



Transnet Port Terminals

an Operating Division of **TRANSNET SOC LTD**

[hereinafter referred to as **Transnet**]

[Registration No. 1990/000900/30]

REQUEST FOR PROPOSAL [RFP] [SERVICES]

PROVISION FOR THE RUBBER TYRE GANTRY (RTG) AND MAFI'S MAINTENANCE AND REPAIR SERVICES FOR TRANSNET SOC LTD (REG.NO.1990/000900/30) OPERATING AS TRANSNET PORT TERMINALS, (HEREINAFTER REFERRED TO AS "TPT") FOR THE PORT OF CAPE TOWN ON AN AS AND WHEN REQUIRED BASIS FOR A PERIOD OF THIRTY-SIX (36) MONTHS.

| | |
|-----------------------------|--|
| RFP NUMBER | iCLM CT 478/TPT |
| ISSUE DATE: | 16 February 2023 |
| CLOSING DATE: | 22 March 2023 |
| CLOSING TIME: | 14:00 PM |
| BID VALIDITY PERIOD: | 180 Business Days from Closing Date |

Note to the bidders:

Bidders are required to ensure that electronic bid submissions are done at least a day before the closing date to prevent issues which they may encounter due to their internet speed, bandwidth or the size of the number of uploads they are submitting. Transnet will not be held liable for any challenges experienced by bidders as a result of the technical challenges. Please do not wait for the last hour to submit. A Bidder can upload 30mb per upload and multiple uploads are permitted.

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SECTION 1: SBD1 FORM

PART A INVITATION TO BID

| | | | | | | | |
|--|--|-------------|-----------------------------|--|--------------------------------|---|----------------|
| YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF TRANSNET PORT TERMINAL , A DIVISION TRANSNET SOC LTD | | | | | | | |
| BID NUMBER: | iCLM CT 478/TPT | ISSUE DATE: | 16 February 2023 | CLOSING DATE: | 22 March 2023 | CLOSING TIME: | 14:00PM |
| DESCRIPTION | PROVISION FOR THE RUBBER TYRE GANTRY (RTG) AND MAFI'S MAINTENANCE AND REPAIR SERVICES FOR THE PORT OF CAPE TOWN ON AN AS AND WHEN REQUIRED BASIS FOR A PERIOD OF THIRTY-SIX (36) MONTHS. | | | | | | |
| BID RESPONSE DOCUMENTS SUBMISSION | | | | | | | |
| RESPONDENTS ARE TO UPLOAD THEIR BID RESPONSE PROPOSALS ONTO THE TRANSNET SYSTEM AGAINST EACH TENDER SELECTED (please refer to section 2, paragraph 3 for a detailed process on how to upload submissions): https://transnetetenders.azurewebsites.net | | | | | | | |
| BIDDING PROCEDURE ENQUIRIES MAY BE DIRECTED TO | | | | TECHNICAL ENQUIRIES MAY BE DIRECTED TO: | | | |
| CONTACT PERSON | Mxoleli Ngongoshe | | | CONTACT PERSON | Mxoleli Ngongoshe | | |
| TELEPHONE NUMBER | 021 449 3830 | | | TELEPHONE NUMBER | 021 449 3830 | | |
| FACSIMILE NUMBER | N/A | | | FACSIMILE NUMBER | N/A | | |
| E-MAIL ADDRESS | Mxoleli.ngongoshe@transnet.net | | | E-MAIL ADDRESS | Mxoleli.ngongoshe@transnet.net | | |
| SUPPLIER INFORMATION | | | | | | | |
| NAME OF BIDDER | | | | | | | |
| POSTAL ADDRESS | | | | | | | |
| STREET ADDRESS | | | | | | | |
| TELEPHONE NUMBER | CODE | | | NUMBER | | | |
| CELLPHONE NUMBER | | | | | | | |
| FACSIMILE NUMBER | CODE | | | NUMBER | | | |
| E-MAIL ADDRESS | | | | | | | |
| VAT REGISTRATION NUMBER | | | | | | | |
| SUPPLIER COMPLIANCE STATUS | TAX COMPLIANCE SYSTEM PIN: | | | OR | CENTRAL SUPPLIER DATABASE | UNIQUE REGISTRATION REFERENCE NUMBER: | MAAA |
| B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE | TICK APPLICABLE BOX] <input type="checkbox"/> Yes <input type="checkbox"/> No | | | B-BBEE STATUS LEVEL SWORN AFFIDAVIT | | [TICK APPLICABLE BOX] <input type="checkbox"/> Yes <input type="checkbox"/> No | |
| [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] |
|--|--|---|---|

QUESTIONNAIRE TO BIDDING FOREIGN SUPPLIERS

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

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

PART B TERMS AND CONDITIONS FOR BIDDING

1. TAX COMPLIANCE REQUIREMENTS

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

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

SIGNATURE OF BIDDER:

CAPACITY UNDER WHICH THIS BID IS SIGNED:

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

DATE: _____

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 | Provision for the Rubber Tyre Gantry (RTG) and Mafi's maintenance and repair services for the Port of Cape Town on an as and when required basis for a period of thirty-six (36) months [the Services] |
| TENDER ADVERT | All Transnet tenders are advertised on the National Treasury's e-Tender Publication Portal and the Transnet website. Should one of these media (i.e. National Treasury's e-Tender Publication Portal or Transnet website) not be available, bidders are advised to check on the other media for advertised tenders. |
| RFP DOWNLOADING | <p>This RFP may be downloaded directly from National Treasury's e-Tender Publication Portal at www.etenders.gov.za free of charge.</p> <p>To download RFP and Annexures:</p> <ul style="list-style-type: none"> • Click on "Tender Opportunities"; • Select "Advertised Tenders"; • In the "Department" box, select Transnet SOC Ltd. <p>Once the tender has been located in the list, click on the "Tender documents" tab and process to download all uploaded documents.</p> <p>The RFP may also be downloaded from the Transnet Portal at https://transnetetenders.azurewebsites.net (please use Google Chrome to access Transnet link/site) free of charge (refer to section 2, paragraph 3 below for detailed steps)</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> |
| CLOSING DATE | <p>14:00 pm on Wednesday, 22 March 2023</p> <p>Bidders must ensure that bids are uploaded timeously onto the system.</p> <p>As a general rule, if a bid is late, it will not be accepted for consideration.</p> <p><i>Bidders are required to ensure that electronic bid submissions are done at least a day before the closing date to prevent issues which they may encounter due to their internet speed, bandwidth or the size of the number of uploads they are submitting. Transnet will not be held liable for any challenges experienced by bidders as a result of the technical challenges. Please do not wait for the last hour to submit. A Bidder can upload 30mb per upload and multiple uploads are permitted.</i></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</p> |

| | |
|--|--|
| | <p>bidder(s), the validity of the successful bidder(s)' bid will be deemed to remain valid until a final contract has been concluded.</p> <p>With regard to the validity period of next highest ranked bidders, please refer to Section 2, paragraph 11.12</p> |
|--|--|

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

2 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:

- Log on to the Transnet eTenders management platform website/ Portal (transnetetenders.azurewebsites.net)
Please use **Google Chrome** to access Transnet link/site);
- Click on "ADVERTISED TENDERS" to view advertised tenders;
- Click on "SIGN IN/REGISTER – for bidder to register their information (must fill in all mandatory information);
- Click on "SIGN IN/REGISTER" - to sign in if already registered;
- Toggle (click to switch) the "Log an Intent" button to submit a bid;
- Submit bid documents by uploading them into the system against each tender selected.
- No late submissions will be accepted. The bidder guide can be found on the Transnet Portal transnetetenders.azurewebsites.net

3 RFP INSTRUCTIONS

- 3.1 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.
- 3.2 **All returnable documents tabled in the Proposal Form [Section 5] must be returned with proposals.**
- 3.3 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.
- 3.4 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.

4 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) as per the B-BBEE Preferential Procurement Regulations, 2022 preference point scoring.

5 COMMUNICATION

- 5.1 For specific queries relating to this RFP, an RFP Clarification Request Form should be submitted onto the system and to [Mxoleli.ngongoshe@transnet.net] before **12:00 pm on 13 March 2023**, 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 After the closing date of the RFP, a Respondent may only communicate with the name of delegated individual (BEC chairperson), at telephone number 021 449 3830, email Mxoleli.ngongoshe@transnet.net on any matter relating to its RFP Proposal.
- 5.3 Respondents are to note that changes to its submission will not be considered after the closing date.
- 5.4 It is prohibited for Respondents to attempt, either directly or indirectly, to canvass any officer or employee of Transnet in respect of this RFP between the closing date and the date of the award of the business.
- 5.5 Respondents found to be in collusion with one another will be automatically disqualified and restricted from doing business with organs of state for a specified period.
- 5.6 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 individual 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 Supplier 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 Goods/Services and request Respondents to re-bid on any such changes;

- 9.2 reject any Proposal which does not conform to instructions and specifications which are detailed herein;
- 9.3 disqualify Proposals submitted after the stated submission deadline [closing date];
- 9.4 award a contract in connection with this Proposal at any time after the RFP's closing date;
- 9.5 award a contract for only a portion of the proposed Goods/Services which are reflected in the scope of this RFP;
- 9.6 split the award of the contract between more than one Supplier/Service provider, should it at Transnet's discretion be more advantageous in terms of, amongst others, cost or developmental considerations;
- 9.7 cancel the bid process;
- 9.8 validate any information submitted by Respondents in response to this bid. This would include, but is not limited to, requesting the Respondents to provide supporting evidence. By submitting a bid, Respondents hereby irrevocably grant the necessary consent to Transnet to do so;
- 9.9 request audited financial statements or other documentation for the purposes of a due diligence exercise;
- 9.10 not accept any changes or purported changes by the Respondent to the bid rates after the closing date and/or after the award of the business, unless the contract specifically provided for it;
- 9.11 to cancel the contract and/request that National Treasury place the Respondent on its Database of Restricted Suppliers for a period not exceeding 10 years, on the basis that a contract was awarded on the strength of incorrect information furnished by the Respondent or on any other basis recognised in law;
- 9.12 to award the business to the next ranked bidder, provided that he/she 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.

