

Transnet Port Terminals (TPT)
an Operating Division of TRANSNET SOC LTD
[hereinafter referred to as Transnet]
[Registration No. 1990/000900/30]

REQUEST FOR PROPOSAL [RFP] [SERVICES]

FOR THE PROVISION OF DEDICATED EMPLOYEE STAFF TRANSPORT SERVICES FOR THE CAPE TOWN PORT TERMINAL FOR A PERIOD OF 3 MONTHS.

RFP NUMBER	iCLM CT 494/TPT
ISSUE DATE:	28 December 2022
CLOSING DATE:	10 January 2023
CLOSING TIME:	14:00 PM

BID VALIDITY PERIOD: **180 Business Days from Closing Date**

Note to the bidders:

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

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

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

SCHEDULE OF BID DOCUMENTS

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RFP ANNEXURE:**ANNEXURE A****MASTER AGREEMENT**

**RFP FOR THE PROVISION OF DEDICATED STAFF TRANSPORT SERVICES FOR TRANSNET LTD
(REG.NO. 1990/000900/30) OPERATING AS TRANSNET PORT TERMINALS HEREINAFTER REFERRED TO AS ("TPT") AT THE PORT OF CAPE TOWN FOR A PERIOD OF THREE (3) MONTHS**

SECTION 1: SBD1 FORM

PART A

INVITATION TO BID

YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF TRANSNET PORT TERMINALS, A DIVISION TRANSNET SOC LTD							
BID NUMBER:	iCLM CT 494/TPT	ISSUE DATE:	28 Dec 2022	CLOSING DATE:	10 Jan 2023	CLOSING TIME:	14:00PM
DESCRIPTION	RFP FOR THE PROVISION OF DEDICATED STAFF TRANSPORT SERVICES FOR TRANSNET SOC LTD (REG.NO. 1990/000900/30) OPERATING AS TRANSNET PORT TERMINALS (HEREINAFTER REFERRED TO AS "TPT") AT THE PORT OF CAPE TOWN FOR A PERIOD OF THREE (3) MONTHS.						
BID RESPONSE DOCUMENTS SUBMISSION							
RESPONDENTS ARE TO UPLOAD THEIR BID RESPONSE PROPOSALS ONTO THE TRANSNET SYSTEM AGAINST EACH TENDER SELECTED (please refer to section 2, paragraph 3 for a detailed process on how to upload submissions):							
transnetetenders.azurewebsites.net							
BIDDING PROCEDURE ENQUIRIES MAY BE DIRECTED TO				TECHNICAL ENQUIRIES MAY BE DIRECTED TO:			
CONTACT PERSON	Thizeka Mpengezi			CONTACT PERSON	Thizeka Mpengezi		
TELEPHONE NUMBER	021 449 3169			TELEPHONE NUMBER	021 449 3169		
FACSIMILE NUMBER	N/A			FACSIMILE NUMBER	N/A		
E-MAIL ADDRESS	Thizeka.mpengezi@transnet.net			E-MAIL ADDRESS	Thizeka.mpengezi@transnet.net		
SUPPLIER INFORMATION							
NAME OF BIDDER							
POSTAL ADDRESS							
STREET ADDRESS							
TELEPHONE NUMBER	CODE			NUMBER			
CELLPHONE NUMBER							
FACSIMILE NUMBER	CODE			NUMBER			
E-MAIL ADDRESS							
VAT REGISTRATION NUMBER							
SUPPLIER COMPLIANCE STATUS	TAX COMPLIANCE SYSTEM PIN:			OR	CENTRAL SUPPLIER DATABASE	UNIQUE REGISTRATION REFERENCE NUMBER: MAAA	
B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE	TICK APPLICABLE BOX] <input type="checkbox"/> Yes <input type="checkbox"/> No			B-BBEE STATUS LEVEL SWORN AFFIDAVIT		[TICK APPLICABLE BOX] <input type="checkbox"/> Yes <input type="checkbox"/> No	

Respondent's Signature

Date & Company Stamp

[A B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE/ SWORN AFFIDAVIT (FOR EMES & QSEs) MUST BE SUBMITTED FOR PURPOSES OF COMPLIANCE WITH THE B-BBEE ACT]			
2 ARE YOU THE ACCREDITED REPRESENTATIVE IN SOUTH AFRICA FOR THE GOODS /SERVICES /WORKS OFFERED? Yes No <input type="checkbox"/> [IF YES ENCLOSE PROOF] <input type="checkbox"/>	3 ARE YOU A FOREIGN BASED SUPPLIER FOR THE GOODS /SERVICES /WORKS OFFERED? Yes No <input type="checkbox"/> [IF YES, ANSWER QUESTIONNAIRE BELOW] <input type="checkbox"/>		
QUESTIONNAIRE TO BIDDING FOREIGN SUPPLIERS			
IS THE ENTITY A RESIDENT OF THE REPUBLIC OF SOUTH AFRICA (RSA)?			YES NO <input type="checkbox"/> YES <input type="checkbox"/> NO
DOES THE ENTITY HAVE A BRANCH IN THE RSA?			<input type="checkbox"/> YES <input type="checkbox"/> NO
DOES THE ENTITY HAVE A PERMANENT ESTABLISHMENT IN THE RSA?			<input type="checkbox"/> YES <input type="checkbox"/> NO
DOES THE ENTITY HAVE ANY SOURCE OF INCOME IN THE RSA?			<input type="checkbox"/> YES <input type="checkbox"/> NO
IS THE ENTITY LIABLE IN THE RSA FOR ANY FORM OF TAXATION?			<input type="checkbox"/> YES <input type="checkbox"/> NO
IF THE ANSWER IS "NO" TO ALL OF THE ABOVE, THEN IT IS NOT A REQUIREMENT TO REGISTER FOR A TAX COMPLIANCE STATUS SYSTEM PIN CODE FROM THE SOUTH AFRICAN REVENUE SERVICE (SARS) AND IF NOT REGISTER AS PER 1.3 BELOW.			

PART B
TERMS AND CONDITIONS FOR BIDDING

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

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

SIGNATURE OF BIDDER:

CAPACITY UNDER WHICH THIS BID IS SIGNED:

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

DATE:

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

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

DESCRIPTION	RFP FOR THE PROVISION OF DEDICATED STAFF TRANSPORT SERVICES FOR TRANSNET SOC LTD (REG.NO. 1990/000900/30) OPERATING AS TRANSNET PORT TERMINALS (HEREINAFTER REFERRED TO AS "TPT") AT THE PORT OF CAPE TOWN FOR A PERIOD OF THREE (3) MONTHS
TENDER ADVERT	All Transnet tenders are advertised on the National Treasury's e-Tender Publication Portal and the Transnet website. Should one of these media (i.e. National Treasury's e-Tender Publication Portal or Transnet website) not be available, bidders are advised to check on the other media for advertised tenders.
RFP DOWNLOADING	<p>This RFP may be downloaded directly from National Treasury's e-Tender Publication Portal at www.etenders.gov.za free of charge.</p> <p>To download RFP and Annexures:</p> <ul style="list-style-type: none"> Click on "Tender Opportunities". Select "Advertised Tenders"; In the "Department" box, select Transnet SOC Ltd. <p>Once the tender has been located in the list, click on the "Tender documents" tab and process to download all uploaded documents.</p> <p>The RFP may also be downloaded from the Transnet Portal at https://transnetetenders.azurewebsites.net (please use Google Chrome to access Transnet link/site) free of charge (refer to section 2, paragraph 3 below for detailed steps)</p>
COMMUNICATION	<p>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 finalizing their bid submissions for any changes or clarifications to the RFP.</p> <p>Transnet will not be held liable if Bidders do not receive the latest information regarding this RFP with the possible consequence of either being disadvantaged or disqualified as a result thereof.</p>
BRIEFING SESSION	N/A
CLOSING DATE	<p>14:00 pm on Tuesday , 10 January 2023</p> <p>Bidders must ensure that bids are uploaded timeously onto the system. As a general rule, if a bid is late, it will not be accepted for consideration.</p> <p>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.</p>
VALIDITY PERIOD	180 Business Days from Closing Date

	<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

N/A

3 PROPOSAL SUBMISSION

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

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

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

4 RFP INSTRUCTIONS

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

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

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

5 JOINT VENTURES OR CONSORTIUMS

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

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

6 COMMUNICATION

- 6.1 For specific queries relating to this RFP, an RFP Clarification Request Form should be submitted onto the system and to [Thizeka.mpengezi@transnet.net] before **10:00 am on 06 January 2023**, substantially in the form set out in Section 8 hereto. In the interest of fairness and transparency, Transnet's response to such a query will be published on the e-tender portal and Transnet website.
- 6.2 After the closing date of the RFP, a Respondent may only communicate with Thizeka Mpengezi, at telephone number 021 449 3169, email Thizeka.mpengezi@transnet.net on any matter relating to its RFP Proposal.
- 6.3 Respondents are to note that changes to its submission will not be considered after the closing date.
- 6.4 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.
- 6.5 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.

7 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.

8 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.

9 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.

10 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:

- 10.1 modify the RFP's Services and request Respondents to re-bid on any such changes.
- 10.2 reject any Proposal which does not conform to instructions and specifications which are detailed herein.
- 10.3 disqualify Proposals submitted after the stated submission deadline [closing date];
- 10.4 award a contract in connection with this Proposal at any time after the RFP's closing date;
- 10.5 award a contract for only a portion of the proposed Services which are reflected in the scope of this RFP;
- 10.6 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;
- 10.7 cancel the bid process.
- 10.8 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;
- 10.9 request audited financial statements or other documentation for the purposes of a due diligence exercise.
- 10.10 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;
- 10.11 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.
- 10.12 to award the business to the next ranked bidder, provided that he/she is still prepared to provide the required 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 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.

11 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.

12 SECURITY CLEARANCE

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

13 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.

14 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 System™

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" and converse with him. JACK has 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 a call or



Telegram
Speak to an Agent via Telegram

0800 003 056



086 551 4153



reportit@ethicshelpdesk.com



***120*0785980808#**

Respondent's Signature_____
Date & Company Stamp

SECTION 3: BACKGROUND, OVERVIEW AND SCOPE OF REQUIREMENTS

1. BACKGROUND

The Port of Cape Town container terminal plays a pivotal role in the regional economy. It is well positioned to facilitate the movement of cargo to and from the Asian, European, American and Australian markets. The Port of Cape Town is world renowned for the export of deciduous fruit, perishables and frozen products. Fruit and fresh produce are Cape Town's major export commodities, and these go via the break-bulk facilities. Now however, it has become increasingly common to transport these goods in containers through the Port of Cape Town. The Port of Cape Town operates on a 24/7 basis and therefore Transnet Port Terminals is seeking to collaborate with Service Provider who is able to provide reliable staff transportation.

TPT intends to award the staff transport services to one (1) Service Provider at the Port of Cape Town for period of THREE (3) MONTHS.

2. EXECUTIVE OVERVIEW

Whereas Transnet is seeking a partner(s) to provide solutions for its staff employees at the Port of Cape Town, it also seeks to improve its current processes for providing these Services to its end user community throughout its locations.

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

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

2.1 Transnet must receive reduced cost of acquisition and improved service benefits resulting from the Service provider's economies of scale and streamlined service processes.

2.2 Transnet must achieve appropriate availability that meets user needs while reducing costs for both Transnet and the chosen Supplier

2.3 Transnet must receive proactive improvements from the Service provider with respect to provision of Services and related processes.

