

## **TRANSNET FREIGHT RAIL**

an Operating Division of **TRANSNET SOC LTD**

[hereinafter referred to as **Transnet**]

[Registration No. 1990/000900/30]

## **REQUEST FOR PROPOSAL [RFP] [SERVICES]**

**FOR THE APPOINTMENT OF SERVICE PROVIDER(S) TO PROVIDE LOCOMOTIVE ABLUTION FACILITIES SERVICES AT 10 DEPOTS IN TRANSNET FREIGHT RAIL FOR PERIOD OF THREE (03) YEARS.**

<b>RFP NUMBER:</b>	<b>HOAC-HO-38022</b>
<b>ISSUE DATE:</b>	<b>10 OCTOBER 2022</b>
<b>COMPULSORY BRIEFING SESSION DATE:</b>	<b>19 OCTOBER 2022</b>
<b>CLOSING DATE:</b>	<b>10 NOVEMBER 2022</b>
<b>CLOSING TIME:</b>	<b>10:00 AM</b>
<b>BID VALIDITY PERIOD:</b>	<b>19 MARCH 2023 -90 Business Days from Closing Date</b>

### **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.*

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

- **RESPONDENTS WITH A MINIMUM B-BBEE STATUS LEVEL OF 1.**
- **EXEMPTED MICRO ENTERPRISES (EMEs) AND/OR QUALIFYING SMALL ENTERPRISES (QSEs).**

### **A COMPULSORY BRIEFING SESSION: (Refer to Section 1, clause 2)**

**Very Important to NOTE:** Also, it is compulsory that the bidders must wear the full PPE (Reflector Jacket and Safety Boots), failure to do so, they will not be allowed to enter Transnet premises at the below mentioned depots and the site certificate will not be signed which will result in disqualification

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**RFP FOR THE APPOINTMENT OF SERVICE PROVIDER(S) TO PROVIDE LOCOMOTIVE ABLUTION FACILITIES CLEANING SERVICES AT 10 DEPOTS IN TRANSNET FREIGHT RAIL FOR PERIOD OF THREE (03) YEARS.**

**SECTION 1: SBD1 FORM**

**PART A**

**INVITATION TO BID**

<b>YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF TRANSNET FREIGHT RAIL, A DIVISION TRANSNET SOC LTD</b>							
BID NUMBER:	HOAC-HO-38022	ISSUE DATE:	10 OCTOBER 2022	CLOSING DATE:	10 NOVEMBER 2022	CLOSING TIME:	<b>10:00AM</b>
DESCRIPTION	FOR THE APPOINTMENT OF SERVICE PROVIDER(S) TO PROVIDE LOCOMOTIVE ABLUTION FACILITIES CLEANING SERVICES AT 10 DEPOTS IN TRANSNET FREIGHT RAIL FOR PERIOD OF THREE (03) YEARS.						
<b>BID RESPONSE DOCUMENTS SUBMISSION</b>							
<b>RESPONDENTS ARE TO UPLOAD THEIR BID RESPONSE PROPOSALS ONTO THE TRANSNET SYSTEM AGAINST EACH TENDER SELECTED</b> (please refer to section 2, paragraph 3 for a detailed process on how to upload submissions): <a href="https://transnetetenders.azurewebsites.net">https://transnetetenders.azurewebsites.net</a>							
<b>BIDDING PROCEDURE ENQUIRIES MAY BE DIRECTED TO</b>				<b>TECHNICAL ENQUIRIES MAY BE DIRECTED TO:</b>			
CONTACT PERSON	Tshepiso Modjela			CONTACT PERSON			
TELEPHONE NUMBER	011 584 0606			TELEPHONE NUMBER			
FACSIMILE NUMBER	N/A			FACSIMILE NUMBER			
E-MAIL ADDRESS	<a href="mailto:Tshepiso.modjela@transnet.net">Tshepiso.modjela@transnet.net</a>			E-MAIL ADDRESS			
<b>SUPPLIER INFORMATION</b>							
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:		<b>OR</b>	CENTRAL SUPPLIER DATABASE	UNIQUE REGISTRATION REFERENCE NUMBER: MAAA		
B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE	TICK APPLICABLE BOX] <input type="checkbox"/> Yes <input type="checkbox"/> No		B-BBEE STATUS LEVEL SWORN AFFIDAVIT			[TICK APPLICABLE BOX] <input type="checkbox"/> Yes <input type="checkbox"/> No	

Respondent's Signature

Date & Company Stamp

<b>[A B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE/ SWORN AFFIDAVIT (FOR EMES &amp; QSEs) MUST BE SUBMITTED FOR PURPOSES OF COMPLIANCE WITH THE B-BBEE ACT]</b>			
<b>1</b> 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]	<b>2</b> 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 ]
<b>QUESTIONNAIRE TO BIDDING FOREIGN SUPPLIERS</b>			
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

<b>1</b>	<b>TAX COMPLIANCE REQUIREMENTS</b>
	<ul style="list-style-type: none"> <li>○ BIDDERS MUST ENSURE COMPLIANCE WITH THEIR TAX OBLIGATIONS.</li> <li>○ 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.</li> <li>○ APPLICATION FOR TAX COMPLIANCE STATUS (TCS) PIN MAY BE MADE VIA E-FILING THROUGH THE SARS WEBSITE WWW.SARS.GOV.ZA.</li> <li>○ BIDDERS MAY ALSO SUBMIT A PRINTED TCS CERTIFICATE TOGETHER WITH THE BID.</li> <li>○ IN BIDS WHERE UNINCORPORATED CONSORTIA / JOINT VENTURES / SUB-CONTRACTORS ARE INVOLVED, EACH PARTY MUST SUBMIT A SEPARATE TCS CERTIFICATE / PIN / CSD NUMBER.</li> <li>○ WHERE NO TCS IS AVAILABLE BUT THE BIDDER IS REGISTERED ON THE CENTRAL SUPPLIER DATABASE (CSD), A CSD NUMBER MUST BE PROVIDED.</li> </ul>

**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**].

<b>DESCRIPTION</b>	For the appointment of service provider(s) to provide Locomotive Ablution facilities Cleaning Services at 10 depots in Transnet Freight Rail for period of three (03) years. <b>[the Goods/Services]</b>
<b>TENDER ADVERT</b>	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.
<b>RFP DOWNLOADING</b>	<p>This RFP may be downloaded directly from National Treasury's e-Tender Publication Portal at <a href="http://www.etenders.gov.za">www.etenders.gov.za</a> free of charge.</p> <p>To download RFP and Annexures:</p> <ul style="list-style-type: none"> <li>Click on "Tender Opportunities";</li> <li>Select "Advertised Tenders";</li> <li>In the "Department" box, select Transnet SOC Ltd.</li> </ul> <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 <a href="https://transnetetenders.azurewebsites.net">https://transnetetenders.azurewebsites.net</a> (please use <b>Google Chrome</b> to access Transnet link/site) free of charge (<i>refer to section 2, paragraph 3 below for detailed steps</i>)</p>
<b>COMMUNICATION</b>	<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>
<b>BRIEFING SESSION</b>	<p>Yes Compulsory</p> <p>Bidders are required to confirm their attendance and to send their contact details including the number of representatives (where applicable) to the following address: <a href="mailto:Tshepiso.modjela@transnet.net">Tshepiso.modjela@transnet.net</a></p> <p>This is to ensure that Transnet may make the necessary arrangements for the briefing session.</p> <p>Refer to paragraph 2 for details.</p>
<b>CLOSING DATE</b>	<p><b>10:00 am on Tuesday 10 November 2022</b></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><b><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></b></p>

<b>VALIDITY PERIOD</b>	<p><b>(19 March 2023) 90 Business Days from Closing Date</b></p> <p>Bidders are to note that they may be requested to extend the validity period of their bid, at the same terms and conditions, if the internal evaluation process has not been finalised within the validity period. However, once the adjudication body has approved the process and award of the business to the successful bidder(s), the validity of the successful bidder(s)' bid will be deemed to remain valid until a final contract has been concluded.</p> <p>With regard to the validity period of next highest ranked bidders, please refer to Section 2, paragraph 11.12</p>
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Any additional information or clarification will be published on the e-Tender portal and Transnet website, if necessary.

## 2. FORMAL BRIEFING

A compulsory pre-proposal site meeting will be conducted at **Kaserne Locomotive depot** Address: 01 Vickers Road, Locomotive Movement Depot, Kaserne, City Deep on the **19 October 2022 at 10:00am** for a period of  $\pm$  2 hours. [Respondents to provide own transportation and accommodation]. The briefing session will start punctually, and information will not be repeated for the benefit of Respondents arriving late.

**Very Important to NOTE: Also, It is compulsory that the bidders must wear the fully PPE (Reflector Jacket and Safety Boots), failure to do so, they will not be allowed to enter Transnet premises at the below mentioned depots and the site certificate will not be signed which will result in disqualification**

- A Certificate of Attendance in the form set out in Section 10 hereto must be completed and submitted with your Proposal as proof of attendance is required for a **compulsory** site meeting and/or RFP briefing.*
- Respondents failing to attend the compulsory RFP briefing will be disqualified.
- Respondents are encouraged to bring a copy of the RFP to the site meeting.

## 3. PROPOSAL SUBMISSION

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

- The Transnet e-Tender Submission Portal can be accessed as follows:
- Log on to the Transnet eTenders management platform website/ Portal ([transnetetenders.azurewebsites.net](https://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](https://transnetetenders.azurewebsites.net)

#### 4. RFP INSTRUCTIONS

- 4.1. Please sign documents [sign, stamp and date the bottom of each page] before uploading them on the system. The person or persons signing the submission must be legally authorised by the respondent to do so.

**All returnable documents tabled in the Proposal Form [Section 5] must be returned with proposals.**

- 4.2. Unless otherwise expressly stated, all Proposals furnished pursuant to this RFP shall be deemed to be offers. Any exceptions to this statement must be clearly and specifically indicated.
- 4.3. Any additional conditions must be embodied in an accompanying letter. Subject only to clause 15 [Alterations made by the Respondent to Bid Prices] of the General Bid Conditions, paragraph 12 below (Legal Review) and Section 6 of the RFP, alterations, additions or deletions must not be made by the Respondent to the actual RFP documents.

#### 5. JOINT VENTURES OR CONSORTIUMS

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

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

#### 6. PREFERENTIAL PROCUREMENT PREQUALIFICATION CRITERIA

##### 6.1. Exempted Micro Enterprises & Qualifying Small Enterprises

- 6.2. Transnet has set a prequalification criterion that only Exempted Micro Enterprises (EMEs) and/or Qualifying Small Enterprises with B-BBEE Status Level 1 may participate in this RFP process. A bid that fails to meet this pre-qualifying criterion will be regarded as an unacceptable bid.

##### 6.3. Minimum B-BBEE level

Transnet has decided to set a minimum B-BBEE threshold for participation in this RFP process. The minimum B-BBEE threshold in this instance is a B-BBEE Level 1, and Respondents who do not have at least this B-BBEE status or higher will be disqualified.

#### 7. COMMUNICATION

- 7.1. For specific queries relating to this RFP, an RFP Clarification Request Form should be submitted onto the system and to [**Tshepiso Morema Email: [tshepiso.modjela@transnet.net](mailto:tshepiso.modjela@transnet.net)** ] before **12:00 pm on 21 October**

**2022**, substantially in the form set out in Section 8 hereto. In the interest of fairness and transparency, Transnet's response to such a query will be published on the e-tender portal and Transnet website.

- 7.2. After the closing date of the RFP, a Respondent may only communicate with the Prudence Nkabinde (DBAC Secretariat), at telephone number 011-584 0821, email: [prudence.nkabinde@transnet.net](mailto:prudence.nkabinde@transnet.net) on any matter relating to its RFP Proposal.
- 7.3. Respondents are to note that changes to its submission will not be considered after the closing date.
- 7.4. It is prohibited for Respondents to attempt, either directly or indirectly, to canvass any officer or employee of Transnet in respect of this RFP between the closing date and the date of the award of the business.
- 7.5. Respondents found to be in collusion with one another will be automatically disqualified and restricted from doing business with organs of state for a specified period.

## 8. CONFIDENTIALITY

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

## 9. COMPLIANCE

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

## 10. EMPLOYMENT EQUITY ACT

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

## 11. DISCLAIMERS

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

- 11.1. modify the RFP's Goods/Services and request Respondents to re-bid on any such changes;
- 11.2. reject any Proposal which does not conform to instructions and specifications which are detailed herein;
- 11.3. disqualify Proposals submitted after the stated submission deadline [closing date];
- 11.4. award a contract in connection with this Proposal at any time after the RFP's closing date;
- 11.5. award a contract for only a portion of the proposed Goods/Services which are reflected in the scope of this RFP;
- 11.6. split the award of the contract between more than one Supplier/Service provider, should it at Transnet's discretion be more advantageous in terms of, amongst others, cost or developmental considerations;
- 11.7. cancel the bid process;
- 11.8. validate any information submitted by Respondents in response to this bid. This would include, but is not limited to, requesting the Respondents to provide supporting evidence. By submitting a bid, Respondents hereby irrevocably grant the necessary consent to Transnet to do so;



- 11.9. request audited financial statements or other documentation for the purposes of a due diligence exercise;
- 11.10. not accept any changes or purported changes by the Respondent to the bid rates after the closing date and/or after the award of the business, unless the contract specifically provided for it;
- 11.11. to cancel the contract and/request that National Treasury place the Respondent on its Database of Restricted Suppliers for a period not exceeding 10 years, on the basis that a contract was awarded on the strength of incorrect information furnished by the Respondent or on any other basis recognised in law;
- 11.12. to award the business to the next ranked bidder, provided that he/she is still prepared to provide the required Goods/Services at the quoted price, should the preferred bidder fail to sign or commence with the contract within a reasonable period after being requested to do so. Under such circumstances, the validity of the bids of the next ranked bidder(s) will be deemed to remain valid, irrespective of whether the next ranked bidder(s) were issued with a Letter of Regret. Bidders may therefore be requested to advise whether they would still be prepared to provide the required Goods/Services at their quoted price, even after they have been issued with a Letter of Regret.

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

## 12. LEGAL REVIEW

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

## 13. SECURITY CLEARANCE

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

## 14. NATIONAL TREASURY'S CENTRAL SUPPLIER DATABASE

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

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

## **15. TAX COMPLIANCE**

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


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

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

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


**Transnet urges its clients, suppliers and the general public to report any fraud or corruption to**

**TIP-OFFS ANONYMOUS:**




Ethics Helpdesk (Pty) Ltd.  
Ethics Management Systems™

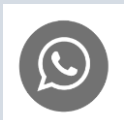
You can choose to be **Anonymous** or **Non-Anonymous** on **ANY** of the platforms  
**PLEASE RETAIN YOUR REFERENCE NUMBER**




**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.




**What's App**  
Speak to an Agent via What's App.




**Speak to an Agent**  
Speak to an Agent via the platform with no call or data charge




**Telegram**  
Speak to an Agent via Telegram




**0800 003 056**



**086 551 4153**



**reportit@ethicshelpdesk.com**



**\*120\*0785980808#**

### **SECTION 3: BACKGROUND, OVERVIEW AND SCOPE OF REQUIREMENTS**

#### **1. BACKGROUND**

Transnet Freight Rail (TFR) is seeking to appoint service provider(s) for locomotives toilets cleaning services for a period of three (3) years. The train crew working trains from origin to destination require hygienic sanitary equipment to use en-route their trips. There are different types of toilet systems on board locomotives which train crew can use and that needs to always be cleaned and maintained.

The purpose of this Request for Proposal (RFP) is to clarify the cleaning processes of the locomotive toilets to ensure that hygienically clean facilities are always available to the train crew.

#### **2. SELECTION OF THE CATEGORIE(S) OR AREAS**

Transnet reserves the right to split the award of business between one or more Service Provider(s) for the provision Locomotive Toilets Cleaning Services at 10 depots.

Respondents are required to select and confirm the specific categories of the areas that they intend submitting a proposal for. Respondents are permitted to select more than one area/ category for the provision of Locomotive Toilets Cleaning Services at 10 depots:

Description	Selection ( • )
Category 1: Kaserne, City Deep, and Capital Park	
Category 2: Springs, Welgedag and Majuba	
Category 3: Setrarand, Millsite, Coligny, and Leeuhof	

#### **3. SCOPE OF REQUIREMENTS**

Transnet Freight Rail is calling for proposals from experienced service providers with a proven track record for the provision of Locomotive Toilets Cleaning Services at 10 depots in Transnet Freight Rail for period of three (03) years.

#### **4. THIS SCOPE OF WORK COVERS THE FOLLOWING:**

- 4.1. The requirements for cleaning the toilet and its cubicle, emptying the retention tank and refilling water into the tank;
- 4.2. Both chemical toilets and systems that incorporate a septic tank that are used on locomotives;
- 4.3. The cleaning and disposal of waste from locomotive porta potties;
- 4.4. Locomotive toilet cleaning is required 24/7 a week in 365 days; and
- 4.5. Two (2) cleaners are required per shift.

## **5. THE DELIVERABLES OF THIS PROJECT WILL CONTAIN THE FOLLOWING:**

### **5.1. Chemical Toilets System "Porta Potties"**

- 5.1.1. There is continuous recycling of water, waste and chemicals therefore regular drainage and refilling is frequently required depending on the system capacity;
- 5.1.2. There must be a pool of Porta Potties available for the toilet cleaning team so that change out can take place on an exchange basis;
- 5.1.3. The Porta Potties can preferably be placed on the leading and the last loco;
- 5.1.4. Cleaning a Chemical Toilet System "Porta Pottie";
- 5.1.5. The cleaning operation should be performed in a demarcated area, at the Transnet's property, with access to a sewage drain or a normal toilet and tap for water;
- 5.1.6. The toilet cleaning team unlocks the toilet using the unique keys;
- 5.1.7. Disconnect flush tank from the waste tank;
- 5.1.8. Empty waste tank into a sewage drain/toilet through the emptying spout. To ensure proper decanting swing the emptying spout outwards as per figure 1.1 (refer to Annexure A). When emptying, spout should be pointing downwards, depressed depress vent button to avoid splashing while waste is being disposed of;
- 5.1.9. The cleaning operation should be performed using soapy water and anti-bacterial cleaners;
- 5.1.10. The waste-holding tank must be filled with water diluted chemical that is SABS Compliance, e.g. Aqua Blue. The chemical must liquefies waste for easier tank emptying, deflates gas build-up and keeps waste holding tank fresh-smelling;
- 5.1.11. The flush-water tank must be filled with water diluted chemical that is SABS Compliance, e.g. Rinse Blue. The chemical must enable a more effective flush and keeps the flush water clean. The chemical must be a highly effective fresh smelling fluid;
- 5.1.12. While the toilet is being removed, the toilet cubicle should be cleaned with a mop. Each cubicle has a waste drain through which excess water can drain out of the cubicle;
- 5.1.13. The water tank should be re-filled with clean water at all times.

### **5.2. LOGISTICS REQUIREMENTS**

- 5.2.1. The toilet has sufficient capacity to last up to 5 days of use; hence the cleaning process has
- 5.2.2. to be performed on return (during trip inspection); and
- 5.2.3. The toilet can easily be ferried by bakkie / Kombi should there be any incident. It can be moved through locomotive doors with ease. **(See figure 1.2)**

### **5.3. SEPTIC TANK TYPES SYSTEM TOILET**

- 5.3.1. The cleaning operation should be performed in the toilet inside the locomotive. (See figure 1.3)
- 5.3.2. The toilet cleaning team cleans the bowl walls inside-out using a brush;
- 5.3.3. The cleaning operation should be performed using soapy water and anti-bacterial cleaners;
- 5.3.4. The toilet cubicle should be cleaned with a mop. Each cubicle has a waste drain through which excess water can drain out of the cubicle;
- 5.3.5. The toilet cleaning team should gauge the water level in the locomotive tank and refill. The tank can take up to 100 liters and a single flush uses approximately 2 liters therefore the water can last up to 50 flushes.

#### **5.4. QUALITY ASSURANCE**

- 5.4.1. Transnet Freight Rail shall nominate a quality Inspector according to different regions / depots who will take samples daily of cleaned locos and evaluate the quality;
- 5.4.2. Transnet Freight Rail and the supplier shall agree on quality deliverables that needs to be incorporated in the evaluation form.

#### **5.5. INDUCTION TRAINING**

- 5.5.1. Transnet will provide the contractor with induction training by Local Safety Office at the depot

#### **5.6. SANITARY FACILITY**

5.6.1.1. Sanitary facility is Transnet Property

5.6.1.2. The facility is used for the following:

- Office (cleaners (contractors) to sit);
- Cleaning of porta potties (portable toilets); and
- Storage of porta potties chemicals, cleaning chemicals, cleaning equipment and cleaned spare porta potties only.

5.6.1.3. Also the contractor is responsible for housekeeping. The facility must be always kept clean;

5.6.1.4. The contractor is liable for any damages of the building, cleaning equipment (e.g. slop hopper, sink, water tap), microwave, fridge and furniture found in the Sanitary Facility, since they are Transnet Properties;

5.6.1.5. The maintenance of the building is the Transnet Freight Rail Real Estate responsibility; and

5.6.1.6. The contractor must report any fault occur in the Sanitary Facility to Operations

## 6. SAMPLES



**Figure 1.1- Porta Pottie**



**Figure 1.2 – Porta Pottie**



*Figure 1.3 – Fixed **Septic** Toilet*

## **7. 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.*

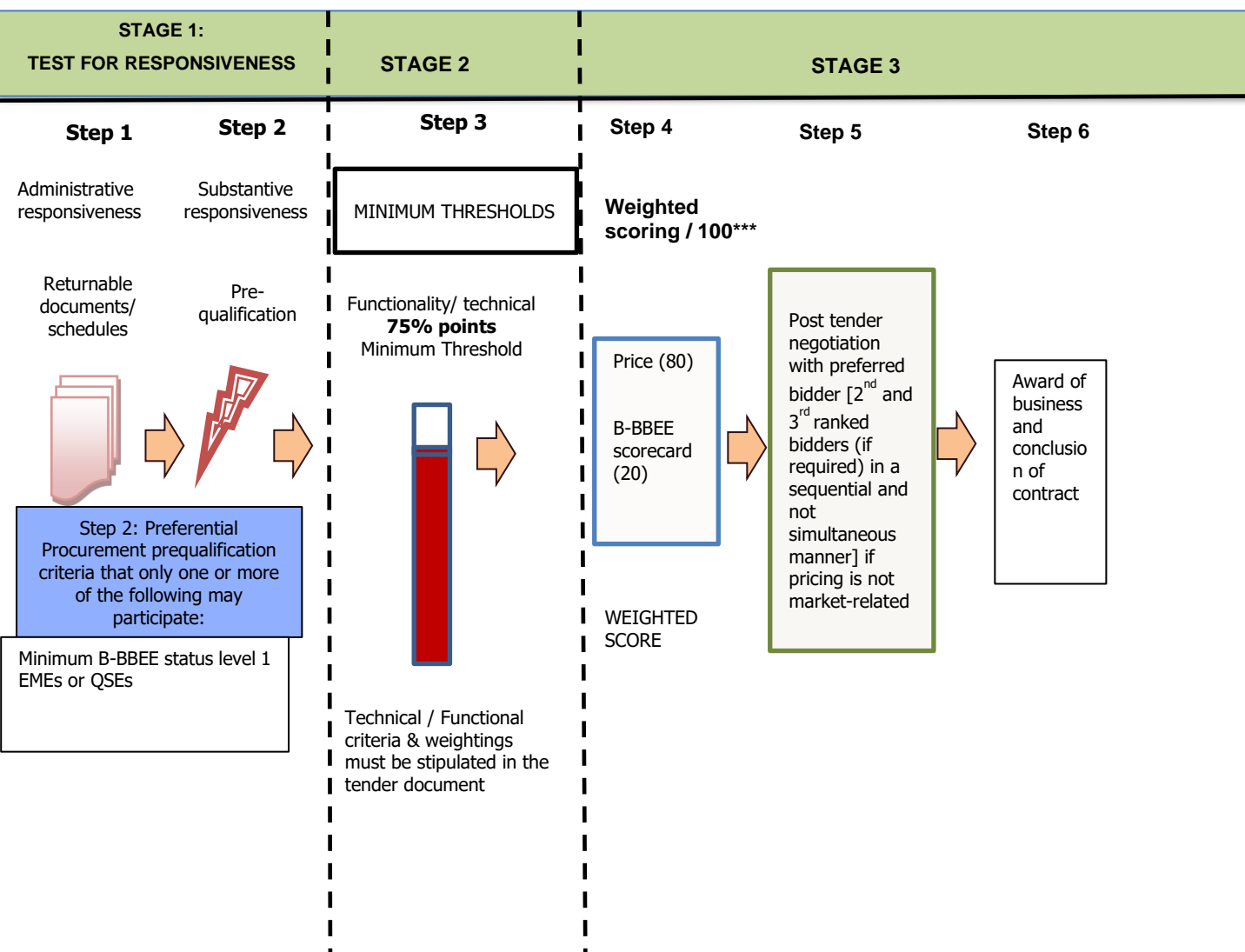
## **8. GENERAL SERVICE PROVIDER OBLIGATIONS**

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



## 9. 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).

### 9.2. STEP ONE: Test for Administrative Responsiveness

The test for administrative responsiveness will include the following:

