

TRANSNET PIPELINES

an Operating Division of **TRANSNET SOC LTD**

[hereinafter referred to as **Transnet**]

[Registration No. 1990/000900/30]

EXPRESSIONS OF INTEREST [EOI]

This proposal is sought to establish information from those parties interested from the market to enable Transnet to find a long term (20 years) commercial lease solution for six (6) tanks in Ladysmith located within Transnet depot. The Transnet Pipelines (TPL), may thereafter invite bidders for the leasing of these stranded assets or request for proposals subject to obtaining all the necessary governance approvals within TPL.

THEREAFTER

Transnet may at its sole discretion decide to embark on a separate "Request for Proposal" [RFP] process which will be open to the market to appoint regional/national Service Providers to undertake the provision for leasing six (6) tanks over an agreed period of 20 years in Ladysmith.

EOI NUMBER:	PYP/W1/6/21/1995
ISSUE DATE:	21 October 2021
CLOSING DATE:	16 November 2021
CLOSING TIME:	10:00AM

SCHEDULE OF CONTENTS

Section No	Page
SECTION 1: SBD1 FORM.....	3
PART A	3
PART B	4
SECTION 2: NOTICE TO RESPONDENTS	5
1 EXPRESSION OF INTEREST [EOI]	5
2 FORMAL BRIEFING.....	6
3 RESPONSE SUBMISSION.....	6
4 EOI INSTRUCTIONS	7
5 B-BBEE JOINT VENTURES OR CONSORTIUMS	7
6 COMMUNICATION	7
7 CONFIDENTIALITY	8
8 STATUS OF THIS EOI AND SUBSEQUENT PROCESS	8
9 DISCLAIMERS	8
10 SECURITY CLEARANCE	9
11 NATIONAL TREASURY'S CENTRAL SUPPLIER DATABASE	9
12 TAX COMPLIANCE	9
13 PROTECTION OF PERSONAL DATA	9
SECTION 3 : EOI SCOPE OF REQUIREMENTS	10
SECTION 4 : TRANSNET'S EOI INFORMATION.....	15
SECTION 5 : EXPRESSION OF INTEREST	17
SECTION 6 : CERTIFICATE OF ACQUAINTANCE WITH EOI, TERMS & CONDITIONS & APPLICABLE DOCUMENTS..	20
SECTION 7 : EOI CLARIFICATION REQUEST FORM	22
SECTION 8: SBD 9 - CERTIFICATE OF INDEPENDENT BID DETERMINATION	23
SECTION 9: CERTIFICATE OF ATTENDANCE OF NON-COMPULSORY EOI BRIEFING.....	26
SECTION 10: RECORD OF ADDENDA TO TENDER DOCUMENTS	27
SECTION 11: PROTECTION OF PERSONAL INFORMATION.....	28
ANNEXURE A SPECIFICATIONS AND DRAWINGS ATTACHED TO THIS EOI	
ANNEXURE B NON-DISCLOSURE AGREEMENT	
ANNEXURE C TRANSNET'S GENERAL BID CONDITIONS	
ANNEXURE D TRANSNET'S SUPPLIER INTEGRITY PACT	

**EOI FOR PROVISION OF A PROPOSAL FOR THE MOST SUITABLE AND COMMERCIAL VIABLE BUSINESS
INITIATIVE IN RESPECT TO LEASING OF THE LADYSMITH TANKS
FOR TRANSNET SOC LTD OPERATING AS TRANSNET PIPELINES**