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

12 NATIONAL TREASURY'S CENTRAL SUPPLIER DATABASE

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

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


13 TAX COMPLIANCE

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










It is a condition of this bid that the tax matters of the successful Respondents be in order, or that satisfactory arrangements have been made with South African Revenue Service (SARS) to meet the Respondents tax obligations. The Tax Compliance status requirements are also applicable to foreign Respondents/ individuals who wish to submit bids.

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

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



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

| | | | | |
|---|--|--|--|---|
|  |  <p>AI Voice Bot "Jack" Speak to our AI Voice Chat Bot "JACK", you converse with him like chatting to a human, with the option to record a message and speak to an agent at anytime.</p> |  <p>What's App Speak to an Agent via What's App.</p> |  <p>Speak to an Agent Speak to an Agent via the platform with no call or data charge</p> |  <p>Telegram Speak to an Agent via Telegram</p> |
|  0800 003 056 |  086 551 4153 |  reportit@ethicshelpdesk.com |  *120*0785980808# | |

SECTION 3: BACKGROUND, OVERVIEW AND SCOPE OF REQUIREMENTS

1 BACKGROUND

The purpose of this work instruction is to procure services from an external Service Provider to provide services for the repairs of Rubber Tyre Gantry (RTG), Mafi Haulers and MPT Mafi Haulers related Port equipment on an as and when required basis for a period of thirty-six (36) months. The Service Provider will be given two (2) months' notice to arrange the resources and the resources will remain in the Terminal for at least four (4) months. The services of the external Service Provider will supplement the existing compliment and so ensure successful execution of all planned maintenance activities, breakdown repairs and rebuilding standing machines.

2 EXECUTIVE OVERVIEW

Whereas Transnet is seeking a partner(s) to provide solutions for its provision for the RTG and Mafi's maintenance and repair services nationally, it also seeks to improve its current processes for providing these Goods to its end user community throughout its locations.

The selected Supplier(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 Supplier(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:

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

3 SCOPE OF REQUIREMENTS

- 3.1 Refer to **Annexure A** for Scope of Work (SOW).

4 GREEN ECONOMY / CARBON FOOTPRINT

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

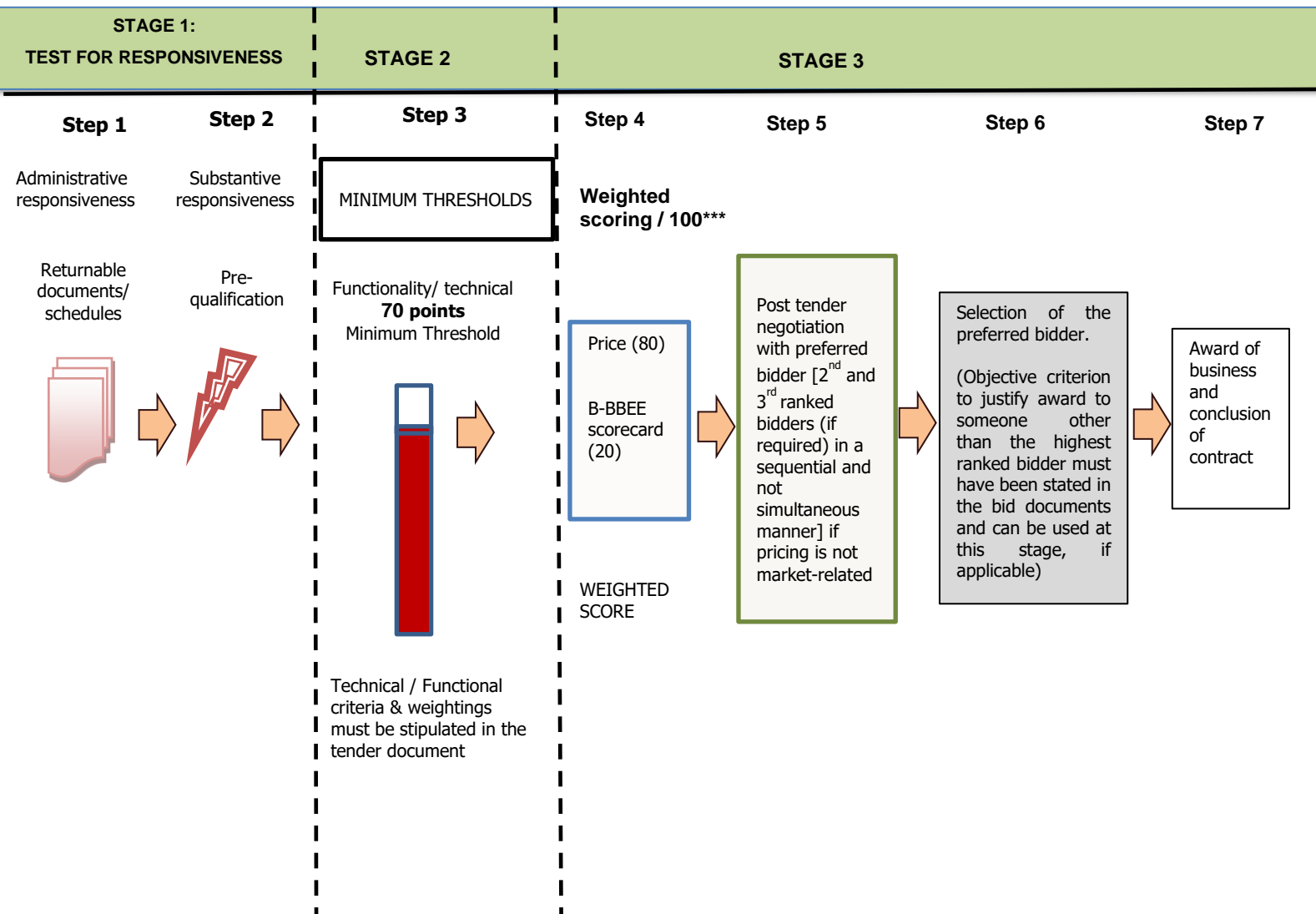
5 GENERAL SERVICE PROVIDER OBLIGATIONS

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

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

6 EVALUATION METHODOLOGY

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

6.1 STEP ONE: Test for Administrative Responsiveness

The test for administrative responsiveness will include the following:

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

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

6.2 STEP TWO: Test for Substantive Responsiveness to RFP

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

| Check for substantive responsiveness | RFP Reference |
|--|---|
| <ul style="list-style-type: none"> Whether any general 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> |
| <ul style="list-style-type: none"> Whether the Bid contains a priced offer as prescribed in the pricing and delivery schedule | <i>Section 4</i> |
| <ul style="list-style-type: none"> Whether the Bid materially complies with the scope and/or specification given | <i>All Sections</i> |

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

6.3 STEP THREE: Minimum Threshold 70% points for Technical Criteria

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

| Technical Criteria | Weightings |
|---|--|
| <p><u>Experience</u></p> <p>The Service Provider shall be required to have a proven track record in the maintenance and repairs RTG, Mafi Haulers and other related port equipment (Similar Equipment), for a minimum period of two years.</p> <p>Supporting documents - Two (2) written references which shall be used to verify the Service Provider's previous performance and service delivery. Kindly note that the references must specifically set out whether the service provider is experienced in the capacities as set out above.</p> | <ul style="list-style-type: none"> • 40 points = Two (2) written references Issued by respondent's client (different clients) in the supply of supplementary labour. • 20 points = One (1) written references issued by respondent's client (different clients) in the supply of supplementary labour. • Zero points = Zero (0) written references issued by respondent's client (different clients) in the supply of supplementary labour |
| <p><u>Qualification Verification</u></p> <p>The service provider shall assure TPT that he/she can provide the following:</p> <ul style="list-style-type: none"> • Certified copies of "Red Seals" for all Artisans. • Curriculum Vitae's (CV's) for all workers. | <ul style="list-style-type: none"> • 30 points = Service Provider must provide evidence of the employees Qualification/ red seal documentation and Curriculum Vitae's (CV) of all artisans. • 15 points = Service Provider must provide evidence of the employees Qualification/ red seal documentation of all artisans. |

| | |
|--|---|
| <p>Supporting documents – Service Provider must provide proof of all above mentioned documentation for verification purposes.</p> | <ul style="list-style-type: none"> • Zero points = Anything less than above mentioned threshold. |
| <p>Tools</p> <p>Service Provider shall be required to provide proof, that each artisan that has been issued with relevant tool in accordance to their work SCOPE</p> <p>Supporting documents – Confirmation to provide a signed tool list of tools being issued to all artisans in accordance to their works SCOPE.</p> | <ul style="list-style-type: none"> • 15 points = Proof of Tools given to all artisans according to SCOPE of work. • Zero points = Anything less than above mentioned threshold. |
| <p>Transportation</p> <p>Service Provider to provide proof, that daily transportation to and from site shall be provide and in strict accordance to section 3.8 of the works instruction.</p> <p>Supporting documents – Proof of transportation that shall be provided to the employees in accordance to section 3.8 of the works instruction.</p> | <ul style="list-style-type: none"> • 15 points = Proof of transportation services according to work instruction. • Zero points = no confirmation of transportationservices. |

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

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

6.4 STEP FOUR: Evaluation and Final Weighted Scoring

a) **Price and TCO Criteria** [Weighted score 80 points]:

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

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

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

Where:

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

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

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

| Thresholds | Minimum Threshold |
|------------|-------------------|
| Technical | 70 |

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

6.6 **STEP FIVE: Post Tender Negotiations (if applicable)**

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

6.7 **STEP SIX: Objective Criteria (if applicable)**

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

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

6.8 **STEP SEVEN: 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).
- A final contract will be concluded and entered into with the successful Bidder at the acceptance of a letter of award by the Respondent.