Administrative responsiveness check	RFP Reference
Whether the Bid has been lodged on time	Section 1 paragraph 3
Whether all Returnable Documents and/or schedules [where applicable] were completed and returned by the closing date and time	Section 5

Verify the validity of all returnable documents	<i>Section 5</i>
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***

### 9.3. 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
Whether any general and legislation qualification criteria set by Transnet, have been met	<i>All sections including: Section 2 paragraphs, 2.2, 6, 11.2, General Bid Conditions clause 20</i>
Whether the Bid contains a priced offer as prescribed in the pricing and delivery schedule (pricing schedule must be fully completed for all items for the selected category)	<i>Section 4</i>
Whether the Bid materially complies with the scope and/or specification given	<i>All Sections</i>
Whether any set prequalification criteria for preferential procurement have been met: <ul style="list-style-type: none"> <li>Minimum B-BBEE Level 1 that are <ul style="list-style-type: none"> <li>EME or QSE (Provide a valid Sworn Affidavit or valid B-BBEE Certificate)</li> </ul> </li> </ul>	<i>Section 2 paragraph 6</i>
<ul style="list-style-type: none"> <li>CSD Form Proof of registration on the National Treasury Central Supplier Database (CSD) <ul style="list-style-type: none"> <li>CSD Registration report</li> </ul> </li> </ul>	<i>Section 1</i>
SBD1 Form fully completed and signed	<i>Section 1</i>

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

### 9.4. STEP THREE: Minimum Threshold 75% points for Technical Criteria

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

Technical Criteria	Weightings	Scoring Matrix	Effective Weights
<b>Previous work done.</b> Respondents must submit authenticated references letters or copies of awarded contracts indicating the experience of previous work done for cleaning services.	<b>50%</b>	0 = 0%  1 = 20%  2 = 30%	0 = No reference letters submitted 1 = One (1 Reference letters or contracts) 2 = Two (2 References letters or contracts)

Technical Criteria	Weightings	Scoring Matrix	Effective Weights
<p>Bidders should indicate each contactable reference and the durations of each contract concerned.</p> <p>It should be on a letterhead from the company where they rendered the service</p> <ul style="list-style-type: none"> <li>➤ Contract value</li> <li>➤ Contract period (start and end dates)</li> <li>➤ Contact details of the company where they rendered the service</li> </ul>		<p>3 = 40%</p> <p>4= 50%</p>	<p>3 =Three (3 References letters or contracts);</p> <p>4 = Four (4 References letters or contracts).</p>
<p><b>Service Implementation plan</b></p> <p>(i) <u>Measures to ensure service continuity</u> includes induction programme, cleaning process and intervals, register of cleaning service, sourcing on consumables, equipment and timelines.</p> <p>(ii) <u>Employment and labour relations</u> includes employment process and management of employment, remuneration and wage management, management of absenteeism, misconduct, insubordination and disciplinary process, labour disputes, employee retainment/retention plan, resignations and constructive dismissal, record keeping</p> <p>(iii) <u>Training plan</u> includes formal and on the job training on but not limited to, Occupational Health &amp; Safety, cleaning processes, hygiene and housekeeping, supervisory skills and management</p>	<b>50%</b>	<p>0 = .00%</p> <p>1 =25%</p> <p>2 =50%</p>	<p>0= No Service Implementation plan provided;</p> <p>1= Service Implementation Plan provided with less than 3 requirements fully address with the listed areas;</p> <p>2= Service Implementation Plan provided with all 3 requirement fully addressed with the listed areas</p>
<b>Total Weighting:</b>	<b>100%</b>		
<b>Minimum qualifying score required:</b>	<b>75%</b>		

*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***

#### 9.5. STEP FOUR: Evaluation and Final Weighted Scoring

- **Price Criteria** [Weighted score 80 points]:

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

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

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

Where:

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

- **Broad-Based Black Economic Empowerment criteria** [Weighted score 20 points]

- i. B-BBEE - current scorecard / B-BBEE Preference Points Claims Form
- ii. 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.

#### 9.6. SUMMARY: Applicable Thresholds and Final Evaluated Weightings

Thresholds	Minimum Threshold
Technical	75%

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

#### 9.7. 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.:

- 2.2 first negotiate with the highest ranked bidder or cancel the bid, should such negotiations fail,
- 2.3 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).

**9.8. STEP SIX: Award of business and conclusion of contract**

Immediately after approval to award the contract has been received, the successful bidder(s) will be informed of the acceptance of his/their Bid by way of a Letter of Award. Thereafter the final contract will be concluded with the successful Respondent(s).

A final contract will be concluded and entered into with the successful Bidder at the acceptance of a letter of award by the Respondent.

**RFP FOR THE APPOINTMENT OF A SERVICE PROVIDER(S) WITH THE PROVISION OF LOCOMOTIVE ABLUTION FACILITIES CLEANING SERVICES AT THE TRANSNET FREIGHT RAIL 10 DEPOTS FOR PERIOD OF THREE (03) YEARS.**

**SECTION 4: PRICING AND DELIVERY SCHEDULE**

*Respondents are required to complete the table below:*

Respondents are required to select and confirm the specific categories (Premises) that they intend submitting a proposal for. Respondents are permitted to select more than one area and type of service.

**Note: Failure to fully complete pricing schedule 100% on the selected category (ies), bidder(s) will be disqualified.**

Description	Selection ( · )
Category 1: Kaserne, City Deep, and Capital Park	
Category 2: Springs, Welgedag and Majuba	
Category 3: Setrarand, Millsite, Coligny, and Leeuhof	

Respondents are required to complete the table below:

tick box

CATEGORY 1: KASERNE, CITY DEEP, AND CAPITAL PARK

ITEMS	LOCOMOTIVE TOILETS TO BE CLEANED AT THE FOLLOWING AREAS:	QUANTITY OF UNITS PER YEAR (365 DAYS)	COST PER UNIT FOR 1ST YEAR	COST FOR 1ST YEAR (365 days)	COST PER UNIT FOR 2ND YEAR	COST FOR 2ND YEAR (365 days)	COST PER UNIT FOR 3RD YEAR	COST FOR 3RD YEAR (365 days)
1	City Deep Yard	14 600 UNITS						
2	Kaserne Yard	7 300 UNITS						
3	Capital Park	5 475 UNITS						
						TOTAL BID PRICE FOR 3 YEARS (EXCL.VAT)		
						VAT (15%)		
						TOTAL BID PRICE FOR 3 YEARS (INC.VAT)		

Respondent's Signature

Date & Company Stamp

Respondents are required to complete the table below:

tick box

CATEGORY 2: SPRINGS, WELGEDAG AND MAJUBA

ITEMS	LOCOMOTIVE TOILETS TO BE CLEANED AT THE FOLLOWING AREAS:	QUANTITY OF UNITS PER YEAR (365 DAYS)	COST PER UNIT FOR 1ST YEAR	COST FOR 1ST YEAR (365 days)	COST PER UNIT FOR 2ND YEAR	COST FOR 2ND YEAR (365 days)	COST PER UNIT FOR 3RD YEAR	COST FOR 3RD YEAR (365 days)
1	Welgedag	7 300 UNITS						
2	Springs	7 300 UNITS						
3	Majuba	7 300 UNITS						
TOTAL BID PRICE FOR 3 YEARS (EXCL.VAT)								
VAT (15%)								
TOTAL BID PRICE FOR 3 YEARS (INC.VAT)								

Respondent's Signature

Date & Company Stamp



Respondents are required to complete the table below:

tick box

CATEGORY 3: SETRARAND, MILLSITE, COLIGNY, AND LEEUHOF

ITEMS	LOCOMOTIVE TOILETS TO BE CLEANED AT THE FOLLOWING AREAS:	QUANTITY OF UNITS PER YEAR (365 DAYS)	COST PER UNIT FOR 1ST YEAR	COST FOR 1ST YEAR (365 days)	COST PER UNIT FOR 2ND YEAR	COST FOR 2ND YEAR (365 days)	COST PER UNIT FOR 3RD YEAR	COST FOR 3RD YEAR (365 days)
1	Sentrarand	9 125 UNITS						
2	Millsite	5 475 UNITS						
3	Leeuhof (Biljkor)	5 475 UNITS						
4	Coligny	5 475 UNITS						
						TOTAL BID PRICE FOR 3 YEARS (EXCL.VAT)		
						VAT (15%)		
						TOTAL BID PRICE FOR 3 YEARS (INC.VAT)		

Respondent's Signature

Date & Company Stamp

SUMMARY COST

Item	Overall Cost for over three (3) years Excl. VAT)
Category 1: Kaserne, City Deep, and Capital Park	R
Category 2: Springs, Welgedag and Majuba	R
Category 3: Setrarand, Millsite, Coligny, and Leeuhof	R
TOTAL PRICE EXLC VAT	R
VAT 15%	R
TOTAL PRICE INCL VAT	R

1. GRAND TOTAL FOR THREE (3) YEARS *EXCLUDING VAT*: R\_\_\_\_\_

2. VAT 15%: R\_\_\_\_\_

3. GRAND TOTAL FOR THREE (3) YEARS EXCLUDING VAT *INCLUDING VAT* R\_\_\_\_\_

Respondent's Signature

Date & Company Stamp

***NOTE: All items on the price schedule should be 100% priced. (Pricing schedule must be fully completed for all items for the selected category)***  
***Failure to do so will lead to bidders being disqualified.***

***Bidders are advised to consider the following indirect cost in the pricing : 2 porta potties chemicals (very important) e.g. Aqua blue and Aqua Rinse ;Cleaning materials e.g. Liquid soap and pine gel ; Equipment -Must be Bucket, Broom, Mob, Brush and washing clothes; PPE for cleaners (remember that Transnet require 2 Cleaners per shift and they must work 24/7 in 365 days) ; Must be Working suits, Reflector jackets, Safety boots, Gloves, and Masks; and Salaries (remember that Transnet require 2 Cleaners per shift and they must work 24/7 in 365 days)***

***Bidders are to note that after award of business, should the average volumes reduce over a period of 3 consecutive months, TFR will reduce the rate per month by applying the unit rate to the reduced volumes.***

***Transnet encourages awarded bidder(s) to employ people of that particular (area) community and to support local procurement to ensure that the local economy is stimulated.***



### Notes to Pricing:

- .1.1 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.
- .1.2 Prices must be quoted in South African Rand inclusive of VAT.
- .1.3 Any disbursement not specifically priced for will not be considered/accepted by Transnet.
- .1.4 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.
- .1.5 Rates proposed must be aligned with the Guide on Hourly Fee Rates for Consultants" by the Department of Public Service and Administration (DPSA);
- .1.6 Quantities given are estimates only. Any orders resulting from this RFP will be on an "as and when required" basis.
- .1.7 Please note that should you have offered a discounted price(s), Transnet will only consider such price discount(s) in the final evaluation stage if offered on an unconditional basis.
- .1.8 Where a Respondent's price(s) includes imported goods/items, the rate of exchange to be used must be in South African Rands for purposes of determining whether the price is market related or not and must be the currency's rate published by the South African Reserve Bank on the date of the advertisement of the bid:
- Currency rate of exchange utilised: \_\_\_\_\_
- .1.9 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	
-----	--

### ➤ 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](http://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:

2. Considered relevant governance protocols;
3. Determined the DPIP or FPPO status of that counterparty; and
4. 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.						
<b>Is the Respondent</b> (Complete with a "Yes" or "No")						
<b>A DPIP/FPPO</b>		<b>Closely Related to a DPIP/FPPO</b>		<b>Closely Associated to a DPIP/FPPO</b>		
<b>List all known business interests, in which a DPIP/FPPO may have a direct/indirect interest or significant participation or involvement.</b>						
No	Name of Entity / Business	Role in the Entity / Business (Nature of interest/ Participation)	Shareholding %	Registration Number	Status (Mark the applicable option with an X)	
					Active	Non-Active
1						
2						
3						

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

### ➤ 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.

- Transnet reserves the right to place purchase orders until the last day of the contract for deliveries to be effected, within the delivery period / lead time specified, beyond the expiry date of the contract under the same terms and conditions as agreed upon.



- Delivery requirements may be stipulated in purchase orders and scheduled deliveries may be called for. However, delivery periods and maximum monthly rates of delivery offered by the Respondents will be used as guidelines in establishing lead times and monthly delivery requirements with the Supplier.
- Where scheduled deliveries are required, the delivery period(s) specified must be strictly complied with, unless otherwise requested by Transnet. Material supplied earlier than specified may not be paid for or may be returned by Transnet, with the Supplier being held liable for all expenses so incurred, e.g. handling and transport charges.
- If the delivery period offered by the Respondents is subject to a maximum monthly production capacity, full particulars must be indicated in Section 4 [*Pricing and Delivery Schedule*]
- The Respondent must state hereunder its annual holiday closedown period [if applicable] and whether this period has been included in the delivery lead time offered:  
\_\_\_\_\_
- Respondents are required to indicate below the action that the Respondent proposes to take to ensure continuity of supply during non-working days or holidays.  
\_\_\_\_\_

➤ **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:

- **Quality and specification of Goods/Services delivered:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- **Continuity of supply:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

SIGNED at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

SIGNATURE OF WITNESSES

ADDRESS OF WITNESSES

1 \_\_\_\_\_

Name \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

2 \_\_\_\_\_

Name \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_



SIGNATURE OF RESPONDENT'S AUTHORISED REPRESENTATIVE:

\_\_\_\_\_

NAME: \_\_\_\_\_

DESIGNATION: \_\_\_\_\_



## SECTION 5: PROPOSAL FORM AND LIST OF RETURNABLE DOCUMENTS

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

\_\_\_\_\_

carrying on business trading/operating as

represented by \_\_\_\_\_  
 in my capacity as

\_\_\_\_\_

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

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

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

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

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

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

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





I/We further agree that if, after I/we have been notified of the acceptance of my/our Proposal, I/we fail to enter into a formal contract if called upon to do so, or fail to commence the supply/provision of 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:

---



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### NOTIFICATION OF AWARD OF RFP

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

### VALIDITY PERIOD

Transnet requires a validity period of 90 Business Days [from closing date] **17 March 2023** 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.

1. Registration number of company / C.C. \_\_\_\_\_
2. Registered name of company / C.C. \_\_\_\_\_



3. Full name(s) of director/member(s)  
Number(s)

Address/Addresses

ID

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## RETURNABLE DOCUMENTS

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

Mandatory Returnable Documents	<b><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></b>
Returnable Documents Used for Scoring	<b><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></b>
Essential Returnable Documents	<b><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></b>

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

### ➤ 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 proof of Respondent's compliance to B-BBEE requirements stipulated in Section 9 of this RFP (Valid B-BBEE certificate or Sworn Affidavit)	
Annexure D1: Normal Salary schedule-indicating labour regulated rates per cleaner for normal hours (100% Completed) for Category 1	
Annexure D2: Normal Salary schedule-indicating labour regulated rates per cleaner for normal hours (100% Completed ) for Category 2	

MANDATORY RETURNABLE DOCUMENTS	SUBMITTED [Yes/No]
Annexure D3: Normal Salary schedule-indicating labour regulated rates per cleaner for normal hours (100% Completed) for Category 3	
CSD Form	
SBD1 Form	

➤ **Returnable Documents Used for Scoring**

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

<b><u>RETURNABLE DOCUMENTS USED FOR SCORING</u></b>	SUBMITTED [Yes or No]
References letters	
Service Implementation plan	

➤ **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:

<b>ESSENTIAL RETURNABLE DOCUMENTS &amp; SCHEDULES</b>	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 9: B-BBEE Preference Claim Form	
SECTION 10: Certificate of attendance of compulsory Site Meeting / RFP Briefing	
SECTION 11: Protection of Personal Information	
Annexure C: Completion of SHE Management Questionnaire	

**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:**

➤ Transnet's General Bid Conditions
➤ Master Agreement and SLA attached
➤ Transnet's Supplier Integrity Pact
➤ Non-disclosure Agreement
➤ Specifications and drawings attached to this RFP

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

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

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

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

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:

- Transnet has supplied and we have received appropriate responses to any/all questions [as applicable] which were submitted by ourselves for RFP Clarification purposes;
- We have received all information we deemed necessary for the completion of this Request for Proposal [RFP];
- 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.
- 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;
- 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;
- 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;
- 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;
- 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;
- 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

- 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]***

- 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)**

### **2) PURPOSE OF THE FORM**

- a) 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.
- b) 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.

### **3) Bidder's declaration**

- a) Is the bidder, or any of its directors / trustees / shareholders / members / partners or any person having a controlling interest<sup>1</sup> in the enterprise, employed by the state?

**YES/NO**

<sup>1</sup> 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.



- 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

- b) Do you, or any person connected with the bidder, have a relationship with any person who is employed by the procuring institution?

**YES/NO**

- 1.1.1 If so, furnish particulars:

.....  
 .....

- c) 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**

1. If so, furnish particulars:

.....  
 .....

#### 4) 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:

- I have read and I understand the contents of this disclosure;
- I understand that the accompanying bid will be disqualified if this disclosure is found not to be true and complete in every respect;





- c) 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 consortium<sup>2</sup> will not be construed as collusive bidding.
- d) 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.
- e) 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.
- f) 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.
- g) 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:

---

<sup>2</sup> 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.



NATURE OF BREACH:

---

DATE OF BREACH: \_\_\_\_\_

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

SIGNED at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_

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

## RFP No: HOAC-HO-38022

TO: Transnet SOC Ltd  
ATTENTION: Tshepiso Morema  
EMAIL [Tshepiso.modjela@reansnet.net]  
DATE: \_\_\_\_\_  
FROM: \_\_\_\_\_

<b>REQUEST FOR RFP CLARIFICATION</b>
--------------------------------------

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



## SECTION 9: B-BBEE PREFERENCE POINTS CLAIM FORM

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

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

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

### (i) GENERAL CONDITIONS

- a. 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).
    - b. 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.
- c. Preference points for this bid shall be awarded for:
  - Price; and
  - B-BBEE Status Level of Contribution.
- d. The maximum points for this bid are allocated as follows:

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

- e. 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.
- f. 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.

### (ii) DEFINITIONS

- **"all applicable taxes"** includes value-added tax, pay as you earn, income tax, unemployment insurance fund contributions and skills development levies;
- **"B-BBEE"** means broad-based black economic empowerment as defined in section 1 of the Broad-Based Black Economic Empowerment Act;
- **"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;
- **"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;

- **"Broad-Based Black Economic Empowerment Act"** means the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);
- **"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);
- **"functionality"** means the ability of a bidder to provide goods or services in accordance with specification as set out in the bid documents
- **"Price"** includes all applicable taxes less all unconditional discounts.
- **"Proof of B-BBEE Status Level of Contributor"**
  - i) the B-BBEE status level certificate issued by an authorised body or person;
  - ii) a sworn affidavit as prescribed by the B-BBEE Codes of Good Practice; or
  - iii) any other requirement prescribed in terms of the B-BBEE Act.
- **"QSE"** means a Qualifying Small Enterprise as defines by Codes of Good Practice under section 9 (1) of the Broad-Based Black Economic Empowerment Act, 2003 ( Act No. 53 of 2003);
- **"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.

### (iii) POINTS AWARDED FOR PRICE

#### a. 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

- Ps = Points scored for comparative price of bid under consideration  
 Pt = Comparative price of bid under consideration  
 Pmin = Comparative price of lowest acceptable bid

### (iv) POINTS AWARDED FOR B-BBEE STATUS LEVEL OF CONTRIBUTION

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

B-BBEE Status Level of Contributor	Number of points (80/20 system)
1	20
2	18
3	14
4	12
5	8
6	6
7	4
8	2



Non-compliant contributor	0
---------------------------	---

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

Enterprise	B-BBEE Certificate & Sworn Affidavit
<b>Large</b>	Certificate issued by SANAS accredited verification agency
<b>QSE</b>	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 <a href="http://www.dti.gov.za/economic_empowerment/bee_codes.jsp">www.dti.gov.za/economic_empowerment/bee_codes.jsp</a> .]
<b>EME<sup>3</sup></b>	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

- c. 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.
- d. 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.
- e. 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.
- f. 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.
- g. 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.

**(v) BID DECLARATION**

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

**(vi) B-BBEE STATUS LEVEL OF CONTRIBUTION CLAIMED IN TERMS OF PARAGRAPHS 1.4 AND 6.1**

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

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



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

**(vii) SUB-CONTRACTING**

- a. Will any portion of the contract be sub-contracted?

(*Tick applicable box*)

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

- i. If yes, indicate:

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

(*Tick applicable box*)

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

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

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

**(viii) DECLARATION WITH REGARD TO COMPANY/FIRM**

- a. Name of company/firm:.....
- b. VAT registration number:.....
- c. Company registration number:.....
- d. TYPE OF COMPANY/ FIRM

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

[TICK APPLICABLE BOX]

- e. DESCRIBE PRINCIPAL BUSINESS ACTIVITIES

.....

.....

- f. COMPANY CLASSIFICATION

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



[ TICK APPLICABLE BOX ]

- g. Total number of years the company/firm has been in business:.....
- h. I/we, the undersigned, who is / are duly authorised to do so on behalf of the company/firm, certify that the points claimed, based on the B-BBE status level of contribution indicated in paragraphs 1.4 and 6.1 of the foregoing certificate, qualifies the company/ firm for the preference(s) shown and I / we acknowledge that:
- The information furnished is true and correct;
  - The preference points claimed are in accordance with the General Conditions as indicated in paragraph 1 of this form;
  - 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;
  - If a bidder submitted false information regarding its B-BBEE status level of contributor, local production and content, or any other matter required in terms of the Preferential Procurement Regulations, 2017 which will affect or has affected the evaluation of a bid, or where a bidder has failed to declare any subcontracting arrangements or any of the conditions of contract have not been fulfilled, the purchaser may, in addition to any other remedy it may have
    - .1 disqualify the person from the bidding process;
    - .2 recover costs, losses or damages it has incurred or suffered as a result of that person's conduct;
    - .3 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;
    - .4 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;
    - .5 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
    - .6 forward the matter for criminal prosecution.

WITNESSES

- .....
- .....

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

DATE: .....

ADDRESS.....





**SECTION 10: CERTIFICATE OF ATTENDANCE OF COMPULSORY RFP  
BRIEFING**

It is hereby certified that –

\_\_\_\_\_

\_\_\_\_\_

Representative(s) of \_\_\_\_\_ [name of entity]  
attended the site meeting in respect of the proposed Goods/Services to be rendered in terms of this RFP  
on \_\_\_\_\_ 20\_\_\_\_

\_\_\_\_\_  
TRANSNET'S REPRESENTATIVE

\_\_\_\_\_  
RESPONDENT'S REPRESENTATIVE

DATE \_\_\_\_\_

DATE \_\_\_\_\_

EMAIL \_\_\_\_\_

**NOTE:**

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



## SECTION 11: PROTECTION OF PERSONAL INFORMATION

1. The following terms shall bear the same meaning as contemplated in Section 1 of the Protection of Person information act, No. 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. The Operator will process all information by the Transnet 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 of Transnet and the information of a third party that will be processed pursuant to this Agreement , the Operator is (Respondent) and the Data subject is "Transnet". Operator will process personal information only with the knowledge and authorisation of Transnet and will treat personal information and the information of a third party 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 Agreement and the Operator is required to comply with all prescripts as detailed in the POPIA relating to all information concerning Transnet.
5. In terms of this Agreement, the Operator acknowledges that it will obtain and have access to personal information of Transnet and the information of a third party and agrees that it shall only process the information disclosed by Transnet in terms of this Agreement and only for the purposes as detailed in this Agreement and in accordance with any applicable law.
6. Should there be a need for the Operator to process the personal information and the information of a third party in a way that is not agreed to in this Agreement, the Operator must request consent from Transnet to the processing of its personal information or and the information of a third party in a manner other than that it was collected for, which consent cannot be unreasonably withheld.
7. Furthermore, the Operator will not otherwise modify, amend or alter any personal information and the information of a third party submitted by Transnet or disclose or permit the disclosure of any personal information and the information of a third party to any third party without prior written consent from Transnet.
8. The Operator 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 the services offered to Transnet in terms of this Agreement (physically, through a computer or any other form of electronic communication).
9. The Operator shall notify Transnet in writing of any unauthorised access to personal information and the information of a third party , 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 Operator must inform Transnet of the breach as soon as it has occurred to allow Transnet to take all necessary remedial steps to mitigate the extent of the loss



or compromise of personal information and the information of a third party and to restore the integrity of the affected personal information as quickly as is possible.

10. Transnet may, in writing, request the Operator to confirm and/or make available any personal information and the information of a third party in its possession in relation to Transnet and if such personal information has been accessed by third parties and the identity thereof in terms of the POPIA.
11. Transnet may further request that the Operator correct, delete, destroy, withdraw consent or object to the processing of any personal information and the information of a third party relating to the Transnet or a third party in the Operator's possession in terms of the provision of the POPIA and utilizing Form 2 of the POPIA Regulations.
12. In signing this addendum that is in terms of the POPIA, the Operator hereby agrees that it has adequate measures in place to provide protection of the personal information and the information of a third party given to it by Transnet in line with the 8 conditions of the POPIA and that it will provide to Transnet satisfactory evidence of these measures whenever called upon to do so by Transnet.

**The Operator is required to provide confirmation that all measures in terms of the POPIA are in place when processing personal information and the information of a third party received from Transnet:**

<b>YES</b>		<b>NO</b>	
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13. Further, the Operator acknowledges that it will be held liable by Transnet should it fail to process personal information in line with the requirements of the POPIA. The Operator will be subject to 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 Transnet submitted to it.