SECTION 1: SBD1 FORM

**PART A
INVITATION TO BID**

YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF TRANSNET PIPELINES, A DIVISION TRANSNET SOC LTD							
BID NUMBER:	PYP/W1/6/21/1995	ISSUE DATE:	21 October 2021	CLOSING DATE:	16 November 2021	CLOSING TIME:	10h00 am
DESCRIPTION	THE PROVISION OF AN EOI PROPOSAL FOR THE MOST SUITABLE AND COMMERCIAL VIABLE BUSINESS INITIATIVE IN RESPECT TO LEASING OF THE LADYSMITH TANKS						
BID RESPONSE DOCUMENTS MAY BE DEPOSITED IN THE BID BOX SITUATED AT (STREET ADDRESS)							
Transnet Pipelines Building							
202 Anton Lembede Street							
Durban							
4000							
BIDDING PROCEDURE ENQUIRIES MAY BE DIRECTED TO				TECHNICAL ENQUIRIES MAY BE DIRECTED TO:			
CONTACT PERSON	HLEKANE MARINGA			CONTACT PERSON	HLEKANE MARINGA		
TELEPHONE NUMBER	0313611237			TELEPHONE NUMBER	0313611237		
E-MAIL ADDRESS	Hlekane.Maringa@transnet.net			E-MAIL ADDRESS	Hlekane.Maringa@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] ☐ Yes ☐ No		B-BBEE STATUS LEVEL SWORN AFFIDAVIT		[TICK APPLICABLE BOX] ☐ Yes ☐ No		

Respondent's Signature

Date and Company Stamp

[A B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE/ SWORN AFFIDAVIT (FOR EMES & QSEs) MUST BE SUBMITTED IN ORDER TO QUALIFY FOR PREFERENCE POINTS FOR B-BBEE]

1 ARE YOU THE ACCREDITED REPRESENTATIVE IN SOUTH AFRICA FOR THE GOODS /SERVICES /WORKS OFFERED?	☐ Yes ☐ No [IF YES ENCLOSE PROOF]	2 ARE YOU A FOREIGN BASED SUPPLIER FOR THE GOODS /SERVICES /WORKS OFFERED?	☐ Yes ☐ No [IF YES, ANSWER QUESTIONNAIRE BELOW]
--	--	---	---

QUESTIONNAIRE TO BIDDING FOREIGN SUPPLIERS

IS THE ENTITY A RESIDENT OF THE REPUBLIC OF SOUTH AFRICA (RSA)?	☐ YES ☐ NO
DOES THE ENTITY HAVE A BRANCH IN THE RSA?	☐ YES ☐ NO
DOES THE ENTITY HAVE A PERMANENT ESTABLISHMENT IN THE RSA?	☐ YES ☐ NO
DOES THE ENTITY HAVE ANY SOURCE OF INCOME IN THE RSA?	☐ YES ☐ NO
IS THE ENTITY LIABLE IN THE RSA FOR ANY FORM OF TAXATION?	☐ YES ☐ NO

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

PART B

TERMS AND CONDITIONS FOR BIDDING

1. TAX COMPLIANCE REQUIREMENTS

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

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

SIGNATURE OF BIDDER:

CAPACITY UNDER WHICH THIS BID IS SIGNED:

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

DATE: _____

Respondent's Signature

Date and Company Stamp

SECTION 2: NOTICE TO RESPONDENTS

1 EXPRESSION OF INTEREST [EOI]

Respondents should note that Transnet is merely utilising the EOI process to determine what is available in the market and to learn more about possible commercial leasing solutions available in the market. Should it, depending on the information received, decide to proceed with this acquisition, it will be on the basis of a totally separate Open RFP Process to which anyone can respond. Respondents in this process will receive no preference in any subsequent open tender process, apart from their information supplied possibly being utilized in the preparation of the Transnet scope/specification.