2.4 Transnet's overall competitive advantage must be strengthened by the chosen Service provider's leading-edge technology and service delivery systems.

2.5 Transnet end users must be able to rely on the chosen Service provider's personnel for service enquiries, recommendations and substitutions.

2.6 Transnet must reduce costs by streamlining its acquisition of Services, including managed service processes on a Group basis.

3. SCOPE OF REQUIREMENTS

To provide transportation services for Transnet Port Terminal's employees during night shifts, from their designated residential address and/or areas to their place of work i.e., Cape Town Container Terminal (CTCT)

This service will be rendered in the morning (morning shift), during evening (night shift) on weekdays, as well as on public holidays from the areas mentioned below (refer section 2.4 for designated routes) in line with. TPT shift patterns including ad hoc requests outside of the TPT shift pattern.

The Service Provider should ensure that the employees are:

Transported on time via the agreed vehicles and in a safe manner taking into account all aspects of safety associated to the transportation of staff.

Dropped off and picked up on agreed times as stipulated by TPT.

Employees should be dropped off at the workplace 15 minutes prior to the commencement of shift (**see below for shift patterns**) and collected at the workplace 10 minutes after the shift has been completed.

The Service Provider shall ensure that the first TPT employee is collected on time to allow for sufficient time for other collections and the transport time to the terminal. As an example, for the 06H00 shift, the first employee should be collected at approximately 04H30; for the 14H00 shift the first employee should be collected at approximately 12h30 and for the 22H00 shift, the first employee should be collected at approximately 20H30.

- Door-to-door service.
- Contract covers fares only, which will be paid per trip.
- TPT has the right to cancel all collection requests within 2 hours from time of collection.
- Maintenance / service & repair of vehicles will be for the supplier's own costs and not for TPT account.

The Service Provider will be required to operate on a 24/7 basis during the festive season (December /January) to support TPT's 24/7 operation during this period.

The service provider will be required to supply a 13-seater-passenger carrying capacity vehicle to shuttle employees from the Cape Town station to the Port and vice versa as and when required and will not form part of the daily staff transport service.

- Supplying additional vehicles to accommodate for the afternoon shift during the December/January festive period whereby staff transport is available on all shifts (24/7 Transport).
- TPT/Staff events within the Western Cape (including to and from Saldanha).
- Year- end functions;
- Funerals / memorial services to various locations in the Eastern Cape.

2.1 SPECIAL AD HOC REQUIREMENTS

The Service Provider will further be required to support TPT in ad hoc requests for transportation of staff whereby TPT will request an additional quotation from the Service Provider(s) and if satisfied with the quoted price, such quotation will be accepted for but not limited to the following services:

Supplying of a 13-seater- passenger carrying capacity bus to shuttle operational staff to and from TPT.

2.2 GENERAL REQUIREMENTS

- The vehicles required must be reliable have legal carrying capacity to transport the number of staff i.e. 13 seater- passenger carrying vehicles (excluding driver).
- All vehicles supplied should be designed and manufactured for passenger carrying/ passenger transportation and not vehicles that are aftermarket converted into passenger carrying vehicles.
- Time Management is critical as it can have an impact on the productivity levels of TPT should employees arrive late and therefore Service Provider should ensure that time is of the essence.
- Service Provider to provide feedback in writing to TPT for all the challenges they are faced with TPT staff during the execution of the services.
- Service Provider will be required to have a supervisor per Terminal on-site after completion of each shift when employees are to be taken home to ensure that vehicles are loaded correctly as per the designated routes and to ensure the smooth flowing of the transportation service.
- The Service Provider will further be required to attend a monthly Service Level Agreement meeting whereby all issues for the previous month will be addressed to ensure that a resolution is obtained.
- The Service Provider to ensure that daily vehicle inspections are completed and any vehicle, which is identified as being a risk, should not be utilized for the transportation of staff.
- TPT will perform ad hoc inspections to verify that the vehicles being utilized is safe and 'fit for purpose';
- TPT will supply the Service Provider with a list of employee names to be collected at their residence, at the following times:

SHIFT	Collection List / Pick-up list to be submitted to Service Provider by:
Normal shift (Monday to Friday)	17H00 on Monday (start of the week)
Weekend work (Saturday & Sunday)	16H00 on Friday
Public Holidays	16H00 on the day prior to the public holiday

The Service Provider will be required to filter the collection list and group the employees in their respective residential areas as per the route allocation for collections.

The Service Provider will issue each route with a waybill, which will reflect all details i.e. Route/date/shift/area and employee's names, addresses and contact details.

The Service Provider will ensure that a trip register/waybill gets signed after each delivery by the TPT shift supervisor on duty or Operations sign on office or TPT nominated employee so that accurate records are maintained for all drop offs whereby copies should be attached to the monthly invoices as proof of delivery/ services rendered.

TPT will further provide a confirmation with a collection list of all employees required to be collected at the Port to be delivered to their residence at the end of each 12Hr shift. The collection list will be provided to the service provider two (2) hours after shift commences. Service Provider Service Provider

The route layout shall be agreed upon with the successful Respondents at award of business. The successful Respondents' drivers would need to conform to the agreed route.

2.3 SHIFTS IN OPERATION AND TECHNICAL DEPARTMENT

TPT does not guarantee that the information stated in the tables below (2.3.1; 2.3.2; 2.3.3) would be accurate at the time of intent. The information stated below is an indicative and is subject to change based on the business demands. It should be noted that where it is stipulated 'transport required' it is for those employees coming to work as well as for those employees going home.

2.2.1 DAILY

SHIFTS	START	END
Morning	05h45 (transport required)	14h15
Afternoon	13h45	22h15 (transport required)
Night	21h45 (transport required)	06h15 (transport required)

2.3.2 WEEKEND

Day	05h45 (transport required)	18h15 (transport required)
Night	17h45 (transport required)	06h15 (transport required)

2.3.3. PUBLIC HOLIDAY

SHIFT	START	END
Morning	05h45 (transport required)	14h15 (transport required)
Afternoon	13h45 (transport required)	22h15 (transport required)
Night	21h45 (transport required)	06h15 (transport required)

2.3.4 SERVICE REQUIREDHours of Transport: Weekdays

Transport will be required but not limited to the following times:

- **Daily (Morning Shift): Arrival 05:45 (shift commencement)**

(Collect at the employee's residential address from 04H30 – to drop off at the Port 15 minutes prior to shift start)

- **Daily (Morning Shift): Departure 06:15 (Shift completion)**

(Collect at the Port from 06H15 – and depart at 06H25 to drop off at the employee's residence)

- **Daily (Afternoon Shift): Arrival 13:45 (Shift commencement)**

(Transport required for this shift is not guaranteed and may change at the time of award)

(Collect at the employee's residential address from 12H30 – to drop off at the Port 15 minutes prior to the shift start)

- **Daily (Afternoon Shift): Departure 14:15 (Shift completion)**

(Transport required for this shift is not guaranteed and may change at the time of award) (Collect at the Port from 22:15 to depart from 22H30 – to drop off at the employee's residence.)

- **Daily (Night Shift): Arrival 21H45 (shift commencement)**

(Collect at the employee's residential address from 20H30 – to drop off at the Port 15 minutes prior to shift start)

- **Daily (Night Shift): Departure 22H15 (shift completion)**

(Collect at the Port from 22H15 – and depart at 22H25 to drop off at the employee's residence)

- Weekends (Morning Shift): Arrival 05:45 (shift commencement)

(Collect at the employee's residential address from 04H30 – to drop off at the Port 15mins prior to shift start)

- **Weekend (Morning Shift): Departure 06:15 (Shift completion)**

(Collect at the Port from 06H15 – and depart at 06H25 to drop off at the employee's residence)

- **Weekends (Night Shift): Arrival 17:45 (shift commencement)**

(Collect at employee's residential address from 16H30 – to drop off at the Port 15 minutes prior to shift start)

- **Weekends (Night Shift): Departure 18:15 (Shift completion)**

(Collect at the Port from 18H15 – and depart at 18H25 to drop off at the employee's residence)

- Public Holidays – please refer to the daily shift pattern above.

2.3 (a) DESIGNATED ROUTES PER TERMINAL

No.	TRIP DETAILS	NUMBER OF VEHICLES CONTAINER TERMINAL (A)
1	KRAAIFONTEIN (Durbanville, Postville, Potsdien)	Three
2	KUILSRIVER (Northpine / Brackenfell)	Two
3	NORTHERNS (Bellville, Parow, Goodwood)	Two
4	PARKLANDS (Joe Slovo, Table View)	One
5	MILNERTON (Sand drift)	One
6	GUGULETHU (Nyanga, Heideveld, Bonteheuwel)	One
7	PHILLIPI (Samora, Mandalay)	One
8	LANGA	One
9	MITCHELLS PLAIN (Surrey Estate, Strandfontein)	One
10	SOUTHERN SUBURBS (Athlone, Belgravia, Retreat, Sea Point)	One
11	KHAYALETISHA (SITE C: Luzuko, Mandalay, Kwezi park – SITE B: Site B, Khayelitsha, Green point - LITHA PARK – Litha park, Kuyasa , Harare. Ndlovini, Swart klip – MACASSAR: Graceland, Town Two, Makhaya, Mandela Park, Kanini, Makhaza, Zwezwe	Four
TOTAL NUMBER OF VEHICLES		18

2.4 CRITICAL REQUIREMENTS

- The Respondent is required to provide commitment that they are able to provide a minimum pool of Eighteen (18) vehicles (that are not older than four (4) years) either owned or leased which complies with the following:
 - i) All vehicles to be fitted with GPS/Tracker systems (supporting documents to be provided)
 - ii) Vehicles must have a minimum seating capacity of 13 passenger seats (excluding driver) which should not be modified / converted into passenger carrying vehicles.
- Vehicle to be licensed, registered and roadworthy with certified (supporting documents to be provided) copies of motor vehicle registration/ license discs & or roadworthy certificate
- The Respondent must indicate if the vehicles will be leased or owned

The Respondent must provide a minimum of two (2) trade reference letters from the Respondents' clients, where the service was provided in the last five (5) years. The trade references must illustrate evidence that the Respondent has experience in providing staff transportation.

- Each trade reference letter must be on the client's letterhead, which must clearly state the services rendered by the

Respondent, including and length of service (i.e., number of years), provided by the Respondent to the client.

- The Respondent is required to provide commitment that they will provide Transnet Port Terminals (TPT) with a valid Public Operating License (issued by the Western Cape Government, Transport and Public Works). Proof of application must be provided to TPT within one (1) week of the successful Respondent receiving a signed letter of award.

- Respondents to submit a comprehensive Business Continuity Plan, the following criteria must be included as a minimum: -

- i) Contingency labour work force per shift
- ii) Training
- iii) Transport contingency plan

- The Strike management plan is crucial. It defines the roles and responsibilities of the strike management team.

It should cover the following minimum information in the following categories: Pre-strike planning, during the strike, Post-strike review.

- i) List the strike management team and their contact details
- ii) Command Centre Operation
- iii) Communication protocols e.g., notifying customers and regular strike reports
- iv) Disciplinary process for illegally striking employees
- v) Strike Diary
- vi) Emergency Planning

- The Respondent is required to provide confirmation that a functional office within a 50km radius from the Port of Cape Town will be established within one (1) week of receiving the Letter of Award.

- The Respondent is required to provide their list of drivers and attach copies of their valid driver's licenses (code B/08),

with valid professional driver permits (PDP). The list must contain a minimum of (18) Drivers.