Signature of Respondent's authorised representative: \_\_\_\_\_

14. 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

### **TRANSNET FREIGHT RAIL SAFETY HEALTH AND ENVIRONMENTAL (SHE) SPECIFICATIONS FOR CONTRACTORS**

#### ➤ **Introduction**

- This Safety, Health and Environmental (SHE) specification is Transnet Freight Rail (TFR) minimum requirements to be met by the Contractor when performing work for or on behalf of TFR. They set out the requirements to be followed by the Contractor and subcontractors so that the health and safety of all people's potentially at risk may receive the same priority as other facets of the contract.
- The Contractor shall **develop a SHE plan and prepare a SHE file** based on these requirements, risk assessment as well as all the relevant applicable legislation. The Contractor shall remain accountable for the quality and execution of his health and safety programme for his employees. This specification in no way releases the Contractor from compliance with the relevant legislation.

#### ➤ **Purpose**

- The purpose of this specification is to ensure that the The Contractor provides and maintains, as far as reasonably practicable a safe working environment for all employees and the public whilst performing work for or on behalf of TFR.
- This specification form an integral part of the contract, and the Contractor shall forward this specification to all its subcontractors at the bidding stage so that they can in turn prepare health and safety plans relating to their operations

#### ➤ **Scope and Application**

- This specification is applicable to all contractors, suppliers and all activities and processes carried out for or on behalf of Transnet Freight Rail. The Specification defines the strategies to manage Health and Safety and is a compliance document drawn up in terms of the Occupational Health and Safety Act 85 of 1993, Facilities Regulations GNR.924 of 3 August 2004 and Transnet Contractor Management Procedure.
- This specification shall also apply to any subcontractors as employers in their own right. The Contractor shall furnish the TFR Contract Manager with full particulars of such subcontractors and shall ensure that they comply with the OHS Act and Regulations and TFR's safety requirements and procedures.
- Every effort has been made to ensure that this specification document is accurate and adequate in all respects. Should it however, contain any errors or omissions they may not be considered



as grounds for claims under the contract for additional reimbursement or extension of time, or relieve the Contractor from his responsibilities and accountability in respect of the contract to which this specification document pertains. Any such inaccuracies, inconsistencies and/or inadequacies must immediately be brought to the attention of the TFR Contract Manager.

➤ **General**

- The Contractor and Transnet Freight Rail are individual employers, each in its own right, with their respective duties and obligations set out in the Occupational Health and Safety Act, Act 85 of 1993 (herein referred as the OHS Act) and applicable Regulations.
- 4.2 The Contractor accepts, in terms of the General Conditions of Contract and in terms of the OHS Act, his obligations as an employer in respect of all persons in his employ, other persons on the premises or the Site or place of work or on the work to be executed by him, and under his control. The Contractor shall, before commencement with the execution of the contract work, comply with the provisions set out in the OHS Act, and shall implement and maintain a SHE Plan approved by Transnet Freight Rail, on the site and place of work for the duration of the contract.
- 4.3 The Contractor accepts his obligation with complying to the OHS Act and applicable Regulations notwithstanding the omission of some of the provisions of the OHS Act and the Regulations from this document.
- 4.4 Transnet Freight Rail accepts, in terms of the OHS Act, its obligations as an employer of its own employees working on or associated with the site or place of work, and the Contractor and TFR Contract Manager or his deputy shall at all times, co-operate in respect of the health and safety management of the site, and shall agree on the practical arrangements and procedures to be implemented and maintained during execution of the works
- 4.5 In the event of any discrepancies between any legislation and this specification, the applicable legislation will take precedence.

## **5. Section 37(2) Agreements**

- 5.1 Transnet Freight Rail and the Contractor shall enter into an agreement in terms of section 37(2) of the Occupational Health and Safety Act to the arrangements and procedures between them to ensure compliance by the Contractor with the provisions of the OHS Act.
- 5.2 The agreement shall be completed and signed by the Contractor mandated representative as soon as possible and returned to the relevant TFR Project Manager / TFR Contract Manager for his/her signature on behalf of TFR.
- 5.3 The Contractor shall enter into a Section 37(2) Agreement with their respective sub-contractors. Signed copy of such agreement must be kept on the Contractor's SHE file.

## **6. Definitions**

- 6.1 In this Specification the definitions as listed in the Occupational Health and Safety Act 85 of 1993, Hazardous Chemical Substance Regulation, Facilities Regulations GNR .924 of 3 August 2004 and Transnet Contractor Management Procedure shall apply, unless the context otherwise indicates: -



- 6.2 **" Contractor"** means, an employer (organisation) or a person who performs **ANY** work and has entered into a legal binding business agreement contract to supply a product or provide services to Transnet. This applies to the Suppliers, Vendors, and Consultants, Service providers or Contractors.
- 6.3 **"Fall protection plan "**means a documented plan, which includes and provides for-
- a) all risks relating to working from a fall risk position, considering the nature of work undertaken;
  - b) the procedures and methods to be applied in order to eliminate the risk of falling; and
  - c) a rescue plan and procedures
- 6.4 **"Hazardous Chemical Substance (HCS)"** means any toxic, harmful, corrosive, irritant or asphyxiant substance or a mixture of such substances for which –
- an occupational exposure limit is prescribed; or
  - an occupational exposure limit is not prescribed; but which creates a hazard to health;
- 6.5 **"Intake"** includes inhalation, ingestion or absorption through the skin or mucous membranes
- 6.6 **"Safety, Health and Environmental (SHE) File"** means a file or other record in permanent form, containing the information required to be kept on site in accordance with the OHS Act and applicable Regulations;
- 6.7 **"Safety, Health and Environmental (SHE) plan"** means a site, activity or contract specific documented plan in accordance with the client's health and safety specification;
- 6.8 **"Risk Assessment"** means a programme to determine any risk associated with any hazard at a work site, in order to identify the steps needed to be taken to remove, reduce or control such hazard;
- 6.9 **"TFR"** means Transnet Freight Rail, a division of Transnet SOC Ltd (Registration No. 1990/000900/30), a public company incorporated in accordance with the company laws of the Republic of South Africa
- 6.10 **" TFR Contract Manager"** TFR employee who is authorised to represent Transnet in terms of the contract and appointed to supervise and/or liaise with the Contractor to ensure that the specifications of the contract are met (with special emphasis on technical specifications, inspection of quality, on health and safety, environment and quantity work). A Contract Manager has the role of executing the plan to achieve the deliverables. (It may includes an Operations Manager, Maintenance Manager, Maintenance Supervisor, Technical Officer, etc.)

## 7. SHE Policy

- 7.1 The Contractor shall submit a Safety, Health and Environmental Policy signed by their Chief Executive Officer. The Policy must outline objectives and how they will be achieved and implemented by the Contractor.

## 8. Letter of Good standing

- 8.1 The Contractor shall submit proof of registration and Letter of Good Standing with the compensation fund or with a licensed compensation insurer as contemplated in the Compensation for Occupational Diseases Act, 1993 (Act No. 130 of 1993) for his company and each of his sub-contractors'.
- 8.2 No Contractor may do any work for TFR without a valid letter of good standing. The Contractor must ensure that the Letter of Good Standing remains valid for the duration of the contract period.



- 8.3 The letter of good standing must reflect the name of the Contractor, registration number and expiry date.

## **9. Management and Supervision**

- 9.1 The Contractor shall submit a SHE organogram outlining the contract SHE management structure including a Supervisor and other relevant appointments/competent persons or the intended appointments where such appointments have not been made.
- 9.2 The Contractor shall, in accordance with the OHS Act and applicable Regulations, make all the necessary appointments of competent persons in writing. Copies should also be retained on the SHE file.

## **10. SHE Committee Meetings and SHE Representatives**

- 10.1 Where required by legislation, the Contractor shall appoint SHE Representative/s in writing after consultation with employees and ensure that they are trained in performing their duties.
- 10.2 SHE Representatives duties shall include inspections of the workplace, taking part in incident investigations, risk assessments, attending SHE Committee meetings etc. Records of monthly inspections of SHE Representatives must be kept on the SHE file.
- 10.3 The number of SHE Representatives appointed shall be on ratio of 1 SHE Representative per 50 employees.
- 10.4 Where it is required by legislation, the Contractor must ensure that a SHE Committee meeting is held monthly and minutes of such meeting shall be recorded and records kept on the SHE file. The Contractor representative and appointed SHE representatives shall attend the monthly SHE Committee meeting.
- 10.5 The TFR Contract Manager or his deputy may attend meetings of the Contractor's health and safety committee as an observer.

## **11. SHE Audits, Inspections and Contractor Monthly Reports**

- 11.1 The TFR Contract Manager or his deputy shall ensure that the Contractor SHE Plan is audited at intervals mutually agreed to between them, but at least once every month to ensure that the SHE Plan is implemented and maintained.
- 11.2 TFR Safety Officers / Specialists shall at all reasonable times be allowed access to the work sites, the Contractor site offices to inspect the Contractor and its subcontractor's equipment required to provide the service, registers and workplace.
- 11.3 Should any non-compliances or contraventions to the TFR safety requirements, legal requirements, this specification or the contractor's SHE Plan be identified, such non-compliances or contraventions shall be rectified by the contractor at its cost immediately or within a period specified by the TFR Contract Manager, his deputy, or TFR Safety Officers / Specialists.
- 11.4 Should the Contractor refuse or fail to rectify such non-compliances or contraventions, TFR may take remedial action at the Contractor cost as it may deem necessary to ensure the health and safety at the TFR sites at all times.
- 11.5 TFR reserves the right to conduct safety audits without prior warning.
- 11.6 The Contractor shall provide a monthly safety performance report as required by TFR.



- 11.7 The Monthly safety performance report shall be compiled in terms of Annexure 1 or in any format that the Contractor has as long as it includes all items listed in Annexure 1.

## **12. Training, Competence and Awareness**

### **12.1 Induction Training**

- 12.1.1 The Contractor shall ensure that all his employees undergo a TFR SHE Induction with regard to the general hazards prevalent on the site, rules and regulations, and other related aspects before commencing work to acquaint each employee with the safety requirements and operational environment at the Sites. It is the responsibility of the Contractor to inform TFR whenever new employees are appointed after the initial induction was conducted.
- 12.1.2 In addition to the TFR SHE induction, it is the responsibility of the Contractor to develop and implement a site specific SHE Induction programme, a job specific induction programme and a general employee SHE awareness programme, to develop awareness amongst employees on the generic SHE issues associated with the scope of work and the specific environmental issues in question.
- 12.1.3 The Contractor shall ensure that all visitors and suppliers to the site undergo and comply with Contractor site-specific safety induction requirement prior to being allowed access to site. All visitors and suppliers shall sign the attendance register.
- 12.1.4 All visitors and suppliers shall wear the necessary personal protective equipment whilst on site and shall remain in the care of the host who understand the scope of work and associated risks.
- 12.1.5 The Contractor shall maintain comprehensive attendance records of SHE induction training on the SHE file.

### **12.2 Competency / Training**

- 12.2.1 The Contractor must ensure that all his employees are adequately trained to perform the tasks allocated to them and that there is the requisite amount of supervision at all times to maintain safe work practices and standards.
- 12.2.2 The Contractor shall identify training requirements of employees whose work may have a significant impact on their health and safety or that might create a significant impact upon the environment and ensure that these employees will receive appropriate training. A Training matrix shall be used as a mechanism to manage and control the training of employees.
- 12.2.3 The Contractor shall identify all training needs and incorporate the site specific training into the SHE plan.
- 12.2.4 The Contractor shall be required to ensure that before an employee commences work on the contract that the supervisor in control with responsibility for the employee has informed the employee of his scope of authority and any hazards associated with the work performed. This will include man-job specifications, the discussion of any standard task procedures or hazardous operational procedures to be performed by the employee
- 12.2.5 The Contractor is to ensure that the supervisor has satisfied himself that the employee is conversant with all hazards associated with any work to be performed by conducting task observations.
- 12.2.6 The Contractor must ensure that certificate/s of competence where applicable is/are provided in the SHE File.





### 12.3 Awareness Training

- 12.3.1 Awareness training required shall be identified for all employees on the contract using the SHE Policy, the SHE Plan, risk assessment, the SHE programmes and procedures.
- 12.3.2 The Contractor shall ensure that a daily safety talk is conducted when employees come on duty. The topic and content discussed of such daily talk shall be recorded in writing and all employees in attendance shall sign the attendance register as proof of attendance.
- 12.3.3 The talk must be brief and concise. Subject topics should be applicable to the job at hand, incidents, accidents and up-and-coming work will be discussed along with suggestions and comments. These meetings can be used as a training meeting with the central idea of educating employees.
- 12.3.4 The Contractor shall ensure that employee who are exposed or may be exposed to hazardous chemical substances are informed and trained in terms of HCS Regulation 3.

### 13. Health and Safety Plan (SHE Plan)

- 13.1 Potential Contractor submitting tenders shall submit with their tender, a Health and Safety Plan setting out the practical arrangements and procedures to be implemented by him to ensure compliance by him with the OHS Act and Regulations, this SHE specification and particularly in respect of: -
  - The provision, as far as is reasonably practical, of a working environment that is safe and without risk to the health of his employees in terms of section 8 of the OHS Act;
  - the execution of the contract work in such a manner as to ensure in terms of section 9 of the OHS Act that persons other than those in the Contractor's employment, who may be directly affected by the contract work are not thereby exposed to hazards to their health and safety;
  - ensuring, as far as is reasonably practical, in terms of section 37 of the OHS Act that no employee or subcontractor of the Contractor does or omits to do any act which would be an offence for the Contractor to do or omit to do.
- 13.2 The Contractor Health and Safety Plan shall be based on a risk assessment in respect of the hazards to health and safety of his employees and other persons under his control that are associated with or directly affected by the Contractor's activities in performing the contract work and shall establish precautionary measures as are reasonable and practical in protecting the safety and health of such employees and persons.
- 13.3 The SHE Plan shall include full particulars in respect of: -
  - Safety Management Structure arrangements i.e. Appointments to be done and how;
    - SHE Organisation arrangements i.e. SHE Committees, SHE Audits, Findings and Corrective Actions
  - (c) Risk Management I.e. Risk Assessment frequencies, methodology
  - (d) Education and Training i.e. safety induction, site / job specific training arrangements
  - (e) Emergency Planning
  - (f) Health and Safety Communication i.e. safety talks, incident recall



- (g) Safe working methods and procedures to be implemented i.e. safe work procedures, task observation
  - (h) Personal Protective Equipment and Clothing
  - (i) Contract Security i.e. site access control and security (**if applicable**)
  - (j) SHE Costs (declaration that adequate provision for cost of health and safety have been made in tender price.)
  - (k) Occupational Health i.e. Medical Surveillance, First Aid, Welfare Facilities, Substance Abuse testing, Noise, Vibration, Manual Handling, Ergonomics etc.
  - (l) Incident Management i.e. reporting and investigation
  - (m) Operational Control
  - (n) Review plan of the SHE Plan
- 13.5 The Contractor shall submit a final SHE Plan after awarding of the contract which shall be subject to the TFR Contract Manager's approval and he may, in consultation with the Contractor, order that additional and/or supplementary practical arrangements and procedures be implemented and maintained by the Contractor or that different working methods or safety equipment be used or safety clothing be issued which, in the TFR Contract Manager's opinion, are necessary to ensure full compliance by the Contractor with his obligations as an employer in terms of the OHS Act and Regulations.
- 13.6 The Contractor shall approve the SHE Plan of the subcontractor and further take reasonable steps to ensure that each subcontractor's SHE Plan is implemented and maintained on the site: Provided that the steps taken, shall include periodic audits at intervals mutually agreed to between them, but at least once every month.
- 13.7 The Contractor shall stop any subcontractor from executing any work, which is not in accordance with the Contractor's, and/or sub-contractor's SHE Plan for the site or which poses a threat to the health and safety of persons.
- 13.8 The Contractor shall ensure that a copy of the SHE Plan is available on site for inspection by an inspector, TFR Contract Manager, agent, subcontractor, employee, registered employee organisation, health and safety representative or any member of the health and safety committee.

#### **14. Hazards Identification and Potential Hazardous Situations**

- 14.1 The Contractor shall ensure a risk assessment is carried out by a competent person, appointed in writing, before commencement of any work and reviewed during the duration of the contract period. The Risk Assessments shall form part of the Health and Safety Plan to be applied on the site and shall include at least the following:
- The identification of the risks and hazards (including ergonomic risks) that persons may be exposed to;
  - (b) The analysis and evaluation of the hazards identified;
  - (c) A documented plan, including safe work procedures to mitigate, reduce or control the; risks identified;
  - (d) A monitoring and
  - (e) Review plan



- 14.2 Person conducting such risk assessment use a documented method to analyse and evaluate identified risk and hazards.
- 14.3 The Contractor shall consult with the health and safety committee or, if no health and safety committee exists, with a representative group of employees, on the development, monitoring and review of the risk assessment.
- 14.4 The risk assessment shall be reviewed when there are changes to the operations that may affect the health and safety of persons and may be detrimental to the environment or after an incident.
- 14.5 The Contractor shall ensure that all employees are to be informed, instructed and trained regarding any risks, hazard and related safe work procedures by a competent person as outlined in the risk assessment prior to commencement of work and thereafter at predetermined intervals as outlined in the monitoring plan. Proof of such training shall be kept on the SHE file
- 14.6 The risk assessment shall be available on site for review. Where a risk assessment is not readily available or not communicated to Contractor employees, the activities shall be stopped until such time the Contractor complies.
- 14.7 The Contractor and the TFR Contract Manager shall immediately notify one another of any hazardous or potentially hazardous situations which may arise during performance of the contract.
- 14.8 The Contractor shall be required to analyse his scope of work and define critical activities. For each activity, a risk assessment shall be required which defines systems and safe work procedures that will be used in order to complete the activity safely.

## **15. Safety, Health and Environmental (SHE) File**

- 15.1 The Contractor shall prepare a SHE file and submit to TFR Contract Manager for approval prior to commencement of work on site. The approval time of the file is at least 5 working days.
- 15.2 The file shall include SHE Plan, risk assessment and all documentation required as per this specification, the OHS Act and applicable regulations.
- 15.3 The Contractor shall ensure that a copy of the both his SHE File as well as any sub-contractor's SHE File is kept on site and made available to an inspector of the Department of Labour, the TFR Contract Manager, or sub-contractor upon request.
- 15.4 The Contractor shall hand over a consolidated SHE file to the TFR Contract Manager upon completion of the contract.

## **16. Occupational Health**

### **16.1 Medical Surveillance Programme**

- 16.1.1 The Contractor shall ensure that all his and sub-contractor employees have a valid medical certificate of fitness issued by an Occupational Health Practitioner.
- 16.1.2 Medical certificate of fitness must be available and be kept in the SHE file.



## **16.2 Substance Abuse**

- 16.2.1 The Contractor shall comply with the Transnet Substance Abuse Policy and Regulation 2A of the General Safety Regulations of the OHS Act. Any transgression of this policy will constitute a breach of the relevant contract and may result in penalties as per the contract between TFR and the Contractor.
- 16.2.2 The Contractor shall take adequate steps to test its employees in order to ensure that they are not under the influence of alcohol or a drug having a narcotic or other detrimental effect when on duty.
- 16.2.3 No Contractor employee may be under the influence, possess, sell, offer to other person, use, store, manufacture, transport, distribute, or transfer drugs or alcohol during work hours, on or off TFR premises.
- 16.2.4 TFR will not tolerate substance abuse or use which put at risk the health and safety of its employees or threatens its services to our stakeholders. It is on this basis that a contractor employee will be considered unfit for work if:
- He/she is subjected to alcohol screening and/or alcohol testing and is found to have alcohol in his/her breathe and/or blood;
  - Refuses to undergo substance screening and/or testing;
  - He /she produces a positive confirmatory test for any other substances, measured by sample analysis at a registered pathological laboratory and authorised by a medical practitioner; and/or
  - Through observation by security personnel or TFR Contract Manager, it is evident that the contractor's physical, emotional, mental or behavioural state reflects that they are intoxicated or under the influence.
- 16.2.5 Any Contractor employee using medication that has a narcotic effect must declare before work to his / her supervisor.

## **16.3 First Aid requirements**

- 16.3.1 The Contractor shall ensure that their employees receive prompt first aid treatment in case of injury or emergency. The Contractor must have the necessary equipment and/or facility on site for treatment of injured persons.
- 16.3.2 The Contractor shall ensure that the first aid box / boxes are available and accessible. More first aid boxes shall be provided if the risks, distance between work teams, or the working environment requires it.
- 16.3.3 Taking into account the type of injuries that are likely to occur on site, the nature of activities performed and the number of employees on site, the Contractor shall ensure that the first aid box contain suitable first aid equipment which includes at least the minimum contents as listed on Annexure 1 of General Safety Regulation (GSR).
- 16.3.4 The Contractor must ensure that trained / certificated first-aid personnel are appointed and be available on site at all times. The ratio of first aiders to employees shall be 1:50.

## **16.4 Noise**

- 16.4.1 The Contractor shall ensure that the requirements of the Noise Induced Hearing Loss Regulations are complied with.
- 16.4.2 The Contractor shall ensure that machinery and equipment are operated at noise levels not exceeding an equivalent level of 85-dB (A) during normal working conditions.
- 16.4.3 Where the noise levels at the Operator position or to employees working in the vicinity exceed an equivalent level of 85-dB (A) during normal working conditions, the Contractor shall take appropriate measures to reduce such levels to an equivalent level of 85-dB (A). The use of Personal Protective Equipment (PPE) should be the last resort.



- 16.4.4 All employees exposed to noise must be trained on the effects of exposure, precautionary measures to be taken to prevent exposure and the correct use of PPE.
- 16.4.5 The Contractor shall ensure that its employees comply to PPE requirements in demarcated noise zones.

## **16.5 Manual Handling**

- 16.5.1 Contractor must reduce risk of injury due to manual handling by using mechanical assistance involving the use of mechanical aids to assist the manual handling operation. Mechanical aids such as hand-powered hydraulic hoists, specially adapted trolleys etc. can be used.
- 16.5.2 Contractor shall ensure all employees involved in manual handling are trained in good lifting techniques.

## **16.6 Weather precautions**

- 16.6.1 In the event of adverse weather (high winds, flooding, storm surge, lightning etc.) or other conditions, the Contractor must institute precautionary measures to protect employees on site.
- 16.6.2 The Contractor shall take steps to prevent heat stroke, dehydration, and exhaustion of employees as a result of exposure to excessive heat on site. Such steps may include employees taking regular breaks, consuming enough water, provision of sun brims for their hard hats and sunscreen to protect them against sun burn.
- 16.6.3 The Contractor shall take steps to prevent hypothermia or dangerous overcooling of the body as a result of exposure to cold temperatures.

## **16.7 Welfare facilities for employees**

- 16.7.1 Where such welfare facilities are provided by TFR to the Contractor for the use by their employees and subcontractors, the Contractor must ensure that all such facilities are kept in a clean, hygienic, safe, whole and leak-free condition, and in a good state of repair

## **17 Incidents/Occurrences**

- 17.1 All incidents/occurrences referred to in Regulation 9 of General Administration Regulations of the OHS Act, involving the contractor and his sub-contractor on TFR premises, shall be reported to the TFR Contract Manager and Department of Labour as prescribed by the OHS Act.
- 17.2 TFR must be forwarded with a copy of a report of any investigation, formal inquiry conducted in terms of Section 31 and 32 of the OHS Act into any incident involving the contractor, his sub-contractor, any person or machinery under his control on TFR premises.
- 17.3 TFR Contract Manager must be informed of the above incidents/occurrences before the end of shift when the incident/occurrence occurred.
- 17.4 The Contractor shall make available its employees to attend as witnesses when required so by TFR during an investigation into any incident where TFR believes the said contractor employees were witnesses or may assist in the investigation.
- 17.5 The Contractor shall make available to TFR any documents required to assist in their investigation.

## **18. SHE Cost**

- 18.1 The Contractor shall ensure that it has made adequate provision for the cost of health and safety measures in the tender offer. The Contractor must ensure that his tender price is inclusive of the cost of health and safety as they will not be invoiced separately.
- 18.1 The Contractor shall ensure that its sub-contractors have made adequate provision for the cost of health and safety measures in the tender offer.

**19. Personal Protective Equipment (PPE)**

- 19.1 The Contractor shall ensure that all employees are provided with appropriate Personal Protective Equipment (PPE), free of charge, suitable for the type of activities that the employees will perform.
- 19.2 Such PPE shall be approved by credible institution such as SABS, EN, or AN.
- 19.3 The Contractor shall manage the issuing of PPE and ensure that PPE is used at all times.
- 19.4 The Contractor shall ensure that its employees are trained in the proper use of PPE issued to them.

**20. Emergency Evacuation Plan and Procedure**

- 20.1 An Emergency Evacuation Plan and Procedure must be drawn up; all staff members of the contractor shall be given awareness training and participate in regular evacuation drills.
- 20.2 The Contractor and its employees shall collaborate and adhere to TFR evacuation drills and requirements.