DESCRIPTION	The provision of an Expression of Interest (EOI) proposal for the most suitable and commercial viable business initiative in respect to leasing of the Ladysmith Tanks from Transnet SOC Ltd operating as Transnet Pipelines.
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.
RFI DOWNLOADING	This EOI may be downloaded directly from National Treasury's e-Tender Publication Portal at www.etenders.gov.za and Transnet website at www.transnet.net free of charge. To download RFI and Annexures: • Click on "Tender Opportunities"; • Select "Advertised Tenders"; • In the "Department" box, select Transnet SOC Ltd; Once the tender has been located in the list, click on the 'Tender documents' tab and process to download all uploaded documents. The EOI may also be downloaded from the Transnet website at www.transnet.net free of charge. To access the Transnet eTender portal, please click here. To download EOI and Annexures, • Scroll towards the bottom right hand side of the page, • On the blue window click on 'Transnet SOC Ltd' or Select Operating Division. Once the tender has been located in the list, click on the 'Tender documents' tab and process to download all uploaded documents.
COMMUNICATION	Any addenda to the EOI or clarifications will be published on the e-tender portal and Transnet website. Bidders are required to check the e-tender portal and Transnet website prior to finalising their bid submissions for any changes or clarifications to the EOI. Transnet will not be held liable if Bidders do not receive the latest information regarding this EOI.
BRIEFING SESSION	A non-compulsory site meeting would be held at TPL Ladysmith depot on the 28 October 2021 at 11:00 am Bidders are required to confirm their attendance and to send their contact details including the number of representatives to the following address: Hlekane.maringa@transnet.net This is to ensure that Transnet may make the necessary arrangements for the

	briefing session.
CLOSING DATE	10:00 am on Tuesday 16 November 2021 Bidders must ensure that bids are delivered timeously to the correct address. As a general rule, if a bid is late or delivered to the incorrect address, it will not be accepted for consideration.
BID OPENING	A public opening will not be held for this bid, however Respondents will be provided with a copy of the opening register indicating the names of the Respondents, upon request.
VALIDITY PERIOD	Not applicable since this is an EOI issued for information purposes only.

2 FORMAL BRIEFING

A Non-compulsory site meeting will be conducted at **32A Fairclough Road, Ladysmith 3370** (Coordinates: Long. -29.78844513 Lat. -28.54275182) - on the **28 October 2021**, at **11:00 am** for a period of ± 2hours face to face, [Respondents to provide own transportation and accommodation]. The briefing session will start punctually and information will not be repeated for the benefit of Respondents arriving late.

- 2.1 Despite the briefing session being non-compulsory, Transnet nevertheless encourages all Respondents to attend. Transnet will not be held responsible if any Respondent who did not attend the non-compulsory session subsequently feels disadvantaged as a result thereof.
- 2.2 **Bidders are required to confirm their attendance and to send their contact details including the number of representatives to the following address: Hlekane.maringa@transnet.net. This is to ensure that Transnet may make the necessary arrangements for the briefing session.**
- 2.3 Respondents are encouraged to bring a copy of the RFI to the Site briefing.
- 2.4 A Site visit/walk will take place, tenderers are to note:
 - a) Tenderers are required to wear safety shoes, goggles, long sleeve shirts, high visibility vests and hard hats.
 - b) Tenderers without the recommended PPE will not be allowed on the site walk.
 - c) Tenderers and their employees, visitors, clients and customers entering Transnet Offices, Depots, Workshops and Stores will have to undergo breathalyser testing.
 - d) All forms of firearms are prohibited on Transnet properties and premises.
 - e) The relevant persons attending the meeting must ensure that their identity documents, passports or drivers licences are on them for inspection at the access control gates and for induction.

3 RESPONSE SUBMISSION

Proposals must addressed on the cover as follows:

The Secretariat, Divisional Acquisition Council

EOI No: **PYP/W1/6/21/1995**

Description **PROVISION OF EXPRESSION FOR INTEREST OF A PROPOSAL FOR THE MOST SUITABLE AND COMMERCIAL VIABLE BUSINESS INITIATIVE IN RESPECT TO LEASING OF THE TANKS IN LADYSMITH.**

Closing date and time: **16 November 2021 at 10:00 am**
Closing address: THE SECRETARIAT, TRANSNET ACQUISITION COUNCIL
TRANSNET PIPELINES
202 ANTON LEMBEDE STREET
DURBAN 4000

4 EOI INSTRUCTIONS

- 4.1 The measurements of the "tender slot" are 400mm wide x 100mm high. Bid responses which are larger than the dimensions mentioned must be split into two or more files and clearly marked. **Transnet will not be held responsible if bid documents do not comply with the mentioned dimensions and Respondents experience difficulty in submitting their bids as a result.**
- 4.2 It should also be noted that the above tender box is located at the street level in the main entrance in Transnet Pipelines Building and is accessible to the public from 08:00 am until 16:30 pm business working days only.
- 4.3 EOI proposals must be submitted in duplicate hard copies [1 original and 1 copy] and must be bound.
- 4.4 All returnable documents listed in the expression of interest **[section 5]** in this EOI must be returned with your submission.
- 4.5 The person or persons signing the submission must be legally authorised by the respondent to do so.