SECTION 4: PRICING AND DELIVERY SCHEDULE

Respondents are required to complete the table below:

| Item No | Description | Shift | Annual Projected HRS | Rate PH | Total | Rate PH | Total | Rate PH | Total | Total | TOTAL PRICE OF ITEM [ZAR] |
|---|---------------------|-------|----------------------|---------|-------|---------|-------|---------|-------|-------|---------------------------|
| | | | | Year 1 | | Year 2 | | Year 3 | | | |
| 1 | Electro-Mechanician | Day | 7488 | | | | | | | | |
| 2 | Diesel Mechanic | Day | 5990 | | | | | | | | |
| TOTAL PRICE, exclusive of VAT: | | | | | | | | | | | |
| VAT 15% (if applicable) | | | | | | | | | | | |
| Unconditional Discount(s) | | | | | | | | | | | |
| Total Inclusive of VAT (where applicable) | | | | | | | | | | | |

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

Notes to Pricing:

- 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-
 - negotiate a market-related price with the Respondent scoring the highest points or cancel the RFP;
 - 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;
 - 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.
- Prices must be quoted in South African Rand inclusive of VAT.
- Any disbursement not specifically priced for will not be considered/accepted by Transnet.
- 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.
- Rates proposed must be aligned with the Guide on Hourly Fee Rates for Consultants" by the Department of Public Service and Administration (DPSA);
- Quantities given are estimates only. Any orders resulting from this RFP will be on an "as and when required" basis.
- Prices are to be quoted on a delivered basis to Cape Town.
- 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.

- i) Respondents, if awarded the contract, are required to indicate that their prices quoted would be kept firm and fixed for the contract duration. [Not to be confused with bid validity period Section 2, clause 1]

| | |
|-----|--|
| YES | |
|-----|--|

1. DISCLOSURE OF CONTRACT INFORMATION

PRICES TENDERED

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

JOHANNESBURG STOCK EXCHANGE DEBT LISTING REQUIREMENTS

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

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

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

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

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

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

| | | (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. PRICE REVIEW

The successful Respondent(s) [the Service provider] will be obliged to submit to an annual price review. Transnet will be benchmarking this price offering(s) against the lowest price received as per a benchmarking exercise. If the Service provider's price(s) is/are found to be higher than the benchmarked price(s), then the Service provider shall match or better such price(s) within 30 [thirty] calendar days, failing which the contract may be terminated at Transnet's discretion or the particular item(s) or service(s) purchased outside the contract.

3. RETURN OF SURPLUS GOODS

Respondents are required to indicate whether they have a return policy in place (if so attach a copy):

| | | | |
|-----|--|----|--|
| YES | | NO | |
|-----|--|----|--|

Respondents are required to indicate a reasonable timeframe during which Transnet may return any surplus goods:

4. MANUFACTURERS

The Respondents must state hereunder the actual manufacturer(s) of the Goods tendered for:

4.1 Local Manufacturer(s):

| RFP ITEM NO. | NAME | BUSINESS ADDRESS |
|--------------|------|------------------|
| | | |
| | | |
| | | |

4.2 Foreign Manufacturer(s):

| RFP ITEM NO. | NAME | BUSINESS ADDRESS |
|--------------|------|------------------|
| | | |
| | | |
| | | |

5. 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:

5.1 Quality and specification of Goods/Services delivered:

5.2 **Continuity of supply:**

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

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

SIGNED at _____ on this _____ day of _____ 20____

SIGNATURE OF WITNESSES

ADDRESS OF WITNESSES

1 _____
Name _____

2 _____
Name _____

SIGNATURE OF RESPONDENT'S AUTHORISED REPRESENTATIVE: _____

NAME: _____

DESIGNATION: _____

SECTION 5: PROPOSAL FORM AND LIST OF RETURNABLE DOCUMENTS

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

carrying on business trading/operating as

represented by _____
 in my capacity as _____

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

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

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

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

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

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



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

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

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

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

ADDRESS FOR NOTICES

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

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

Name of Entity: _____

Facsimile: _____

Address: _____

NOTIFICATION OF AWARD OF RFP

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

VALIDITY PERIOD

Transnet requires a validity period of 180 Business Days [from closing date] against this RFP, excluding the first day and including the last day.

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



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

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

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

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

RETURABLE DOCUMENTS

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

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

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

a) Mandatory Returnable Documents

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

| MANDATORY RETURNABLE DOCUMENTS | SUBMITTED [Yes/No] |
|--|-----------------------|
| Section 1: SBD1 Form | |
| SECTION 4 : Pricing and Delivery Schedule | |
| Valid B-BBEE certificate / Valid Sworn Affidavit | |

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

for
No] in

| <u>RETURNABLE DOCUMENTS USED FOR SCORING</u> | SUBMITTED [Yes or No] |
|---|----------------------------------|
| Valid proof of Respondent's compliance to B-BBEE requirements stipulated in Section 9 of this RFP (Valid B-BBEE certificate or Sworn Affidavit) | |

c) Essential Returnable Documents:

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

| ESSENTIAL RETURNABLE DOCUMENTS & SCHEDULES | SUBMITTED [Yes or No] |
|---|----------------------------------|
| In the case of Joint Ventures, a copy of the Joint Venture Agreement or written confirmation of the intention to enter into a Joint Venture Agreement | |
| 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: B-BBEE Preference Claim Form | |
| SECTION 10: Protection of Personal Information | |

CONTINUED VALIDITY OF RETURNABLE DOCUMENTS

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

SIGNED at _____ on this _____ day of _____ 20____

SIGNATURE OF WITNESSES

ADDRESS OF WITNESSES

1 _____

Name _____

2 _____



Name _____

SIGNATURE OF RESPONDENT'S AUTHORISED REPRESENTATIVE: _____

NAME: _____

DESIGNATION: _____



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

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

| | |
|---|------------------------------------|
| 1 | Transnet's General Bid Conditions |
| 2 | Master Agreement and SLA attached |
| 3 | Transnet's Supplier Integrity Pact |
| 4 | Non-disclosure Agreement |

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.

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 7: RFP DECLARATION AND BREACH OF LAW FORM

NAME OF ENTITY: _____

We _____ do hereby certify that:

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

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

ADDRESS:

Indicate nature of relationship with Transnet:

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

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

BIDDER'S DISCLOSURE (SBD4)

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 |
|-----------|-----------------|---------------------------|
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |

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.

| | | |
|--|--|--|
| | | |
| | | |
| | | |

13.2 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:

.....

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.

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.



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 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 _____ | AS WITNESS: |
| duly authorised hereto | |
| Name: | Name: |
| Position: | Position: |
| Signature: | Signature: |
| Date: | Registration No of Company/CC |
| Place: | Registration Name of Company/CC |

SECTION 9: B-BBEE PREFERENCE POINTS CLAIM FORM

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

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

NB: BEFORE COMPLETING THIS FORM, BIDDERS MUST STUDY THE GENERAL CONDITIONS, DEFINITIONS AND DIRECTIVES APPLICABLE IN RESPECT OF B-BBEE, AS PRESCRIBED IN THE PREFERENTIAL PROCUREMENT REGULATIONS, 2022.

1. GENERAL CONDITIONS

1.1 The following preference point systems are applicable to all bids:

- the 80/20 system for requirements with a Rand value of up to R50 000 000 (all applicable taxes included); and
- the 90/10 system for requirements with a Rand value above R50 000 000 (all applicable taxes included).

1.2 The value of this bid is estimated to not exceed R50 000 000 (all applicable taxes included) and therefore the 80/20 preference point system shall be applicable. Despite the stipulated preference point system, Transnet shall use the lowest acceptable bid to determine the applicable preference point system in a situation where all received acceptable bids are received outside the stated preference point system.