**21. Access Control and Security**

- 21.1 The Contractor shall, before commencing any work, obtain from the TFR Contract Manager, a Site Access Certificate executed and signed by him or the relevant TFR personnel, permitting and limiting access to the designated site or place of work by the Contractor.
- 21.2 The Contractor must assess the security risks and implement appropriate measures. All contractors are to strictly adhere to all security requirements on the premises.
- 21.3 The Contractor in collaboration with the TFR Contract Manager will ensure that proper access control is in place and functional at all times onto and out of the site. A form of access control will be issued to Contractor employees who have been inducted and submitted copies of ID documents or work permits (where required).
- 21.4 Contractor shall ascertain from TFR Contract Manager the correct route along which their employees may proceed when coming on or going off shift and direct their employees accordingly.

**22. Management of Subcontractors**

- 22.1 The Contractor is directly responsible for the actions of his sub-contractors.
- 22.2 The Contractor will also be responsible for initiating any remedial action (recovery plan) that may be necessary to ensure that the sub-contractor complies with all requirements.
- 22.3 The Contractor shall provide any sub-contractor who is making a bid or appointed to perform work, with the relevant sections of the documented SHE specification, who would in turn provide a SHE plan for approval.
- 22.4 The Contractor shall carry out inspection/audits on the sub-contractor to ensure that their SHE plan is being implemented and maintained and submit audit report to TFR Representative.
- 22.5 The Contractor shall stop any sub-contractor from executing work which poses a threat to the safety and health of persons or detrimental to the environment.
- 22.6 The Contractor shall ensure that the sub-contractors appointed have the necessary competencies and resources to perform the work safely.
- 22.7 The Contractor will be required to enter into a Section 37(2) mandatory agreement between the Contractor and sub-contractor and a copy of each agreement shall be submitted to the TFR Contract Manager



## **23. Environmental Management**

- 23.1 The Contractor shall adhere to all instructions issued by TFR Contract Manager in promotion of environmental management and legal compliance.
- 23.2 The Contractor shall ensure that his or her employees are aware of the procedures to be followed when dealing with spills and leaks, which shall include notifying the relevant authorities and TFR as required in terms of National Environmental Management Act (NEMA), 1998 and National Water Act (NWA), 1998. The Contractor shall ensure that all necessary material and equipment required for use during clean – up/rehabilitation of spills and leaks are available on site at all times. Treatment, remediation and/or rehabilitation of contaminated areas shall be undertaken to the reasonable satisfaction of the TFR Environmental Control Officer or relevant Environmental Specialist.
- 23.3 The Contractor must notify the TFR Contract Manager immediately of any pollution incident. An incident record system shall be maintained on site for inspection by TFR and relevant authorities.
- 23.4 All vehicles and equipment's shall be kept in good working condition. All leaking equipment's shall be repaired immediately or removed from site. All vehicles and equipment shall be maintained and not emit excessive noise.
- 23.5 Transportation, handling and storage of all substances classified as hazardous must comply with the provisions of the Hazardous Substances Act, 15 of 1973, relevant Regulations and SANS Codes.
- 23.6 No on-site burying or dumping of waste material shall occur. Waste must be collected by a licensed waste transporting contractor and disposed of at a licensed disposal site. Disposal certificate must be made available to TFR on request.

## **24. Operational Safety**

### **24.1 Vehicle Safety**

With respect to vehicles, the Contractor must ensure that:

- 24.1.1 They are of an acceptable design and construction, are maintained in a good working order and are used in accordance with their design and the intention for which they were designed.
- 24.1.2 Are operated by a person who has received appropriate training, is certified competent and in possession of proof of competency and is authorised in writing to operate such vehicle.
- 24.1.3 Are operated by a person who has a medical certificate of fitness to operate such a vehicle, issued by an Occupational Health Practitioner.
- 24.1.4 Vehicles used to transport employees have seats firmly secured and adequate for the number of employees to be carried. No employees will be allowed to be transported at the back of LDV's / bakkies unless licensed for such purpose, provided with a seat and safety belt and further that the risk assessment has indicated it to be a low risk.
- 24.1.5 Vehicles must be inspected by the authorised driver on a daily basis using a relevant checklist prior to use and that the findings of such inspection are recorded in a register kept in the vehicle.
- 24.1.6 Tools, material and equipment are secured and separated by means of a physical barrier in order to prevent movement when transported in the same compartment with employees.



24.1.7 Those working or operating on public roads comply with the requirements of the National Road Traffic Act, 1996.

## **24.2 Housekeeping and general safeguarding**

- 24.2.1 The Contractor must ensure that good housekeeping practices are continuously implemented on each work site.
- 24.2.2 The Contractor must ensure proper storage of materials and equipment and the removal of scrap, waste and debris at appropriate intervals.
- 24.2.3 The Contractor must ensure that materials required for use, are not placed on the site so as to obstruct means of access to and egress from workplaces, passageways and fire protection equipment.
- 24.2.4 The Contractor must ensure that materials which are no longer required for use do not accumulate on and are removed from the site at appropriate intervals.
- 24.2.5 The Contractor shall ensure that the sanitary facility provided for the use of the Contractor is kept in a clean and hygienic condition.

## **24.3 Stacking and Storage**

- 24.3.1 Where applicable, the Contractor shall ensure that a competent person is appointed in writing with the duty of supervising all stacking and storage of material.
- 24.3.2 Storage areas provided for the safekeeping of equipment and material are demarcated as storage areas and are kept neat and under control.

## **24.5 Fire Precautions**

- 24.5.1 The Contractor must ensure that all appropriate measures are taken to avoid the risk of fire including the prohibition of illegal electrical connections and the use of unsafe electrical appliances.
- 24.5.2 Work areas are clear, at all times, of any material, which could fuel a fire, combustible materials do not accumulate, oily rags, waste and other substances liable to ignite are without delay removed to a safe place.
- 24.5.3 Sufficient and suitable storage is provided for flammable liquids, solids and gases.
- 24.5.4 A thorough inspection is made of the area at the end of any working period to ensure that no material is left at the work site or any situation left in such a manner that a fire or accident could result (all machines, heaters to be turned off at main switches, and cylinders to be closed and hoses deflated).
- 24.5.5 Sufficient number of employees are trained in the use of fire extinguishing equipment.
- 24.5.6 There is an effective evacuation plan providing for all persons to be evacuated speedily without panic.
- 24.5.7 The Contractor must ensure that firefighting equipment is not used for any purpose other than their intended use.

## **24.6 Hazardous Chemical Substances (HCS)**

- 24.6.1 The Contractor must ensure that all employees exposed to hazardous chemical substances are trained on the potential source of exposure, potential risk to health caused by exposure and measures to be taken by the contractor and employees against any risk of exposure.





- 24.6.2 The Contractor shall ensure that a HCS risk assessment is to be conducted and where it indicates that any employee may be exposed, the contractor shall ensure that monitoring is carried out in terms of regulation 6 and 7 of the Hazardous Chemical Substances Regulations.
- 24.6.3 Employees exposed to hazardous chemical substances shall be under medical surveillance.
- 24.6.4 The Contractor shall, in order to avoid the spread of contamination of an HCS, take steps to ensure that the HCS in storage or distributed are properly identified, classified and handled in accordance with SANS 10072 and SANS 10228:
- 24.6.5 The Contractor shall ensure that a container or a vehicle in which an HCS is transported is clearly identified, classified and packed in accordance with SANS 10228 and SANS 10229
- 24.6.6 The Contractor shall ensure that any container into which an HCS is decanted, is clearly labelled with regard to the contents thereof.
- 24.6.7 The Contractor shall ensure that every person who is or may be exposed shall obey a lawful instruction given by or on behalf of the Contractor, regarding:
- 3 the prevention of an HCS from being released;
  - 4 the wearing of personal protective equipment;
  - 5 the wearing of monitoring equipment to measure personal exposure;
  - 6 the reporting for health evaluations and biological tests as required by these regulations;
  - 7 the cleaning up and disposal of materials containing HCS;
  - 8 housekeeping at the workplace, personal hygiene and environmental and health practices; and
  - 9 information and training
- 24.6.8 The Contractor shall, as far as is reasonably practicable:
- recycle all HCS waste;
  - ensure that all collectable HCS waste is placed into containers that will prevent the likelihood of exposure during handling;
  - ensure that all vehicles, re-usable containers and covers which have been in contact with HCS waste are cleaned and decontaminated after use in such a way that the vehicles, containers or covers do not cause a hazard inside or outside the premises concerned;
  - ensure that all HCS waste which can cause exposure, is disposed of only on sites specifically designated for this purpose in terms of the Environmental Conservation Act, 1989 (Act No. 73 of 1989), in such a manner that it does not cause a hazard inside or outside the site concerned;
  - ensure that all employees occupied in the collection, transport and disposal of HCS waste, who may be exposed to that waste, are provided with suitable personal protective equipment; and
  - ensure that if the services of a waste disposal contractor are used, a provision is incorporated into the contract stating that the contractor shall also comply with the provisions of these regulations.

## **24.7 Cleaning of Toilets**



- 24.7.1 The Contractor must ensure that cleaning services only commence after the locomotive has been switched off. The employees shall not operate any controls of the locomotive.
- 24.7.2 The Contractor shall ensure that the cleaning activities are only carried out at the allocated toilet cleaning sites.
- 24.7.3 The Contractor shall ensure that a system of work is implemented to protect employees from exposure to toilet waste.

## **24.8 Safety of Employees in the Yards**

- 24.8.1 The Contractor shall ensure that its employees take reasonable care when working inside TFR yards and are protected from the risk of being hit by moving trains.
- 24.8.2 The Contractor shall ensure that its employees are made aware of the dangers of Overhead Traction Equipment (OHE) and complies with the requirements relating to electrical safety.

## **24.9 Electrical Equipment**

The Contractor must ensure that:

- 24.9.1 Compliance with Electrical Installation Regulations, Electrical Machinery Regulations and regulation 24 of the Construction Regulations and OH&S Act.
- 24.9.2 Connections are not made to any power supply without the prior written approval of the TFR Contract Manager.
- 24.9.3 All electrical machines, extension cords, portable tools and appliances provided by the Contractor for his own use on the site are in a serviceable condition.
- 24.9.4 Power tools used on the Site are protected by residual current devices approved by TFR Contract Manager and are double insulated.

## **24.10 Fall Protection Plan**

- 24.10.1 In the event of the risk and hazard identification, as required in terms of clause 14 of this Specification, revealing risks relating to working from a fall risk position the contractor shall cause the designation of a competent person, responsible for the preparation of a fall protection plan;
- 24.10.2 The Contractor shall implement, maintain and monitor the fall protection plan for the duration of the contract. The Contractor shall also take such steps to ensure the continued adherence to the fall protection plan.
- 24.10.3 The fall protection plan shall include:-
  - a risk assessment of all work carried out from a fall risk position;
  - the procedures and methods to address all the identified risks per location;
  - the evaluation of the employees physical and psychological fitness necessary to work at fall risk positions;
  - the training of employees working from a fall risk positions;
  - rescue plan; and
  - the procedure addressing the inspection, testing and maintenance of all fall protection equipment

## **24.11 General Machinery, Tools and Equipment**



- 24.11.1 The Contractor shall ensure that all machinery, tools and equipment are identified, numbered or tagged, listed on an inventory list, are safe to be used and maintained in a good condition.
- 24.11.2 The Contractor shall ensure that all machinery, tools and equipment to be regularly inspected at least monthly or as required by legislation and risk assessments. Records of such inspections shall be kept on the SHE file.
- 24.11.3 The Contractor shall ensure that all machinery, tools and equipment are operated by persons who have been trained to operate such machinery, tools or equipment.
- 24.11.4 All files and similar tools must be fitted with handles. Tools with sharp points in tool boxes must be protected with a cover.
- 24.11.5 The Contractor must have a policy on private and make shift tools on site.

#### **24.12 SHE Signage (Symbolic Safety Signs)**

- 24.12.1 The Contractor employees shall comply with all SHE signage posted at various locations of TFR sites

#### **24.13 COVID 19 Requirements**

- 24.13.1 The contractor shall complete and submit to the TFR Contract Manager a declaration stating that the contractor is permitted to operate in terms of the provisions of the Disaster Management Act 2002 (Act No 57 of 2002) and Regulations, Transnet COVID-19 Guidelines and COVID-19 Occupational Health and Safety Measures in Workplaces, COVID-19 (C19 OHS), 2020 and have prepared a COVID-19 Workplace Readiness Plan and shall operate within the regulated permissions and restrictions of applicable lockdown level.
- 24.13.2 The contractor must ensure that all its employees are trained on the health risks and hazards associated with COVID-19 and what precautionary measures they must follow for the protection of their health, including the proper use and maintenance of PPE. They are prepared and informed regarding updated rules, hygiene and behavioural practices, complete a "return to work interview" with their line manager and sign commitment to maintain social distancing.
- 24.13.3 The contractor shall ensure that every employee reporting for duty is screened to ascertain whether they have any observable symptoms associated with COVID-19 and require such employee to immediately inform the contractor if he/she experiences such symptoms
- 24.13.4 Non-essential physical work that requires close contact between workers should be avoided where it is possible to do so.
- 24.13.5 Where it is practicable, every employee must be issued with own tool for use for the duration of the shift. Tools and equipment in stores should be sanitised before issued and on return to the stores.
- 24.13.6 Washing hands facilities must be provided on site, and where it is not available, employees should be provided with hand sanitisers. Employees should be encouraged to regularly wash their hands.
- 24.13.7 Alcohol testing on site should be managed in such a way that no employee is exposed to the virus and contractors must promote personal hygiene. Breathalyzer equipped with disposable mouthpieces shall be used and shall be cleaned and/or disinfected after every use.
- 24.13.8 All non-essential visitors to site are not allowed, only suppliers are allowed. Suppliers must be advised in advance of the COVID-19 site screening tests and required COVID-19 PPE requirements for the site.



24.13.9 Where site meetings are held, only absolutely necessary meeting participants should attend. Social distancing should be maintained.

24.13.10 The contractor shall when transporting his employees to TFR premises comply with the regulations which outlines that 70% of the vehicle capacity can be utilised.

24.13.11 The contractor shall inform the TFR Contract Manager when any of its employees working on TFR premises has been diagnosed with COVID-19. The contractor shall investigate the cause and control failure and review its risk assessment to ensure that the necessary controls and PPE requirements are in place.

## **25. Confidentiality**

25.1 The Contractor must, at all times, consider all data or information given to him or that is required in connection with the work of the Company, as confidential and not make unauthorized use of it.

25.2 He/she must ensure that such data or information is not given to any non-employee of the contractor without written consent of the TFR Contract Manager.

25.3 The Contractor shall be aware of the confidentiality of the mentioned information and is compelled to treat it accordingly.

25.4 The Contractor must provide adequate physical protection for any confidential documents, etc., which were obtained from TFR in connection with the contract work as well as any copies made thereof.

**ANNEXURE B****CONTRACTORS MONTHLY SHE REPORT**

<b>For Month/Year</b>				<b>Name of Contractor</b>			
<b>Name of Contract</b>							
<b>Contract Number</b>			<b>Date of Commencement</b>		<b>Date of Completion</b>		
<b>Number of employees</b>	<b>Man-hours worked this Month</b>	<b>Cumulative (Contract duration man-hours)</b>	<b>Man-hours Since last Lost Time Incident (LTI)</b>	<b>DIFR</b>			

**1. Details of SHE Incidents**

<b>Incident</b>	<b>This Month</b>	<b>Cumulative (Contract duration)</b>	<b>Short description of major/significant incidents and preventative action taken</b>
<b>Number of fatalities</b>			
<b>Number of disabling incidents</b>			
<b>Number of Medical Treatment Cases</b>			
<b>Number of first aid Cases</b>			
<b>Number of near miss incidents</b>			
<b>Motor vehicle incidents</b>			
<b>Number of environmental incidents</b>			
<b>Positive substance abuse incidents</b>			

<b>Substandard Act/ Conditions observed</b>			
<b>Legal violations observed</b>			

## **2. Details of SHE Meetings**

<b>Date</b>	<b>No of participants</b>	<b>Major SHE Concerns</b>	<b>Action taken</b>

## **3. Details of Audits/Inspections**

<b>Date</b>	<b>Area / Facility</b>	<b>Findings/Recommendations</b>	<b>Action taken</b>

## **4. Details of any SHE Promotional activities for the month**

<b>Date</b>	<b>Activity</b>	<b>Remarks</b>

## **5. Safety Communication**

<b>Month</b>	<b>Number of Safety talks held</b>	<b>Remarks</b>



Attach separate sheets for further or other details

.....

.....

.....

Name of Contractor Representative

Signature

Date

**ANNEXURE C****Tenderer SHE Management System Questionnaire**

**NOTE: FAILURE TO FULLY (100%) COMPLY AND SUBMIT OF ANNEXURE C WILL RENDER THE BID AS BEING NON-COMPLIANT.**

This questionnaire forms part of the TFR tender evaluation process. It must be completed by all Tenderer's and submitted with their tender offer. The tenderer Health and Safety (SHE) Plan must also be submitted. The objective of the questionnaire is to provide an overview of the status of the Tenderer's SHE management system. Tenderers will be required to verify their responses noted in their questionnaire by providing evidence of their ability and capacity in relevant matters. The tenderer warrants that the information provided below is accurate and correct.

**TFR may verify the accuracy of this information during the physical visit as part of the tender evaluation.**

The information provided in this questionnaire is an accurate summary of the company's occupational health and safety management system.		
Company Name:		
Signed:	Name:	
Position:	Date:	
Tender Description:		
Tender Number:		
<b>Tenderer SHE Management System Questionnaire</b>	<b>Yes</b>	<b>No</b>
<b>1. SHE Policy</b>		
- <b><i>Is there a written company SHE policy?</i></b>		
- If yes provide a copy of the policy		
<b>2. SHE Management</b>		
- <b><i>Does the company have an independently audited or accredited SHE Management system e.g. NOSA, OHSAS, IRCA System etc.</i></b>		
- If yes provide details or copy of accreditation		
<b>3. SHE Organogram</b>		
- <b><i>Is there a company organogram indicating key SHE personnel?</i></b>		
- If yes provide a copy		





<b>4. Letter of good standing with COID</b>		
<p><b>- Is company registered with the Compensation Commissioner under the COID Act and up to date?</b></p> <p>- If yes provide proof of letter of good standing</p>		
<b>5. SHE Cost</b>		
<p><b>- Has the tenderer made provision for the cost of safety in the tender price?</b></p> <p>If yes provide evidence</p>		
<b>6. Training Records</b>		
<p><b>- Is a record maintained of all training and induction programs undertaken for employees in your company?</b></p> <p>- If yes provide examples of safety training records</p>		
<b>7. Health and Safety Plan (SHE Plan) Are the following arrangements included and adequately addressed in the Health and Safety Plan:</b>		
<p><b>- Are SHE responsibilities clearly identified for all levels of Management and employees?</b></p> <p>- If yes provide details</p>		
<p><b>- Are Risk Assessments conducted and appropriate techniques used?</b></p> <p>- If yes provide details or copy of procedure</p>		
<p><b>- Are safe operating procedures or specific safety instructions relevant to its operations available?</b></p> <p>- If yes provide a summary listing of procedures or instructions</p>		
<p><b>- Description on how health and safety training is conducted in your company:</b></p> <p>-If yes provide details</p>		
<p><b>- Health and safety inspections at worksites undertaken?</b></p> <p>-If yes provide details</p>		
<p><b>- Health and Safety Communication i.e Safety talks, incident recalls?</b></p>		



- If yes provide details		
- <b>Workplace SHE Committee?</b>		
- If yes provide details		
- <b>Appointment of SHE Representatives?</b>		
- If yes provide details		
- <b>SHE Incident Reporting and Investigation?</b>		
- If yes provide details		
- <b>Provision of Personal Protective Equipment (PPE)?</b>		
- If yes provide details		
- <b>Emergency Planning?</b>		
- If yes provide details		
- <b>Fall Protection?</b>		
- If yes provide details		
- <b>Project Security?</b>		
- If yes provide details		
- <b>Medical Surveillance?</b>		
- If yes provide details		
- <b>Substance abuse policy/procedure/testing?</b>		
- If yes provide details		
- <b>Selection, Procurement and management of Subcontractors?</b>		
- If yes provide details		
- <b>Operational Safety?</b>		
- If yes provide details		



<p><b>- Is there a system for recording and analysing health and safety performance statistics including injuries and incidents?</b></p> <p>- If yes provide details</p>		
<b>8. Health and Safety Violations</b>		
<p><b>- Has the company been fined or convicted of an occupational health and safety offence?</b></p> <p>- If yes provide details</p>		

### Safety Performance Report

#### Monthly DIFR for previous months

Previous Year	No of Disabling Injuries	Total Number of employees	DIFR calculated over 12 months
Jan			
Feb			
Mar			
Apr			
May			
Jun			
Jul			
Aug			
Sep			
Oct			
Nov			
Dec			

DIFR = Number of Disabling injuries x 200000 divided by number of man-hours worked for the period



=====

Signed (Tenderer)

## Introduction

This Safety, Health and Environmental (SHE) specification is Transnet Freight Rail (TFR) minimum requirements to be met by the Contractor when performing work for or on behalf of TFR. They set out the requirements to be followed by the Contractor and subcontractors so that the health and safety of all people's potentially at risk may receive the same priority as other facets of the project.

The Contractor shall **develop a SHE plan and prepare a SHE file** based on these requirements, risk assessment as well as all the relevant applicable legislation. The Contractor shall remain accountable for the quality and execution of his health and safety programme for his employees. This specification in no way releases the Contractor from compliance with the relevant legislation.

## Purpose

The purpose of this specification is to ensure that the The Contractor provides and maintains, as far as reasonably practicable a safe working environment for all employees and the public whilst performing work for or on behalf of TFR.

This specification forms an integral part of the contract, and the Contractor shall forward this specification to all its subcontractors at the bidding stage so that they can in turn prepare health and safety plans relating to their operations

## Scope and Application

This specification is applicable to all contractors, suppliers and all activities and processes carried out for or on behalf of Transnet Freight Rail. The Specification defines the strategies to manage Health and Safety and is a compliance document drawn up in terms of the Occupational Health and Safety Act 85 of 1993 and Construction Regulations, February 2014.

This specification shall also apply to any subcontractors as employers in their own right. The Contractor shall furnish the TFR Contract Representative with full particulars of such subcontractors and shall ensure that they comply with the OHS Act and Regulations and TFR's safety requirements and procedures.

Every effort has been made to ensure that this specification document is accurate and adequate in all respects. Should it however, contain any errors or omissions they may not be considered as grounds for claims under the contract for additional reimbursement or extension of time, or relieve the Principal Contractor from his responsibilities and accountability in respect of the project to which this specification document pertains. Any such inaccuracies, inconsistencies and/or inadequacies must immediately be brought to the attention of the TFR Contract Representative or Client Agent.

## General

The Contractor and Transnet Freight Rail are individual employers, each in its own right, with their respective duties and obligations set out in the Occupational Health and Safety Act, Act 85 of 1993 (herein referred as the OHS Act) and applicable Regulations.



- 4.1 The Contractor accepts, in terms of the General Conditions of Contract and in terms of the OHS Act, his obligations as an employer in respect of all persons in his employ, other persons on the premises or the Site or place of work or on the work to be executed by him, and under his control. The Contractor shall, before commencement with the execution of the contract work, comply with the provisions set out in the OHS Act, and shall implement and maintain a SHE Plan approved by Transnet Freight Rail, on the Site and place of work for the duration of the contract.
- 4.2 The Contractor accepts his obligation with complying to the OHS Act and applicable Regulations notwithstanding the omission of some of the provisions of the OHS Act and the Regulations from his document.
- 4.3 Transnet Freight Rail accepts, in terms of the OHS Act, its obligations as an employer of its own employees working on or associated with the site or place of work, and the Contractor and TFR Contract Representative or his deputy shall at all times, co-operate in respect of the health and safety management of the site, and shall agree on the practical arrangements and procedures to be implemented and maintained during execution of the works
- 4.4 In the event of any discrepancies between any legislation and this specification, the applicable legislation will take precedence.

## 5. Section 37(2) Agreements

- 5.1 Transnet Freight Rail and the Contractor shall enter into an agreement in terms of section 37(2) of the Occupational Health and Safety Act to the arrangements and procedures between them to ensure compliance by the Contractor with the provisions of the OHS Act.
- 5.2 The agreement shall be completed and signed by the Contractor mandated representative as soon as possible and returned to the relevant TFR Project Manager / TFR Contract Representative for his/her signature on behalf of TFR.
- 5.3 The Contractor shall enter into a Section 37(2) Agreement with their respective sub-contractors. Signed copy of such agreement must be kept on the Contractor's SHE file.