- The Respondent must submit proof of valid/active insurance cover i.e. General Liability/Public liability or Passenger Liability insurance, either by supplying a copy of the insurance policy or a letter from an underwriter confirming policy exists and that the maximum amount claimable is **R1m per incident**.

(a) OWNED VEHICLES

- The respondent must provide copies of the vehicle registration certificates (Form RC1) referencing the year model of vehicle; date of first registration as well as owner (responded should be listed as either owner or holder of the vehicle).

(b) LEASED VEHICLES

- Where the service provider leases the vehicles i.e. the vehicles are currently in the possession of the service provider in terms of an existing lease agreement;
- The successful service provider must submit the following additional document prior to commencement of services:
 - Certified copy of a duly endorsed and valid lease agreement, which provide a description of the vehicle being leased.
- The lease agreement should provide a description of the vehicles being leased

Should any information be outstanding, then the document will NOT be considered for evaluations.

2.5 ADDITIONAL REQUIREMENTS /INFORMATION

- All drivers should be medically fit and free from any ailments, which will require them to take medication and/or render them unfit to perform this function. (Medical certificates of all drivers to be provided).
- The Service Provider must be able to provide alternate drivers and vehicles.
- The Service Provider must have a detailed accident procedure in place.
- Projected total monthly trips

2.6 SAFETY

- Drivers to have a valid public driving permit, license, clean record, sober habits, medically fit (at least annual medicals), not afflicted with night blindness, no high-risk conditions (diabetes mellitus high BP, untreated epilepsy, nervous breakdown background).
- Service Provider should have an induction program whereby first aid training is included and supported by certificates issued by an accredited Service Provider.
- Service Provider must have a safety programme Standard Operating Procedures (SOP) in the event of punctures, breakdowns/vehicle inspection.
- Service Provider should engage in daily pre-drive checks vehicle and disinfection of all vehicles
- There should be a zero tolerance of any substance abuse i.e. alcohol, drugs etc. whereby random testing should/will take place including screening of body temperature.
- Service Provider to ensure that all drivers are equipped with hand sanitizers, safety clothing / PPE as required by TPT terminals viz reflective jackets, dust masks
- All vehicles should be fitted with serviceable fire extinguishers
- No loud music in transit
- No passengers allowed on trips other than TPT staff.
- The Service Provider will be subject to an ad hoc safety audit(s) and will be required to furnish TPT with a safety file.

2.7 COMPLIANCE WITH STATUTORY AND OTHER REQUIREMENTS

- Respondents shall comply with all laws, including without limitation, the following:
 - (a) All South African law which impacts on the Proposed Dedicated Staff Transport Agreement, a copy of which is included in the bid pack;
 - (b) Occupational Health & Safety Act 85 of 1993 ("OHSA");
 - (c) International Health Regulation Act 28 of 1974;
 - (d) Hazardous Substances Act 15 1973;
 - (e) The Compensation for Occupational Injuries and Disease Act, 1993 (Act No.130 of 1993);
 - (f) All material aspects of all applicable legislation, provincial ordinances and local authority by-laws, including all relevant regulations promulgated in terms thereof, which affects the Maritime business;
 - (g) The Basic Conditions of Employment Act No. 75 of 1997;
 - (h) Criminal Procedure Act No. 51 of 1977;
 - (i) National Ports Act No. 12 of 2005 and enabling legislation thereto, including the Port Rules;
 - (j) Control of Access to Public Premises and Vehicle Act, No. 53 of 1985;
 - (k) Legal Succession to the South African Transport Services Act No. 9 of 1989 (but excluding any tariff provided for in such regulations);
 - (l) Any other Transportation laws or directives that govern TPT's Transportation and Handling Services.
 - (m) Merchant Shipping Act No.57 of 1951, the Maritime Security Regulations 2004 read in conjunction with the International Ship and Port Facility Security Code and Maritime Occupational Safety Regulations (1994), as amended;
 - (n) Codes of Good Practice embodied in the Broad Based Black Economic Empowerment Act No. 53 of 2003.
 - (o) Customs and Excise Act No 91 of 1964; National Road Traffic Act and Regulations Act 93 of 1996 (as amended from time to time);
 - (p) The National Railway Safety Regulator Act No 16 of 2002,
 - (q) The Labor Relations Act No. 66 of 1995 and the Regulations thereto; and
 - (r) All TPT policies and procedures

4 GREEN ECONOMY / CARBON FOOTPRINT

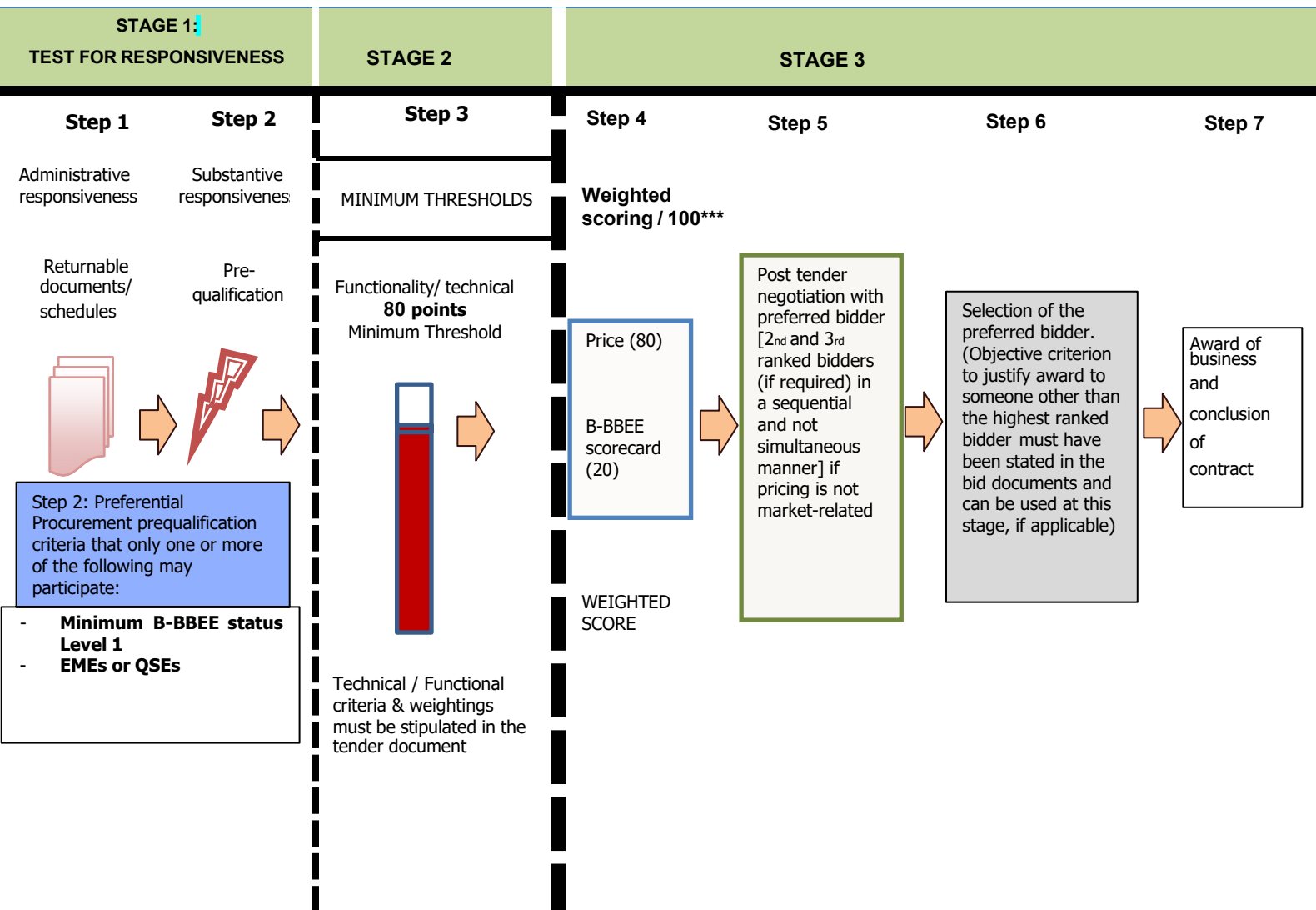
Transnet wishes to have an understanding of your company's position with regard to environmental commitments, including key environmental characteristics such as waste disposal, recycling and energy conservation. Please submit details of your entity's policies in this regard.

5 GENERAL SERVICE PROVIDER OBLIGATIONS

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

6 EVALUATION METHODOLOGY

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



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

6.1 STEP ONE: Test for Administrative Responsiveness

The test for administrative responsiveness will include the following:

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

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

6.2 STEP TWO: Test for Substantive Responsiveness to RFP

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

Check for substantive responsiveness	RFP Reference
<ul style="list-style-type: none"> Whether any general and legislation qualification criteria set by Transnet, have been met 	All sections including: Section 2 paragraphs, 2.2, 6, 11.2, General Bid Conditions clause 20
<ul style="list-style-type: none"> Whether the Bid contains a priced offer as prescribed in the pricing and delivery schedule 	Section 4
<ul style="list-style-type: none"> Whether the Bid materially complies with the scope and/or specification given 	All Sections
<ul style="list-style-type: none"> Whether any set prequalification criteria for preferential procurement have been met: <ul style="list-style-type: none"> minimum B-BBEE status level 1 only EMEs and/or QSEs may participate in this RFP 	Section 2 - Paragraph 6

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

6.3 STEP THREE: Minimum Threshold 80 points for Technical Criteria

TECHNICAL / FUNCTIONALITY EVALUATION			
Provision for Dedicated Staff Transport Services, For Transnet SOCLtd, Operating as Transnet Port Terminals ("TPT"), at the Cape Town Container Terminal, Port of Cape Town, for a period of THREE (3) MONTHS. RFP No.iCLM CT 494/TPT			
	CRITERIA	SCORE WEIGHTING (100 %)	SCORING INDEX
Technical/ Functionality	1 HAVE A POOL OF 18 VEHICLES. (Vehicles PRICING SCHEDULE C – ADHOC TRANSPORT PRICING/SCHEDULE C – ADHOC TRANSPORT must be 13-seater passenger carrying capacity and must not be older than FOUR (4) years from date of bid closure) Evidence: Bidders are required to provide the following supporting documents as evidence: (a) If Owned: Copies of the certificate of registration or valid license certificates in respect of each vehicle.(RC-1)Please take note, copies of the vehicle renewal disk will not be scored. (b) Existing Lease Agreement: 1. Copies of the certificate of registration or valid license certificates in respect of each vehicle.(RC-1)Please take note, copies of the vehicle renewal disk will not be scored. 2. Certified copy of a duly endorsed and valid lease agreement which sets out the details of each vehicle	30%	* Supporting documents for all 18 vehicles or more = 30% * Supporting documents for 15 -17 vehicles only = 25% *Supporting documents for 12 -14 vehicles only = 15% *Zero Supporting documents or supporting documents for less than 12 vehicles = 0%
	2 SERVICE PROVIDER MUST HAVE A MINIMUM OF 18 DRIVERS (drivers must have valid code EB [code8] driver's license and Professional Drivers Permits [PDP]) Evidence: -Certified copy of Code EB [code 8] drivers' licenses and valid Professional Driver's Permits [PDP]in respect of each driver listed. - Kindly note that bidders must submit valid, clear and legible copies of the driver's licenses.(Illegible: expired, unclear copies will not be taken into account when evaluating a bid.	30%	18 Drivers with valid driver's license & PDP = 30% 15 -17 Drivers with valid driver's license & PDP = 25% 12 - 14 Drivers with valid driver's license and PDP = 15% Less than 12 drivers with valid Driver's License and PDP = 0%
	3 HAVE ADEQUATE INSURANCE COVER Evidence A copy of a valid insurance policy or letter from an underwriter indicating the type of insurance cover i.e., Passenger Liability; 3rdParty Cover or General Liability Insurance whereby a claimant may claim up to R1 million per incident/ accident.	20%	Valid Active Insurance Policy/ Letter from underwriter which covers R1 million per incident = 20% Valid /Active Insurance Policy/ Letter from underwriter which covers between R500 000 - R999 999.99 per incident =15% Valid/ Active Insurance Policy/ Letter from underwriter which covers between R100 000 - R499 999.99 per incident =10% No Valid/ Active Insurance Policy/ Letter from underwriter which covers R100 000 or less per incident or zero insurance
	BUSINESS CONTINUITY PLAN Note: Business Continuity Plan refersto ONLY were the client's (Transnet's) staff is concerned.		