5 B-BBEE JOINT VENTURES OR CONSORTIUMS

Bidders may choose during the subsequent RFP process to enter into a Joint Venture with B-BBEE companies. RFP Bidders will also be required to submit a signed JV 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 the 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.

Please indicate below whether your entity has an existing JV, and if so, provide details, including details of the percentage split of business, or whether your entity intends to create a JV relationship for RFP purposes:

6 COMMUNICATION

- 6.1 For specific queries relating to this EOI a Clarification Request Form should be submitted to Hlekane.maringa@transnet.net before **12:00 pm on 10 November 2021** substantially in the form set out in **Section 7**. 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 EOI a Respondent may only communicate with the Secretariat of the Divisional Acquisition Council, at telephone number **0313611239**, email Nombuso.Mtolo3@transnet.net on any matter relating to its EOI 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 EOI.
- 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 EOI 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 EOI or the subsequent EOI process, written approval to divulge such information must be obtained from Transnet.

8 STATUS OF THIS EOI AND SUBSEQUENT PROCESS

- 8.1 This EOI is not an offer to purchase and Transnet is under no obligation to accept any proposals in this process and/or the subsequent RFP which may be issued hereafter.
- 8.2 As this is an Expression of Interest only, no business will be awarded through this process.

9 DISCLAIMERS

- 9.1 Respondents are hereby advised that Transnet is not committed to any course of action as a result of its issuance of this EOI and/or its receipt of submissions in response to it. In particular, please note that Transnet reserves the right and at its sole and full discretion to:
 - (a) utilise any information provided to it in response to this EOI to draft the scope of requirements for inclusion in an RFP;
 - (b) take no further action whatsoever, if it so decides;
 - (c) withdraw from this process and the provisions of this project at any time;
 - (d) select the EOI and RFP participants based on Transnet's criteria;
 - (e) change the dates of adjudication and submission;
 - (f) not invite RFI respondents for further participation in the RFP process;
 - (g) not bind itself to accept any or all of the EOIs;
 - (h) increase or decrease the quantities/scope as indicated in the EOI;
 - (i) 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;
 - (j) request audited financial statements or other documentation for the purposes of a due diligence exercise;
 - (k) not accept any changes or purported changes by the Respondent to the bid rates after the closing date;
- 9.2 Note that Transnet will not reimburse any Respondent for any preparatory costs or other work performed in connection with this submission.

10 SECURITY CLEARANCE

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

11 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 returnable document by the closing date and time of the bid.

12 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 bidder's 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.

13 PROTECTION OF PERSONAL DATA

In responding to this bid, Transnet acknowledges that it may obtain and have access to personal data of the Respondents. Transnet agrees that it shall only process the information disclosed by Respondents in their response to this bid for the purpose of evaluating and subsequent award of business and in accordance with any applicable law. Furthermore, Transnet will not otherwise modify, amend or alter any personal data submitted by Respondents or disclose or permit the disclosure of any personal data to any Third Party without the prior written consent from the Respondents. Similarly, Transnet requires Respondents to process any personal information disclosed by Transnet in the bidding process in the same manner. The detailed mutual duties of Transnet and the Respondents to protect personal information is contained in the General Bid Conditions.

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

TIP-OFFS ANONYMOUS : 0800 003 056

SECTION 3 : EOI SCOPE OF REQUIREMENTS

1 INTRODUCTION

1.1. Transnet Pipelines (TPL) hereby issues this EOI, with the view of establishing and confirming whether there is market demand and appetite for the commercial leasing of the six (6) tanks in Ladysmith. These tanks are; two (2) petrol accumulator tanks with 1 770 m³ working capacity each, two (2) diesel accumulator tanks with 2 500 m³ working capacity each and two intermixture tanks with a working capacity of 84m³ and 390 m³ respectively. The total working capacity of these six tanks amounts to 9 014 m³.