1.3 Preference points for this bid shall be awarded for:

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

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

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

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

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

2. DEFINITIONS

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

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

3. POINTS AWARDED FOR PRICE

3.1 THE 80/20 PREFERENCE POINT SYSTEMS

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

80/20

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

Where

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

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

- 4.1 In terms of Transnet SCM Policy on preferential procurement and Procurement Manuals, preference points must be awarded to a bidder for attaining the B-BBEE status level of contribution in accordance with the table below:

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

| | |
|---------------------------|---|
| 6 | 6 |
| 7 | 4 |
| 8 | 2 |
| Non-compliant contributor | 0 |

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

| Enterprise | B-BBEE Certificate & Sworn Affidavit |
|------------------------|--|
| Large | Certificate issued by SANAS accredited verification agency |
| QSE | Certificate issued by SANAS accredited verification agency Sworn Affidavit signed by the authorised QSE representative and attested by a Commissioner of Oaths confirming annual turnover and black ownership (only black-owned QSEs - 51% to 100% Black owned) [Sworn affidavits must substantially comply with the format that can be obtained on the DTI's website at www.dti.gov.za/economic_empowerment/bee_codes.jsp .] |
| EME³ | Sworn Affidavit signed by the authorised EME representative and attested by a Commissioner of Oaths confirming annual turnover and black ownership Certificate issued by CIPC (formerly CIPRO) confirming annual turnover and black ownership Certificate issued by SANAS accredited verification agency only if the EME is being measured on the QSE scorecard |

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

5. BID DECLARATION

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

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

- 6.1 B-BBEE Status Level of Contribution: . =(maximum of 20 points)
- (Points claimed in respect of paragraph 6.1 must be in accordance with the table reflected in paragraph 4.1 and must be substantiated by relevant proof of B-BBEE status level of contributor.

7. SUB-CONTRACTING

- 7.1 Will any portion of the contract be sub-contracted?
(***Tick applicable box***)



| | | | |
|-----|--|----|--|
| 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:

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

8. DECLARATION WITH REGARD TO COMPANY/FIRM

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

8.2 VAT registration number:.....

8.3 Company registration number:.....

8.4 TYPE OF COMPANY/ FIRM

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

[TICK APPLICABLE BOX]

8.5 DESCRIBE PRINCIPAL BUSINESS ACTIVITIES

.....

.....

8.6 COMPANY CLASSIFICATION

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

[TICK APPLICABLE BOX]

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

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

- i) The information furnished is true and correct;

- ii) The preference points claimed are in accordance with the General Conditions as indicated in paragraph 1 of this form;
- iii) In the event of a contract being awarded as a result of points claimed as shown in paragraph 1.4 and 6.1, the contractor may be required to furnish documentary proof to the satisfaction of the purchaser that the claims are correct;
- iv) If a bidder submitted false information regarding its B-BBEE status level of contributor 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: PROTECTION OF PERSONAL INFORMATION

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

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

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

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

Respondents are required to provide consent below:

| | | | |
|------------|--|-----------|--|
| YES | | NO | |
|------------|--|-----------|--|

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

Signature of Respondent's authorised representative: _____

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

ANNEXURE A: SCOPE OF WORK

1. BACKGROUND

The purpose of this work instruction is to procure services from an external Service Provider to provideservices for the repairs of Rubber Tyre Gantry (RTG), Mafi Haulers and MPT Mafi Haulers related port equipment for the period of three years as and when required. The service provider will be given two months' notice to arrange the resources and the resources will remain in the terminal for at least four months. The services of the external service provider will supplement the existing compliment and so ensure successful execution of all planned maintenance activities, breakdown repairs and rebuilding standing machines.

2. SCOPE OF REQUIREMENTS

- 2.1 Included a detailed scope of work/requirement The scope of work will be for a period of thirty-six (36) months to perform the following at CTCT and MPT:
 - 2.1.1 In providing the required repairs and maintenance services, the service provider shall supply the staff complement listed in table 3.3 below, supplementing the man-hour requirements in order for the Technical Supervisors to successfully execute all planned maintenance activities.
 - 2.1.2 The man-hours required, are projected and under no circumstances committed, man- hours are therefore not guaranteed.
 - 2.1.3 The requirements are as per the table below:

| Description | Quantity | Shift | Required hours | Projected Man-hours required/person/week |
|---------------------|----------|-------|----------------|--|
| Electro-Mechanician | 8 | Day | 8 | 40 |
| Diesel Mechanic | 6 | Day | 8 | 40 |

- 2.1.4 The table above provides summation of the requirements; resources shall be sub-divided amongst Technical Supervisors as per their individual requirements.
- 2.2 The service provider shall ensure that all Artisans are equipped with a trade-specific toolbox;
 - 2.2.1 Electro-Mechanician toolbox for the Artisans.
 - 2.2.2 Diesel Mechanic toolbox for the Artisans.
- 2.2.3 These and all other tools brought on site by the service provider, shall remain the responsibility of the service provider.
- 2.2.4 The service provider (and each individual) shall have a tool list with all tools present at all times.
- 2.3 The Service Provider shall ensure that each person that enters the site for the intention of this specification is issued with the following Personal Protective Equipment (PPE):
 - 2.3.1 Safety Boots.
 - 2.3.2 Two-piece overalls – at least three pairs per person.
 - 2.3.3 Reflective jacket – at least two per person.
 - 2.3.4 Hard hat.
 - 2.3.5 Safety glasses and face shields where applicable.

*** All of the above should be SABS approved and bear the SABS approval seal

- 2.4 The Service Provider shall provide each grade of resource supplied, with a noticeably different colour overall. There should be a clear distinguishing factor between resources working on different grades, i.e. Artisans and Semi-skilled workers.
- 2.5 TPT shall in no way accept responsibility for any tools and/or PPE brought to site by the service provider. Any replacement of tools and/or PPE shall be done at the service providers own cost.
- 2.6 The service provider shall supply transportation for all shifts to and from site on a daily basis. Transport should have employees on site 15 minutes before the start of a shift and allow employees to make their way from their respective areas 15 minutes after a shift.
- 2.7 The service provider shall within a day of subdivision supply the Technical Supervisors with blank timesheets for the employees within the respective team. These timesheets shall be validated and signed off before submission to the service provider at the end of the month.
- 2.8 The service provider shall have a suitably qualified representative present on site at all times. The representative shall liaise on behalf of the service provider and handle all matters relating to the provision of the requirements as per this specification.
- 2.9 The Service Provider shall be required to give a flat hourly rate inclusive of the following:
 - Accommodation
 - Travelling
 - Induction
 - Medical surveillance

- Personal Protective Equipment (PPE)

2.9.1 If for any reason, any of the hired artisans and/or Semi-skilled does not show up for any particular reason, the contractor shall be responsible to replace that specific person with a suitable replacement. Failure to replace shall result in a penalty of twelve (12) hours payment on that particular grade.

3. QUALITY AND SERVICE

- 3.1 All services supplied to Transnet must be of excellent quality and in compliance with the required specifications. Should the service(s) not be in conformity with the specifications, Transnet serves 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.
- 3.2 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.
- 3.3 The Service Provider must have roadworthy and licensed vehicles.
- 3.4 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.

4. TECHNICAL REQUIREMENTS

Service Providers will be evaluated according to the following criteria:

| Technical Criteria | Weightings |
|---|--|
| <p><u>Experience</u></p> <p>The Service Provider shall be required to have a proven track record in the maintenance and repairs RTG, Mafi Haulers and other related port equipment (Similar Equipment), for a minimum period of two years.</p> <p>Supporting documents - Two (2) written references which shall be used to verify the Service Provider's previous performance and service delivery. Kindly note that the references must specifically set out whether the service provider is experienced in the capacities as set out above.</p> | <ul style="list-style-type: none"> • 40 points = Two (2) written references Issued by respondent's client (different clients) in the supply of supplementary labour • 20 points = One (1) written references issued by respondent's client (different clients) in the supply of supplementary labour • Zero points = Zero (0) written references issued by respondent's client (different clients) in the supply of supplementary labour |
| <p><u>Qualification Verification</u></p> <p>The service provider shall assure TPT that he/she can provide the following:</p> <ul style="list-style-type: none"> • Certified copies of "Red Seals" for all Artisans • Curriculum Vitae's (CV's) for all workers <p>Supporting documents – Service Provider must provide proof of all above mentioned documentation for verification purposes.</p> | <ul style="list-style-type: none"> • 30 points = Service Provider must provide evidence of the employees Qualification/ red seal documentation and Curriculum Vitae's (CV) of all artisans. • 15 points = Service Provider must provide evidence of the employees Qualification/ red seal documentation of all artisans. • Zero points = Anything less than above mentioned threshold |
| <p><u>Tools</u></p> <p>Service Provider shall be required to provide proof, that each artisan that has been issued with relevant tool in accordance to their work SCOPE</p> <p>Supporting documents – Confirmation to provide a signed tool list of tools being issued to all artisans in accordance to their works SCOPE.</p> | <ul style="list-style-type: none"> • 15 points = Proof of Tools given to all artisans according to SCOPE of work • Zero points = Anything less than above mentioned threshold |
| <p><u>Transportation</u></p> <p>Service Provider to provide proof, that daily transportation to and from site shall be provided in strict accordance to section 3.8 of the works instruction.</p> <p>Supporting documents – Proof of transportation that shall be provided to the employees in accordance to section 3.8 of the works instruction.</p> | <ul style="list-style-type: none"> • 15 points = Proof of transportation services according to work instruction. • Zero points = no confirmation of transportation services |



Bidder to achieve a minimum 70% threshold in order to proceed to the next phase.

5. SERVICE PROVIDER CONSTRAINTS FOR PROVIDING THE WORKS

- 5.1 During this time the team might be required to work two shifts (Morning and Afternoon shifts).