Continued

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4	<p>Bidders to submit a business continuity plan including the following criteria:</p> <ul style="list-style-type: none"> -Contingency labour work force per shift -Transport contingency plan <p>The strike management plan is crucial. It defines the roles and responsibilities of the strike management team. It should cover the following minimum information in the following categories: Pre-strike planning, during the strike, post-strike review.</p> <ul style="list-style-type: none"> -List the strike management team and their contact details -Command Centre operation & Communication protocols e.g., notifying customers and regular strike reports -Disciplinary process for illegally striking employees -Strike diary & Emergency planning. 	20%	<p>Contingency labour work force per shift (document to have the below as evidence:</p> <ul style="list-style-type: none"> i) Transport contingency plan ii) The strike management plan <ul style="list-style-type: none"> ii) Strike management team and their contact details iii) Command Centre operation & communication protocols iv) Disciplinary process v) Strike diary and emergency planning = 20% No/Incomplete Business Continuity Plan = 0%
	Technical Threshold	80 points	

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

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

6.4 STEP FOUR: Evaluation and Final Weighted Scoring

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

Evaluation Criteria	RFP Reference
• Commercial offer	Section 4

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

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

Where:

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

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

- B-BBEE - current scorecard / B-BBEE Preference Points Claims Form
- Preference points will be awarded to a bidder for attaining the B-BBEE status level of contribution in accordance with the table indicated in Section 4.1 of the B-BBEE Preference Points Claim Form.

6.5 SUMMARY: Applicable Thresholds and Final Evaluated Weightings

Thresholds	Minimum Threshold
Technical / functionality	80

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

6.6 STEP FIVE: Post Tender Negotiations (if applicable)

- Respondents are to note that Transnet may not award a contract if the price offered is not market-related. In this regard, Transnet reserves the right to engage in PTN with the view to achieving a market-related price or to cancel the tender. Negotiations will be done in a sequential manner i.e.:
 - first negotiate with the highest ranked bidder or cancel the bid, should such negotiations fail,
 - negotiate with the 2nd and 3rd ranked bidders (if required) in a sequential manner.

- In the event of any Respondent being notified of such short-listed/preferred bidder status, his/her bid, as well as any subsequent negotiated best and final offers (BAFO), will automatically be deemed to remain valid during the negotiation period and until the ultimate award of business.
- Should Transnet conduct post tender negotiations, Respondents will be requested to provide their best and final offers to Transnet based on such negotiations. Where a market related price has been achieved through negotiation, the contract will be awarded to the successful Respondent(s).

6.7 STEP SIX: Objective Criteria (if applicable)

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

- Geographical location.
 - Local Footprint (proximity) within 50km radius to the Port of Cape, with the provision of Utility bill or lease agreement.
 - Non-Existing Premises: Letter of Intent from the landlord that the office will be established within one week of award.
 - Where a Premises Exist: A certified copy of a valid/active signed Lease Agreement or Utility Bill to be provided as proof
- all Risks identified during a risk assessment exercise/probity check (which may be conducted by an authorised third party) that would be done to assess all risks, including but not limited to:
 - the financial stability of the bidder based on key ratio analysis, which would include, but not be limited to Efficiency, Profitability, Financial Risk, Liquidity, Acid Test, and Solvency.
 - a due diligence to assess functional capability and capacity. This could include a site visit.
 - A commercial relationship with a Domestic Prominent Influential Person (DPIP) or Foreign Prominent Public Official (FPPO) or an entity of which such person or official is the beneficial owner; and
 - Reputational and Brand risks

6.8 STEP SEVEN: Award of business and conclusion of contract

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

SECTION 4:**PRICING SCHEDULE A – NORMAL SHIFTS**

Please note that the below routes on all Pricing Schedules are not fixed and are subject to change as a result of various factors i.e., recruitment; relocation; operational requirements etc.

No	Trip Details	No of Vehicles Container Terminal(A)	Number of Trips per month(B)	Rate per trip Per vehicle(C)	Total Cost per month (AxBxC)(D)	Total Cost for 3 months (Dx3)
1	KRAAIFONTEIN (Durbanville, Postville, Potsdien)	3	124	R	R	R
2	KUILSRIVER (Northpine / Brackenfell)	2	124	R	R	R
3	NORTHERNS SUBURBS (Bellville, Parow, Goodwood)	2	124	R	R	R
4	PARKLANDS (Joe Slovo, Table View)	1	124	R	R	R
5	MILNERTON (Sand drift)	1	124	R	R	R
6	GUGULETHU (Nyanga, Heideveld, Bonteheuwel)	1	124	R	R	R
7	PHILLIPI (Samora, Mandalay)	1	124	R	R	R
8	LANGA	1	124	R	R	R
9	MITCHELLS PLAIN (Surrey Estate, Strandfontein)	1	124	R	R	R
10	SOUTHERN SUBURBS (Athlone, Belgravia, Retreat, Sea Point)	1	124	R	R	R
11	KHAYELITSHA (Macassar, Harare, Makassar – Litha Park /Mandalay, Sections, Site B, Site C – Ikhwezi Park)	4	124	R	R	R
	Total Price (before discount)			R	R	
	Less: Discount			R	R	
	TOTAL PRICE (exclusive of VAT)			R	R	
	VAT @ 15% (if applicable)			R	R	
	TOTAL PRICE (inclusive of VAT)			R	R	

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

Notes to Pricing:

- a) Respondents are to note that if the price offered by the highest scoring bidder is not market-related, Transnet may not award the contract to that Respondent. Transnet may

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negotiate a market-related price with the Respondent scoring the highest points or cancel the RFP;

- (i) 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.
- (ii) if the Respondent scoring the second highest points does not agree to a market-related price, negotiate a market-related price with the Respondent scoring the third highest points or cancel the RFP.

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

- b) Prices must be quoted in South African Rand inclusive of VAT.
- c) Any disbursement not specifically priced for will not be considered/accepted by Transnet.
- d) To facilitate like-for-like comparison bidders must submit pricing strictly in accordance with this pricing schedule and not utilise a different format. Deviation from this pricing schedule could result in a bid being declared non-responsive.
- e) Please note that should you have offered a discounted price(s), Transnet will only consider such price discount(s) in the final evaluation stage if offered on an unconditional basis.

15 PRICING SCHEDULE B – ADHOC TRANSPORT

No.	DESCRIPTION OF SERVICE	PRICE
1	<p>Supplying additional vehicles to accommodate for the afternoon shift during the December/January festive period whereby staff transport is available on all shifts (24/7 Transport).</p> <p>Note: The vehicles required must be reliable have legal carrying capacity to transport the number of staff i.e., 13 seater-passenger carrying vehicles (excluding driver).</p>	<p>R.....</p> <p>Price per trip</p>
2.	<p>TPT/Staff events within the Western Cape (including to and from Saldanha)</p> <p>Note: The vehicles required must be reliable have legal carrying capacity to transport the number of staff i.e., 13 seater-passenger carrying vehicles (excluding driver).</p>	<p>R.....</p> <p>Price per trip</p>
3.	<p>Year –end Functions</p> <p>Note: The vehicles required must be reliable have legal carrying capacity to transport the number of staff i.e., 13 seater-passenger carrying vehicles (excluding driver).</p>	<p>R.....</p> <p>Price per trip</p>
4.	<p>Funerals / memorial services to various locations in the Eastern Cape and other areas</p> <p>Note: The vehicles required must be reliable have legal carrying capacity to transport the number of staff i.e. 13 seater-passenger carrying vehicles (excluding driver). Service and price quoted must include two x drivers & a trailer for employee's luggage.</p>	<p>R.....</p> <p>Price per trip</p>

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5.	<p>Supplying of a 13-seater - passenger carrying capacity bus to shuttle operational staff to and from the quay side;</p> <p>Note: The vehicles required must be reliable have legal carrying capacity to transport the number of staff i.e., 23 to 46 seater-passenger carrying bus (excluding driver). Services and price quoted must be excluding driver and fuel (diesel) which will be provided by TPT.</p>	<p>R.....</p> <p>Price per month</p>
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a) Notes to Pricing:

- 3.1 The Respondents are requested to submit **one fixed price** for all routes listed in **Pricing Schedule A** above whereby TPT will remunerate the successful Service Provider per trip/per vehicle basis against the nominated routes. The Respondents are required to submit **various pricing / per line item** for **Pricing Schedule B** above whereby TPT will remunerate the successful Service Provider as per price quoted per line item.
- 3.2 **Only pricing schedule, A** will be utilized for the price evaluation and **not Pricing Schedule B.**
- 3.3 Prices must be quoted in South African Rand, exclusive of VAT and must be held valid for a period of 180 days from closing date of this RFP
- 3.4 To facilitate like-for-like comparison Respondents must submit pricing strictly in accordance with this price schedule and not utilize a different format. Deviation from this pricing schedule could result in a bid being declared non-responsive.
- 3.5 Prices shall be fixed for the duration of the contract.
- 3.6 TPT reserves the right to negotiate final prices with the preferred Respondents.
- 3.7 Prices should not be subject to variation, amendment or adjustment and should include all variables depicted in the scope of work i.e., Driver, fuel, consumables, vehicles, all variable hours of work etc.
- 3.8 Please note that should you have offered a discounted price(s), TPT will only consider such price discount(s) in the final evaluation stage if offered on an unconditional basis

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1. DISCLOSURE OF CONTRACT INFORMATION**PRICES TENDERED**

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

JOHANNESBURG STOCK EXCHANGE DEBT LISTING REQUIREMENTS

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

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

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

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

As per the Transnet Domestic Prominent Influential Persons (DPIP) and Foreign Prominent Public Officials (FPPO) and Related Individuals Policy available on Transnet website

<https://www.transnet.net/search/pages/results.aspx?k=FPIDP#k=DPIP>, Respondents are required to disclose any commercial relationship with a DPIP or FPPO (as defined in the Policy) by completing the following section:

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

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

2. SERVICE LEVELS

- 2.1** An experienced national account representative(s) is required to work with Transnet's procurement department. [No sales representatives are needed for individual department or locations]. Additionally, there shall be a minimal number of people, fully informed and accountable for this agreement.
- 2.2** Transnet will have monthly reviews with the Service provider's account representative on an on-going basis.
- 2.3** Transnet reserves the right to request that any member of the Service provider's team involved on the Transnet account be replaced if deemed not to be adding value for Transnet.
- 2.4** The Service provider guarantees that it will achieve an acceptable service level on the following measures:
- Random checks on compliance with quality
 - On-time delivery
- 2.5** The Service provider must provide a telephone number for customer service calls.
- 2.6** Failure of the Service provider to comply with stated service level requirements will give Transnet the right to cancel the contract in whole, without penalty to Transnet, giving 30 [thirty] calendar days' notice to the Service provider of its intention to do so.