## 6. Definitions

- 6.1 In this Specification the definitions as listed in the Occupational Health and Safety Act 85 of 1993 and Construction Regulations, 2014 shall apply, unless the context otherwise indicates: -
- 6.2 **"Competent Person"** means a person who —  
has in respect of the work or task to be performed the required knowledge, training and experience and, where applicable, qualifications, specific to that work or task: Provided that where appropriate qualifications and training are registered in terms of the provisions of the National Qualification Framework Act, 2000 (Act No.67 of 2000), those qualifications and that training must be regarded as the required qualifications and training; and is familiar with the Act and with the applicable regulations made under the Act;
- 6.3 **"Contractor"** means an employer who performs work for or on behalf of TFR,
- 6.4 **"Fall Protection Plan"** means a documented plan, which includes and provides for-



- a) All risks relating to working from a fall risk position, considering the nature of work undertaken;
  - b) The procedures and methods to be applied in order to eliminate the risk of falling; and
  - c) A rescue plan and procedures
- 6.5 **"Safety, Health and Environmental (SHE) File"** means a file or other record in permanent form, containing the information required to be kept on site in accordance with the OHS Act and applicable Regulations;
- 6.6 **"Safety, Health and Environmental (SHE) plan"** means a site, activity or project specific documented plan in accordance with the client's health and safety specification;
- 6.7 **"Risk Assessment"** means a programme to determine any risk associated with any hazard at a work site, in order to identify the steps needed to be taken to remove, reduce or control such hazard;
- 6.8 **"TFR"** means Transnet Freight Rail, a division of Transnet SOC Ltd (Registration No. 1990/000900/06), a public company incorporated in accordance with the company laws of the Republic of South Africa
- 6.9 **" TFR Contract Representative"** TFR employee appointed to liaise with the contractor to ensure that the specifications of the contract are met (with special emphasis on safety, technical specifications, inspection of quality and quantity of work). It includes a Technical Officer, Security Depot Manager, Senior Protection Officer, Leading Protection Officer, Maintenance Supervisor's etc.
- 7. SHE Policy**
- 7.1 The Contractor shall submit a Safety, Health and Environmental Policy signed by their Chief Executive Officer. The Policy must outline objectives and how they will be achieved and implemented by the Contractor.



## **8. Letter of Good standing**

- 8.1 The Contractor shall submit proof of registration and Letter of Good Standing with the compensation fund or with a licensed compensation insurer as contemplated in the Compensation for Occupational Diseases Act , 1993 (Act No. 130 of 1993) for his company and each of his sub-contractors'.
- 8.2 No Contractor may do any work for TFR without a valid letter of good standing. The Contractor must ensure that the Letter of Good Standing remains valid for the duration of the contract period.
- 8.3 The letter of good standing must reflect the name of the Contractor, registration number and expiry date.

## **9. Management and Supervision**

- 9.1 The Contractor shall submit a SHE organogram outlining the site SHE management structure including a Supervisor and other relevant appointments/competent persons or the intended appointments where such appointments have not been made.
- 9.2 The Contractor shall, in accordance with the OHS Act and applicable Regulations, make all the necessary appointments of competent persons in writing. Copies should also be retained on the SHE file.
- 9.3 Person responsible to perform cleaning duties are appointed in writing. (Attachment letter 1.14.1 form attached as an example).

## **10. SHE Committee Meetings and SHE Representatives**

- 10.1 The Contractor shall appoint SHE Representative/s in writing after consultation with employees and ensure that they are trained in performing their duties.
- 10.2 SHE Representatives duties shall include inspections of the workplace, taking part in incident investigations, risk assessments, attending SHE Committee meetings etc. Records of monthly inspections of SHE Representatives must be kept on the SHE file.
- 10.3 The number of SHE Representatives appointed shall be on ratio of 1 SHE Representative per 50 employees.
- 10.4 The Contractor must ensure that a SHE Committee meeting is held monthly and minutes of such meeting shall be recorded and records kept on the SHE file. The Contractor representative and appointed SHE representatives shall attend the monthly SHE Committee meeting.
- 10.5 The TFR Contract Representative or his deputy may attend meetings of the Contractor's health and safety committee as an observer.

## **11. SHE Audits, Inspections and Contractor Monthly Reports**

- 11.1 The TFR Contract Representative or his deputy shall ensure that the Contractor SHE Plan is audited at intervals mutually agreed to between them, but at least once every month to ensure that the SHE Plan is implemented and maintained.



- 11.2 TFR Safety Officers / Specialists shall at all reasonable times be allowed access to the work sites, the Contractor site offices and tool-sheds to inspect the Contractor and its subcontractor's tools, equipment, registers and workplace.
- 11.3 Should any non-compliances or contraventions to the TFR safety requirements, legal requirements, this specification or the principal contractor's SHE Plan be identified, such non-compliances or contraventions shall be rectified by the contractor at its cost immediately or within a period specified by the TFR Contract Representative, his deputy, or TFR Safety Officers / Specialists.
- 11.4 Should the Contractor refuse or fail to rectify such non-compliances or contraventions, TFR may take remedial action at the Contractor cost as it may deem necessary to ensure the health and safety at the TFR sites at all times.
- 11.5 TFR reserves the right to conduct safety audits without prior warning.
- 11.6 The Contractor shall provide a monthly safety performance report as required by TFR.
- 1.7 The Monthly safety performance report shall be compiled in terms of Annexure 1 or in any format that the Contractor has as long as it includes all items listed in Annexure 1.
- 11.8 The Contractor shall ensure that ablution facilities are inspected on a monthly basis by the Contractor Supervisor or other person so appointed to perform such inspections (Attachment 1.14.2 form attached as an example) and proof of inspections be submitted to TFR Contract Representative in order to ensure deviations are corrected accordingly.

## **12. Training, Competence and Awareness**

### **12.1 Induction Training**

- 12.1.1 The Contractor shall ensure that all his employees undergo a TFR SHE Induction with regard to the general hazards prevalent on the site, rules and regulations, and other related aspects before commencing work. It is the responsibility of the Contractor to inform TFR whenever new employees are appointed after the initial induction was conducted.
- 12.1.2 In addition to the TFR SHE induction, it is the responsibility of the Contractor to develop and implement a site specific SHE Induction programme, a job specific induction programme and a general employee SHE awareness programme, to develop awareness amongst employees on the generic SHE issues associated with the scope of work and the specific environmental issues in question.
- 12.1.3 The Contractor shall ensure that all visitors and suppliers to the site undergo and comply with Contractor site-specific safety induction requirement prior to being allowed access to site. All visitors and suppliers shall sign the attendance register.
- 12.1.4 All visitors and suppliers shall wear the necessary personal protective equipment whilst on site and shall remain in the care of the host who understand the scope of work and associated risks.
- 12.1.5 The Contractor shall maintain comprehensive attendance records of SHE induction training on the SHE file.

### **12.2 Competency / Training**





- 12.2.1 The Contractor must ensure that all his employees are adequately trained to perform the tasks allocated to them and that there is always the requisite amount of supervision to maintain safe work practices and standards.
- 12.2.2 The Contractor shall identify training requirements of employees whose work may have a significant impact on their health and safety or that might create a significant impact upon the environment and ensure that these employees will receive appropriate training. A Training matrix shall be used as a mechanism to manage and control the training of employees.
- 12.2.3 The Contractor shall identify all training needs and incorporate the site-specific training into the SHE plan.
- 12.2.4 The Contractor shall be required to ensure that before an employee commences work on the contract that the supervisor in control with responsibility for the employee has informed the employee of his scope of authority and any hazards associated with the work performed. This will include man-job specifications, the discussion of any standard task procedures or hazardous operational procedures to be performed by the employee
- 12.2.5 The Contractor is to ensure that the supervisor has satisfied himself that the employee is conversant with all hazards associated with any work to be performed by conducting task observations.
- 12.2.6 The Contractor must ensure that certificate/s of competence where applicable is/are provided in the SHE File.

### **12.3 Awareness Training**

- 12.3.1 Awareness training required shall be identified for all employees on the project using the SHE Policy, the SHE Plan, risk assessment, the SHE programmes and procedures.
- 12.3.2 The Contractor shall have a daily safety talk. This talk shall include subcontractor employees.
- 12.3.3 The talk must be brief and concise. Subject topics should be applicable to the job at hand, incidents, accidents and up-and-coming work will be discussed along with suggestions and comments. These meetings can be used as a training meeting with the central idea of educating employees.

### **13. Health and Safety Plan (SHE Plan)**

- 13.1 Potential Contractor submitting tenders shall submit with their tender, a Health and Safety Plan setting out the practical arrangements and procedures to be implemented by him to ensure compliance by him with the OHS Act and Regulations, this SHE specification and particularly in respect of: -

The provision, as far as is reasonably practical, of a working environment that is safe and without risk to the health of his employees in terms of section 8 of the OHS Act;

the execution of the contract work in such a manner as to ensure in terms of section 9 of the OHS Act that persons other than those in the Contractor's employment, who may be directly affected by the contract work are not thereby exposed to hazards to their health and safety;

ensuring, as far as is reasonably practical, in terms of section 37 of the OHS Act that no employee or subcontractor of the Contractor does or omits to do any act which would be an offence for the Contractor to do or omit to do.



- 13.2 The Contractor Health and Safety Plan shall be based on a risk assessment in respect of the hazards to health and safety of his employees and other persons under his control that are associated with or directly affected by the Contractor's activities in performing the contract work and shall establish precautionary measures as are reasonable and practical in protecting the safety and health of such employees and persons.
- 13.3 The SHE Plan shall include full particulars in respect of: -
- Safety Management Structure arrangements i.e. Appointments to be done and how;
  - SHE Organisation arrangements i.e. SHE Committees, SHE Audits, Findings and Corrective Actions
  - (a) Risk Management i.e. Risk Assessment frequencies, methodology
  - (b) Education and Training i.e. safety induction, site / job specific training arrangements
  - (c) Emergency Planning
  - (d) Health and Safety Communication i.e. Toolbox talks, incident recall
  - (e) Safe working methods and procedures to be implemented i.e. safe work procedures, task observation
  - (f) Fall Protection Plan i.e. documented plan, training/competency, medical surveillance, rescue plan  
**(applicable if working at fall risk position/ working at heights)**
  - (g) Personal Protective Equipment and Clothing
  - (h) Project Security i.e. site access control and security **(if applicable)**
  - (i) SHE Costs (declaration that adequate provision for cost of health and safety have been made in tender price.)
  - (j) Occupational Health i.e. Medical Surveillance, First Aid, Welfare Facilities, Substance Abuse testing, Noise, Vibration, Manual Handling, Ergonomics etc.
  - (k) Environmental management
  - (l) Incident Management i.e. reporting and investigation
  - (m) Operational Control
  - (n) Review plan of the SHE Plan
- 13.5 The Contractor shall submit a final SHE Plan after awarding of the contract which shall be subject to the TFR Contract Representative's approval and he may, in consultation with the Contractor, order that additional and/or supplementary practical arrangements and procedures be implemented and maintained by the Contractor or that different working methods or safety equipment be used or safety clothing be issued which, in the TFR Contract Representative's opinion, are necessary to ensure full compliance by the Contractor with his obligations as an employer in terms of the OHS Act and Regulations.
- 13.6 The Contractor shall approve the SHE Plan of the subcontractor and further take reasonable steps to ensure that each subcontractor's SHE Plan is implemented and maintained on the site: Provided that the steps taken, shall include periodic audits at intervals mutually agreed to between them, but at least once every month.



- 13.7 The Contractor shall stop any subcontractor from executing any work, which is not in accordance with the Contractor's, and/or sub-contractor's SHE Plan for the site or which poses a threat to the health and safety of persons.
- 13.8 The Contractor shall ensure that a copy of the SHE Plan is available on site for inspection by an inspector, TFR Contract Representative, agent, subcontractor, employee, registered employee organisation, health and safety representative or any member of the health and safety committee.

#### **14. Hazards Identification and Potential Hazardous Situations**

- 14.1 The Contractor shall ensure a risk assessment is carried out by a competent person, appointed in writing, before commencement of any work and reviewed during the duration of the contract period. The Risk Assessments shall form part of the Health and Safety Plan to be applied on the site and shall include at least the following:

The identification of the risks and hazards (including ergonomic risks) that persons may be exposed to;

- (b) The analysis and evaluation of the hazards identified;
  - (c) A documented plan, including safe work procedures to mitigate, reduce or control the; risks identified;
  - (d) A monitoring and
  - (e) Review plan
- 14.2 Person conducting such risk assessment use a documented method to analyse and evaluate identified risk and hazards.
- 14.3 The Contractor shall consult with the health and safety committee or, if no health and safety committee exists, with a representative group of employees, on the development, monitoring, and review of the risk assessment.
- 14.4 The risk assessment shall be reviewed when there are changes to the operations that may affect the health and safety of persons and may be detrimental to the environment or after an incident.
- 14.5 The Contractor shall ensure that all employees are to be informed, instructed and trained regarding any risks, hazard and related safe work procedures by a competent person as outlined in the risk assessment prior to commencement of work and thereafter at predetermined intervals as outlined in the monitoring plan. Proof of such training shall be kept on the SHE files
- 14.6 The risk assessment shall be available on site for review. Where a risk assessment is not readily available or not communicated to Contractor employees, the activities shall be stopped until such time the Contractor complies.
- 14.7 The Contractor and the TFR Contract Representative shall immediately notify one another of any hazardous or potentially hazardous situations which may arise during performance of the contract.
- 14.8 The Contractor shall be required to analyse his scope of work and define critical activities. For each activity, a risk assessment shall be required which defines systems and safe work procedures that will be used in order to complete the activity safely.

#### **15. Safety, Health and Environmental (SHE) File**



- 15.1 The Contractor shall prepare a SHE files and submit to TFR Contract Representative for approval prior to commencement of work on site. The approval time of the file is at least 5 working days.
- 15.2 The file shall include SHE Plan, risk assessment and all documentation required as per this specification, the OHS Act and applicable regulations.
- 15.3 The Contractor shall ensure that a copy of both his SHE File as well as any sub-contractor's SHE File is kept on site and made available to an inspector of the Department of Labour, the TFR Contract Representative, or sub-contractor upon request.
- 15.4 The Contractor shall hand over a consolidated SHE file to the TFR Contract Representative upon completion of the contract.

## **16. Occupational Health**

### **16.1 Medical Surveillance Programme**

- 16.1.1 The Contractor shall ensure that all his and sub-contractor employees have a valid medical certificate of fitness issued by an Occupational Health Practitioner.
- 16.1.2 Medical certificate of fitness must be available and be kept in the SHE file.

### **16.2 Substance Abuse**

- 16.2.1 The Contractor shall comply with the Transnet Substance Abuse Policy and Regulation 2A of the General Safety Regulations of the OHS Act.
- 16.2.2 No Contractor employee may possess, sell, offer to other person, use, store, manufacture, transport, distribute, or transfer drugs or alcohol during work hours, on or off TFR premises.
- 16.2.3 TFR will not tolerate substance abuse or use which put at risk the health and safety of its employees or threatens its services to our stakeholders. It is on this basis that a contractor employee will be considered unfit for work if:
  - He/she is subjected to alcohol screening and/or alcohol testing and is found to have alcohol in his/her breathe and/or blood;
  - Refuses to undergo substance screening and/or testing;
  - He /she produces a positive confirmatory test for any other substances, measured by sample analysis at a registered pathological laboratory and authorised by a medical practitioner; and/or
  - Through observation by security personnel or TFR Contract Representative, it is evident that the contractor's physical, emotional, mental or behavioural state reflects that they are intoxicated or under the influence.
- 16.2.4 Any transgression of this policy will constitute a breach of the relevant contract and may result in the termination of services/contract.
- 16.2.5 Any Contractor employee using medication that has a narcotic effect must declare before work to his / her supervisor.

### **16.3 First Aid requirements**



- 16.3.1 The Contractor shall ensure that their employees receive prompt first aid treatment in case of injury or emergency. The Contractor must have the necessary equipment and/or facility on site for treatment of injured persons.
- 16.3.2 The Contractor shall ensure that the first aid box / boxes are available and accessible. More first aid boxes shall be provided if the risks, distance between work teams, or the working environment requires it.
- 16.3.3 Taking into account the type of injuries that are likely to occur on site, the nature of activities performed and the number of employees on site, the Contractor shall ensure that the first aid box contain suitable first aid equipment which includes at least the minimum contents as listed on Annexure 1 of General Safety Regulation (GSR).
- 16.3.4 The Contractor must ensure that trained / certificated first-aid personnel are appointed and be available on site at all times. The ratio of first aiders to employees shall be 1:50.

#### **16.4 Asbestos Control**

- 16.4.1 The Contractor shall inform the TFR Project Manager or TFR Contract Representative if during the performance of their work, asbestos or suspected asbestos containing material is found. Only Asbestos Approved Contractor can work on asbestos containing material.

#### **16.5 Noise**

- 16.5.1 The Contractor shall ensure that the requirements of the Noise Induced Hearing Loss Regulations are complied with.
- 16.5.2 The Contractor shall ensure that machinery and equipment are operated at noise levels not exceeding an equivalent level of 85-dB (A) during normal working conditions.
- 16.5.3 Where the noise levels at the Operator position or to employees working in the vicinity exceed an equivalent level of 85-dB (A) during normal working conditions, the Contractor shall take appropriate measures to reduce such levels to an equivalent level of 85-dB (A). The use of Personal Protective Equipment (PPE) should be the last resort.
- 16.5.4 All employees exposed to noise must be trained on the effects of exposure, precautionary measures to be taken to prevent exposure and the correct use of PPE.
- 16.5.5 The Contractor shall ensure that its employees comply to PPE requirements in demarcated noise zones.

#### **16.6 Manual Handling**

- 16.6.1 Contractor must reduce risk of injury due to manual handling by using mechanical assistance involving the use of mechanical aids to assist the manual handling operation. Mechanical aids such as hand-powered hydraulic hoists, specially adapted trolleys etc. can be used.
- 16.6.2 Contractor shall ensure all employees involved in manual handling are trained in good lifting techniques.

#### **16.7 Weather precautions**



- 16.7.1 In the event of adverse weather (high winds, flooding, storm surge, lightning etc.) or other conditions, the Contractor must institute precautionary measures to protect employees on site.
- 16.7.2 The Contractor shall take steps to prevent heat stroke, dehydration and exhaustion of employees as a result of exposure to excessive heat on site. Such steps may include employees taking regular breaks, consuming enough water, provision of sun brims for their hard hats and sunscreen to protect them against sun burn.
- 16.7.3 The Contractor shall take steps to prevent hypothermia or dangerous overcooling of the body as a result of exposure to cold temperatures.

## **17 Incidents/Occurrences**

- 17.1 All incidents referred to in Regulation 9 of General Administration Regulations of the OHS Act involving the contractor and his sub-contractor on TFR premises, shall be reported to the TFR Contract Representative and Department of Labour as prescribed by the OHS Act.
- 17.2 TFR must be forwarded with a copy of a report of any investigation, formal inquiry conducted in terms of Section 31 and 32 of the Act into any incident involving the contractor, his sub-contractor, any person or machinery under his control on TFR premises.
- 17.3 TFR Contract Representative must be informed of the above incidents/occurrences before the end of shift when the incident/occurrence occurred.
- 17.4 The Contractor shall make available its employees to attend as witnesses when required so by TFR during an investigation into any incident where TFR believes the said contractor employees were witnesses or may assist in the investigation.
- 17.5 The Contractor shall make available to TFR any documents required to assist in their investigation.

## **18. SHE Cost**

- 18.1 The Contractor shall ensure that it has made adequate provision for the cost of health and safety measures in the tender offer. The Contractor must ensure that his tender price is inclusive of the cost of health and safety as they will not be invoiced separately.
- 18.1.1 The Contractor shall ensure that its sub-contractors have made adequate provision for the cost of health and safety measures in the tender offer.

## **19. Personal Protective Equipment (PPE)**

- 19.1 The Contractor shall ensure that all employees are provided with appropriate Personal Protective Equipment (PPE), free of charge, suitable for the type of activities that the employees will perform.
- 19.2 Such PPE shall be approved by credible institution such as SABS, EN, or AN.
- 19.3 The Contractor shall manage the issuing of PPE and ensure that PPE is used at all times. Employees shall be trained in the proper use of PPE.



## **20. Emergency Evacuation Plan and Procedure**

- 20.1 The Contractor must establish and implement an emergency evacuation plan to ensure that in the event of fire, explosion structural collapse etc. all staff is able to evacuate the area to a demarcated areas for the purpose.
- 20.2 The area so selected must be demarcated and the relevant "Assembly Point" sign displayed where applicable or use TFR nearest assembly point.
- 20.3 An Emergency Evacuation Procedure must be drawn up; all staff members and contractors shall be given awareness training and participate in regular evacuation drills.
- 20.4 The Contractor and its employees shall collaborate and adhere to TFR evacuation drills and requirements.

## **21. Access Control and Security**

- 21.1 The Contractor shall, before commencing any work, obtain from the TFR Contract Representative, a Site Access Certificate executed and signed by him or the relevant TFR personnel, permitting and limiting access to the designated site or place of work by the Contractor.
- 21.2 The Contractor must assess the security risks and implement appropriate measures. All contractors are to strictly adhere to all security requirements on the premises.
- 21.3 The Contractor in collaboration with the TFR Contract Representative will ensure that proper access control is in place and functional at all times onto and out of the site. A form of access control will be issued to Contractor employees who have been inducted and submitted copies of ID documents or work permits (where required).
- 21.4 Access Permits should be carried by a contractor employee at all time when on site. Access Permits shall be produced at the point of entry / gate.
- 21.5 Contractor shall ascertain from TFR Contract Representative the correct route along which their employees may proceed when coming on or going off shift and direct their employees accordingly.

## **22. Management of Subcontractors**

- 22.1 The Contractor is directly responsible for the actions of his sub-contractors.
- 22.2 The Contractor will also be responsible for initiating any remedial action (recovery plan) that may be necessary to ensure that the sub-contractor complies with all requirements.
- 22.3 The Contractor shall provide any sub-contractor who is making a bid or appointed to perform work, with the relevant sections of the documented SHE specification, who would in turn provide a SHE plan for approval.
- 22.4 The Contractor shall carry out inspection/audits on the sub-contractor to ensure that their SHE plan is being implemented and maintained and submit audit report to TFR Representative.
- 22.5 The Contractor shall stop any sub-contractor from executing work which poses a threat to the safety and health of persons or detrimental to the environment.



- 22.6 The Contractor shall ensure that the sub-contractors appointed have the necessary competencies and resources to perform the work safely.
- 2.7 The Contractor will be required to enter into a Section 37(2) mandatory agreement between the Contractor and sub-contractor and a copy of each agreement shall be submitted to the TFR Contract Representative.

## **23. Environmental Management**

- 23.1 The Contractor shall adhere to all instructions issued by TFR contract representative in promotion of environmental management and legal compliance.
- 23.2 The Contractor shall ensure that his or her employees are aware of the procedures to be followed when dealing with spills and leaks, which shall include notifying the relevant authorities and TFR as required in terms of National Environmental Management Act (NEMA), 1998 and National Water Act (NWA), 1998. The Contractor shall ensure that all necessary material and equipment required for use during clean-up/rehabilitation of spills and leaks are available on site at all times. Treatment, remediation and/or rehabilitation of contaminated areas shall be undertaken to the reasonable satisfaction of the TFR Environmental Control Officer or relevant Environmental Specialist.
- 23.3 The Contractor must notify the TFR Contract representative immediately of any pollution incident. An incident record system shall be maintained on site for inspection by TFR and relevant authorities.
- 23.4 All vehicles and equipment's shall be kept in good working condition. All leaking equipment's shall be repaired immediately or removed from site. All vehicles and equipment shall be maintained and not emit excessive noise.
- 23.5 Transportation, handling and storage of all substances classified as hazardous must comply with the provisions of the Hazardous Substances Act, 15 of 1973, relevant Regulations and SANS Codes.
- 3.6 No on-site burying or dumping of waste material shall occur. Waste must be collected by a licensed waste transporting contractor and disposed of at a licensed disposal site. Disposal certificate must be made available to TFR on request.

## **4. Operational Safety**

### **24.1 Cleaning Programme**

- 22.2.5 Cleaning programme is compiled and made available to TFR Contract Representative (Attachment 1.14.3 form attached as an example). Copy of cleaning programme be available on the SHE File.

### **24.2 Vehicle Safety**

With respect to vehicles, the Contractor must ensure that:

- 24.2.1 They are of an acceptable design and construction, are maintained in a good working order and are used in accordance with their design and the intention for which they were designed.
- 24.2.2 Are operated by a person who has received appropriate training, is certified competent and in possession of proof of competency and is authorised in writing to operate such vehicle.
- 24.2.3 Are operated by a person who has a medical certificate of fitness to operate those vehicles, issued by an Occupational Health Practitioner.





- 24.2.4 Vehicles used to transport employees have seats firmly secured and adequate for the number of employees to be carried. No employees will be allowed to be transported at the back of LDV's /

bakkies unless it is provided with a seat and safety belt and further that the risk assessment has indicated it to be a low risk.

- 24.2.5 Vehicles are fitted with structures designed to protect the Operator from falling material or from being crushed should the vehicle overturn.

24.2.6 Vehicles must be inspected by the authorised Operator or driver on a daily basis using a relevant checklist prior to use and that the findings of such inspection are recorded in a register kept in the vehicle.

- 24.2.7 Tools, material and equipment are secured and separated by means of a physical barrier in order to prevent movement when transported in the same compartment with employees.

- 24.2.8 Those working or operating on public roads comply with the requirements of the National Road Traffic Act, 1996.

### **24.3 Housekeeping and general safeguarding**

- 24.3.1 Contractor must ensure that good housekeeping practices are continuously implemented on each work site

- 24.3.2 The Contractor must ensure proper storage of materials and equipment and the removal of scrap, waste and debris at appropriate intervals.

- 24.3.3 The Contractor must ensure that materials required for use, are not placed on the site so as to obstruct means of access to and egress from workplaces and passageways

- 24.3.4 The Contractor must ensure that materials which are no longer required for use do not accumulate on and are removed from the site at appropriate intervals.

