forthwith without any Liability and without prejudice to any claims which the Aggrieved Party may have for damages against the Defaulting Party.
- 25.6** 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.
- 25.7** 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.
- 25.8** Notwithstanding this clause 299, Transnet may cancel this Agreement without cause by giving 30 [thirty] calendar days prior written notice thereof to the Service Provider, or
- 25.9** The provisions of clauses 2 [Definitions], 21 [Warranties], 28 [Rights on Cancellation], 32 [Confidentiality], 35 [Limitation of Liability], 36 [Intellectual Property Rights], 39 [Dispute Resolution] and 43.1 [Governing Law] shall survive termination or expiry of this Agreement.

26 CESSION

- 26.1** Upon written notice to the Service Provider, Transnet shall be entitled:
- a) to appoint Transnet's financier of the Services as first payer under this Agreement, without transferring the ultimate responsibility for payment which will remain with Transnet; and
 - b) to cede, assign and transfer its right, title and interest in the Services to such financier as part

of the funding consideration for the Goods/Services.

- 26.2** 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.

27 FORCE MAJEURE

- 27.1** 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.
- 27.2** Each Party will take all reasonable steps by whatever lawful means that are available to resume full performance as soon as practicable and will seek agreement to modification of the relevant Provisions of this Agreement in order to accommodate the new circumstances caused by the act of force majeure. If a Party fails to agree with such modifications proposed by the other Party within 90 [ninety] calendar days of the act of force majeure first occurring, either Party may thereafter terminate this Agreement with immediate notice.

28 PROTECTION OF PERSONAL INFORMATION

- a) The following terms shall bear the same meaning as contemplated in Section 1 of the Protection of Personal Information Act 4 of 2013 ("POPIA"):
- Consent; person; personal information; processing; record; Regulator as well as any terms derived from these terms of the POPIA
- b) Transnet will process all information by the Respondent in terms of the requirements contemplated in Section 4(1) of the POPIA:
- Accountability; Processing limitation; Purpose specification; Further processing limitation; Information quality; Openness; Security safeguards and Data subject participation.
- c) Transnet agrees that in submitting any information or documentation requested in the RFP and in this Agreement, the Service Provider consents to the processing of their personal information for the purpose of, but not limited to, risk assessment, contract award, contract management, auditing, legal opinions/litigation, investigations (if applicable), document storage for the legislatively required period, destruction, de-identification and publishing of personal information by Transnet and/or its authorized appointed third parties.
- d) The Parties agree that they may obtain and have access to personal information for the fulfilment of the rights and obligations contained herein. In performing the obligations as set out in this Agreement, the Parties shall at all times ensure that:
- i. they process personal information only for the express purpose for which it was obtained;
 - ii. once processed for the purposes for which it was obtained, all personal information will be destroyed to an extent that it cannot be reconstructed to its original form, subject to any legal retention requirements;
 - iii. Personal information is provided only to authorized personnel who strictly require the personal Information to carry out the Parties' respective obligations under this Agreement;
 - iv. they do not disclose personal information of the other Party, other than in terms of this

Agreement;

- v. they have all reasonable technical and organizational measures in place to protect all personal information from unauthorized access and/or use;
- vi. they have appropriate technical and organizational measures in place to safeguard the security, integrity and authenticity of all information in their possession or under their control in terms of this Agreement;
- vii. they identify all reasonably foreseeable internal and external risks to personal information in their possession or under their control; establish and maintain appropriate safeguards against the risks identified; regularly verify that the safeguards are effectively implemented; and ensure

That the safeguards are continually updated in response to new risks or deficiencies in previously implemented safeguards;

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

of personal information and to restore the integrity of the affected personal information as quickly as is possible. The Parties shall also be required to provide each other with details of the persons affected by the compromise and the nature and extent of the compromise, including details of the identity of the unauthorized person who may have accessed or acquired the personal information.