Acceptance of Service Levels:

YES		NO	
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3. RISK

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

3.1 Quality and specification of Services delivered:

3.2 Continuity of supply:

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

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

SIGNED at _____ on this _____ day of _____ 20____

SIGNATURE OF WITNESSES

ADDRESS OF WITNESSES

1 _____

Name _____

2 _____

Name _____

SIGNATURE OF RESPONDENT'S AUTHORISED REPRESENTATIVE: _____

NAME: _____

DESIGNATION: _____

SECTION 5: PROPOSAL FORM AND LIST OF RETURNABLE DOCUMENTS

I/We _____

[name of entity, company, close corporation or partnership] of [full address]

carrying on business trading/operating as

represented by _____

in my capacity as _____

being duly authorised thereto by a Resolution of the Board of Directors or Members or Certificate of Partners, dated

_____ to enter into, sign execute and complete any documents relating to this proposal and any

subsequent Agreement. The following list of persons are hereby authorised to negotiate on behalf of the

abovementioned entity, should Transnet decide to enter into Post Tender Negotiations with highest ranked bidder(s).

FULL NAME(S)

CAPACITY

SIGNATURE

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

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

- (i) Master Agreement (which may be subject to amendment at Transnet's discretion if applicable);

Respondent's Signature_____
Date & Company Stamp

- (ii) General Bid Conditions; and
- (iii) any other standard or special conditions mentioned and/or embodied in this Request for Proposal.

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

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

I/We further agree that if, after I/we have been notified of the acceptance of my/our Proposal, I/we fail to enter into a formal contract if called upon to do so, or fail to commence the provision of 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 Services due to non-performance by ourselves, , etc.

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

ADDRESS FOR NOTICES

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

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

Name of Entity:

Facsimile: _____

Address: _____

NOTIFICATION OF AWARD OF RFP

As soon as possible after approval to award the contract(s), the successful Respondent [**Service provider**] will be informed of the acceptance of its Proposal. Unsuccessful Respondents will be advised in writing of the name of the

successful Supplier/Service provider and the reason as to why their Proposals have been unsuccessful, for example, in the category of price, delivery period, quality, B-BBEE status or for any other reason.

VALIDITY PERIOD

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

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

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

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

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

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

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

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

a) Mandatory Returnable Documents

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

MANDATORY RETURNABLE DOCUMENTS	SUBMITTED [Yes/No]
SECTION 1: SBD1 Form	
SECTION 4: Pricing and Delivery Schedule	
Valid proof of Respondent's compliance to B-BBEE requirements stipulated in Section 9 of this RFP EXEMPTED MICRO ENTERPRISES (EMEs) AND/OR QUALIFYING SMALL ENTERPRISES(QSEs); WITH A MINIMUM B-BBEE STATUS LEVEL 1	

b) Returnable Documents Used for Scoring

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

RETURNABLE DOCUMENTS USED FOR SCORING	SUBMITTED [Yes or No]
<p>HAVE A POOL OF 18 VEHICLES. (Vehicles PRICING SCHEDULE C –ADHOC TRANSPORT PRICING/SCHEDULE C – ADHOC TRANSPORT must be 13-seater passenger carrying capacity and must not be older than FOUR (4) years from date of bid closure)Bidders are required to provide the following supporting documents as evidence:</p> <p>Evidence:</p> <p>- Bidders are required to provide the following supporting documents as evidence:</p> <p>(a) If Owned: Copies of the certificate of registration or valid license certificates in respect of each vehicle.(RC-1)Please take note, copies of the vehicle renewal disk will not be scored.</p> <p>(b) Existing Lease Agreement: 1. Copies of the certificate of registration or valid license certificates in respect of each vehicle.(RC-1)Please take note, copies of the vehicle renewal disk will not be scored.</p> <p>2. Certified copy of a duly endorsed and valid lease agreement which sets out the details of each vehicle</p>	
<p>SERVICE PROVIDER MUST HAVE A MINIMUM OF 18 DRIVERS</p> <p>Certified copy of Code EB [code 8] drivers' licenses and valid Professional Driver's Permits [PDP]in respect of each driver listed.</p> <p>- Kindly note that bidders must submit valid, clear and legible copies of the driver's licenses.(Illegible:expired,unclear copies will not be taken into account when evaluating a bid.</p>	
<p>HAVE ADEQUATE INSURANCE COVER</p> <p>A copy of a valid insurance policy or letter from an underwriter indicating the type of insurance cover i.e., Passenger Liability: 3rd Party Cover or General Liability Insurance whereby a claimant may claim up to R1million per incident/ accident.</p>	
<p>BUSINESS CONTINUITY PLAN</p> <p>Note: Business Continuity Plan refers to ONLY where the client's (Transnet's) staff is concerned.</p> <p>Bidders to submit a business continuity plan including but not limited to the following criteria:</p> <p>-Contingency labour work force per shift</p> <p>-Transport contingency plan</p> <p>The strike management plan is crucial. It defines the roles and responsibilities of the strike management team. It should cover the following minimum information in the following categories: Pre-strike planning, during the strike, post-strike review.</p> <p>-List the strike management team and their contact details</p> <p>-Command centre operation & Communication protocols e.g., notifying customers and regular strike reports</p> <p>-Disciplinary process for illegally striking employees</p> <p>-Strike diary & Emergency planning.</p>	

Respondent's Signature_____
Date & Company Stamp

c) Essential Returnable Documents:

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

ESSENTIAL RETURNABLE DOCUMENTS & SCHEDULES	SUBMITTED [Yes or No]
In the case of Joint Ventures, a copy of the Joint Venture Agreement or written confirmation of the intention to enter into a Joint Venture Agreement	
Latest Financial Statements signed by your Accounting Officer or latest Audited Financial Statements plus 2 previous years	
Local Footprint (proximity) within 50km Radius to the port of Cape Town copy of the Utility Bill, or Lease agreement Non- Existing Premises: Letter of Intent from the landlord that the office will be established within one week of award. Where a Premises Exist: A certified copy of a valid/Active signed Lease Agreement or Utility Bill to be provided as proof.	
SECTION 5: Proposal Form and List of Returnable documents	
SECTION 6: Certificate Of Acquaintance with RFP, Terms & Conditions & Applicable Documents	
SECTION 7: RFP Declaration and Breach of Law Form	
SECTION 8: B-BBEE Preference Claim Form	
SECTION 9: SBD 5 (NIPP)	
SECTION 10: Protection of Personal Information	
Annexure A: Master Agreement	

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.

 Respondent's Signature

 Date & Company Stamp

SIGNED at _____ on this _____ day of _____ 20____

SIGNATURE OF WITNESSES

ADDRESS OF WITNESSES

1 _____

Name _____

2 _____

Name _____

SIGNATURE OF RESPONDENT'S AUTHORISED REPRESENTATIVE: _____

NAME: _____

DESIGNATION: _____

Respondent's Signature_____
Date & Company Stamp

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

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

1	Transnet's General Bid Conditions
2	Master Agreement
3	Transnet's Supplier Integrity Pact

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: _____

Respondent's Signature

Date & Company Stamp

SECTION 7: RFP DECLARATION AND BREACH OF LAW FORM

NAME OF ENTITY: _____

We _____ do hereby certify that:

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

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

ADDRESS:

Respondent's Signature_____
Date & Company Stamp

Indicate nature of relationship with Transnet:

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

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

BIDDER'S DISCLOSURE (SBD4)

12 PURPOSE OF THE FORM

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

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

13 Bidder's declaration

- 13.1 Is the bidder, or any of its directors / trustees / shareholders / members / partners or any person having a controlling interest¹ in the enterprise, employed by the state?

YES/NO

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

Full Name	Identity Number	Name of State institution

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

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

person who is employed by the procuring institution?

YES/NO

13.2.1. If so, furnish particulars:

.....
.....

13.3 Does the bidder or any of its directors / trustees / shareholders / members / partners or any person having a controlling interest in the enterprise have any interest in any other related enterprise whether or not they are bidding for this contract?

YES/NO

13.3.1. If so, furnish particulars:

.....
.....

14 DECLARATION

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

14.1 I have read and I understand the contents of this disclosure;

14.2 I understand that the accompanying bid will be disqualified if this disclosure is found not to be true and complete in every respect.

14.3 The bidder has arrived at the accompanying bid independently from, and without consultation, communication, agreement or arrangement with any competitor. However, communication between partners in a joint venture or consortium² will not be construed as collusive bidding.

14.4 In addition, there have been no consultations, communications, agreements or arrangements with any competitor regarding the quality, quantity, specifications, prices, including methods, factors or formulas used to calculate prices, market allocation, the intention or decision to submit or not to submit the bid, bidding with the intention not to win the bid and conditions or delivery particulars of the products or services to which this bid invitation relates.

² Joint venture or Consortium means an association of persons for the purpose of combining their expertise, property, capital, efforts, skill and knowledge in an activity for the execution of a contract.

- 14.5 The terms of the accompanying bid have not been, and will not be, disclosed by the bidder, directly or indirectly, to any competitor, prior to the date and time of the official bid opening or of the awarding of the contract.
- 14.6 There have been no consultations, communications, agreements or arrangements made by the bidder with any official of the procuring institution in relation to this procurement process prior to and during the bidding process except to provide clarification on the bid submitted where so required by the institution; and the bidder was not involved in the drafting of the specifications or terms of reference for this bid.
- 14.7 I am aware that, in addition and without prejudice to any other remedy provided to combat any restrictive practices related to bids and contracts, bids that are suspicious will be reported to the Competition Commission for investigation and possible imposition of administrative penalties in terms of section 59 of the Competition Act No 89 of 1998 and or may be reported to the National Prosecuting Authority (NPA) for criminal investigation and or may be restricted from conducting business with the public sector for a period not exceeding ten (10) years in terms of the Prevention and Combating of Corrupt Activities Act No 12 of 2004 or any other applicable legislation.

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

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

BREACH OF LAW

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

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

NATURE OF BREACH:

DATE OF BREACH: _____

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

SIGNED at _____ on this _____ day of _____ 20_____

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

Respondent's Signature_____
Date & Company Stamp

SECTION 8: B-BBEE PREFERENCE POINTS CLAIM FORM

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

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

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

1. GENERAL CONDITIONS

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

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

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

1.3 Preference points for this bid shall be awarded for:

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

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

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

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

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

2. DEFINITIONS

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

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

3. POINTS AWARDED FOR PRICE

3.1 THE 80/20 PREFERENCE POINT SYSTEMS

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

$$P_s = \left(\frac{P_t - P_{\min}}{P_{\min}} \right) \times 80/20$$

Where

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

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

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

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

8	2
Non-compliant contributor	0

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

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

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

5. BID DECLARATION

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

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

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

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

7. SUB-CONTRACTING

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

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

(Tick applicable box)

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

7.1.1 If yes, indicate:

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

(Tick applicable box)

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

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

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

8. DECLARATION WITH REGARD TO COMPANY/FIRM

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

8.2 VAT registration number:.....

8.3 Company registration number:.....

8.4 TYPE OF COMPANY/ FIRM

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

[TICK APPLICABLE BOX]

8.5 DESCRIBE PRINCIPAL BUSINESS ACTIVITIES

.....