### **24.4 Hazardous Chemical Substances (HCS)**

- 24.4.1 The Contractor must ensure that all employees exposed to hazardous chemicals are trained on the potential source of exposure, potential risk to health caused by exposure and measures to be taken by the contractor and employees against any risk of exposure.

- 24.4.2 HCS risk assessment to be conducted and where it indicates that any employee may be exposed, the contractor shall ensure that monitoring is carried out in terms of regulation 6 and 7 of the Hazardous Chemical Substances Regulations.

- 24.4.3 Employees exposed to hazardous substances shall be under medical surveillance.

- 24.4.4 The Contractor shall have a list of all hazardous chemicals used for cleaning and copies of each chemical's Material Safety Data Sheet (MSDS). Copies of such a list and MSDS's shall be available in the SHE File.

- 24.4.5 The Contractor shall ensure that all employees are trained in the use of cleaning materials according to the manufacturer's specification and MSDS. Proof of training must be recorded on register (Attachment 1.14.4 form attached as an example).

### **24.5 Stacking and Storage**



- 24.5.1 The Contractor shall ensure that a competent person is appointed in writing with the duty of supervising all stacking and storage of material.
- 24.5.2 Storage areas provided for the safekeeping of equipment and material are demarcated as storage areas and are kept neat and under control.

#### **24.6 Fire Precautions**

- 24.6.1 The Contractor must ensure that all appropriate measures are taken to avoid the risk of fire. Work areas are clear, at all times, of any material, which could fuel a fire, combustible materials do not accumulate, oily rags, waste and other substances liable to ignite are without delay removed to a safe place.
- 24.6.2 Sufficient and suitable storage is provided for flammable liquids, solids and gases.
- 24.6.3 In confined spaces and other places in which flammable gases, vapours or dust can cause danger only suitably protected electrical installations and equipment, including portable lights, are used, there are no flames or similar means of ignition and adequate ventilation is provided.
- 24.6.4 A thorough inspection is made of the area at the end of any working period to ensure that no material is left at the work site, or any situation left in such a manner that a fire or accident could result (all machines to be turned off at main switches, and cylinders to be closed and hoses deflated).
- 24.6.5 Sufficient number of employees are trained in the use of fire extinguishing equipment.
- 24.6.6 There is an effective evacuation plan providing for all persons to be evacuated speedily without panic.
- 24.6.7 The Contractor must ensure that fire-fighting equipment is not used for any purpose other than their intended use.

#### **24.7 General Machinery, Tools and Equipment**

- 24.7.1 The Principal Contractor shall ensure that all machinery, tools and equipment are identified, numbered or tagged, listed on an inventory list.
- 24.7.2 The Principal Contractor shall ensure that all machinery, tools and equipment are safe to be used and is maintained in a good condition.
- 24.7.3 The Principal Contractor shall ensure that all machines driven by means of belts, gear wheels, chains and couplings shall be adequately guarded in such a manner that persons cannot gain inadvertent access to the moving parts.
- 24.7.4 All machinery, tools and equipment to be regularly inspected at least monthly or as required by legislation and risk assessments. Records of such inspections shall be kept on the SHE file.
- 24.7.5 Where applicable machinery, tools and equipment must have the necessary approved test or calibration documentation.
- 24.7.6 The Principal Contractor shall ensure that all machinery, tools and equipment are operated by persons who have been trained to operate such machinery, tools or equipment.



## **24.8 SHE Signage (Symbolic Safety Signs) on plant and in buildings**

- 24.8.1 The Contractor employees shall comply with all SHE signage posted at various locations of TFR sites.
- 24.8.2 The Contractor shall provide "wet floor signage" to warn others when cleaning floors where there is a risk that persons may slip as a result of the wet floor.

## **24.9 Electrical Equipment**

The Contractor must ensure that:

- 24.9.1 Connections are not made to any power supply without the prior written approval of the TFR Contract Representative.
- 24.9.2 All electrical machines and appliances provided by the Contractor for his own use on the site are in a serviceable condition
- 24.9.3 Power tools used on the Site are protected by residual current devices approved by TFR Contract Representative and are double insulated.
- 24.9.4 All extension cords, portable tools and electrical plant supplied at a voltage above 32 volts are inspected, tested and tagged by a Licensed Electrician at regular monthly intervals. Details of inspections and tests are kept in Log Books available for inspection by the TFR Contract Representative or any other authorised Officer of TFR.
- 24.9.5 Portable lights have adequate stability and are fitted with a mechanical guard to protect the lamp. Temporary festoon lighting is of the 'double insulated' type and is supported at least 2.5m above the floor, if possible. Hand lamps are of the 'all insulated' type.
- 24.9.6 All temporary light fittings are supplied from more than one final sub-circuit, with the supply from a residual current device, extra low voltage source or an isolating transformer.
- 24.9.7 The Contractor must obtain approval from the TFR Contract Representative before any of his employees or Sub-contractors commence work within three (3) metres of conductor rails or high tension wires, or where there is a possibility of equipment coming close to and/or touching a power source, and must provide suitable protective insulating barriers. For the erection of scaffolding, the distance is five (5) metres.
- 24.9.8 Only authorised persons may enter Electrical Contactor Houses, Electrical Sub-stations, Motor Rooms, Switch Rooms, Control Rooms or Cable Ducts. Should the Contractor require entering such places to carry out work, he must first obtain permission from the TFR Contract Representative and obtain a valid Permit to Work.
- 24.9.9 Electrical equipment supply cabling distribution boards, fixed lighting and portable appliances, extension leads, welding machines, compressors, pumps and hand portable tools are inspected on a monthly basis and also by the user daily before use.
- 24.9.10 Such monthly inspection(s) are to be performed by an appropriately qualified Electrician.

## **25. Confidentiality**



- 25.1 The Contractor must, at all times, consider all data or information given to him or that is required in connection with the work of the Company, as confidential and not make unauthorized use of it.
- 25.2 He/she must ensure that such data or information is not given to any non-employee of the contractor without written consent of the TFR Project Manager.
- 25.3 The Contractor shall be aware of the confidentiality of the mentioned information and is compelled to treat it accordingly.
- 25.4 The contractor must provide adequate physical protection for any confidential documents, etc., which were obtained from TFR in connection with the contract work as well as any copies made thereof.

**ANNEXURE C1****SERVICE PROVIDERS MONTHLY SHE REPORT**

<b>For Month/Year</b>		<b>Name of Contractor</b>		
<b>Name of Project</b>				
<b>Project Number</b>	<b>Date of Commencement</b>	<b>Date of Completion</b>		
<b>Number of employees</b>	<b>Man-hours worked this Month</b>	<b>Cumulative (Project duration man-hours)</b>	<b>Man-hours Since last Lost Time Incident (LTI)</b>	<b>DIFR</b>

**1. Details of SHE Incidents**

<b>Incident</b>	<b>This Month</b>	<b>Cumulative(Project duration)</b>	<b>Short description of major/ significant incidents and preventative action taken</b>
<b>Number of fatalities</b>			
<b>Number of disabling incidents</b>			
<b>Number of Medical Treatment Cases</b>			
<b>Number of first aid Cases</b>			
<b>Number of near miss incidents</b>			
<b>Motor vehicle incidents</b>			
<b>Number of environmental incidents</b>			
<b>Positive substance abuse incidents</b>			

<b>Substandard Act/ Conditions observed</b>			
<b>Legal violations observed</b>			

## **2. Details of SHE Meetings**

<b>Date</b>	<b>No of participants</b>	<b>Major SHE Concerns</b>	<b>Action taken</b>

## **3. Details of Audits/Inspections**

<b>Date</b>	<b>Area / Facility</b>	<b>Findings/Recommendations</b>	<b>Action taken</b>

#### **4. Details of any SHE Promotional activities for the month**

Date	Activity	Remarks

#### **5. Safety Communication**

Month	Number of Safety talks held	Remarks

Attach separate sheets for further or other details

.....

Name of Contractor Representative

.....

Signature

.....

Date



## SECTION DETERMINATION FOR CLEANING SERVICES

### SECTORAL DETERMINATION 1: CONTRACT CLEANING SECTOR

3. Substitute Contract Cleaning Sector minimum wages as reflected in Government Gazette No. 44136, published on the 08 February 2021 with the following:

Minimum hourly rates for Contract Cleaning employees		
Area A	Area B	Area C
<b>Metropolitan Councils:</b> City of Cape Town, Greater East Rand Metro, City of Johannesburg, Tshwane and Nelson Mandela.  <b>Local Council:</b> Emfuleni, Merafong, Mogale City, Metsimaholo, Randfontein, Stellenbosch, Westonaria	<b>All Areas in KwaZulu-Natal</b>  <i>NB: Conditions of employment and minimum wage rates for KwaZulu-Natal areas shall be subjected to the collective agreement concluded in the Bargaining Council for the Contract Cleaning Service Industry (BCCCI).</i>	<b>In the rest of the RSA</b>
Rate per hour	Rate per hour	Rate per hour
<b>R25,52</b>	<b>BCCCI rates apply</b>	<b>R23,27</b>





**ANNEXURE D1: NORMAL SALARY SCHEDULE-INDICATING LABOUR**  
**REGULATED RATES PER CLEANER FOR NORMAL HOURS (100% COMPLETED)**  
**FOR CATEGORY 1**

**CONTRACT CLEANING MINIMUM WAGE PRICE SCHEDULE**

#	ITEM	DESCRIPTION	AMOUNT
1	<b>Basic monthly wage cost</b>	R25.52 x 40 hours per week x 4.33 weeks	<b>R 4 373,30</b>
	Hourly rate	Hourly rate	<b>R 25,52</b>
	Daily rate	8 hrs per day	R 204,16
	Weekly wage cost	Hourly wage x 40 hours (week)	R 1 020,80
2	<b>Leave provisions</b>		<b>R 578,45</b>
	Annual leave	21 days per year	R 357,28
	Sick leave	10 days per year	R 170,13
	Family responsibility	3 days per year	R 51,04
3	<b>Other: Employer contribution</b>		<b>R 781,50</b>
	Provident fund	5.25% of monthly wage	R 133,98
	Bonus	4.33 weeks for a full 12 months	R 364,44
	UIF	1% of basiv monthly wage	R 43,73
	COID	1.6% of basic monthly wage	R 69,97
	Training levy	SDL = 1% of wage	R 43,73
	Uniform	R500 per year	R 41,67
	Severence pay	1.92% of basic monthly wage	R 83,97
4	<b>Monthly Labour Cost (per 1 x cleaner )</b>	<b>A1 + A2 + A3</b>	<b>R 5 154,80</b>
5	<b>Total monthly labour cost (per total number of cleaners required</b>	<b>2</b>	<b>R 10 309,60</b>

**TOTAL LABOUR COST FOR THE CONTRACT PERIOD OF 36 MONTHS**

(including all required cleaners including Supervisor)

R \_\_\_\_\_

I, \_\_\_\_\_ hereby commit my company to pay my employees  
according to the above-mentioned salary template.

Signed by: \_\_\_\_\_

Full name and surname \_\_\_\_\_

---

**Capacity**

**IMPORTANCE NOTICE**

- \* Bidders must not pay anything less than the approved labour rate to its employees. Failure to comply will result in disqualification
- \* Random payslips will be requested from the cleaning personell once contract is in place
- \* Please include the weekend and public holidays rates where applicable



**ANNEXURE D2: NORMAL SALARY SCHEDULE-INDICATING LABOUR**  
**REGULATED RATES PER CLEANER FOR NORMAL HOURS (100% COMPLETED)**  
**FOR CATEGORY 2**

**CONTRACT CLEANING MINIMUM WAGE PRICE SCHEDULE**

#	ITEM	DESCRIPTION	AMOUNT
<b>1</b>	<b>Basic monthly wage cost</b>	R25.52 x 40 hours per week x 4.33 weeks	<b>R 4 373,30</b>
	Hourly rate	Hourly rate	<b>R 25,52</b>
	Daily rate	8 hrs per day	R 204,16
	Weekly wage cost	Hourly wage x 40 hours (week)	R 1 020,80
<b>2</b>	<b>Leave provisions</b>		<b>R 578,45</b>
	Annual leave	21 days per year	R 357,28
	Sick leave	10 days per year	R 170,13
	Family responsibility	3 days per year	R 51,04
<b>3</b>	<b>Other: Employer contribution</b>		<b>R 781,50</b>
	Provident fund	5.25% of monthly wage	R 133,98
	Bonus	4.33 weeks for a full 12 months	R 364,44
	UIF	1% of basiv monthly wage	R 43,73
	COID	1.6% of basic monthly wage	R 69,97
	Training levy	SDL = 1% of wage	R 43,73
	Uniform	R500 per year	R 41,67
	Severence pay	1.92% of basic monthly wage	R 83,97
<b>4</b>	<b>Monthly Labour Cost (per 1 x cleaner)</b>	<b>A1 + A2 + A3</b>	<b>R 5 154,80</b>
<b>5</b>	<b>Total monthly labour cost (per total number of cleaners required)</b>	<b>2</b>	<b>R 10 309,60</b>

**TOTAL LABOUR COST FOR THE CONTRACT PERIOD OF 36 MONTHS**

(including all required cleaners including Supervisor)

R \_\_\_\_\_

I, \_\_\_\_\_ hereby commit my company to pay my employees  
according to the above-mentioned salary template.

Signed by: \_\_\_\_\_

Full name and surname \_\_\_\_\_



---

**Capacity****IMPORTANCE NOTICE**

- \* Bidders must not pay anything less than the approved labour rate to its employees. Failure to comply will result in disqualification
- \* Random payslips will be requested from the cleaning personell once contract is in place
- \* Please include the weekend and public holidays rates where applicable



**ANNEXURE D3: NORMAL SALARY SCHEDULE-INDICATING LABOUR**  
**REGULATED RATES PER CLEANER FOR NORMAL HOURS (100% COMPLETED)**  
**FOR CATEGORY 3**

**CONTRACT CLEANING MINIMUM WAGE PRICE SCHEDULE**

#	ITEM	DESCRIPTION	AMOUNT
<b>1</b>	<b>Basic monthly wage cost</b>	R25.52 x 40 hours per week x 4.33 weeks	<b>R 4 373,30</b>
	Hourly rate	Hourly rate	<b>R 25,52</b>
	Daily rate	8 hrs per day	R 204,16
	Weekly wage cost	Hourly wage x 40 hours (week)	R 1 020,80
<b>2</b>	<b>Leave provisions</b>		<b>R 578,45</b>
	Annual leave	21 days per year	R 357,28
	Sick leave	10 days per year	R 170,13
	Family responsibility	3 days per year	R 51,04
<b>3</b>	<b>Other: Employer contribution</b>		<b>R 781,50</b>
	Provident fund	5.25% of monthly wage	R 133,98
	Bonus	4.33 weeks for a full 12 months	R 364,44
	UIF	1% of basiv monthly wage	R 43,73
	COID	1.6% of basic monthly wage	R 69,97
	Training levy	SDL = 1% of wage	R 43,73
	Uniform	R500 per year	R 41,67
	Severence pay	1.92% of basic monthly wage	R 83,97
<b>4</b>	<b>Monthly Labour Cost (per 1 x cleaner )</b>	<b>A1 + A2 + A3</b>	<b>R 5 154,80</b>
<b>5</b>	<b>Total monthly labour cost (per total number of cleaners required)</b>	<b>2</b>	<b>R 10 309,60</b>

**TOTAL LABOUR COST FOR THE CONTRACT PERIOD OF 36 MONTHS**

(including all required cleaners including Supervisor)

R \_\_\_\_\_

I, \_\_\_\_\_ hereby commit my company to pay my employees  
according to the above-mentioned salary template.

Signed by: \_\_\_\_\_

Full name and surname \_\_\_\_\_

---

**Capacity**

**IMPORTANCE NOTICE**

- \* Bidders must not pay anything less than the approved labour rate to its employees. Failure to comply will result in disqualification
- \* Random payslips will be requested from the cleaning personell once contract is in place
- \* Please include the weekend and public holidays rates where applicable

**ANNEXURE E****MASTER AGREEMENT**

entered into by and between

**TRANSNET SOC LTD**

and

.....

**FOR THE APPOINTMENT OF SERVICE PROVIDER(S) TO PROVIDE LOCOMOTIVE  
TOILETS CLEANING SERVICES AT 10 DEPOTS IN TRANSNET FREIGHT RAIL FOR  
PERIOD OF THREE (03) YEARS.**

**Agreement Number**      **HOAC-HO-38022**

**Commencement Date**      .....

**Expiry Date**      .....

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SCHEDULE 1 – WORK ORDER / SCHEDULE OF REQUIREMENTS





## 1 INTRODUCTION

This Agreement is entered into by and between:

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

and

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

### NOW THEREFORE, IT IS AGREED:

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

## 2 DEFINITIONS

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

- 2.1 **AFSA** means the Arbitration Foundation of South Africa;
- 2.2 **Agreement** means this Agreement and its associated schedules and/or annexures and/or appendices, and/or schedules, including the Schedule of Requirements/Work Orders, the technical specifications for the Services and such special conditions as shall apply to this Agreement, together with the General Tender Conditions and any additional provisions in the associated bid documents tendered by the Service Provider [as agreed, in writing, between the Parties], which collectively and exclusively govern the provision of Services and provision of ancillary Services by the Service Provider to Transnet;
- 2.3 **Background Intellectual Property** means all Intellectual Property introduced and required by either Party to give effect to their obligations under this Agreement owned in whole or in part by or licensed to either Party or their affiliates prior to the Commencement Date or developed after the Commencement Date otherwise pursuant to this Agreement;
- 2.4 **Business Day(s)** means Mondays to Fridays between 07:30 and 16:00, excluding public holidays as proclaimed in South Africa;
- 2.5 **Commencement Date** means ....., notwithstanding the signature date of this Agreement;
- 2.6 **Confidential Information** means any information or other data, whether in written, oral, graphic or in any other form such as in documents, papers, memoranda, correspondence, notebooks, reports, drawings, diagrams, discs, articles, samples, test results, prototypes, designs, plans, formulae, patents, or inventor's certificates, which a Party discloses or provides to the other Party [intentionally or unintentionally, or as a result of one Party permitting the representative of the other Party to visit any



of its premises], or which otherwise becomes known to a Party, and which is not in the public domain and includes, without limiting the generality of the term:

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

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

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

2.9 **Designs** mean registered Designs and/or Design applications and will include the monopoly right granted for the protection of an independently created industrial design including designs dictated essentially



by technical or functional considerations as well as topographies of integrated circuits and integrated circuits;

- 2.10 **Expiry Date** means ..... ;
- 2.11 **Foreground Intellectual Property** means all Intellectual Property developed by either Party pursuant to this Agreement;
- 2.12 **ICC Incoterms** means the the latest version of commercial trade terms as published by the International Chamber of Commerce, Paris [ICC], which are otherwise referred to as purchase terms and which define precisely the responsibilities, costs and risks of the buyer [**Transnet**] and the seller [**the Supplier**]. Incoterms are only applicable to contracts involving the import or export of Goods from one country to another and for the purpose of this Agreement, if applicable, shall mean the designated Incoterm as stipulated in Schedule 1 hereto. Further details of the Incoterm [purchase terms] for this Agreement, if applicable, can be viewed at the International Business Training website - <http://www.i-b-t.net/incoterms.html>;
- 2.13 **Intellectual Property** means Patents, Designs, Know-How, Copyright and Trade Marks and all rights having equivalent or similar effect which may exist anywhere in the world and includes all future additions and improvements to the Intellectual Property;
- 2.14 **Know-How** means all Confidential Information of whatever nature relating to the Intellectual Property and its exploitation as well as all other Confidential Information generally relating to Transnet's field of technology, including technical information, processing or manufacturing techniques, Designs, specifications, formulae, systems, processes, information concerning materials and marketing and business information in general;
- 2.15 **Parties** mean the Parties to this Agreement together with their subsidiaries, divisions, business units, successors-in-title and assigns;
- 2.16 **Party** means either one of these Parties;
- 2.17 **Patents** mean registered Patents and Patent applications, once the latter have proceeded to grant, and includes a right granted for any inventions, products or processes in all fields of technology;
- 2.18 **Permitted Purpose** means any activity or process to be undertaken or supervised by a Staff member of one Party during the term of this Agreement, for which purpose authorised disclosure of the other Party's Confidential Information or Intellectual Property is a prerequisite in order to enable such activity or process to be accomplished;
- 2.19 **Price(s)** means the agreed Price(s) for the Services to be purchased from the Service Provider by Transnet, as detailed in the Schedule of Requirements, issued in accordance with this Agreement, as amended by mutual agreement between the Parties and in accordance with the terms and conditions in this Agreement from time to time;
- 2.20 **Purchase Order(s)** means official orders issued by an operating division of Transnet to the Service Provider for the supply of Goods or Services;
- 2.21 **Service(s)** provision of for the appointment of service provider(s) to provide locomotive toilets cleaning services at 10 depots, the Service(s) provided to Transnet by the Service Provider , pursuant to the Work Order(s) in terms of this Agreement;
- 2.22 **Service Level Agreement** or **SLA** means the processes, deliverables, key performance indicators and performance standards relating to the Servicesto be provided by the Service Provider ;



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

### 3 INTERPRETATION

- 3.1 Clause headings in this Agreement are included for ease of reference only and do not form part of this Agreement for the purposes of interpretation or for any other purpose. No provision shall be construed against or interpreted to the disadvantage of either Party hereto by reason of such Party having or being deemed to have structured or drafted such provision.
- 3.2 Any term, word or phrase used in this Agreement, other than those defined under the clause heading "*Definitions*" shall be given its plain English meaning, and those terms, words, acronyms, and phrases used in this Agreement will be interpreted in accordance with the generally accepted meanings accorded thereto.
- 3.3 A reference to the singular incorporates a reference to the plural and *vice versa*.
- 3.4 A reference to natural persons incorporates a reference to legal persons and *vice versa*.
- 3.5 A reference to a particular gender incorporates a reference to the other gender.



#### 4 NATURE AND SCOPE

- 4.1 This Agreement is an agreement under the terms and conditions of which the Service Provider will arrange for the provision to Transnet of the Services which meet the requirements and specifications of Transnet, the delivery of which is controlled by means of Purchase Orders to be issued by Transnet and executed by the Service Provider in accordance with this Agreement.
- 4.2 Such Purchase Orders and deliveries to Transnet shall be agreed between the Parties from time to time, subject to the terms of the Schedule of Requirements/Work Order.
- 4.3 Each properly executed Purchase Order forms an inseparable part of this Agreement as if it were fully incorporated into the body of this Agreement.
- 4.4 During the period of this Agreement, both Parties can make written suggestions for amendments to the Schedule of Requirements/Work Orders in accordance with procedures set out in clause 36 [*Amendment and Change Control*]. A Party will advise the other Party within 14 [fourteen] Business Days, or such other period as mutually agreed, whether the amendment is acceptable.
- 4.5 Insofar as any term, provision or condition in the Schedule of Requirements/Work Order conflicts with a like term, provision or condition in this Agreement and/or a Purchase Order, the term or provision or condition in this Master Agreement shall prevail, unless such term or provision or condition in this Master Agreement has been specifically revoked or amended by mutual written agreement between the Parties.
- 4.6 Time will be of the essence and the Service Provider will perform its obligations under this Agreement in accordance with the timeframe(s) [if any] set out in the relevant schedule, save that the Service Provider will not be liable under this clause if it is unable to meet such obligation within the time required as a direct result of any act or omission by Transnet and it has used its best endeavours to advise Transnet of such act or omission. In the event of such delay, any time deadlines detailed in the relevant schedule shall be extended by a period equal to the period of that delay.

#### 5 AUTHORITY OF PARTIES

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

#### 6 DURATION/TERM AND CANCELLATION

- 6.1 Notwithstanding the date of signature hereof, the Commencement Date if this Agreement is ..... 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
  - b) this Agreement is extended at Transnet's option for a further period to be agreed by the Parties.



6.2 Notwithstanding clause 23 [*Breach and Termination*], either Party may cancel this Agreement without cause by giving 30 [thirty] calendar days prior written notice thereof to the other Party, provided that in such instance, this Agreement will nevertheless be applicable in respect of all Purchase Orders which have been placed prior to the date of such cancellation.