6. GENERAL SAFETY AND COMPLIANCE SPECIFICATIONS

- 6.1 Service Provider shall implement and maintain applicable Health, Safety, Quality and Environmental regulations and other relevant standards and regulation, example: NOSA CMB253; applicable SANS codes; OHS Act of 1993 and OHSAS 18001.
- 6.2 Service Provider ensures compliance with TPT SHERQ-RS PRO 027_ SHERQ Service Provider Specifications Procedure. SHE File will be handed in to TPT SHERQ Department in advance for approval before work commence.
- 6.3 The Service Provider to have a fire watch on duty when hot work is performed.
- 6.4 The Service Provider to declare the structure safe for operation and issue TPT a safe for operation certificate after completion of the work.
- 6.5 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, proof to be submitted to SHERQ with SHE File.
- 6.6 Updated SHE File to be sub-mitted to SHERQ via procurement on award of business in accordance with TPT SHERQ – RS PRO 027 TPT SHERQ Service Providers Specifications Procedure within 14 days from award of business (2 weeks).
- 6.7 The following document is compulsory returnable document for all service provider to supply chain management:
- 6.7.1 Valid Letter of Good standing
 - 6.7.2 Valid Public Liability Insurance
 - 6.7.3 37.2 Agreement (TPT CTCT SHEQ-RS FORM 065_Section 37 (2) Agreement) between TPT & Principle Service Provider
 - 6.7.4 37.2 Agreement between Principle Service Provider and Sub Service Provider if making use of any.
- 6.8 The following document is compulsory returnable document for service provider that conduct any physical work on site to SHERQ:
- 6.8.1 SHE File that comply with TPT SHERQ-RS PRO 027 TPT SHERQ Service Provider Specifications Procedure.
- 6.9 Service Provider must ensure that when required to off-load or load any heavy equipment and machinery on the plant that they comply with the following:
- 6.9.1 An employee when required to off-loaded or load from any flatbed or low bed may physically operate no equipment or machinery.
- 6.10 The following is compulsory returnable documents to service provider that is required to load or off-load any equipment or machinery on TPT site to SHERQ and Supply Chain Management:
- 6.10.1 Valid Letter of Good Standing
 - 6.10.2 Valid Public Liability insurance
 - 6.10.3 37.2 Agreement (TPT CTCT SHEQ-RS FORM 065_Section 37 (2) Agreement) between TPT & Principle Service Provider
 - 6.10.4 37.2 Agreement between Principle Service Provider and Sub Service Provider if making use of any.
 - 6.10.5 Safe loading and off-loading specifications
 - 6.10.6 Task Base Risk assessment and Method Statement related to task
 - 6.10.7 All legal document regarding statutory inspection as per requirement related to OHS Act, other Standards and SANS codes.



14 SPECIFICATIONS:

| Applicable Legislation and/or procedures | Description |
|--|--|
| TPT CTCT SHEQ-RS PRO 060 | SHEQ Fire Risk Management Procedure |
| GRM/SHEQ/STD 009 | TNPA Fire Safety Management Manual |
| TPT CTCT SHEQ-RS PRO 027 | TPT SHERQ Service Provider Specifications Procedure |
| TPT CTCT SHEQ-RS PRO 065 | TPT Fall Protection plan |
| SANS Codes | Applicable related South African Bureau of Standards' Code of Practice in conjunction with Scope of work |
| TPT CTCT SHEQ-RS PRO 009 | Waste Management Procedure |
| TPT CTCT SHEQ-RS PRO 007 | Emergency Preparedness and Response |
| TPT CTCT SHEQ-RS PRO 016 | Incident Reporting and Investigation Procedure |
| ISO 14001 | Environmental Management System Environmental Specifications with guidance for use |
| ISO 9001 | Quality Management System- Requirements |
| OHSAS 18001 | Occupational Health and Safety Management System Requirements |
| OHSAS 18002 | Occupational Health and Safety Management Systems – Guidelines for the Implementation of OHSAS 18001 |
| CMB253 | National Occupational Safety Association-NOSA Integrated Management System |
| OHSACT 85 of 1993 | Occupational Health and Safety Act |
| TPT CTCT SHEQ-RS FORM 077 | Contractors SHE File Index |
| TPT CTCT SHEQ-RS FORM 078 | SHE Service Provider File Approval Document |
| TPT CTCT SHEQ-RS FORM 071 | Notification to Provincial Director |
| TPT CTCT SHEQ-RS FORM 062 | Notification of Construction Work |

To obtain the any Supporting document like:

- TPT CTCT SHEQ-RS PRO 027_ SHERQ Service Provider Specifications Procedure.
- TPT CTCT SHEQ-RS FORM 126_Contractors SHE Site File Index
- TPT CTCT SHEQ-RS FORM 065_Section 37 (2) Agreement
- TPT CTCT SHEQ-RS FORM 077_Transnet Port Terminals – Saldanha Contractors SHE File Index

**MASTER AGREEMENT**

entered into by and between

TRANSNET SOC LTD

and

.....

PROVISION FOR THE RUBBER TYRE GANTRY (RTG) AND MAFI'S MAINTENANCE AND REPAIR SERVICES FOR TRANSNET SOC LTD (REG.NO.1990/000900/30) OPERATING AS TRANSNET PORT TERMINALS, (HEREINAFTER REFERRED TO AS "TPT") FOR THE PORT OF CAPE TOWN ON AN AS AND WHEN REQUIRED BASIS FOR A PERIOD OF THIRTY-SIX (36) MONTHS.

| | |
|--------------------------|------------------------|
| Agreement Number | iCLM CT 478/TPT |
| Commencement Date | |
| Expiry Date | |

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SCHEDULE 1 – WORK ORDER / SCHEDULE OF REQUIREMENTS

7 INTRODUCTION

This Agreement is entered into by and between:

Transnet SOC Ltd [Registration Number 1990/000900/30] whose registered address is **202 Anton Lembede Street, Durban Central ,Durban, 4001**, Republic of South Africa [**Transnet**]

and

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

NOW THEREFORE, IT IS AGREED:

- 7.1 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
- 7.2 the Service Provider hereby undertakes to provide the Goods/Services provided for herein, as formally agreed between the Parties and in accordance with the Schedule of Requirements issued as a schedule to this Agreement.

8 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:

- 8.1 **AFSA** means the Arbitration Foundation of South Africa;
- 8.2 **Agreement** means this Agreement and its associated schedules and/or annexures and/or appendices, and/or schedules, including the Schedule of Requirements/Work Orders, the technical specifications for the Goods/Services and such special conditions as shall apply to this Agreement, together with the General Tender Conditions and any additional provisions in the associated bid documents tendered by the Service Provider [as agreed, in writing, between the Parties], which collectively and exclusively govern the provision of Services and provision of ancillary Services by the Service Provider to Transnet;
- 8.3 **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;
- 8.4 **Business Day(s)** means Mondays to Fridays between 07:30 and 16:00, excluding public holidays as proclaimed in South Africa;
- 8.5 **Commencement Date** means, notwithstanding the signature date of this Agreement;
- 8.6 **Confidential Information** means any information or other data, whether in written, oral, graphic or in any other form such as in documents, papers, memoranda, correspondence, notebooks, reports, drawings, diagrams, discs, articles, samples, test results, prototypes, designs, plans, formulae, patents, or inventor's certificates, which a Party discloses or provides to the other Party [intentionally or unintentionally, or as a result of one Party permitting the representative of the other Party to visit any of its premises], or which otherwise becomes known to a Party, and which is not in the public domain and includes, without limiting the generality of the term:
- a) information relating to methods of operation, data and plans of the disclosing Party;

- b) the contents of this Agreement;
- c) private and personal details of employees or clients of the disclosing Party or any other person where an onus rests on the disclosing Party to maintain the confidentiality of such information;
- d) any information disclosed by either Party and which is clearly marked as being confidential or secret;
- e) information relating to the strategic objectives and planning of the disclosing Party relating to its existing and planned future business activities;
- f) information relating to the past, present and future research and development of the disclosing Party;
- g) information relating to the business activities, business relationships, products, services, customers, clients and Subcontractors of the disclosing Party where an onus rests on the disclosing Party to maintain the confidentiality of such information;
- h) information contained in the software and associated material and documentation belonging to the disclosing Party;
- i) technical and scientific information, Know-How and trade secrets of a disclosing Party including inventions, applications and processes;
- j) Copyright works;
- k) commercial, financial and marketing information;
- l) data concerning architecture, demonstrations, tools and techniques, processes, machinery and equipment of the disclosing Party;
- m) plans, designs, concepts, drawings, functional and technical requirements and specifications of the disclosing Party;
- n) information concerning faults or defects in Goods, equipment, hardware or software or the incidence of such faults or defects; and
- o) information concerning the charges, fees and/or costs of the disclosing Party or its authorised Subcontractors, or their methods, practices or service performance levels actually achieved;

8.7 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;

8.8 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;

8.9 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;

8.10 Expiry Date means

8.11 Foreground Intellectual Property means all Intellectual Property developed by either Party pursuant to this Agreement;

- 8.12 **Services** means of Maintenance and Repaired services specified in the Schedule of Requirements appended as Schedule 1 hereto;
- 8.13 **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>;
- 8.14 **Imported content** means that portion of the bid price represented by the cost of components, parts or materials which have been or are still to be imported (whether by the supplier or its subcontractors) and which costs are inclusive of the costs abroad (this includes labour or intellectual property costs), plus freight and other direct importation costs, such as landing costs, dock duties, import duty, sales duty or other similar tax or duty at the South African port of entry;
- 8.15 **Intellectual Property** means Patents, Designs, Know-How, Copyright and Trade Marks and all rights having equivalent or similar effect which may exist anywhere in the world and includes all future additions and improvements to the Intellectual Property;
- 8.16 **Know-How** means all Confidential Information of whatever nature relating to the Intellectual Property and its exploitation as well as all other Confidential Information generally relating to Transnet's field of technology, including technical information, processing or manufacturing techniques, Designs, specifications, formulae, systems, processes, information concerning materials and marketing and business information in general;
- 8.17 **Local content** means that portion of the bid price which is not included in the imported content, provided that local manufacture does take place;
- 8.18 **Parties** mean the Parties to this Agreement together with their subsidiaries, divisions, business units, successors-in-title and assigns;
- 8.19 **Party** means either one of these Parties;
- 8.20 **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;
- 8.21 **Permitted Purpose** means any activity or process to be undertaken or supervised by a Staff member of one Party during the term of this Agreement, for which purpose authorised disclosure of the other Party's Confidential Information or Intellectual Property is a prerequisite in order to enable such activity or process to be accomplished;
- 8.22 **Price(s)** means the agreed Price(s) for the Goods/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;
- 8.23 **Purchase Order(s)** means official orders issued by an operating division of Transnet to the Service Provider for the supply of Goods or Services;