8.6 COMPANY CLASSIFICATION

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

[TICK APPLICABLE BOX]

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

Respondent's Signature_____
Date & Company Stamp

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

WITNESSES	
1.
2.

..... SIGNATURE(S) OF BIDDERS(S)	
DATE:
ADDRESS:

Respondent's Signature

Date & Company Stamp

SECTION 9: SBD 5

This document must be signed and submitted together with your bid

THE NATIONAL INDUSTRIAL PARTICIPATION PROGRAMME**INTRODUCTION**

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

1. PILLARS OF THE PROGRAMME

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

Respondent's Signature

Date & Company Stamp

2. REQUIREMENTS OF THE DEPARTMENT OF TRADE AND INDUSTRY

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

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

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

4. PROCESS TO SATISFY THE NIPP OBLIGATION

- 4.1 Once the successful bidder (contractor) has made contact with and furnished the DTI with the information required, the following steps will be followed:
- a. the contractor and the DTIC will determine the NIPP obligation;
 - b. the contractor and the DTI will sign the NIPP obligation agreement;
 - c. the contractor will submit a performance guarantee to the DTI;
 - d. the contractor will submit a business concept for consideration and approval by the DTI;
 - e. upon approval of the business concept by the DTI, the contractor will submit detailed business plans outlining the business concepts;
 - f. the contractor will implement the business plans; and
 - g. the contractor will submit bi-annual progress reports on approved plans to the DTI.
- 4.2 The NIPP obligation agreement is between the DTI and the successful bidder (contractor) and, therefore, does not involve the purchasing institution.

Bid number

Closing date:

Name of bidder.....

Postal address

.....

Signature.....

Name (in print).....

Date.....

Respondent's Signature

Date & Company Stamp

SECTION 10: PROTECTION OF PERSONAL INFORMATION

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

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

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

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

Respondents are required to provide consent below:

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

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

Signature of Respondent's authorised representative: _____

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

ANNEXURE A

MASTER AGREEMENT

entered into by and between

TRANSNET SOC LTD

and

.....

**FOR THE PROVISION OF :DEDICATED STAFF TRANSPORT SERVICES FOR
THE CAPE TOWN CONTAINER TERMINAL**

.....

Agreement Number	iCLM CT 494/TPT
Commencement Date
Expiry Date

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SCHEDULE 1 – 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 supply of 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 supply of Provision of Services and provision of ancillary Services by the Service Provider to Transnet;
- 2.3 Assignment** refers to the transfer of rights and obligations in a contract from an assigner to an assignee.
- 2.4 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;
- 2.5 Business Day(s)** means Mondays to Fridays between 07:30 and 16:00, excluding public holidays as proclaimed in South Africa;

2.6 Cession refers to the transfer of only the rights a service provider has in terms of a contract from it to a third party.

2.7 Commencement Date means, notwithstanding the signature date of this Agreement;

2.8 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;

- 2.9 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;
- 2.10 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;
- 2.11 Designs** mean registered Designs and/or Design applications and will include the monopoly right granted for the protection of an independently created industrial design including designs dictated essentially by technical or functional considerations as well as topographies of integrated circuits and integrated circuits;
- 2.12 Expiry Date** means ;
- 2.13 Foreground Intellectual Property** means all Intellectual Property developed by either Party pursuant to this Agreement;
- 2.14 ICC Incoterms** means 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>;
- 2.15 Intellectual Property** means Patents, Designs, Know-How, Copyright and Trade Marks and all rights having equivalent or similar effect which may exist anywhere in the world and includes all future additions and improvements to the Intellectual Property;
- 2.16 Know-How** means all Confidential Information of whatever nature relating to the Intellectual Property and its exploitation as well as all other Confidential Information generally relating to Transnet's field of technology, including technical information, processing or manufacturing techniques, Designs, specifications, formulae, systems, processes, information concerning materials and marketing and business information in general;
- 2.17 Parties** mean the Parties to this Agreement together with their subsidiaries, divisions, business units, successors-in-title and assigns;
- 2.18 Party** means either one of these Parties;
- 2.19 Patents** mean registered Patents and Patent applications, once the latter have proceeded to grant, and includes a right granted for any inventions, products or processes in all fields of technology;
- 2.20 Permitted Purpose** means any activity or process to be undertaken or supervised by 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;

- 2.21 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;
- 2.22 Purchase Order(s)** means official orders issued by an operating division of Transnet to the Service Provider for the supply of Goods or Services;
- 2.23 Service(s)** means..... , the Service(s) provided to Transnet by the Service Provider, pursuant to the Work Order(s) in terms of this Agreement;
- 2.24 Service Level Agreement or SLA** means the processes, deliverables, key performance indicators and performance standards relating to the Services to be provided by the Service Provider;
- 2.25 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;
- 2.26 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;
- 2.27 Schedule of Requirements** means Schedule 1 hereto;
- 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 33 [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.
 - c) this Agreement shall terminate on the date the funds are depleted or on whichever event that comes first between the expiry date and the date in which the funds are depleted
- 6.2** Notwithstanding clause 200 [Breach and Termination], either Party may cancel this Agreement without cause by giving 14 [fourteen] calendar days prior written notice thereof to the other Party, provided that in such instance, this Agreement will nevertheless be applicable in respect of all Purchase Orders which have been placed prior to the date of such cancellation.

7 RISK MANAGEMENT

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

8 TRANSNET'S OBLIGATIONS

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

9 GENERAL OBLIGATIONS OF THE SERVICE PROVIDER

9.1 The Service Provider shall:

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

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

- a) render the supply of the Services and ancillary Services (if applicable) and perform all its duties with honesty and integrity;
- b) communicate openly and honestly with Transnet regarding the supply and performance of the Services and demonstrate a commitment to effecting the supply and performing ancillary Services timeously, efficiently and at least to the required standards;

- c) 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 Supplier's/Service Provider's own policies and procedures, excluding Know-How and other Confidential Information, except where a non-disclosure undertaking has been entered into between the Parties;
- i) not allow a conflict of interest to develop between its own interests [or the interests of any of its other customers] and the interests of Transnet;
- j) not accept or offer, nor allow, induce or promote the acceptance or offering of any gratuity, enticement, incentive or gift that could reasonably be regarded as bribery or an attempt to otherwise exert undue influence over the recipient;
- k) not mislead Transnet or its officers, employees and stakeholders, whether by act or omission;
- l) not otherwise act in an unethical manner or do anything which could reasonably be expected to damage or tarnish Transnet's reputation or business image;
- m) immediately report to Transnet any unethical, fraudulent or otherwise unlawful conduct of which it becomes aware in connection with Transnet or the supply of Services or ancillary Services to Transnet;
- n) ensure that at all times, during the currency of this Agreement, it complies with all obligations and commitments in terms of the provisions of the Income Tax Act, No 58 of 1962, the VAT Act or any other tax legislation relating to their liability for Income Tax, VAT, Pay as You Earn or any other tax. The Service Provider shall further ensure Tax Clearance Compliance, for the duration of this Agreement;
- o) not 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 Supplier, as applicable, shall be subject to a review of the capability of the proposed Subcontractor to comply with the specified railway safety requirements and/or regulations. The Supplier and/or its Subcontractor shall grant Transnet access, during the term of this Agreement, to review any safety-related activities, including the coordination of such activities across all parts of its organisation.

10 SERVICE PROVIDER'S PERSONNEL

- 10.1** The Service Provider's Personnel shall be regarded at all times as employees, agents or Subcontractors of the Service Provider and no relationship of employer and employee shall arise between Transnet and any Service Provider Personnel under any circumstances regardless of the degree of supervision that may be exercised over the Personnel by Transnet.
- 10.2** The Service Provider warrants that all its Personnel will be entitled to work in South Africa or any other country in which the Services are to be performed.
- 10.3** The Service Provider will ensure that its Personnel comply with all reasonable requirements made known to the Service Provider by Transnet concerning conduct at any Transnet premises or any other premises upon which the Services are to be performed [including but not limited to security regulations, policy standards and codes of practice and health and safety requirements]. The Service Provider will ensure that such Personnel at all times act in a lawful and proper manner in accordance with these requirements.
- 10.4** Transnet reserves the right to refuse to admit or to remove from any premises occupied by or on behalf of it, any Service Provider Personnel whose admission or presence would, in the reasonable opinion of Transnet, be undesirable or who represents a threat to confidentiality or security or whose presence would be in breach of any rules and regulations governing Transnet's Personnel, provided that Transnet notifies the Service Provider of any such refusal [with reasons why]. The reasonable exclusion of any such individual from such premises shall not relieve the Service Provider from the performance of its obligations under this Agreement.
- 10.5** The Service Provider agrees to use all reasonable endeavours to ensure the continuity of its Personnel assigned to perform the Services. If any re-assignment by the Service Provider of those Personnel is necessary, or if Transnet advises that any such Personnel assigned are in any respect unsatisfactory, including where any such Personnel are, or are expected to be or have been absent for any period, then the Service Provider will promptly supply a replacement of equivalent calibre and experience, and any such replacement shall be approved by Transnet prior to commencing provision of the Services, such approval not to be unreasonably withheld or delayed.

11 B-BBEE AND SOCIO-ECONOMIC OBLIGATIONS

11.1 B-BBEE Scorecard

- a) Transnet fully endorses and supports the Broad-Based Black Economic Empowerment Programme and is strongly of the opinion that all South African business enterprises have an equal obligation to redress the imbalances of the past.
- b) In response to this requirement, the Service Provider shall submit to Transnet's Contract Manager or such other designated person details of its B-BBEE status in terms of the latest Codes of Good Practice issued in terms of the B-BBEE Act and proof thereof at the beginning of March each year during the currency of this Agreement.
- c) The Service Provider undertakes to notify and provide full details to Transnet in the event there is:
 - (i) a change in the Supplier's/Service Provider's B-BBEE status which is less than what it was at the time of its appointment including the impact thereof; and
 - (ii) a corporate or internal restructure or change in control of the Service Provider which has or likely to impact negatively on the Supplier's/ Service Provider's B-BBEE status.
- d) Notwithstanding any other reporting requirement in terms hereof, the Supplier Service Provider undertakes to provide any B-BBEE data (underlying data relating to the Supplier /Service Provider which has been relied upon or utilised by a verification agency or auditor for the purposes of issuing a verification certificate in respect of the Service Provider B-BBEE status) which Transnet may request on written notice within 30 (thirty) calendar days of such request. A failure to provide such data shall constitute a Supplier/ Service Provider Default and may be dealt with in accordance with the provisions of clause 200.
- e) In the event there is a change in the Supplier's/ Service Provider's B-BBEE status, then the provisions of clause 200 shall apply.

Green Economy/Carbon Footprint

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.

12 PENALTIES

12.1 Penalties for Non-compliance to Service Level Agreement

Where the Service Provider fails to deliver the Services within the agreed and accepted milestone timelines and provided that the cause of the delay was not due to a fault of Transnet, penalties shall be imposed at 10% (ten percent) rebate per invoice submitted for the duration of the contract

Non-compliance Penalty Certificate:

- a) If any Non-compliance Penalty arises, the Contract Manager/Administrator shall issue a Non-compliance Penalty Certificate within seven(7) business days before indicating the Non-compliance Penalties which have accrued during that period.
- b) A Non-compliance Penalty Certificate shall be prima facie proof of the matters to which it relates. If the Service Provider disputes any of the amounts set out in a Non-compliance Penalty Certificate:

- the dispute shall be resolved in accordance with the provisions of the Agreement; and
- if pursuant to that referral, it is determined that the Service Provider owes any amount to Transnet pursuant to the Non-compliance Penalty Certificate, then the Service Provider shall pay such amount to Transnet within 10 (ten) Business Days of the determination made pursuant to such determination and an accompanying valid Tax Invoice.