## **7 RISK MANAGEMENT**

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

## **8 TRANSNET'S OBLIGATIONS**

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

## **9 GENERAL OBLIGATIONS OF THE SERVICE PROVIDER**

- 9.1 The Service Provider shall:
- a) respond promptly to all complaints and enquiries from Transnet;
  - b) inform Transnet immediately of any dispute or complaint arising in relation to the storage or provision of the services;
  - c) conduct its business in a professional manner which will reflect positively upon the Service Provider and the Service Provider's services;
  - d) keep full records clearly indicating all transactions concluded by the Service Provider relating to the delivery of the Services and keep such records for at least 5 [five] years from the date of each such transaction;
  - e) obtain, and at all times maintain in full force and effect, any and all licences, permits and the like required under applicable laws for the provision of the Services and ancillary Services and the conduct of the business and activities of the Service Provider ;



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

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

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



Information, except where a non-disclosure undertaking has been entered into between the Parties;

- i) not allow a conflict of interest to develop between its own interests [or the interests of any of its other customers] and the interests of Transnet;
- j) not accept or offer, nor allow, induce or promote the acceptance or offering of any gratuity, enticement, incentive or gift that could reasonably be regarded as bribery or an attempt to otherwise exert undue influence over the recipient;
- k) not mislead Transnet or its officers, employees and stakeholders, whether by act or omission;
- l) not otherwise act in an unethical manner or do anything which could reasonably be expected to damage or tarnish Transnet's reputation or business image;
- m) immediately report to Transnet any unethical, fraudulent or otherwise unlawful conduct of which it becomes aware in connection with Transnet or the supply of Services or ancillary Services to Transnet;
- n) ensure that at all times, during the currency of this Agreement, it complies with all obligations and commitments in terms of the provisions of the Income Tax Act, No 58 of 1962, the VAT Act or any other tax legislation relating to their liability for Income Tax, VAT, Pay as You Earn or any other tax. The Service Provider shall further ensure Tax Clearance Compliance, for the duration of this Agreement;
- o) not victimise, harass or discriminate against any employee of either Party to this Agreement or any applicant for employment with either Party to this Agreement due to their gender, race, disability, age, religious belief, sexual orientation or part-time status. This provision applies, but is not limited to employment, upgrading, work environment, demotion, transfer, recruitment, recruitment advertising, termination of employment, rates of pay or other forms of compensation and selection for training.
- p) shall ensure that its employees, agents and Subcontractors will not breach any applicable discrimination legislation and any amendments and re-enactments thereof.

9.3 In compliance with the National Railway Safety Regulator Act, 16 of 2002, as may be amended from time to time, the Supplier shall ensure that the Services and ancillary Services, to be supplied to Transnet under the terms and conditions of this Agreement, comply fully with the Specifications as set forth in Schedule 1 hereto, and shall thereby adhere [as applicable] to railway safety requirements and/or regulations. Permission for the engagement of a Subcontractor by the 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.

## **10 SERVICE PROVIDER 'S PERSONNEL**

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

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





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

## **11 SUBCONTRACTING**

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



## 12 PAYMENT TO SUB-CONTRACTORS

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

## 13 B-BBEE AND SOCIO-ECONOMIC OBLIGATIONS

13.1

### **B-BBEE Scorecard**

- 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.
- 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.
- The Service Provider undertakes to notify and provide full details to Transnet in the event there is:
  - a change in the Service Provider 's B-BBEE status which is less than what it was at the time of its appointment including the impact thereof; and
  - a corporate or internal restructure or change in control of the Service Provider which has or likely to impact negatively on the Service Provider 's B-BBEE status.
- Notwithstanding any other reporting requirement in terms hereof, the Service Provider undertakes to provide any B-BBEE data (underlying data relating to the Service Provider which has been relied upon or utilised by a verification agency or auditor for the purposes of issuing a verification certificate in respect of the Service Provider B-BBEE status) which Transnet may request on written notice within 30 (thirty) calendar days of such request. A failure to provide such data shall constitute a Service Provider Default and may be dealt with in accordance with the provisions of clause 23.
- In the event there is a change in the Supplier's/ Service Provider 's B-BBEE status, then the provisions of clause 23 shall apply.

13.2

### **Green Economy/Carbon Footprint**



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

## 14 PENALTIES

### 14.1 Penalties for Non-compliance to Service Level Agreement

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

### 14.2 Non-compliance penalties for subcontracting

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

#### **Non-compliance Penalty Certificate:**

- d) If any Non-compliance Penalty arises, the Supplier Development Manager shall issue a Non-compliance Penalty Certificate 90 business days before the expiry of the contract indicating the Non-compliance Penalties which have accrued during that period.
- e) A Non-compliance Penalty Certificate shall be prima facie proof of the matters to which it relates. If the Service Provider disputes any of the amounts set out in a Non-compliance Penalty Certificate:
- the dispute shall be resolved in accordance with the provisions of the Agreement; and
  - if pursuant to that referral, it is determined that the Service Provider owes any amount to Transnet pursuant to the Non-compliance Penalty Certificate, then the Service Provider shall pay such amount to Transnet within 10 (ten) Business Days of the determination made pursuant to such determination and an accompanying valid Tax Invoice.

#### **Payment of Non-compliance Penalties:**

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



- h) Should the Service Provider fail to pay any Non Compliance Penalties within the time indicated above (as applicable), Transnet shall be entitled to deduct (set off) the amount not paid by the Service Provider from the account of the Service Provider in the ensuing month.
- i) The Non Compliance Penalties set forth in this Clause are stated exclusive of VAT. Any VAT payable on Non Compliance Penalties will be for the account of the Service Provider .

## **15 FEES AND EXPENSES RELATING TO SERVICES**

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

## **16 INVOICES AND PAYMENT**

- 16.1 Transnet shall pay the Service Provider the amounts stipulated in each Purchase Order/Work Order, subject to the terms and conditions of this Agreement.
- 16.2 Transnet shall pay such amounts to the Service Provider upon receipt of a valid and undisputed Tax Invoice together with the supporting documentation, as specified in the Schedule of Requirements appended hereto, once the valid and undisputed Tax Invoices or such portions of the Tax Invoices which are valid and undisputed become due and payable to the Service Provider for the delivery of the Services ordered, in terms of clause 16.5 below.
- 16.3 Transnet may, pending an investigation, withhold any payments to the Service Provider , in the case where irregular expenditure has been identified in the particular contract and that there is reasonable suspicion that the Service Provider is involved or was aware that the contract transgressed any legislation.
- 16.4 All Prices set out in this Agreement and the Schedule of Requirements hereto are to be indicated inclusive and exclusive of VAT, which will be payable at the applicable rate in ZAR.
- 16.5 Unless otherwise provided for in the Schedule of Requirements appended to this Agreement, Tax Invoices shall be submitted together with a month-end statement. Payment against such month-end statement shall be made by Transnet within 30 [thirty] calendar days after date of receipt by Transnet of the



Service Provider 's statement together with the relevant valid and undisputed Tax Invoice(s) and supporting documentation.

- 16.6 Where the payment of any Tax Invoice, or any part of a Tax Invoice which is not in dispute, is not made in accordance with this clause, the Service Provider shall be entitled to charge interest on the outstanding amount, at The Standard Bank of South Africa's prime rate of interest in force, for the period from the due date of payment until the outstanding amount is paid.
- 16.7 The Service Provider shall remain the owner of all plant, material, machinery, equipment and the like [services] provided to Transnet until Transnet has paid in full for the Services rendered, it being specifically agreed that Transnet shall acquire no rights [including liens] of whatsoever nature in such Service Provider's services that until date of final payment by Transnet. Subject to the foregoing, all risk and benefit to the Service Provider's services shall pass from the Service Provider' to Transnet on provision of the Service Provider's services by the Service Provider to Transnet.

## **17 PRICE ADJUSTMENTS**

- 17.1 Prices for Services supplied in terms of this Agreement shall be subject to review as indicated in the Schedule of Requirements/Works Order annexed hereto.
- 17.2 No less than 2 [two] months prior to any proposed Price adjustment, the Parties shall commence negotiations for Prices for the next period or as otherwise indicated in Schedule 1 hereto. The Parties shall have regard for market-related pricing of equivalent goods, continuous improvement initiatives, costs [including labour, raw materials and transport/delivery], order size and frequency and changes to the specification of the Services .
- 17.3 Pursuant to clause 17.2 above, the Service Provider shall keep full and accurate records of all costs associated with the supply of the Services to Transnet, in a form to be approved in writing by Transnet. The Service Provider shall produce such records to Transnet for inspection at all reasonable times on request and such records may, at Transnet's option, be audited by Transnet or its designated representatives.
- 17.4 Should Transnet and the Service Provider fail to reach an agreement on Price for the successive period, either Party shall be entitled to submit this matter to dispute resolution in accordance with clause 33 of the Master Agreement [Dispute Resolution].
- 17.5 If during the period of this Agreement Transnet can purchase similar Services of a like quality from another supplier at a total delivered cost to a Transnet facility that is lower than the total delivered cost of the Services purchased hereunder from the Service Provider, Transnet may notify the Service Provider of such total delivered cost and the Service Provider shall have an opportunity to adjust the Price of the Services purchased hereunder, on such a basis as to result in the same total delivered cost to Transnet, within 30 [thirty] calendar days of such notice. If the Service Provider fails to do so or cannot legally do so, Transnet may (i) purchase the Services from such other supplier in which case the obligations, including, but not limited to, any purchase and sale requirements and/or commitments, if any, of Transnet and the Service Provider hereunder shall be reduced accordingly; (ii) terminate this Agreement without any penalty, liability or further obligation; or (iii) continue purchases under this Agreement.
- 17.6 If during the period of this Agreement the Service Provider sells any materials which are the same as, equivalent to, or substantially similar to the Services herein, at a total delivered cost to a third party



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

## **18 WARRANTIES APPLICABLE TO SERVICES**

18.1 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.

18.2 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 18.3 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.

18.3 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 .



- 18.4 The Service Provider will remedy any defect within 30 [thirty] calendar days of being notified of that defect by Transnet in writing.
- 18.5 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 .
- 18.6 The Service Provider shall advise Transnet of the effects of any steps proposed by Transnet pursuant to clause 18.5 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 36 *[Amendment and Change Control]*.
- 18.7 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.
- 18.8 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.
- 18.9 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.
- 18.10 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.

## **19 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 18 above.





## 20 TOTAL OR PARTIAL FAILURE TO PERFORM

- 20.1 The Service Provider shall thereupon, as soon as possible after such date, deliver to Transnet the Services [if any] already completed, and payment for the part performance shall be made on a pro rata basis, provided the uncompleted part is not an integral or essential part of the completed 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, provide Transnet with the necessary drawings and/or specifications to enable it to complete the work.
- 20.2 Whenever, in any case not covered by clause above, the Service provider fails or neglects to execute the work or to deliver any portion of the Services as required by the terms of this Agreement or Purchase Order, or if any Services are rejected [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 Services , and in such event, the supply of the remaining portion shall remain subject in all respects to these conditions.

## 21 NON CONFORMANCE OF SERVICES PROCURED

- 21.1 *In the case of Services manufactured for and procured by Transnet from the Service Provider in terms of this Agreement, being found not to conform to the Transnet standards, specifications and requirements, Transnet at any time may be entitled to raise a Non Conformance Report (NCR) against a Service Provider whose Goods/ Services do not conform to Transnet standards, specifications and requirements directing the Service Provider to investigate and remedy the non-conformance within the stipulated time frame as may be determined by Transnet at its discretion.*
- 21.2 *Failure by the Service Provider to fully comply with NCR within the period stated in sub-clause 20.1 above, shall entitle Transnet to further conditions to which the Service Provider must discharge in order to close the NCR or to terminate the order without by given the Service Provider written notice of termination in terms of this Agreement.*

## 22 RIGHTS ON CANCELLATION

- 22.1 If this Agreement or Purchase Order is cancelled in whole or in part in terms of clause 20 [*Total or Partial Failure to Perform*], Transnet may execute or complete this Agreement with any other entity and do so on such terms as it may deem proper, or may procure other comparable Services in substitution for those neglected to be manufactured or supplied or rejected as aforesaid, and may recover from the Supplier the difference between the cost of such Services and the Price [if the latter was lower] as well as any costs and expenses [including any additional transport costs] which Transnet may have had to incur in consequence of the Service Provider 's default.
- 22.2 Any amount which may be recoverable from the Service Provider in terms of clause 22.1 above, without prejudice to any other legal remedies available to Transnet, may be deducted in whole or in part from any monies in the hands of Transnet and due for payment to the Service Provider .

## 23 BREACH AND TERMINATION

- 23.1 Termination in accordance with clause 6 [Term and Cancellation] shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to either Party and all provisions which are to survive this Agreement or impliedly do so shall remain in force and in effect.
- 23.2 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.

- 23.3 To the extent that any of the Deliverables and property referred to in clause 23.2 above are in electronic form and contained on non-detachable storage devices, the Service Provider will provide Transnet with unencrypted copies of the same on magnetic media and will irretrievably destroy and delete copies so held.
- 23.4 In the event that this Agreement is terminated by the Service Provider under clause 6 [Term and Cancellation], or in the event that a Work Order is terminated by Transnet under clause 23 [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.
- 23.5 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.
- 23.6 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.
- 23.7 Transnet may terminate this Agreement at any time within 2 [two] months of becoming aware of a change of control of the Service Provider by notice in writing to the Service Provider . For the purposes of this clause, **control** means the right to direct the affairs of a company whether by ownership of shares, membership of the board of directors, agreement or otherwise.
- 23.8 Notwithstanding this clause 233, Transnet may cancel this Agreement without cause by giving 30 [thirty] calendar days prior written notice thereof to the Service Provider , or
- 23.9 The provisions of clauses 2 [Definitions], 18 [Warranties], 22 [Rights on Cancellation], 27 [Confidentiality], 29 [Limitation of Liability], 30 [Intellectual Property Rights], **Error! Reference source not found.** [Dispute Resolution] and **Error! Reference source not found.** [Governing Law] shall survive termination or expiry of this Agreement.

## 24 CESSION

- 24.1 Upon written notice to the Service Provider , Transnet shall be entitled:



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

24.2 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.

## 25 FORCE MAJEURE

25.1 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.

25.2 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.

## 26 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;



**ANNEXURE F**

**GENERAL BID CONDITIONS**

**[October 2021]**

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## 2 DEFINITIONS

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

- 2.1 **Bid** shall mean a Respondent's tendered response / proposal to a Transnet RFP or RFQ;
- 2.2 **Bid Document(s)** shall mean a reference to a Request for Proposal or Request for Quotation;
- 2.3 **Business Day** shall mean any day other than a Saturday, Sunday or public holiday;
- 2.4 **Goods** shall mean the goods required by Transnet as specified in its Bid Document;
- 2.5 **Parties** shall mean Transnet and the Respondents to a Bid Document;
- 2.6 **Respondent(s)** shall mean a respondent/bidder to a Bid Document;
- 2.7 **RFP** shall mean Request for Proposal;
- 2.8 **RFQ** shall mean Request for Quotation;
- 2.9 **RFX** shall mean RFP or RFQ, as the case may be;
- 2.10 **Services** shall mean the services required by Transnet as specified in its Bid Document;
- 2.11 **Service Provider or Supplier** shall mean the successful Respondent;
- 2.12 **Tax Invoice** shall mean the document as required by Section 20 of the Value-Added Tax Act, 89 of 1991, as may be amended from time to time;
- 2.13 **Transnet** shall mean Transnet SOC Ltd, a State Owned Company; and
- 2.14 **VAT** shall mean Value-Added Tax in terms of the Value-Added Tax Act, 89 of 1991, as may be amended from time to time.

## 3 GENERAL

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

## 4 SUBMITTING OF BID DOCUMENTS

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

## 5 USE OF BID FORMS

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



## 6 **BID FEES**

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

## 7 **VALIDITY PERIOD**

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

## 8 **SITE VISITS / BRIEFING SESSIONS**

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

## 9 **CLARIFICATION BEFORE THE CLOSING DATE**

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

## 10 **COMMUNICATION AFTER THE CLOSING DATE**

After the closing date of a Bid (i.e. during the evaluation period) the Respondent may only communicate with the Chairperson of the relevant Bid Preparation and Evaluation Committee.

## 11 **UNAUTHORISED COMMUNICATION ABOUT BIDS**

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

## 12 **RETURNABLE DOCUMENTS**

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

## 13 **DEFAULTS BY RESPONDENTS**

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

- 13.1 enter into a formal contract when called upon to do so within such period as Transnet may specify; or



- 13.2 accept an order in terms of the Bid;
- 13.3 furnish satisfactory security when called upon to do so for the fulfilment of the contract; or
- 13.4 comply with any condition imposed by Transnet,

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

#### 14 **CURRENCY**

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

#### 15 **PRICES SUBJECT TO CONFIRMATION**

- 15.1 Prices which are quoted subject to confirmation will not be considered.

#### 16 **ALTERATIONS MADE BY THE RESPONDENT TO BID PRICES**

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

#### 17 **EXCHANGE AND REMITTANCE**

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





## 18 **ACCEPTANCE OF BID**

- 18.1 Upon the acceptance of a Bid by Transnet, the parties shall be bound by these General Bid Conditions and any contractual terms and/or any schedule of "Special Conditions" or otherwise which form part of the Bid Documents.
- 18.2 Where the Respondent has been informed by Transnet of the acceptance of its Bid, an email communication that has been successfully sent to the Respondent shall be regarded as proof of delivery to the Respondent 1 day after the date of submission.

## 19 **NOTICE TO UNSUCCESSFUL RESPONDENTS**

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

## 20 **TERMS AND CONDITIONS OF CONTRACT**

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

## 21 **CONTRACT DOCUMENTS**

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

## 22 **LAW GOVERNING CONTRACT**

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



## 23 IDENTIFICATION

If the Respondent is a company, the full names of the directors shall be stated in the Bid.

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

## 24 RESPONDENT'S SAMPLES

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

## 25 SECURITIES

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

## 26 PRICE AND DELIVERY BASIS FOR GOODS

- 26.1 Unless otherwise specified in the Bid Documents, the prices quoted for Goods must be on a Delivered Duty Paid [latest ICC Incoterms] price basis in accordance with the terms and at the delivery point or points specified in Transnet's Bid Documents. Bids for supply on any other basis of delivery are liable to disqualification. The lead time for delivery stated by the Respondent must be inclusive of all non-working days or holidays, and of periods occupied in stocktaking or in effecting repairs to or overhauling plant, which would ordinarily occur within the delivery period given by the Respondent.
- 26.2 Respondents must furnish their Bid prices in the Price Schedule of the Bid Documents on the following basis:



27 Local Supplies - Prices for Goods to be manufactured, produced or assembled in the Republic of South Africa, or imported supplies held in South Africa, to be quoted on a Delivered RSA named destination basis.

28 Imported Supplies - Prices for Goods to be imported from all sources to be quoted on a Delivered Duty Paid [latest ICC Incoterms] basis, to end destination in South Africa, unless otherwise specified in the Bid Price Schedule.

29 **EXPORT LICENCE**

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

30 **QUALITY OF MATERIAL**

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

31 **DELETION OF ITEMS EXCLUDED FROM BID**

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

32 **VALUE-ADDED TAX**

32.1 In respect of local supplies, i.e. Goods to be manufactured, produced or assembled in the Republic of South Africa, or imported supplies held or already in transit to South Africa, the prices quoted by the Respondent are to be inclusive of VAT which must be shown separately at the standard rate on the Tax Invoice.

32.2 In respect of foreign Services rendered:

- the invoicing by a South African Service Provider on behalf of its foreign principal rendering such Service represents a Service rendered by the principal; and
- the Service Provider's Tax Invoice(s) for the local portion only [i.e. the "commission" for the Services rendered locally] must show the VAT separately.

33 **IMPORTANT NOTICE TO RESPONDENTS REGARDING PAYMENT**

33.1 Method of Payment

34 The attention of the Respondent is directed to the Terms and Conditions of Contract which set out the conditions of payment on which Bid price(s) shall be based.

35 However, in addition to the foregoing the Respondent is invited to submit offers based on alternative methods of payment and/or financing proposals.

36 The Respondent is required to give full particulars of the terms that will be applicable to its alternative offer(s) and the financial merits thereof will be evaluated and taken into consideration when the Bid is adjudicated.

37 The Respondent must, therefore, in the first instance, tender strictly in accordance with clause 33.1 (a) above. Failure to comply with clause 33.1 (34 above) may preclude a Bid from further consideration.

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

37.1 Conditional Discount

Respondents offering prices which are subject to a conditional discount applicable for payment within a specific period are to note that the conditional period will be calculated as from the date of receipt by



Transnet of the Supplier/Service Provider's month-end statement reflecting the relevant Tax Invoice(s) for payment purposes, provided the conditions of the order or contract have been fulfilled and the Tax Invoice is correct in all respects as referred to in the contract or order. Incomplete and/or incorrect Tax Invoices shall be returned and the conditional period will be recalculated from the date of receipt of the correct documentation.

### 38 **CONTRACT QUANTITIES AND DELIVERY REQUIREMENTS**

#### 38.1 Contract Quantities

39 It must be clearly understood that although Transnet does not bind itself to purchase a definitive quantity under any contract which may be entered into pursuant to this Bid, the successful Respondent nevertheless undertakes to supply against the contract such quantities as may be ordered against the contract, which orders are posted or delivered by hand or transmitted electronically on or before the expiry date of such contract.

40 It is furthermore a condition that Transnet will not accept liability for any material/stocks specially ordered or carried by the Respondent with a view to meeting the requirements under any such contract.

41 The estimated planned quantities likely to be ordered by Transnet per annum are furnished in relevant section of the Bid Documents. For avoidance of doubt the estimated quantities are estimates and Transnet reserves the right to order only those quantities sufficient for its operational requirements.

#### 41.1 Delivery Period

#### 42 Period Contracts and Fixed Quantity Requirements

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

#### 43 Progress Reports

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

#### 44 Emergency Demands as and when required

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

### 45 **PLANS, DRAWINGS, DIAGRAMS, SPECIFICATIONS AND DOCUMENTS**

#### 45.1 Copyright

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

#### 45.2 Drawings and specifications

In addition to what may be stated in any Bid Document, the Respondent should note that, unless notified to the contrary by Transnet or a designated official by means of an official amendment to the Bid Documents, it is required to tender for Goods/Services strictly in accordance with the drawings



and/or specifications supplied by Transnet, notwithstanding that it may be aware that alterations or amendments to such drawings or specifications are contemplated by Transnet.

45.3 Respondent's drawings

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

45.4 Foreign specifications

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

46 **BIDS BY OR ON BEHALF OF FOREIGN RESPONDENTS**

46.1 Bids submitted by foreign principals may be forwarded directly by the principals or by its South African representative or agent to the designated official of Transnet according to whichever officer is specified in the Bid Documents.

46.2 In the case of a representative or agent, written proof must be submitted to the effect that such representative or agent has been duly authorised to act in that capacity by the principal. Failure to submit such authorisation by the representative or agent shall disqualify the Bid.

46.3 When legally authorised to prepare and submit Bids on behalf of their principals not domiciled in the Republic of South Africa, representatives or agents must compile the Bids in the names of such principals and sign them on behalf of the latter.

46.4 South African representatives or agents of a successful foreign Respondent must when so required enter into a formal contract in the name of their principals and must sign such contract on behalf of the latter. In every such case a legal Power of Attorney from their principals must be furnished to Transnet by the South African representative or agents authorising them to enter into and sign such contract.

47 Such Power of Attorney must comply with Rule 63 (Authentication of documents executed outside the Republic for use within the Republic) of the Uniform Rules of Court: Rules regulating the conduct of the proceedings of the several provincial and local divisions of the Supreme Court of South Africa.

48 The Power of Attorney must be signed by the principal under the same title as used in the Bid Documents.

49 If a Power of Attorney held by the South African representative or agent includes matters of a general nature besides provision for the entering into and signing of a contract with Transnet, a certified copy thereof should be furnished.

50 The Power of Attorney must authorise the South African representative or agent to choose the *domicilium citandi et executandi*.

50.1 If payment is to be made in South Africa, the foreign Supplier/Service Provider [i.e. the principal, or its South African agent or representative], must notify Transnet in writing whether, for payment by electronic funds transfer [EFT]:

51 funds are to be transferred to the credit of the foreign Supplier/Service Provider's account at a bank in South Africa, in which case the name and branch of such bank shall be furnished; or

52 funds are to be transferred to the credit of its South African agent or representative, in which case the name and branch of such bank shall be furnished.



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

**53 DATABASE OF RESTRICTED SUPPLIERS**

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

**54 CONFLICT WITH ISSUED RFX DOCUMENT**

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

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**ANNEXURE G:**

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

**INTEGRITY PACT**

Between

**TRANSNET SOC LTD**

Registration Number: 1990/000900/30

("Transnet")

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

**PREAMBLE**

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

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

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

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

**10. OBJECTIVES**

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

**11. COMMITMENTS OF TRANSNET**

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

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





## 12. OBLIGATIONS OF THE BIDDER / SUPPLIER

- 12.2. Transnet has a '**Zero Gifts**' Policy. No employee is allowed to accept gifts, favours or benefits.
- 12.2.1. Transnet officials and employees **shall not** solicit, give or accept, or from agreeing to solicit, give, accept or receive directly or indirectly, any gift, gratuity, favour, entertainment, loan, or anything of monetary value, from any person or juridical entities in the course of official duties or in connection with any operation being managed by, or any transaction which may be affected by the functions of their office.
- 12.2.2. Transnet officials and employees **shall not** solicit or accept gifts of any kind, from vendors, suppliers, customers, potential employees, potential vendors, and suppliers, or any other individual or organisation irrespective of the value.
- 12.2.3. Under **no circumstances** should gifts, business courtesies or hospitality packages be accepted from or given to prospective suppliers participating in a tender process at the respective employee's Operating Division, regardless of retail value.
- 12.2.4. Gratuities, bribes or kickbacks of any kind must never be solicited, accepted or offered, either directly or indirectly. This includes money, loans, equity, special privileges, personal favours, benefit or services. Such favours will be considered to constitute corruption.
- 12.3. The Bidder / Supplier commits itself to take all measures necessary to prevent corrupt practices, unfair means and illegal activities during any stage of its bid or during any ensuing contract stage in order to secure the contract or in furtherance to secure it and in particular the Bidder / Supplier commits to the following:
- 12.3.1. The Bidder / Supplier will not, directly or through any other person or firm, offer, promise or give to Transnet or to any of Transnet's employees involved in the bidding process or to any third person any material or other benefit or payment, in order to obtain in exchange an advantage during the bidding process; and
- 12.3.2. The Bidder / Supplier will not offer, directly or through intermediaries, any bribe, gift, consideration, reward, favour, any material or immaterial benefit or other advantage, commission, fees, brokerage or inducement to any employee of Transnet, connected directly or indirectly with the bidding process, or to any person, organisation or third party related to the contract in exchange for any advantage in the bidding, evaluation, contracting and implementation of the contract.
- 12.4. The Bidder / Supplier will not collude with other parties interested in the contract to preclude a competitive bid price, impair the transparency, fairness and progress of the bidding process, bid evaluation, contracting and implementation of the contract. The Bidder / Supplier further commits itself to delivering against all agreed upon conditions as stipulated within the contract.
- 12.5. The Bidder / Supplier will not enter into any illegal or dishonest agreement or understanding, whether formal or informal with other Bidders / Suppliers. This applies in particular to certifications, submissions or non-submission of documents or actions that are restrictive or to introduce cartels into the bidding process.
- 12.6. The Bidder / Supplier will not commit any criminal offence under the relevant anti-corruption laws of South Africa or any other country. Furthermore, the Bidder /Supplier will not use for illegitimate purposes or for restrictive purposes or personal gain, or pass on to others, any information provided by Transnet as part of the business relationship, regarding plans, technical proposals and business details, including information contained or transmitted electronically.
- 12.7. A Bidder / Supplier of foreign origin shall disclose the name and address of its agents or representatives in South Africa, if any, involved directly or indirectly in the registration or bidding process. Similarly, the Bidder / Supplier of South African nationality shall furnish the name and address of the foreign principals, if any, involved directly or indirectly in the registration or bidding process.