- 8.24 **Service(s)** means Maintenance and Repaired services the Service(s) provided to Transnet by the Service Provider, pursuant to the Work Order(s) in terms of this Agreement;
- 8.25 **Service Level Agreement** or **SLA** means the processes, deliverables, key performance indicators and performance standards relating to the **Goods** to be provided by the **Service Provider**;
- 8.26 **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;
- 8.27 **Staff** means any partner, employee, agent, consultant, independent associate or contractor, Subcontractor and the staff of such Subcontractor, or other authorised representative of either Party;
- 8.28 **Schedule of Requirements** means Schedule 1 hereto;
- 8.29 **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;
- 8.30 **Subcontractor** means the third party with whom the Service Provider enters into a Subcontract;
- 8.31 **Tax Invoice** means the document as required by Section 20 of the VAT Act, as may be amended from time to time;
- 8.32 **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;
- 8.33 **VAT** means Value-Added Tax chargeable in terms of the VAT Act, 89 of 1991, as may be amended from time to time; and
- 8.34 **VAT Act** means the Value Added Tax Act, No 89 of 1991, as may be amended from time to time.
- 8.35 **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.

9 INTERPRETATION

- 9.1 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.
- 9.2 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.
- 9.3 A reference to the singular incorporates a reference to the plural and *vice versa*.
- 9.4 A reference to natural persons incorporates a reference to legal persons and *vice versa*.

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

10 NATURE AND SCOPE

- 10.1 This Agreement is an agreement under the terms and conditions of which the Service Provider will arrange for the supply/provision to Transnet of the Goods/Services which meet the requirements and specifications of Transnet, the delivery of which is controlled by means of Purchase Orders to be issued by Transnet and executed by the Service Provider in accordance with this Agreement.
- 10.2 Such Purchase Orders and deliveries to Transnet shall be agreed between the Parties from time to time, subject to the terms of the Schedule of Requirements/Work Order.
- 10.3 Each properly executed Purchase Order forms an inseparable part of this Agreement as if it were fully incorporated into the body of this Agreement.
- 10.4 During the period of this Agreement, both Parties can make written suggestions for amendments to the Schedule of Requirements/Work Orders in accordance with procedures set out in clause 412 [*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.
- 10.5 Insofar as any term, provision or condition in the Schedule of Requirements/Work Order conflicts with a like term, provision or condition in this Agreement and/or a Purchase Order, the term or provision or condition in this Master Agreement shall prevail, unless such term or provision or condition in this Master Agreement has been specifically revoked or amended by mutual written agreement between the Parties.
- 10.6 Time will be of the essence and the Service Provider will perform its obligations under this Agreement in accordance with the timeframe(s) [if any] set out in the relevant schedule, save that the Service Provider will not be liable under this clause if it is unable to meet such obligation within the time required as a direct result of any act or omission by Transnet and it has used its best endeavours to advise Transnet of such act or omission. In the event of such delay, any time deadlines detailed in the relevant schedule shall be extended by a period equal to the period of that delay.

11 AUTHORITY OF PARTIES

- 11.1 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.
- 11.2 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.

12 DURATION/TERM AND CANCELLATION

- 12.1 Notwithstanding the date of signature hereof, the Commencement Date if this Agreement is and the duration shall be for a [.....] year period, expiring on, unless:
- a) this Agreement is terminated by either Party in accordance with the provisions incorporated herein or in any schedules or annexures appended hereto, or otherwise in accordance with law or equity; or

"It shall terminate on the date the funds are depleted or on whichever event that comes first between the expiry date and the date in which the funds are depleted"

b) this Agreement is extended at Transnet's option for a further period to be agreed by the Parties.

12.2 Notwithstanding clause 289 [*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.

13 RISK MANAGEMENT

13.1 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.

13.2 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

14 TRANSNET'S OBLIGATIONS

14.1 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 Goods/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.

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

14.3 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.

15 GENERAL OBLIGATIONS OF THE SUPPLIER/SERVICE PROVIDER

15.1 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 Goods/Services and keep such records for at least 5 [five] years from the date of each such transaction;

- e) obtain, and at all times maintain in full force and effect, any and all licences, permits and the like required under applicable laws for the provision of the Goods/Services and ancillary Services and the conduct of the business and activities of the Supplier/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 Goods/Services or ancillary Services are procured, produced, packaged, delivered and are capable of being used and ultimately disposed of in a way that is environmentally appropriate; and
- 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 Supplier/Service Provider.

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

- a) render the supply of the Goods/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 Goods/Services and demonstrate a commitment to effecting the supply and performing ancillary Services timeously, efficiently and at least to the required standards;
- c) endeavour to provide the highest possible standards of service and workmanship, with a reasonable degree of care and diligence;
- d) use its best endeavours and make every diligent effort to meet agreed deadlines;
- e) treat its own Staff, as well as all Transnet's Staff, with fairness and courtesy and respect for their human rights;
- f) practice and promote its own internal policies aimed at prohibiting and preventing unfair discrimination;
- g) treat all enquiries from Transnet in connection with the supply of the Goods/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 Goods/Services or ancillary Services to Transnet;
- n) ensure that at all times, during the currency of this Agreement, it complies with all obligations and commitments in terms of the provisions of the Income Tax Act, No 58 of 1962, the VAT Act or any other tax legislation relating to their liability for Income Tax, VAT, Pay as You Earn or any other tax. The Service Provider shall further ensure Tax Clearance Compliance, for the duration of this Agreement;
- o) not victimise, harass or discriminate against any employee of either Party to this Agreement or any applicant for employment with either Party to this Agreement due to their gender, race, disability, age, religious belief, sexual orientation or part-time status. This provision applies, but is not limited to employment, upgrading, work environment, demotion, transfer, recruitment, recruitment advertising, termination of employment, rates of pay or other forms of compensation and selection for training.
- p) shall ensure that its employees, agents and Subcontractors will not breach any applicable discrimination legislation and any amendments and re-enactments thereof.

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

16 SERVICE PROVIDER'S PERSONNEL

16.1 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.

- 16.2 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.
- 16.3 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.
- 16.4 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.
- 16.5 The Service Provider agrees to use all reasonable endeavours to ensure the continuity of its Personnel assigned to perform the Services. If any re-assignment by the Service Provider of those Personnel is necessary, or if Transnet advises that any such Personnel assigned are in any respect unsatisfactory, including where any such Personnel are, or are expected to be or have been absent for any period, then the Service Provider will promptly supply a replacement of equivalent calibre and experience, and any such replacement shall be approved by Transnet prior to commencing provision of the Services, such approval not to be unreasonably withheld or delayed.

17 B-BBEE AND SOCIO-ECONOMIC OBLIGATIONS

17.1

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 utilised by a verification agency or auditor for the purposes of issuing a verification certificate in respect of the Service Provider B-BBEE status) which Transnet may request on written notice within 30 (thirty) calendar days of such request. A failure to provide such data shall constitute a Supplier/ Service Provider Default and may be dealt with in accordance with the provisions of clause 289.

- e) In the event there is a change in the Supplier's/ Service Provider's B-BBEE status, then the provisions of clause 289 shall apply.

17.2 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.

17.3 Reporting

- a) The Service Provider shall monitor, audit, and record in an auditable manner, its own implementation and compliance with its Local Content obligations (if applicable) and provide the Contract Manager with such information as the Contract Manager may reasonably request concerning its Local Content obligations.
- b) The Service Provider shall, on a monthly basis from the Commencement Date and within 7 (seven) calendar days of the end of the previous calendar month, provide Transnet with a report (for monitoring purposes only) in respect of each of the undertakings stipulated in this clause.

18 PENALTIES

18.1 Penalties for Non-compliance to Service Level Agreement

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

Non-compliance Penalty Certificate:

- a) 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.
- b) 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:

- c) 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.
- d) 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.
- e) 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.
- 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/Service Provider.

18.2 Non-compliance penalties for Job Creation

- a) Breach of job creation 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 job creation 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 between the committed and delivered jobs. For every job not created, a penalty of 2% of the contract value will be applied.

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.

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

19 FEES AND EXPENSES RELATING TO SERVICES

- 19.1 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.
- 19.2 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].
- 19.3 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.

- 19.4 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.

20 INVOICES AND PAYMENT

- 20.1 Transnet shall pay the Service Provider the amounts stipulated in each Purchase Order/Work Order, subject to the terms and conditions of this Agreement.
- 20.2 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 Goods/Services ordered, in terms of clause 20.5 below.
- 20.3 Transnet may, pending an investigation, withhold any payments to the Supplier/Service Provider, in the case where irregular expenditure has been identified in the particular contract and that there is reasonable suspicion that the Service Provider is involved or was aware that the contract transgressed any legislation.
- 20.4 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.
- 20.5 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.
- 20.6 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.
- 20.7 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.