Payment of Non-compliance Penalties:

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

Non-compliance Penalty Certificate:

- g) 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.
- h) 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:

- i) 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.

- j) 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.
- k) Should the Service Provider fail to pay any Non-Compliance Penalties within the time indicated above (as applicable), Transnet shall be entitled to deduct (set off) the amount not paid by the Service Provider from the account of the Service Provider in the ensuing month.

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

13 FEES AND EXPENSES RELATING TO SERVICES

- 13.1** 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.
- 13.2** 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].
- 13.3** 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.
- 13.4** 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.

14 INVOICES AND PAYMENT

- 14.1** Transnet shall pay the Service Provider the amounts stipulated in each Purchase Order/Work Order, subject to the terms and conditions of this Agreement.
- 14.2** 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 14.5 below.
- 14.3** 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.

- 14.4** 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.
- 14.5** Unless otherwise provided for in the Schedule of Requirements appended to this Agreement, Tax Invoices shall be submitted together with a month-end statement. Payment against such month-end statement shall be made by Transnet within 30 [thirty] calendar days after date of receipt by Transnet of the Supplier's/Service Provider's statement together with the relevant valid and undisputed Tax Invoice(s) and supporting documentation.
- 14.6** 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.
- 14.7** The Service Provider shall remain the owner of all plant, material, machinery, equipment and the like [collectively, **the Supplier's Goods**] provided to Transnet until Transnet has paid in full for the Supplier's Goods, it being specifically agreed that Transnet shall acquire no rights [including liens] of whatsoever nature in such Supplier's Goods until date of final payment by Transnet. Subject to the foregoing, all risk and benefit to the Supplier's Goods shall pass from the Supplier to Transnet on delivery of the Supplier's Goods by the Supplier to Transnet.

15 PRICE ADJUSTMENTS

- 15.1** Prices for Services supplied in terms of this Agreement shall be fixed indicated in the Schedule of Requirements/Works Order annexed hereto.
- Pursuant to clause 15.1 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.
- 15.2** 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 30 of the Master Agreement [Dispute Resolution].
- 15.3** 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 sametotal 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.

15.4 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.

16 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 **16**.

16.1 Any amount recoverable from the Supplier in terms of this clause may, without prejudice to any other legal remedies available to Transnet, be deducted in whole or in part from any monies in the hands of Transnet which are due for payment to the Supplier.

17 TOTAL OR PARTIAL FAILURE TO PERFORM

17.1 In the case of Goods to be specially manufactured for it, if Transnet at any time ascertains that:

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

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

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

18 NON CONFORMANCE OF SERVICES PROCURED

- 18.1** 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.
- 18.2** Failure by the Service Provider to fully comply with NCR within the period stated in sub-clause 18.1 above, shall entitle Transnet to further conditions to which the Supplier/ Service Provider must discharge in order to close the NCR or to terminate the order without giving the Service Provider written notice of termination in terms of this Agreement.

19 RIGHTS ON CANCELLATION

- 19.1** If this Agreement or Purchase Order is cancelled in whole or in part in terms of clause 17 [Total or Partial Failure to Perform], Transnet may execute or complete this Agreement with any other entity and do so on such terms as it may deem proper, or may procure other comparable Services in substitution for those neglected to be manufactured or supplied or rejected as aforesaid, and may recover from the Supplier the difference between the cost of such Services and the Price [if the latter was lower] as well as any costs and expenses [including any additional transport costs] which Transnet may have had to incur in consequence of the Supplier's/Service Provider's default.
- 19.2** Any amount which may be recoverable from the Service Provider in terms of clause 19.1 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.

20 BREACH AND TERMINATION

- 20.1** 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.
- 20.2** 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.
- 20.3** To the extent that any of the Deliverables and property referred to in clause 20.2 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.
- 20.4** 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 20 [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.

20.5 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.

20.6 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.

20.7 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.

20.8 Notwithstanding this clause 200, Transnet may cancel this Agreement without cause by giving 30 [thirty] calendar days prior written notice thereof to the Service Provider, or

20.9 The provisions of clauses 2 [Definitions], 17 [Rights on Cancellation], 24 [Confidentiality], 26 [Limitation of Liability], 27 [Intellectual Property Rights], 30 [Dispute Resolution] and 34.1 [Governing Law] shall survive termination or expiry of this Agreement.

21 CESSIONS AND ASSIGNMENTS AS PER NT INSTRUCTION NOTE 08 OF 2022/2023

21.1 The Service Provider is not allowed to cede its rights for payment in terms of this Agreement without prior written approval from Transnet. Cession shall only be applicable as follows:

- a) Cession must only be applicable to the transfer of right to payment for Services delivered/rendered by a Service Provider to an FSP or State Institutions;
- b) The written request for cession must be by the Service Provider and not a third party; and
- c) The written request by the Service Provider must be accompanied by the cession agreement.

21.2 The Service Provider is prohibited from transferring its rights and obligations to perform under this contract. Assignments are against the principles of section 217 of the Constitution mainly, fairness, transparency and competitiveness.

22 FORCE MAJEURE

- 22.1** 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.
- 22.2** 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.

23 PROTECTION OF PERSONAL INFORMATION

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

- iii. Personal information is provided only to authorised personnel who strictly require the personal information to carry out the Parties' respective obligations under this Agreement;
- iv. they do not disclose personal information of the other Party, other than in terms of this Agreement;
- v. they have all reasonable technical and organisational measures in place to protect all personal information from unauthorised access and/or use;
- vi. they have appropriate technical and organisational measures in place to safeguard the security, integrity and authenticity of all information in their possession or under their control in terms of this Agreement;
- vii. they identify all reasonably foreseeable internal and external risks to personal information in their possession or under their control; establish and maintain appropriate safeguards against the risks identified; regularly verify that the safeguards are effectively implemented; and ensure that the safeguards are continually updated in response to new risks or deficiencies in previously implemented safeguards;
- viii. such personal information is protected against unauthorised or unlawful processing, accidental loss, destruction or damage, alteration, disclosure or access.

23.1 The Parties agree that if personal information will be processed for additional purposes beyond the original purpose for which it was obtained, explicit consent must be obtained beforehand from those persons whose information will be subject to such processing.

23.2 Should it be necessary for either Party to disclose or otherwise make available the personal information to any third party (including sub-contractors and employees) that is not already consented to, it may do so only with the prior written consent of the other Party. The Party requiring such consent shall require of all such third parties, appropriate written undertakings to be provided, containing similar terms to that set forth in this clause, and dealing with that third party's obligations in respect of its processing of the personal information. Following approval by the other Party, the Party requiring consent agrees that the provisions of this clause shall mutatis mutandis apply to all authorised third parties who process personal information.

23.3 The Parties shall ensure that any persons authorized to process information on their behalf (including employees and third parties) will safeguard the security, integrity and authenticity of all information. Where necessary to meet this requirement, the Parties shall keep all personal information and any analyses, profiles, or documents derived therefrom logically separated from all other information and documentation held by it.

23.4 The Parties shall carry out regular assessments to identify all reasonably foreseeable internal and external risks to the personal information in its possession or under its control. The Parties shall implement and maintain appropriate safeguards against the risks which it identifies and shall also regularly verify that the safeguards which it has in place have been effectively implemented.

23.5 The Parties agree that they will promptly return, destroy or de-identify any personal information in their possession or control which belongs to the other Party once it no longer serves the purpose for which it was collected in relation to this Agreement, subject to any legal retention requirements. This may be at the request of the other Party and includes circumstances where a person has

requested the Parties to delete all instances of their personal information. The information will be destroyed or de-identified in such a manner that it cannot be reconstructed to its original form, linking it to any particular individual or organisation.

23.6 Personal Information security breach:

- a) Each Party shall notify the other party in writing as soon as possible after it becomes aware of or suspects any loss, unauthorised access or unlawful use of any personal information and shall, at its own cost, take all necessary remedial steps to mitigate the extent of the loss or compromise of personal information and to restore the integrity of the affected personal information as quickly as is possible. The Parties shall also be required to provide each other with details of the persons affected by the compromise and the nature and extent of the compromise, including details of the identity of the unauthorised person who may have accessed or acquired the personal information.
- b) The Parties shall provide on-going updates on the progress in resolving the compromise at reasonable intervals until such time as the compromise is resolved.
- c) Where required, the Parties must notify the South African Police Service; and/or the State Security Agency and the Information Regulator and the affected persons of the security breach. Any such notification shall always include sufficient information to allow the persons to take protective measures against the potential consequences of the compromise.
- d) The Parties undertake to co-operate in any investigations relating to security which is carried out by or on behalf of the other including providing any information or material in its possession or control and implementing new security measures.

24 CONFIDENTIALITY

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

- a) not to divulge or disclose to any person whomsoever in any form or manner whatsoever, either directly or indirectly, any Confidential Information of the other without the prior written consent of such other Party, other than when called upon to do so in accordance with a statute, or by a court having jurisdiction, or by any other duly authorised and empowered authority or official, in which event the Party concerned shall do what is reasonably possible to inform the other of such a demand and each shall assist the other in seeking appropriate relief or the instituting of a defensive action to protect the Confidential Information concerned;
- b) not to use, exploit, permit the use of, directly or indirectly, or in any other manner whatsoever apply the Confidential Information disclosed to it as a result of this Agreement, for any purpose whatsoever other than for the purpose for which it is disclosed or otherwise than in strict compliance with the provisions in this Agreement;
- c) not to make any notes, sketches, drawings, photographs or copies of any kind of any part of the disclosed Confidential Information without the prior written consent of such other Party, except when reasonably necessary for the purpose of this Agreement, in which case such copies shall be regarded as Confidential Information;

- d) not to de-compile, disassemble or reverse engineer any composition, compilation, concept application, item, component de-compilation, including software or hardware disclosed and shall not analyse any sample provided by Transnet, or otherwise determine the composition or structure or cause to permit these tasks to be carried out except in the performance of its obligations pursuant to this Agreement;
- e) not to exercise less care to safeguard Transnet Confidential Information than the Party exercises in safeguarding its own competitive, sensitive or Confidential Information;
- f) Confidential Information disclosed by either Party to the other or by either Party to any other party used by such party in the performance of this Agreement, shall be dealt with as "restricted" or shall be dealt with according to any other appropriate level of confidentiality relevant to the nature of the information concerned, agreed between the Parties concerned and stipulated in writing for such information in such cases;
- g) the Parties shall not make or permit to be made by any other person subject to their control, any public statements or issue press releases or disclose Confidential Information with regard to any matter related to this Agreement, unless written authorisation to do so has first been obtained from the Party first disclosing such information;
- h) each Party shall be entitled to disclose such aspects of Confidential Information as may be relevant to one or more technically qualified employees or consultants of the Party who are required in the course of their duties to receive the Confidential Information for the Permitted Purpose provided that the employee or consultant concerned has a legitimate interest therein, and then only to the extent necessary for the Permitted Purpose, and is informed by the Party of the confidential nature of the Confidential Information and the obligations of the confidentiality to which such disclosure is subject and the Party shall ensure such employees or consultants honour such obligations;
- i) each Party shall notify the other Party of the name of each person or entity to whom any Confidential Information has been disclosed as soon as practicable after such disclosure;
- j) each Party shall ensure that any person or entity to which it discloses Confidential Information shall observe and perform all of the covenants the Party has accepted in this Agreement as if such person or entity has signed this Agreement. The Party disclosing the Confidential Information shall be responsible for any breach of the provisions of this Agreement by such person or entity; and
- k) each Party may by written notice to the other Party specify which of the Party's employees, officers or agents are required to sign a non-disclosure undertaking.