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

29 CONFIDENTIALITY

29.1 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 authorized 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 analyze 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 authorization to do so has first been obtained from the Party first disclosing such information;

- h) each Party shall be entitled to disclose such aspects of Confidential Information as may be relevant to one or more technically qualified employees or consultants of the Party who are required in the course of their duties to receive the Confidential Information for the Permitted Purpose provided that the employee or consultant concerned has a legitimate interest therein, and then only to the extent necessary for the Permitted Purpose, and is informed by the Party of the confidential nature of the Confidential Information and the obligations of the confidentiality to which such disclosure is subject and the Party shall ensure such employees or consultants honour such obligations;
- i) each Party shall notify the other Party of the name of each person or entity to whom any Confidential Information has been disclosed as soon as practicable after such disclosure;
- j) Each Party shall ensure that any person or entity to which it discloses Confidential Information shall observe and perform all of the covenants the Party has accepted in this Agreement as if such person or entity has signed this Agreement. The Party disclosing the Confidential Information shall be responsible for any breach of the provisions of this Agreement by such person or entity; and
- k) each Party may by written notice to the other Party specify which of the Party's employees, Officers or agents are required to sign a non-disclosure undertaking.

29.2 The duties and obligations with regard to Confidential Information in this clause 333 shall not apply where:

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

29.3 This clause 333 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.

30 INSURANCES

30.1 Without limiting the liability of the Service Provider under this Agreement, the Service Provider shall take out insurance in respect of all risks for which it is prudent for the Service Provider to insure against, including any liability it may have as a result of its activities under this Agreement for theft, destruction, death or injury to any person and damage to property. The level of insurance will be kept under review by Transnet, on an annual basis, to ensure its adequacy, provided that any variation to the level of such insurance shall be entirely at the discretion of the Service Provider.

- 30.2** The Service Provider shall arrange insurance with reputable insurers and will produce to Transnet evidence of the existence of the policies on an annual basis within 30 [thirty] calendar days after date of policy renewals.
- 30.3** Subject to clause 34.4 below, if the Service Provider fails to effect adequate insurance under this clause 34.4, it shall notify Transnet in writing as soon as it becomes aware of the reduction or inadequate cover and Transnet may arrange or purchase such insurance on behalf of the Service Provider. The Service Provider shall promptly reimburse Transnet for any premiums paid provided such insurance protects the Service Provider's liability. Transnet assumes no responsibility for such insurance being adequate to protect all of the Service Provider's liability.
- 30.4** 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 34.1 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, where after 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.

31 LIMITATION OF LIABILITY

- 31.1** The Service Provider's liability under this clause 35.5 shall be in addition to any warranty or condition of any kind, express or implied by law or otherwise, relating to the Services or ancillary Services, including the quality of the Services or ancillary Services or any materials delivered pursuant to this Agreement.
- 31.2** 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.
- 31.3** The Service Provider shall indemnify and keep Transnet indemnified from and against liability for damage to any Transnet property [whether tangible or intangible] or any other loss, costs or damage suffered by Transnet to the extent that it results from any act of or omission by the Service Provider or its Personnel in connection with this Agreement. The Service Provider's liability arising out of this clause 35.3 shall be limited to direct damages.
- 31.4** Subject always to clauses 35.1 and 35.2 above, the liability of either the Service Provider or Transnet under or in connection with this Agreement, whether for negligence, misrepresentation, breach of contract or otherwise, for direct loss or damage arising out of each Default or series of related Defaults shall not exceed 100% [one hundred per cent] of the Fees paid under the schedule or Work Order to which the Default(s) relates.
- 31.5** Subject to clauses 35.1 to 35.4 above, in no event shall either Party be liable to the other for indirect or consequential loss or damage or including indirect or consequential loss of profits, business, revenue, goodwill or anticipated savings of an indirect nature or loss or damage incurred by the other Party as a result of third party claims.

- 31.6** If for any reason the exclusion of liability in clause 35.5 above is void or unenforceable, either Party's total liability for all loss or damage under this Agreement shall be as provided in clause 35.3 above.
- 31.7** Nothing in this clause 355 shall be taken as limiting the liability of the Parties in respect of clauses 323 [Confidentiality] and 366 [Intellectual Property Rights].

32 INTELLECTUAL PROPERTY RIGHTS

32.1 Title to Confidential Information

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

32.2 Title to Intellectual Property

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

sums payable in terms of this Agreement. The Service Provider undertakes to sign all documents and do all things as may be necessary to effect, record and perfect the assignment of the Foreground Intellectual Property to Transnet.