1.2. TRANSNET AND TPL

1.2.1. Transnet is a company that is wholly owned by the South African Government and it consists of five main operating divisions:

1.2.1.1. Transnet Freight Rail;

1.2.1.2. Transnet Pipelines;

1.2.1.3. Transnet National Port Authority;

1.2.1.4. Transnet Property

1.2.1.5. Transnet Engineering; and

1.2.1.6. Transnet Port Terminal.

1.2.2. The TPL, is statutorily mandated and empowered, in terms of the Petroleum Pipelines Act 60 of 2003, to undertake, inter alia, the management, operate and maintenance of the pipelines across KwaZulu-Natal, Mpumalanga, Gauteng, Free-State and North West.

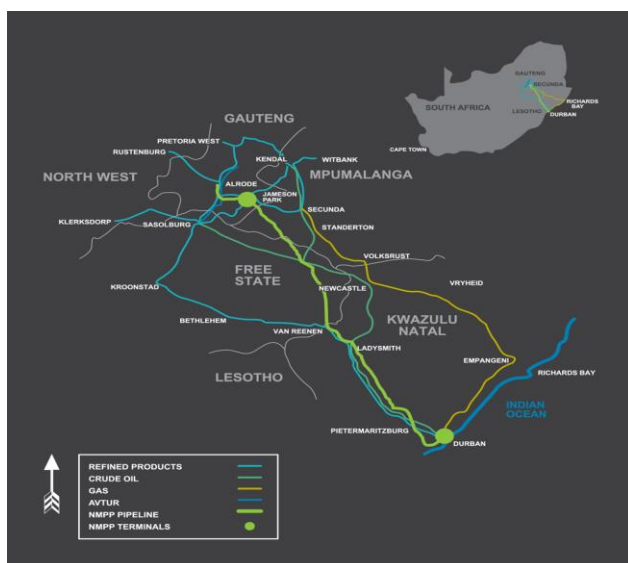


Figure 1. Pipelines map owned, managed, operated and maintained by TPL.

- 1.2.3. In this regard, the TPL's primary function as defined in the Act is to own, manage, operate and maintain pipelines infrastructure and to ensure their efficient and economic functioning as well as the provision of adequate, affordable and efficient pipe services inter alia by exercising control functions in respect of pipe services.

2 BACKGROUND

- 2.1 Ladysmith depot was part of the Durban Johannesburg Pipeline (DJP) system, after the DJP was retired or terminated from service on March 2018; TPL remained with six accumulator tanks for petrol, diesel and intermixture stranded in Ladysmith with a total working capacity of 9 014m³. These tanks has not been maintained ever since they were terminated from service in March 2018. Therefore, before they could be used a provision for cleaning, inspection, and refurbishment would be required.
- 2.2 TPL used to transport an average of 232ML per annum of petrol and diesel to distribute in and around Ladysmith market. The product used to come via the DJP into the tanks and to the Customers through the feederlines. These feederlines still exist and they link TPL tanks with the previously supplied Customer depots except for intermixture tanks.
- 2.3 The tanks are not connected to the new multiproduct pipeline, currently owned and operated by TPL from Durban to the inland market. Moreover, there is no road and rail decanting system within the depot. However, there is an old rail siding adjacent to the depot but it is not in a working condition and also not linked to the tanks.
- 2.4 The tanks currently do not have active fire system, pumps have been removed and not connected to the low pressure manifold anymore.
- 2.5 The depot location is long. 29.78844513, lat. -28.54275182



Figure 2. Ariel view of the Ladysmith depot

- 2.6 Following a subsequent RFI process, Transnet's intention is to find a commercial leasing solution for these six (6) tanks in Ladysmith to a prospective customer(s) for a period of ± 20 years. The tanks are in a Transnet depot which is currently active and used as a pump station for Crude and this operation will still continue whether Transnet identify a viable commercial leasing solution for the tanks. The Crude

operation will not interfere with the operations of the stranded assets (tanks) since they have no relation other than that they share common facility (yard).