24.2 The duties and obligations with regard to Confidential Information in this clause 24 shall not apply where:

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

- c) can be proved to have been rightfully received by a Party from a third party without a breach of a duty or obligation of confidentiality; or
- d) is independently developed by a Party as proven by its written records.

24.3 This clause 24 shall survive termination for any reason of this Agreement and shall remain in force and effect from the Commencement Date of this Agreement and 5 [five] years after the termination of this Agreement. Upon termination of this Agreement, all documentation furnished to the Service Provider by Transnet pursuant to this Agreement shall be returned to Transnet including, without limitation, all corporate identity equipment including dyes, blocks, labels, advertising matter, printing matter and the like.

25 INSURANCES

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

25.2 The Service Provider shall arrange insurance with reputable insurers and will produce to Transnet evidence of the existence of the policies on an annual basis within 30 [thirty] calendar days after date of policy renewals.

25.3 Subject to clause 25.4 below, if the Service Provider fails to effect adequate insurance under this clause 25, it shall notify Transnet in writing as soon as it becomes aware of the reduction or inadequate cover and Transnet may arrange or purchase such insurance on behalf of the Service Provider. The Service Provider shall promptly reimburse Transnet for any premiums paid provided such insurance protects the Service Provider's liability. Transnet assumes no responsibility for such insurance being adequate to protect all of the Service Provider's liability.

25.4 In the event that the Service Provider receives written notice from its insurers advising of the termination of its insurance cover referred to in clause 25.1 above or if the insurance ceases to be available upon commercially reasonable terms, the Service Provider shall immediately notify Transnet in writing of such termination and/or unavailability, whereafter either the Service Provider or Transnet may terminate this Agreement on giving the other Party not less than 30 [thirty] calendar days prior written notice to that effect.

26 LIMITATION OF LIABILITY

26.1 The Service Provider's liability under this clause 26 shall be in addition to any warranty or condition of any kind, express or implied by law or otherwise, relating to the Services or ancillary Services, including the quality of the Services or ancillary Services or any materials delivered pursuant to this Agreement.

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

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

b) fraud or theft.

26.3 The Service Provider shall indemnify and keep Transnet indemnified from and against liability for damage to any Transnet property [whether tangible or intangible] or any other loss, costs or damage suffered by Transnet to the extent that it results from any act of or omission by the Service Provider or its Personnel in connection with this Agreement. The Service Provider's liability arising out of this clause 26.3 shall be limited to direct damages.

26.4 Subject always to clauses 26.1 and 26.2 above, the liability of either the Service Provider or Transnet under or in connection with this Agreement, whether for negligence, misrepresentation, breach of contract or otherwise, for direct loss or damage arising out of each Default or series of related Defaults shall not exceed 100% [one hundred per cent] of the Fees paid under the schedule or Work Order to which the Default(s) relates.

26.5 Subject to clauses 26.1 to 26.4 above, in no event shall either Party be liable to the other for indirect or consequential loss or damage or including indirect or consequential loss of profits, business, revenue, goodwill or anticipated savings of an indirect nature or loss or damage incurred by the other Party as a result of third party claims.

26.6 If for any reason the exclusion of liability in clause 26.5 above is void or unenforceable, either Party's total liability for all loss or damage under this Agreement shall be as provided in clause 26.3 above.

26.7 Nothing in this clause 26 shall be taken as limiting the liability of the Parties in respect of clauses 24 [Confidentiality] and 27 [Intellectual Property Rights].

27 INTELLECTUAL PROPERTY RIGHTS

27.1 Title to Confidential Information

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

27.2 Title to Intellectual Property

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

27.3 Title to Improvements

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

27.4 Unauthorised Use of Confidential Information

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

27.5 Unauthorised Use of Intellectual Property

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

28 NON-WAIVER

28.1 Failure or neglect by either Party, at any time, to enforce any of the provisions of this Agreement, shall not in any manner be construed to be a waiver of any of that Party's rights in that regard and in terms of this Agreement.

28.2 Such failure or neglect shall not in any manner affect the continued, unaltered validity of this Agreement, or prejudice the right of that Party to institute subsequent action.

29 PARTIAL INVALIDITY

If any provision of this Agreement shall be held to be invalid, illegal or unenforceable, or shall be required to be modified, the validity, legality and enforceability of the remaining provisions shall not be affected thereby.

30 DISPUTE RESOLUTION

30.1 Should any dispute of whatsoever nature arise between the Parties concerning this Agreement, the Parties shall try to resolve the dispute by negotiation within 10 [ten] Business Days of such dispute arising.

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

- 30.3** Such dispute shall be finally resolved in accordance with the rules of AFSA by an arbitrator or arbitrators appointed by AFSA.
- 30.4** This clause constitutes an irrevocable consent by the Parties to any proceedings in terms hereof, and neither of the Parties shall be entitled to withdraw from the provisions of this clause or claim at any such proceedings that it is not bound by this clause 300.
- 30.5** This clause 300 is severable from the rest of this Agreement and shall remain in effect even if this Agreement is terminated for any reason.
- 30.6** This clause 300 shall not preclude either Party from seeking urgent relief in a court of appropriate jurisdiction, where grounds for urgency exist.

31 ADDRESSES FOR NOTICES

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

a) Transnet

- (i) For legal notices:
-
-

Fax No.

Attention: Group Legal Department

- (ii) For commercial notices:
-
-

Fax No.

Attention:

b) The Service Provider

- (i) For legal notices:
-
-

Fax No.

Attention:

- (ii) For commercial notices:
-
-

Fax No.

Attention:

- 31.2** Any notice shall be addressed to a Party at its physical address, or delivered by hand, or sent by fax or email.
- 31.3** Any notice shall be deemed to have been given:
- a) if hand delivered, on the day of delivery;
 - b) if faxed, on the date and time of sending of such fax, as evidenced by a fax confirmation printout, provided that such notice shall be confirmed by prepaid registered post on the date of dispatch of such fax, or, should no postal facilities be available on that date, on the next Business Day; or
 - c) if sent by email, on the date and time received, provided that such notice shall be confirmed by prepaid registered post on the date of dispatch of such email, or, should no postal facilities be available on that date, on the next Business Day.

32 WHOLE AND ONLY AGREEMENT

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

33 AMENDMENT AND CHANGE CONTROL

- 33.1** Any amendment or change of any nature made to this Agreement and the Schedule of Requirements thereof shall only be valid if it is in writing, signed by both Parties and added to this Agreement as an addendum hereto. In this regard a Change Notice must first be defined and issued by the requesting Party. A Change Notice Response must then be issued by responding Party. A formal approval of the Change Request will then trigger the issue of the addendum to this Agreement.
- 33.2** In the event the Parties cannot agree upon changes, the Parties shall in good faith seek to agree any proposed changes using the dispute resolution procedures in clause 30 [Dispute Resolution].

34 GENERAL

34.1 Governing Law

This Agreement is exclusively governed by and construed in accordance with the laws of the Republic of South Africa and is subject to the jurisdiction of the courts of the Republic of South Africa.

34.2 Change of Law

In this Agreement, unless the context otherwise requires, references to a statutory provision include references to that statutory provision as from time to time amended, extended or re-enacted and any regulations made under it, provided that in the event that the amendment, extension or re-enactment of any statutory provision or introduction of any new statutory provision has a material impact on the obligations of either Party, the Parties will negotiate in good faith to agree such amendments to this Agreement as may be appropriate in the circumstances. If, within a reasonable

period of time, the Service Provider and Transnet cannot reach agreement on the nature of the changes required or on modification of Prices, delivery schedules, warranties, or other terms and conditions, either Party may seek to have the matter determined in accordance with clause 30 [Dispute Resolution] above.

34.3 Counterparts

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

35 DATABASE OF RESTRICTED SUPPLIER

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

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

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

AS WITNESS: Name:	AS WITNESS: Name:
Signature:	Signature:

AS WITNESS: Name:	AS WITNESS: Name:
Signature:	Signature:

SCHEDULE 1 – SCHEDULE OF REQUIREMENTS

DESCRIPTION **STANDARD TERMS AND CONDITIONS FOR THE
APPOINTMENT OF A SERVICE PROVIDER FOR THE
SUPPLY/PROVISION OF DEDICATED STAFF TRANSPORT
FOR A PERIOD OF THREE (3) MONTHS.**

SERVICE PROVIDER

CONTRACT NUMBER **iCLM CT 494/TPT**

DURATION

COMMENCEMENT DATE

EXPIRY DATE

With reference to the Standard Terms and Conditions of Contract, Reference Number iCLM CT 494/TPT dated , ("Contract") between Transnet SOC Ltd ("Transnet") and (the Service Provider pursuant to which you have agreed to perform certain services for and on behalf of Transnet subject to such Contract.

The defined terms in the Contract will, unless otherwise indicated, have the same meaning in this Schedule of Requirements. In consideration of the mutual covenant and agreements contained in the Contract and in this Schedule of Requirements, it is agreed as follows:

1. Description of the Services

The scope of services to be performed by the service provider is the provision of for a period of three (3) months. The details for the goods/services to be provided are as stipulated in clause 2 below.

2. Scope of Services

2.1 Deliverables

The service provider shall:

.....
.....
.....
.....
.....

3. Contract Manager/s & Personnel to provide the Services

Transnet Contract Manager	
Designation	
Operating Division	
Address	
Telephone	
Email	

Service Provider's Account Manager	
Designation	
Address	
Telephone	
Email	

4. Performance Review Meetings

Contract management and performance review meetings will be held as required by Transnet's Contract Manager.

5. Fees & Disbursements

5.1 In consideration of the performance of the Services by the Service Provider pursuant to this Work Order, Transnet will pay to it an amount not exceeding (including VAT) over the three (3) month period.

IN WITNESS of which this Schedule of Requirements has been duly executed by the parties.

SIGNED for and on behalf of

SIGNED for and on behalf of

Transnet SOC Ltd

Signature.....

Signature.....

Name.....

Name.....

Position.....

Position.....

Date.....

Date.....

APPENDIX 1

Address for Notices

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

- i. by email transmission – when the sender receives confirmation of receipt;
- ii. by hand delivery - immediately upon receipt by the recipient.

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

The Service Provider

Addressee:

Attention:

Physical Address:

.....
.....
.....

Postal Address:

.....

email:

.....

Transnet

Addressee:

Transnet SOC Ltd

Attention : Group Legal Counsel

Physical Address:

08th Floor
Carlton Centre
150 Commissioner Street
Johannesburg
2001

Postal Address:

P.O. Box 72501

Parkview

email:

.....

Either party may, by a notice given in accordance with this Schedule 1, change its address or email address for the purpose of this Schedule 1.

APPENDIX 2

Non- Disclosure Agreement

Date: 20--

I (name)

Of (address)
.....
.....

Undertake to Transnet SOC Ltd ("Transnet") that:

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

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

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

SIGNED at _____ on _____ 20--

(Signature)

in the presence of:-

Witness name:

Witness Signature:

Witness address:
.....