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

32.3 Title to Improvements

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

32.4 Unauthorized Use of Confidential Information

The Service Provider shall not authorize 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.

32.5 Unauthorized Use of Intellectual Property

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

33 NON-WAIVER

- 33.1** 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.

33.2 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.

34 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.

35 DISPUTE RESOLUTION

35.1 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.

35.2 If the dispute has not been resolved by such negotiation, either of the Parties may refer the dispute to AFSA and notify the other Party accordingly, which proceedings shall be held in Johannesburg.

35.3 Such dispute shall be finally resolved in accordance with the rules of AFSA by an arbitrator or arbitrators appointed by AFSA.

35.4 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 39.

35.5 This clause 399 is severable from the rest of this Agreement and shall remain in effect even if this Agreement is terminated for any reason.

35.6 This clause 399 shall not preclude either Party from seeking urgent relief in a court of appropriate jurisdiction, where grounds for urgency exist.

36 ADDRESSES FOR NOTICES

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

a) Transnet

(i) For legal notices: Pavitra Ramsunder

Fax No. N/A

Attention: Group Legal Department

(ii) For commercial notices:

.....

Fax No. N/A

Attention: Supply Chain Department

b) **The Service Provider**

(i) For legal notices:

.....

.....

.....

Fax No.

Attention:

(ii) For commercial notices:

.....

.....

.....

Fax No.

Attention:

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

36.3 Any notice shall be deemed to have been given:

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

37 WHOLE AND ONLY AGREEMENT

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

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

38 AMENDMENT AND CHANGE CONTROL

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

38.2 In the event the Parties cannot agree upon changes, the Parties shall in good faith seek to agree any proposed changes using the dispute resolution procedures in clause 39 [Dispute Resolution].

39 GENERAL

39.1 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.

39.2 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 Prices, delivery schedules, warranties, or other terms and conditions, either Party may seek to have the matter determined in accordance with clause 39 [Dispute Resolution] above.

39.3 Counterparts

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

40 DATABASE OF RESTRICTED SUPPLIER

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

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

For and on behalf of TRANSNET SOC LTD duly authorized hereto	For and on behalf of duly authorized 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:

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

INTEGRITY PACT

Between

TRANSNET SOC LTD

Registration Number: 1990/000900/30

("Transnet")

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

PREAMBLE

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

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

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

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

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 Transnet has a '**Zero Gifts**' Policy. No employee is allowed to accept gifts, favours or benefits.
- a) Transnet officials and employees **shall not** solicit, give or accept, or from agreeing to solicit, give, accept or receive directly or indirectly, any gift, gratuity, favour, entertainment, loan, or anything of monetary value, from any person or juridical entities in the course of official duties or in connection with any operation being managed by, or any transaction which may be affected by the functions of their office.
 - b) Transnet officials and employees **shall not** solicit or accept gifts of any kind, from vendors, suppliers, customers, potential employees, potential vendors, and suppliers, or any other individual or organisation irrespective of the value.
 - c) Under **no circumstances** should gifts, business courtesies or hospitality packages be accepted from or given to prospective suppliers participating in a tender process at the respective employee's Operating Division, regardless of retail value.
 - d) Gratuities, bribes or kickbacks of any kind must never be solicited, accepted or offered, either directly or indirectly. This includes money, loans, equity, special privileges, personal favours, benefit or services. Such favours will be considered to constitute corruption.
- 3.2 The Bidder / Supplier commits itself to take all measures necessary to prevent corrupt practices, unfair means and illegal activities during any stage of its bid or during any ensuing contract stage in order to secure the contract or in furtherance to secure it and in particular the Bidder / Supplier commits to the following:
- a) The Bidder / Supplier will not, directly or through any other person or firm, offer, promise or give to Transnet or to any of Transnet's employees involved in the bidding process or to any third person any material or other benefit or payment, in order to obtain in exchange an advantage during the bidding process; and
 - b) The Bidder / Supplier will not offer, directly or through intermediaries, any bribe, gift, consideration, reward, favour, any material or immaterial benefit or other advantage, commission, fees, brokerage or inducement to any employee of Transnet, connected directly or indirectly with the bidding process, or to any person, organisation or third party related to the contract in exchange for any advantage in the bidding, evaluation, contracting and implementation of the contract.
- 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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