- 2.7 Following that the tanks are in a common facility with the Crude pump station, then your submission should include a detail proposed methodology, the intended use of the tanks, and proposed lease period. The methodology should outline how you intend to bring and inject the prospective product into the tanks and also how you intend to decant the prospective product from the tanks. Noting that the existing feederlines are connected to the previously supplied Customer properties, if you need to redirect these feederlines to serve your intended purpose, an option to close the link to these properties and redirect them is available, as Transnet Owns the feederlines up to the previous Customer's property battery limits.
- 2.8 From the EOI and response and/or submissions thereto, Transnet will compile an RFP document which will include an indicative schedule of activities and timelines.

3 KEY OBJECTIVES OF THIS RFI PROCESS

The following list of deliverables captures the minimum intent and objectives of the EOI process. Transnet requests all Respondents to assist with the achievement of these objectives by submitting the requested information as indicated below. This will be finalised in the RFP documents following the EOI process:

4 The following list of deliverables captures the minimum intent and objectives of the EOI process.

- 4.1 The demand and parties interested in leasing the tanks;
- 4.2 The most sustainable and optimal use of the tanks;
- 4.3 Potential targeted customers which may need storage tanks in Ladysmith;
- 4.4 The nature of the proposed business initiative and necessary developments;
- 4.5 The value adding of the business proposal to the stranded assets in Ladysmith depot;
- 4.6 New supplier development contribution and job creation opportunities to the region.

Transnet requests all Respondents to assist with the achievement of these objectives by submitting the requested information as indicated above:

5 GENERAL RESPONDENT OBLIGATIONS

- 5.1 The Respondent(s) shall provide a full comprehensive proposal including intended use of the tanks.
- 5.2 The Respondent(s) shall provide the detailed methodology which highlights associated risks and mitigation measures.
- 5.3 The Respondent(s) shall have financial capabilities to lease, maintain and operate the tanks. Should they require office space, the bidder can bring own office containers or lease office space within the depot if additional office space is available.
- 5.4 The Respondent(s) should have the technical integrity certification to maintain and operate tanks.
- 5.5 The Respondent(s) must comply with the requirements stated in this EOI.

5.6 The Respondent(s) shall provide a company profile.

6 CONFIDENTIALITY AND COMPLIANCE

This EOI and information contained herein or provided for purposes thereof, remain the property of Transnet and may not be reproduced, sold or otherwise disposed of. All recipients of this document (whether an EOI is submitted or not) shall treat the details of this document as strictly private and confidential.

Information disclosed in this EOI is given in good faith and only for the purposes of providing sufficient information to the Respondent to enable submission of a well-informed and realistic EOI.

7 UNDERTAKINGS BY RESPONDENT

It will be accepted that the Respondent, on submitting the EOI response, has read, understood and accepted all the terms and conditions of the document. The submission of an EOI by any Respondent shall presume complete acceptance of the terms and conditions of the document. All qualifications and or exceptions should be noted in the EOI Response document.

8 COSTS TO RESPOND TO THE EOI

8.1 All Respondents wishing to submit an EOI response must be in possession of this document, the EOI. Transnet will not be responsible for or pay any expense or losses which may be incurred by any Respondent in the preparation and submission of the EOI and the costs of the EOI at all stages of the EOI process. Costs, if any, will be for each Respondent's own account.

8.2 Transnet reserves the right to invite certain Respondents to present or otherwise demonstrate their proposed solution as per their EOI, at the Respondent's own cost.

9 AUTHORITY OF SIGNATORY

9.1 If the EOI Respondent is a company, a certified copy of the resolution of the Board of Directors (i.e. personally signed by the Chairman or Secretary of the Board) authorising the person who signs this EOI to do so and any other documents and correspondence in connection with this EOI and/or agreement on behalf of the company, must be submitted with their EOI.