- 12.8. The Bidder / Supplier will not misrepresent facts or furnish false or forged documents or information in order to influence the bidding process to the advantage of the Bidder / Supplier or detriment of Transnet or other competitors.
- 12.9. Transnet may require the Bidder / Supplier to furnish Transnet with a copy of its code of conduct. Such code of conduct must address the compliance programme for the implementation of the code of conduct and reject the use of bribes and other dishonest and unethical conduct.
- 12.10. The Bidder / Supplier will not instigate third persons to commit offences outlined above or be an accessory to such offences.
- 12.11. The Bidder/Supplier confirms that they will uphold the ten principles of the United Nations Global Compact (UNGC) in the fields of Human Rights, Labour, Anti-Corruption and the Environment when undertaking business with Transnet as follows:
- Human Rights
    - Principle 1: Businesses should support and respect the protection of internationally proclaimed human rights; and
    - Principle 2: make sure that they are not complicit in human rights abuses.
  - Labour
    - Principle 3: Businesses should uphold the freedom of association and the effective recognition of the right to collective bargaining;
    - Principle 4: the elimination of all forms of forced and compulsory labour;
    - Principle 5: the effective abolition of child labour; and
    - Principle 6: the elimination of discrimination in respect of employment and occupation.
  - Environment
    - Principle 7: Businesses should support a precautionary approach to environmental challenges;
    - Principle 8: undertake initiatives to promote greater environmental responsibility; and
    - Principle 9: encourage the development and diffusion of environmentally friendly technologies.
  - Anti-Corruption
    - Principle 10: Businesses should work against corruption in all its forms, including extortion and bribery.

### **13. INDEPENDENT BIDDING**

- 13.2. For the purposes of this undertaking in relation to any submitted Bid, the Bidder declares to fully understand that the word "competitor" shall include any individual or organisation, other than the Bidder, whether or not affiliated with the Bidder, who:
- has been requested to submit a Bid in response to this Bid invitation;
  - could potentially submit a Bid in response to this Bid invitation, based on their qualifications, abilities or experience; and
  - provides the same Goods and Services as the Bidder and/or is in the same line of business as the Bidder.
- 13.3. The Bidder has arrived at his submitted Bid independently from, and without consultation, communication, agreement or arrangement with any competitor. However communication between partners in a joint venture or consortium will not be construed as collusive bidding.
- 13.4. In particular, without limiting the generality of paragraph 4.2 above, there has been no consultation, communication, agreement or arrangement with any competitor regarding:
- prices;
  - geographical area where Goods or Services will be rendered [market allocation];



- methods, factors or formulas used to calculate prices;
  - the intention or decision to submit or not to submit, a Bid;
  - the submission of a Bid which does not meet the specifications and conditions of the RFP; or
  - bidding with the intention of not winning the Bid.
- 13.5. In addition, there have been no consultations, communications, agreements or arrangements with any competitor regarding the quality, quantity, specifications and conditions or delivery particulars of the Goods or Services to which his/her Bid relates.
- 13.6. The terms of the Bid as submitted have not been, and will not be, disclosed by the Bidder, directly or indirectly, to any competitor, prior to the date and time of the official Bid opening or of the awarding of the contract.
- 13.7. Bidders are aware that, in addition and without prejudice to any other remedy provided to combat any restrictive practices related to bids and contracts, Bids that are suspicious will be reported to the Competition Commission for investigation and possible imposition of administrative penalties in terms of section 59 of the Competition Act No 89 of 1998 and/or may be reported to the National Prosecuting Authority [NPA] for criminal investigation and/or may be restricted from conducting business with the public sector for a period not exceeding 10 [ten] years in terms of the Prevention and Combating of Corrupt Activities Act No 12 of 2004 or any other applicable legislation.

#### **14. DISQUALIFICATION FROM BIDDING PROCESS**

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

#### **15. DATABASE OF RESTRICTED SUPPLIERS**

- 15.2. 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.
- 15.3. All the stipulations on Transnet's restriction process as laid down in Transnet's Supply Chain Policy and Procurement Procedures Manual are included herein by way of reference. Below follows a condensed summary of this restriction procedure.



- 15.4. On completion of the restriction procedure, Transnet will submit the restricted entity's details (including the identity number of the individuals and registration number of the entity) to National Treasury for placement on National Treasury's Database of Restricted Suppliers for the specified period of exclusion. National Treasury will make the final decision on whether to restrict an entity from doing business with any organ of state for a period not exceeding 10 years and place the entity concerned on the Database of Restricted Suppliers published on its official website.
- 15.5. The decision to restrict is based on one of the grounds for restriction. The standard of proof to commence the restriction process is whether a "*prima facie*" (i.e. on the face of it) case has been established.
- 15.6. Depending on the seriousness of the misconduct and the strategic importance of the Goods/Services, in addition to restricting a company/person from future business, Transnet may decide to terminate some or all existing contracts with the company/person as well.
- 15.7. A supplier or contractor to Transnet may not subcontract any portion of the contract to a restricted company.
- 15.8. Grounds for restriction include: If any person/Enterprise which has submitted a Bid, concluded a contract, or, in the capacity of agent or subcontractor, has been associated with such Bid or contract:
  - Has, in bad faith, withdrawn such Bid after the advertised closing date and time for the receipt of Bids;
  - has, after being notified of the acceptance of his Bid, failed or refused to sign a contract when called upon to do so in terms of any condition forming part of the bid documents;
  - has carried out any contract resulting from such bid in an unsatisfactory manner or has breached any condition of the contract;
  - has offered, promised or given a bribe in relation to the obtaining or execution of the contract;
  - has acted in a fraudulent or improper manner or in bad faith towards Transnet or any Government Department or towards any public body, Enterprise or person;
  - has made any incorrect statement in a certificate or other communication with regard to the Local Content of his Goods or his B-BBEE status and is unable to prove to the satisfaction of Transnet that:
    - he made the statement in good faith honestly believing it to be correct; and
    - before making such statement he took all reasonable steps to satisfy himself of its correctness;
  - has submitted false information regarding any other matter required in terms of the Preferential Procurement Regulations, 2017 issued in terms of the Preferential Procurement Policy Framework Act which will affect the evaluation of a Bid or where a Bidder has failed to declare any subcontracting arrangements;
  - caused Transnet damage, or to incur costs in order to meet the contractor's requirements and which could not be recovered from the contractor;
  - has litigated against Transnet in bad faith.

## 16. PREVIOUS TRANSGRESSIONS

- 16.2. The Bidder / Supplier hereby declares that no previous transgressions resulting in a serious breach of any law, including but not limited to, corruption, fraud, theft, extortion and contraventions of the Competition Act 89 of 1998, which occurred in the last 5 (five) years with any other public sector undertaking, government department or private sector company that could justify its exclusion from its registration on the Bidder's / Supplier's database or any bidding process.



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

## 17. SANCTIONS FOR VIOLATIONS

- 17.2. Transnet shall also take all or any one of the following actions, wherever required to:
1. Immediately exclude the Bidder / Supplier from the bidding process or call off the pre-contract negotiations without giving any compensation to the Bidder / Supplier. However, the proceedings with the other Bidders / Suppliers may continue;
  2. Immediately cancel the contract, if already awarded or signed, without giving any compensation to the Bidder / Supplier;
  3. Recover all sums already paid by Transnet;
  4. Encash the advance bank guarantee and performance bond or warranty bond, if furnished by the Bidder / Supplier, in order to recover the payments, already made by Transnet, along with interest;
  5. Cancel all or any other contracts with the Bidder / Supplier;
  6. Exclude the Bidder / Supplier from entering into any bid with Transnet and other organs of state in future for a specified period; and
  7. If the Supplier subcontracted a portion of the bid to another person without declaring it to Transnet, Transnet must penalise the Supplier up to 10% of the value of the contract.

## 18. CONFLICTS OF INTEREST

- 18.2. A conflict of interest includes, inter alia, a situation in which:
- A Transnet employee has a personal financial interest in a bidding / supplying entity; and
  - A Transnet employee has private interests or personal considerations or has an affiliation or a relationship which affects, or may affect, or may be perceived to affect his / her judgment in action in the best interest of Transnet, or could affect the employee's motivations for acting in a particular manner, or which could result in, or be perceived as favouritism or nepotism.
- 18.3. A Transnet employee uses his / her position, or privileges or information obtained while acting in the capacity as an employee for:
- Private gain or advancement; or
  - The expectation of private gain, or advancement, or any other advantage accruing to the employee must be declared in a prescribed form.
- Thus, conflicts of interest of any bid committee member or any person involved in the sourcing process must be declared in a prescribed form.
- 18.4. If a Bidder / Supplier has or becomes aware of a conflict of interest i.e. a family, business and / or social relationship between its owner(s) / member(s) / director(s) / partner(s) / shareholder(s) and a Transnet employee / member of Transnet's Board of Directors in respect of a bid which will be considered for the bid process, the Bidder / Supplier:
- must disclose the interest and its general nature, in the Request for Proposal ("RFX") declaration form; or
  - must notify Transnet immediately in writing once the circumstances has arisen.
- 18.5. The Bidder / Supplier shall not lend to or borrow any money from or enter into any monetary dealings or transactions, directly or indirectly, with any committee member or any person involved in the sourcing process, where this is done, Transnet shall be entitled forthwith to rescind the contract and all other contracts with the Bidder / Supplier.

## 19. DISPUTE RESOLUTION

- 19.2. Transnet recognises that trust and good faith are pivotal to its relationship with its Bidders / Suppliers. When a dispute arises between Transnet and its Bidder / Supplier, the parties should use their best endeavours to resolve the dispute in an amicable manner, whenever possible. Litigation in bad faith negates the principles of trust and good faith on which commercial relationships are based. Accordingly, following a restriction process as mentioned in paragraph 15 above, Transnet will not do business with a company that litigates against it in bad faith or is involved in any action that reflects bad faith on its part. Litigation in bad faith includes, but is not limited to the following instances:
- **Vexatious proceedings:** these are frivolous proceedings which have been instituted without proper grounds;
  - **Perjury:** where a supplier make a false statement either in giving evidence or on an affidavit;
  - **Scurrilous allegations:** where a supplier makes allegations regarding a senior Transnet employee which are without proper foundation, scandalous, abusive or defamatory; and
  - **Abuse of court process:** when a supplier abuses the court process in order to gain a competitive advantage during a bid process.

## 20. GENERAL

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

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

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**ANNEXURE H**

**NON-DISCLOSURE AGREEMENT**

**[April 2020]**

**THIS AGREEMENT is made between**

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

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

**and**

**the Company as indicated in the RFP bid response hereto**

## **WHEREAS**

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

## **IT IS HEREBY AGREED**

### **2. INTERPRETATION**

In this Agreement:

- 2.7. **Agents** mean directors, officers, employees, agents, professional advisers, contractors or sub-contractors, or any Group member;
- 2.8. **Bid** or **Bid Document** means Transnet's Request for Information [**RFI**] Request for Proposal [**RFP**] or Request for Quotation [**RFQ**], as the case may be;
- 2.9. **Confidential Information** means any information or other data relating to one party [the **Disclosing Party**] and/or the business carried on or proposed or intended to be carried on by that party and which is made available for the purposes of the Bid to the other party [the **Receiving Party**] or its Agents by the Disclosing Party or its Agents or recorded in agreed minutes following oral disclosure and any other information otherwise made available by the Disclosing Party or its Agents to the Receiving Party or its Agents, whether before, on or after the date of this Agreement, and whether in writing or otherwise, including any information, analysis or specifications derived from, containing or reflecting such information but excluding information which:
  - 2.9.1. is publicly available at the time of its disclosure or becomes publicly available [other than as a result of disclosure by the Receiving Party or any of its Agents contrary to the terms of this Agreement]; or
  - 2.9.2. was lawfully in the possession of the Receiving Party or its Agents [as can be demonstrated by its written records or other reasonable evidence] free of any restriction as to its use or disclosure prior to its being so disclosed; or
  - 2.9.3. following such disclosure, becomes available to the Receiving Party or its Agents [as can be demonstrated by its written records or other reasonable evidence] from a source other than the Disclosing Party or its Agents, which source is not bound by any duty of confidentiality owed, directly or indirectly, to the Disclosing Party in relation to such information;
- 2.10. **Group** means any subsidiary, any holding company and any subsidiary of any holding company of either party; and



- 2.11. **Information** means all information in whatever form including, without limitation, any information relating to systems, operations, plans, intentions, market opportunities, know-how, trade secrets and business affairs whether in writing, conveyed orally or by machine-readable medium.

### 3. CONFIDENTIAL INFORMATION

- 3.7. All Confidential Information given by one party to this Agreement [the **Disclosing Party**] to the other party [the **Receiving Party**] will be treated by the Receiving Party as secret and confidential and will not, without the Disclosing Party's written consent, directly or indirectly communicate or disclose [whether in writing or orally or in any other manner] Confidential Information to any other person other than in accordance with the terms of this Agreement.
- 3.8. The Receiving Party will only use the Confidential Information for the sole purpose of technical and commercial discussions between the parties in relation to the Bid or for the subsequent performance of any contract between the parties in relation to the Bid.
- 3.9. Notwithstanding clause 3.7 above, the Receiving Party may disclose Confidential Information:
- 3.9.1. to those of its Agents who strictly need to know the Confidential Information for the sole purpose set out in clause 3.8 above, provided that the Receiving Party shall ensure that such Agents are made aware prior to the disclosure of any part of the Confidential Information that the same is confidential and that they owe a duty of confidence to the Disclosing Party. The Receiving Party shall at all times remain liable for any actions of such Agents that would constitute a breach of this Agreement; or
- 3.9.2. to the extent required by law or the rules of any applicable regulatory authority, subject to clause 3.10 below.
- 3.10. In the event that the Receiving Party is required to disclose any Confidential Information in accordance with clause 3.9.2 above, it shall promptly notify the Disclosing Party and cooperate with the Disclosing Party regarding the form, nature, content and purpose of such disclosure or any action which the Disclosing Party may reasonably take to challenge the validity of such requirement.
- 3.11. In the event that any Confidential Information shall be copied, disclosed or used otherwise than as permitted under this Agreement then, upon becoming aware of the same, without prejudice to any rights or remedies of the Disclosing Party, the Receiving Party shall as soon as practicable notify the Disclosing Party of such event and if requested take such steps [including the institution of legal proceedings] as shall be necessary to remedy [if capable of remedy] the default and/or to prevent further unauthorised copying, disclosure or use.
- 3.12. All Confidential Information shall remain the property of the Disclosing Party and its disclosure shall not confer on the Receiving Party any rights, including intellectual property rights over the Confidential Information whatsoever, beyond those contained in this Agreement.

### 4. RECORDS AND RETURN OF INFORMATION

- 4.7. The Receiving Party agrees to ensure proper and secure storage of all Information and any copies thereof.
- 4.8. The Receiving Party shall keep a written record, to be supplied to the Disclosing Party upon request, of the Confidential Information provided and any copies made thereof and, so far as is reasonably practicable, of the location of such Confidential Information and any copies thereof.
- 4.9. The Company shall, within 7 [seven] days of receipt of a written demand from Transnet:
- 4.9.1. return all written Confidential Information [including all copies]; and

4.9.2. expunge or destroy any Confidential Information from any computer, word processor or other device whatsoever into which it was copied, read or programmed by the Company or on its behalf.

4.10. The Company shall on request supply a certificate signed by a director as to its full compliance with the requirements of clause 4.9.2 above.

## **5. ANNOUNCEMENTS**

5.7. Neither party will make or permit to be made any announcement or disclosure of its prospective interest in the Bid without the prior written consent of the other party.

5.8. Neither party shall make use of the other party's name or any information acquired through its dealings with the other party for publicity or marketing purposes without the prior written consent of the other party.

## **6. DURATION**

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

## **7. PRINCIPAL**

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

## **8. ADEQUACY OF DAMAGES**

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

## **9. PRIVACY AND DATA PROTECTION**

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

9.8. The Receiving Party warrants that it and its Agents have the appropriate technical and organisational measures in place against unauthorised or unlawful processing of data relating to the Bid and against accidental loss or destruction of, or damage to such data held or processed by them.

## **10. GENERAL**

10.7. Neither party may assign the benefit of this Agreement, or any interest hereunder, except with the prior written consent of the other, save that Transnet may assign this Agreement at any time to any member of the Transnet Group.

10.8. No failure or delay in exercising any right, power or privilege under this Agreement will operate as a waiver of it, nor will any single or partial exercise of it preclude any further exercise or the exercise of any right, power or privilege under this Agreement or otherwise.

10.9. The provisions of this Agreement shall be severable in the event that any of its provisions are held by a court of competent jurisdiction or other applicable authority to be invalid, void or otherwise unenforceable, and the remaining provisions shall remain enforceable to the fullest extent permitted by law.

- 10.10. This Agreement may only be modified by a written agreement duly signed by persons authorised on behalf of each party.
- 10.11. Nothing in this Agreement shall constitute the creation of a partnership, joint venture or agency between the parties.
- 10.12. This Agreement will be governed by and construed in accordance with South African law and the parties irrevocably submit to the exclusive jurisdiction of the South African courts.

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## SUPPLIER DECLARATION FORM

**Please Note:** This Supplier Declaration Form is only to be completed by the successful bidder who is awarded the contract.

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

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

### General Terms and Conditions:

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

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

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

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

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

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

**2. If your annual turnover is between R10 million and R50 million,** then in terms of the DTI codes, you are classified as a Qualifying Small Enterprise (QSE) and you claim a specific B-BBEE level based on any 4 of the 7 elements

of the B-BBEE score-card, please include your B-BBEE certificate in your submission as confirmation of your status. Or if the Supplier is a QSE with More than 51% black owned, they can submit an affidavit (Appendix E).

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

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

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

4. **The supplier to furnish proof to the procurement department as required in the Fourth Schedule of the Income Tax Act. 58 of 1962** whether a supplier of service is to be classified as an “employee”, “personal service provider” or “labour broker”. Failure to do so will result in the supplier being subject to employee’s tax.

5. **No payments can be made to a vendor until the** vendor has been registered / updated, and no vendor can be registered / updated until the vendor application form, together with its supporting documentation, has been received and processed. No payments can be made to a vendor until the vendor has met / comply with the procurement requirements.

6. From 01 May 2015 only B-BBEE certificates issued by SANAS accredited verification agencies will be valid.

## PROTECTION OF PERSONAL INFORMATION

- (ii) The following terms shall bear the same meaning as contemplated in Section 1 of the Protection of Person information act, No. 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.
- (iii) 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.
- (iv) The Parties acknowledge and agree that, in relation to personal information that will be processed pursuant to this Supplier Declaration Form, 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.
- (v) Transnet reserves all the rights afforded to it by the POPIA in the processing of any of its information as contained in this Supplier Declaration Form and the Respondent is required to comply with all prescripts as detailed in the POPIA relating to all information concerning Transnet.
- (vi) In completing this Supplier Declaration form, 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 the Respondent in their response to this Supplier Declaration Form for the purpose of registering the Respondent as a Transnet Vendor to facilitate for payment in the execution of the Agreement between Transnet and the Respondent and in accordance with any applicable law.
- (vii) Transnet further agrees that in submitting any information or documentation requested in this Supplier Declaration Form, the Respondent is consenting to the further processing of their personal information for the purpose of, but not limited to, risk assessment, assurances, vendor management, 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.
- (viii) 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.
- (ix) 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 Supplier Declaration Form (physically, through a computer or any other form of electronic communication).
- (x) 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.

- (xi) 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 their identity thereof in terms of the POPIA.
- (xii) 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.
- (xiii) In submitting any information or documentation requested in this Supplier Declaration Form, the Respondent is hereby consenting to the processing of their personal information for the purpose of this Supplier Declaration Form 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	
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- (xiv) 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 to it.
- (xv) The Respondent declares that the personal information submitted for the purpose of this Supplier Declaration Form 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

## Supplier Declaration Form

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

CSD Number (MAAA xxxxxxx):

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

Did your company previously operate under another name?					Yes		No	
If <b>YES</b> state, the previous details below:								
Trading Name								
Registered Name								
Company Registration No or ID No If a Sole Proprietor								
Form of Entity	CC	Trust	Pty Ltd	Limited	Partnership	Sole Proprietor		
	Non-profit	Personal Liability Co	State Owned Co	National Govt	Provincial Govt	Local Govt		
	Educational Institution	Specialised Profession	Financial Institution	Foreign International	Foreign Branch Office			

Your Current Company's VAT Registration Status	
VAT Registration Number	
If <b>Exempted from VAT registration</b> , state reason and submit proof from SARS in confirming the exemption status	
If your business entity is not VAT Registered, please submit a current original sworn affidavit (see example in Appendix I). Your Non-VAT Registration must be confirmed annually.	

Company Banking Details		Bank Name	
Universal Branch Code		Bank Account Number	



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

Company Contact Person Name	
Designation	
Telephone	
Email	

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

Most recent Financial Year's Annual Turnover	<R10Million		>R10Million <R50Million		>R50Million	
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Does your company have a valid B-BBEE certificate?							
What is your Broad Based BEE status (Level 1 to 9)							
Majority Race of Ownership							
% Black Ownership		% Black Women ownership		% Black Disabled person(s) ownership		% Black Youth ownership	
<b>Please Note:</b> Please provide proof of B-BBEE status as per Appendix V. If you qualify as an EME or QSE then provide an affidavit following the examples provided in Appendix III and IV respectively. If you have indicated Black Disabled person(s) ownership, then provide a <b>certified</b> letter signed by a physician, on the physician's letterhead, confirming the disability.							

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

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Stamp And Signature Of Commissioner Of Oaths			
Name		Date	
Signature		Telephone No	

**Appendix B**

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

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**Affidavit or Solemn Declaration**

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

Signature:

---

Designation:

---

Date:

---

**Commissioner of Oaths**

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

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

---

Commissioner of Oaths

## Appendix C

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

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### **Affidavit or Solemn Declaration**

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

Signature:

---

Designation:

---

Date:

---

### **Commissioner of Oaths**

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

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

---

Commissioner of Oaths

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

### SWORN AFFIDAVIT – B-BBEE EXEMPTED MICRO ENTERPRISE

I, the undersigned,

<b>Full Name &amp; Surname</b>	
<b>Identity Number</b>	

Hereby declare under oath as follows:

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

<b>Enterprise Name</b>	
<b>Trading Name</b>	
<b>Registration Number</b>	
<b>Enterprise Address</b>	

3. I hereby declare under oath that:

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

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

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

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

**Deponent Signature:** \_\_\_\_\_

**Date:** \_\_\_\_\_

\_\_\_\_\_  
**Commissioner of Oaths**  
**Signature & stamp**

## Appendix E

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

### SWORN AFFIDAVIT – B-BBEE QUALIFYING SMALL ENTERPRISE

I, the undersigned,

<b>Full Name &amp; Surname</b>	
<b>Identity Number</b>	

Hereby declare under oath as follows:

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

<b>Enterprise Name</b>	
<b>Trading Name</b>	
<b>Registration Number</b>	
<b>Enterprise Address</b>	

3. I hereby declare under oath that:

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

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

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

100% black owned	<b>Level One</b> (135% B-BBEE procurement recognition)	
------------------	--	--

More than 51% black owned	<b>Level Two</b> (125% B-BBEE procurement recognition)	
---------------------------	--	--

5. I know and understand the contents of this affidavit and I have no objection to take the prescribed oath and consider the oath binding on my conscience and on the owners of the enterprise which I represent in this matter.

6. The sworn affidavit will be valid for a period of 12 months from the date signed by commissioner.

**Deponent Signature:** \_\_\_\_\_

**Date:** \_\_\_\_\_

\_\_\_\_\_  
**Commissioner of Oaths**  
**Signature & stamp**