21 WARRANTIES APPLICABLE TO GOODS

The Supplier warrants that:

- 21.1 pursuant to clause 15.3 [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;
- 21.2 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

- 21.3 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.

22 WARRANTIES APPLICABLE TO SERVICES

22.1 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 authorised 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 licences for Transnet in respect of all Third Party Material detailed in the Work Order(s), and will procure the right for Transnet to take such copies [in whole or in part] of such Third Party Materials as it may reasonably require for the purposes of back-up for archiving and disaster recovery; and
- 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.

22.2 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.

22.3 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.

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

22.5 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.

22.6 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 412 [*Amendment and Change Control*].

22.7 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 endeavours to assist Transnet in reducing the effect of the virus and, particularly in the event that a virus causes loss of operational efficiency or loss of data, to assist Transnet to the same extent to mitigate such losses and to restore Transnet to its original operating efficiency.

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

22.9 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.

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

23 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.

24 INSPECTION APPLICABLE TO GOODS

24.1 Transnet reserves the right to arrange for the inspection of all Goods forming the subject of any Purchase Order, at any stage before final acceptance and by any means it may think fit, and when such inspection is to be carried out, the relevant Purchase Order(s) shall be endorsed accordingly.

24.2 When inspection at the Supplier's works or warehouse is specified, Transnet's authorised inspector shall have free access to the premises of the Supplier at all times during working hours on a Business Day; shall have liberty to inspect work which is the subject of the Purchase Order at any stage of

manufacture, and may reject any Goods which are found to be incomplete, defective or in any way not in conformity with the terms and specifications of this Agreement; and the Supplier shall afford all reasonable facilities for such access and inspection.

- 24.3 The Supplier shall provide inspection gauges, measuring and test equipment to ensure that the requirements of this Agreement are satisfied. All gauges, templates, tools and other equipment required to check the accuracy of the work shall be calibrated at regular and reasonable intervals by a laboratory which has been approved in writing by Transnet. This certificate shall not be more than 12 [twelve] months old.
- 24.4 The Supplier shall prepare and supply, without charge to Transnet, all test pieces, samples and specimens; shall provide all labour and apparatus for carrying out tests and analyses in accordance with the terms of this Agreement or Purchase Order, and render all reasonable assistance in making such tests and analyses.
- 24.5 All special rules governing gauging, testing, analysis and other inspection procedures shall be adhered to strictly in accordance with the terms of this Agreement or Purchase Order and the conditions of any specifications and drawings quoted therein.
- 24.6 Inspection will be arranged by the Staff of Transnet, as indicated in the Purchase Order(s).
- 24.7 When Goods are ready for inspection, the Supplier shall apply promptly to the appropriate authority for instructions regarding such inspection. All applications for inspection shall quote Transnet's Agreement or Purchase Order number. 7 [seven] Business Days' notice of readiness from the Supplier shall be given to the authorised inspector appointed by Transnet to carry out such inspection.
- 24.8 Transnet shall have the right to recover from the Supplier the cost of inspection of any Goods that have been rejected by its authorised inspector in terms of this clause 244.

25 DEFECTIVE GOODS

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.

- 25.1 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.
- 25.2 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.

- 25.3 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.
- 25.4 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.
- 25.5 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.
- 25.6 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.

26 TOTAL OR PARTIAL FAILURE TO PERFORM

- 26.1 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.
- 26.2 The Service Provider shall thereupon, as soon as possible after such date, deliver to Transnet the Goods/Services [if any] already completed, and payment for the part performance shall be made on a pro rata basis, provided the uncompleted part is not an integral or essential part of the completed Goods/Services. Where an integral or essential part of the work has not been completed, the amount to be paid to the 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.
- 26.3 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 Goods/Services as required by the terms of this Agreement or Purchase Order, or if any Goods/Services are rejected on any of the grounds mentioned in clause 255 [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.

27 RIGHTS ON CANCELLATION

- 27.1 If this Agreement or Purchase Order is cancelled in whole or in part in terms of clause 266 [*Total or Partial Failure to Perform*], Transnet may execute or complete this Agreement with any other entity and do so on such terms as it may deem proper, or may procure other comparable Goods/Services in substitution for those neglected to be manufactured or supplied or rejected as aforesaid, and may recover from the Supplier the difference between the cost of such Goods/Services and the Price [if the latter was lower] as well as any costs and expenses [including any additional transport costs] which Transnet may have had to incur in consequence of the Supplier's/Service Provider's default.
- 27.2 Any amount which may be recoverable from the Service Provider in terms of clause 27.1 above, without prejudice to any other legal remedies available to Transnet, may be deducted in whole or in part from any monies in the hands of Transnet and due for payment to the Supplier/Service Provider.

28 BREACH AND TERMINATION

- 28.1 Termination in accordance with clause 12 [Term and Cancellation] shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to either Party and all provisions which are to survive this Agreement or impliedly do so shall remain in force and in effect.
- 28.2 On termination of this Agreement or a Work Order, the Service Provider will immediately deliver up, and procure that its Personnel will immediately deliver up to Transnet, all Deliverables and property belonging to Transnet [or, in the event of termination of a Work Order, such as is relevant to that Work Order] which may be in the possession of, or under the control of the Service Provider, and certify to Transnet in writing that this has been done.
- 28.3 To the extent that any of the Deliverables and property referred to in clause 28.2 above are in electronic form and contained on non-detachable storage devices, the Service Provider will provide Transnet with unencrypted copies of the same on magnetic media and will irretrievably destroy and delete copies so held.
- 28.4 In the event that this Agreement is terminated by the Service Provider under clause **Error! Reference source not found.** [Term and Cancellation], or in the event that a Work Order is terminated by Transnet under clause **Error! Reference source not found.**9 [Breach and Consequences of Termination], Transnet will pay to the Service Provider all outstanding Fees [apportioned on a pro rata basis] relating to the work undertaken by the Service Provider up until the date of such termination. Transnet will also pay the costs of any goods and materials ordered by the Service Provider in relation to the such work for which the Service Provider has paid or is legally obliged to pay, in which case, on delivery of such goods or materials, the Service Provider will promptly deliver such goods and materials to Transnet or as it may direct.
- 28.5 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.
- 28.6 Either Party may terminate this Agreement forthwith by notice in writing to the other Party when the other Party is unable to pay its debts as they fall due or commits any act or omission which would be an

act of insolvency in terms of the Insolvency Act, 24 of 1936 [as amended from time to time], or if any action, application or proceeding is made with regard to it for:

- a) a voluntary arrangement or composition or reconstruction of its debts;
- b) its winding-up or dissolution;
- c) the appointment of a liquidator, trustee, receiver, administrative receiver or similar officer;
- d) any similar action, application or proceeding in any jurisdiction to which it is subject.

28.7 Transnet may terminate this Agreement at any time within 2 [two] months of becoming aware of a change of control of the Service Provider by notice in writing to the Supplier/Service Provider. For the purposes of this clause, **control** means the right to direct the affairs of a company whether by ownership of shares, membership of the board of directors, agreement or otherwise.

28.8 Notwithstanding this clause 289, Transnet may cancel this Agreement without cause by giving 30 [thirty] calendar days prior written notice thereof to the Supplier/Service Provider, or

28.9 The provisions of clauses 8 [Definitions], 212 [Warranties], 278 [Rights on Cancellation], 313 [Confidentiality], 345 [Limitation of Liability], 36 [Intellectual Property Rights], 389 [Dispute Resolution] and 42.1 [Governing Law] shall survive termination or expiry of this Agreement.

29 CESSION

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

- a) to appoint Transnet's financier of the Goods/Services as first payer under this Agreement, without transferring the ultimate responsibility for payment which will remain with Transnet; and
- b) to cede, assign and transfer its right, title and interest in the Goods/Services to such financier as part of the funding consideration for the Goods/Services.

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

30 FORCE MAJEURE

30.1 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.

30.2 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.

31 PROTECTION OF PERSONAL INFORMATION

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

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

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

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

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

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

- i. they process personal information only for the express purpose for which it was obtained;
- ii. once processed for the purposes for which it was obtained, all personal information will be destroyed to an extent that it cannot be reconstructed to its original form, subject to any legal retention requirements;
- iii. Personal information is provided only to authorised personnel who strictly require the personal information to carry out the Parties' respective obligations under this Agreement;
- iv. they do not disclose personal information of the other Party, other than in terms of this Agreement;
- v. they have all reasonable technical and organisational measures in place to protect all personal information from unauthorised access and/or use;
- vi. they have appropriate technical and organisational measures in place to safeguard the security, integrity and authenticity of all information in their possession or under their control in terms of this Agreement;
- vii. they identify all reasonably foreseeable internal and external risks to personal information in their possession or under their control; establish and maintain appropriate safeguards against the risks identified; regularly verify that the safeguards are effectively implemented; and ensure that the safeguards are continually updated in response to new risks or deficiencies in previously implemented safeguards;
- viii. such personal information is protected against unauthorised or unlawful processing, accidental loss, destruction or damage, alteration, disclosure or access.

- 31.1 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.
- 31.2 Should it be necessary for either Party to disclose or otherwise make available the personal information to any third party (including sub-contractors and employees) that is not already consented to, it may do so only with the prior written consent of the other Party. The Party requiring such consent shall require of all such third parties, appropriate written undertakings to be provided, containing similar terms to that set forth in this clause, and dealing with that third party's obligations in respect of its processing of the personal information. Following approval by the other Party, the Party requiring consent agrees that the provisions of this clause shall *mutatis mutandis* apply to all authorised third parties who process personal information.
- 31.3 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.
- 31.4 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.
- 31.5 The Parties agree that they will promptly return, destroy or de-identify any personal information in their possession or control which belongs to the other Party once it no longer serves the purpose for which it was collected in relation to this Agreement, subject to any legal retention requirements. This may be at the request of the other Party and includes circumstances where a person has requested the Parties to delete all instances of their personal information. The information will be destroyed or de-identified in such a manner that it cannot be reconstructed to its original form, linking it to any particular individual or organisation.
- 31.6 Personal Information security breach:
- a) Each Party shall notify the other party in writing as soon as possible after it becomes aware of or suspects any loss, unauthorised access or unlawful use of any personal information and shall, at its own cost, take all necessary remedial steps to mitigate the extent of the loss or compromise of personal information and to restore the integrity of the affected personal information as quickly as is possible. The Parties shall also be required to provide each other with details of the persons affected by the compromise and the nature and extent of the compromise, including details of the identity of the unauthorised person who may have accessed or acquired the personal information.
 - b) The Parties shall provide on-going updates on the progress in resolving the compromise at reasonable intervals until such time as the compromise is resolved.
 - c) Where required, the Parties must notify the South African Police Service; and/or the State Security Agency and the Information Regulator and the affected persons of the security breach. Any such notification shall always include sufficient information to allow the persons to take protective measures against the potential consequences of the compromise.

- d) The Parties undertake to co-operate in any investigations relating to security which is carried out by or on behalf of the other including providing any information or material in its possession or control and implementing new security measures.

32 CONFIDENTIALITY

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

- a) not to divulge or disclose to any person whomsoever in any form or manner whatsoever, either directly or indirectly, any Confidential Information of the other without the prior written consent of such other Party, other than when called upon to do so in accordance with a statute, or by a court having jurisdiction, or by any other duly authorised and empowered authority or official, in which event the Party concerned shall do what is reasonably possible to inform the other of such a demand and each shall assist the other in seeking appropriate relief or the instituting of a defensive action to protect the Confidential Information concerned;
- b) not to use, exploit, permit the use of, directly or indirectly, or in any other manner whatsoever apply the Confidential Information disclosed to it as a result of this Agreement, for any purpose whatsoever other than for the purpose for which it is disclosed or otherwise than in strict compliance with the provisions in this Agreement;
- c) not to make any notes, sketches, drawings, photographs or copies of any kind of any part of the disclosed Confidential Information without the prior written consent of such other Party, except when reasonably necessary for the purpose of this Agreement, in which case such copies shall be regarded as Confidential Information;
- d) not to de-compile, disassemble or reverse engineer any composition, compilation, concept application, item, component de-compilation, including software or hardware disclosed and shall not analyse any sample provided by Transnet, or otherwise determine the composition or structure or cause to permit these tasks to be carried out except in the performance of its obligations pursuant to this Agreement;
- e) not to exercise less care to safeguard Transnet Confidential Information than the Party exercises in safeguarding its own competitive, sensitive or Confidential Information;
- f) Confidential Information disclosed by either Party to the other or by either Party to any other party used by such party in the performance of this Agreement, shall be dealt with as "restricted" or shall be dealt with according to any other appropriate level of confidentiality relevant to the nature of the information concerned, agreed between the Parties concerned and stipulated in writing for such information in such cases;
- g) the Parties shall not make or permit to be made by any other person subject to their control, any public statements or issue press releases or disclose Confidential Information with regard to any matter related to this Agreement, unless written authorisation to do so has first been obtained from the Party first disclosing such information;
- h) each Party shall be entitled to disclose such aspects of Confidential Information as may be relevant to one or more technically qualified employees or consultants of the Party who are required in the course of their duties to receive the Confidential Information for the Permitted Purpose provided that the employee or consultant concerned has a legitimate interest therein, and then only to the extent necessary for the Permitted Purpose, and is informed by the Party of the confidential nature of the

Confidential Information and the obligations of the confidentiality to which such disclosure is subject and the Party shall ensure such employees or consultants honour such obligations;

- i) each Party shall notify the other Party of the name of each person or entity to whom any Confidential Information has been disclosed as soon as practicable after such disclosure;
- j) each Party shall ensure that any person or entity to which it discloses Confidential Information shall observe and perform all of the covenants the Party has accepted in this Agreement as if such person or entity has signed this Agreement. The Party disclosing the Confidential Information shall be responsible for any breach of the provisions of this Agreement by such person or entity; and
- k) each Party may by written notice to the other Party specify which of the Party's employees, officers or agents are required to sign a non-disclosure undertaking.

32.2 The duties and obligations with regard to Confidential Information in this clause 323 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.

32.3 This clause 323 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.

33 INSURANCES

33.1 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 Supplier/Service Provider.

33.2 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.

33.3 Subject to clause 33.4 below, if the Service Provider fails to effect adequate insurance under this clause 334, it shall notify Transnet in writing as soon as it becomes aware of the reduction or inadequate cover and Transnet may arrange or purchase such insurance on behalf of the Supplier/Service Provider. The Service Provider shall promptly reimburse Transnet for any premiums paid provided such insurance

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

- 33.4 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 33.1 above or if the insurance ceases to be available upon commercially reasonable terms, the Service Provider shall immediately notify Transnet in writing of such termination and/or unavailability, whereafter either the Service Provider or Transnet may terminate this Agreement on giving the other Party not less than 30 [thirty] calendar days prior written notice to that effect.

34 LIMITATION OF LIABILITY

- 34.1 The Supplier/Service Provider's liability under this clause 345 shall be in addition to any warranty or condition of any kind, express or implied by law or otherwise, relating to the Goods/Services or ancillary Services, including the quality of the Goods/Services or ancillary Services or any materials delivered pursuant to this Agreement.
- 34.2 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.
- 34.3 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 Supplier/Service Provider's liability arising out of this clause 34.3 shall be limited to direct damages.
- 34.4 Subject always to clauses 34.1 and 34.2 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.
- 34.5 Subject to clauses 34.1 to 34.4 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.
- 34.6 If for any reason the exclusion of liability in clause 34.5 above is void or unenforceable, either Party's total liability for all loss or damage under this Agreement shall be as provided in clause 34.3 above.
- 34.7 Nothing in this clause 345 shall be taken as limiting the liability of the Parties in respect of clauses 313 [Confidentiality] and 356 [Intellectual Property Rights].

35 INTELLECTUAL PROPERTY RIGHTS

35.1 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 Supplier/Service Provider's Background Intellectual Property shall remain vested in the Supplier/Service Provider.

- b) Transnet shall grant to the Service Provider an irrevocable, royalty free, non-exclusive licence to use Transnet's Background Intellectual Property only for the Permitted Purpose. This licence shall not permit the Service Provider to sub-license to other parties.
- c) The Service Provider shall grant to Transnet an irrevocable, royalty free, non-exclusive licence to use the Supplier/Service Provider's Background Intellectual Property for the Permitted Purpose. This licence shall not permit Transnet to sub-license to other parties.
- d) The Service Provider shall grant Transnet access to the Supplier/Service Provider's Background Intellectual Property on terms which shall be *bona fide* negotiated between the Parties for the purpose of commercially exploiting the Foreground Intellectual Property, to the extent that such access is required.
- 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.

35.2

Title to Intellectual Property

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

circumstances be entitled as of right, or to claim the right, to use Transnet's Background Intellectual Property and/or Foreground Intellectual Property.

35.3 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.

35.4 Unauthorised Use of Confidential Information

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

35.5 Unauthorised Use of Intellectual Property

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

36 NON-WAIVER

- 36.1 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.
- 36.2 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.

37 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.

38 DISPUTE RESOLUTION

- 38.1 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.
- 38.2 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.
- 38.3 Such dispute shall be finally resolved in accordance with the rules of AFSA by an arbitrator or arbitrators appointed by AFSA.
- 38.4 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 38.
- 38.5 This clause 389 is severable from the rest of this Agreement and shall remain in effect even if this Agreement is terminated for any reason.
- 38.6 This clause 389 shall not preclude either Party from seeking urgent relief in a court of appropriate jurisdiction, where grounds for urgency exist.

39 ADDRESSES FOR NOTICES

- 39.1 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

Pavitra.Ramsunder@transnet.net

Fax No.

Attention: Legal Department

- (ii) For commercial notices: Mxoleli Ngongoshe

mxoleli.ngongoshe@transnet.net

.....

Fax No.

Attention:

b) The Supplier/Service Provider

- (i) For legal notices:

.....

.....

Fax No.

Attention:

(ii) For commercial notices:

.....

.....

.....

Fax No.

Attention:

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

39.3 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.

40 WHOLE AND ONLY AGREEMENT

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

41 AMENDMENT AND CHANGE CONTROL

- 41.1 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.
- 41.2 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 389 [*Dispute Resolution*].

42 GENERAL

42.1 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.

42.2 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 389 [*Dispute Resolution*] above.

42.3 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.

43 DATABASE OF RESTRICTED SUPPLIER

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

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

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

| | |
|-----------------------------|-----------------------------|
| AS WITNESS: Name: | AS WITNESS: Name: |
| Signature: | Signature: |

| | |
|-----------------------------|-----------------------------|
| AS WITNESS: Name: | AS WITNESS: Name: |
| Signature: | Signature: |