9.2 If the EOI Respondent is a partnership, a certified copy of the resolution of the partners (personally signed by all the partners) authorising the person who signs this EOI to do so and any other documents and correspondence in connection with this EOI and/or agreement on behalf of the partnership, must be submitted with this EOI.

9.3 If the EOI Respondent constitutes a "one-man business", certified proof must be submitted that the person signing this EOI and any other documents and correspondence in connection with this EOI and/or agreement is the sole owner of the one-man business.

Failure to comply with this clause may result in rejection of the EOI response.

10 OFFERING OF COMMISSION OR GRATUITY

If a Respondent, or any person employed by him, is found to have either directly or indirectly offered, promised or given to any person in the employ of Transnet, any commission, gratuity, gift or other consideration, Transnet shall have the right and without prejudice to any other legal remedy which it may have in regard to any loss or additional cost or expenses, to disqualify the EOI Respondent from further participation in this

process and any other subsequent processes in this regard. The EOI Respondent will be responsible for all and any loss that Transnet may suffer as a result thereof. In addition, Transnet reserves the right to exclude such a Respondent from future business with Transnet.

11 UNDERTAKING BY TRANSNET

In responding to this EOI, Transnet encourages all EOI Respondents to put their best effort into the construction and development of the proposal.

The EOI process will include due governance and the results of the adjudication process will be available to Respondents.

SECTION 4 : TRANSNET'S EOI INFORMATION

1 STATISTICS [The Services]

1.1 As per the EOI requirements on Section 3

Please note that the aforementioned information is provided merely as an indication of the size and nature of Transnet's current requirements and consequently does not necessarily reflect the extent of the Services to be provided by appointed Service Provider(s) through an award of business at any future date.

2 REQUIREMENTS FOR EOI

Respondents expressing an interest to participate in this EOI stage must provide the full range of Products/ Services, as set out below:

- (i) Type of product to be stored in the tanks;
- (ii) The method that would be used to bring product to the depot, inject in the tank and the anticipated frequency;
- (iii) The method that would be used to take the product out of the tank and the anticipated frequency;
- (iv) Product volume throughput per week, month, and annum; and
- (v) Technical capability.

Respondents are required to indicate their existing technical capability by ticking the applicable box in the table below:

Description	Yes	No
Engineering expertise to operate the tanks		
Statutory inspection and maintenance (in service & out of service) for the tanks		
Abide to regulations & compliance for the intended application		

Note: The extent to which you are able to provide all or any of the Technical Criteria indicated above will not necessarily penalise you from further participation in an RFP process. Responses to this EOI will permit Transnet to consider and formulate various options in terms of the proposed allocation of its supply requirements and/or allied Services.

3 FINANCIAL REQUIREMENTS FOR FUTURE AWARD OF BUSINESS

In the event of a RFP following this EOI process, it will be a condition precedent prior to the award of business in terms of that RFP that the successful Respondent demonstrates its ability to fund Transnet's requirements.

Respondent's Signature

Date and Company Stamp

4 TEST FOR ADMINISTRATIVE RESPONSIVENESS

The test for administrative responsiveness will include the following:

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

Respondent's Signature

Date and Company Stamp

SECTION 5 : EXPRESSION OF INTEREST

I/We _____

[name of company, close corporation or partnership]

of [full address] _____

carrying on business under style or title of [trading as] _____

represented by _____

in my capacity as _____

being duly authorised, hereby lodge an **Expression of Interest** in the provision of a proposal for the most suitable and commercial viable business initiative in respect to leasing of the six (6) tanks and feederlines, over a period of 20 [twenty] years, as follows:

ADDRESS FOR NOTICESRespondent to indicate its *domicilium citandi et executandi* hereunder:

Name of entity: _____

Facsimile: _____

Address: _____

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 RFI is submitted.

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

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

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

.....

.....

.....

.....

Respondent's Signature_____
Date and Company Stamp

.....

.....

.....

.....

RETURNABLE DOCUMENTS

Respondents must submit with their responses to this EOI, **as a minimum requirement**, all the returnable documents indicated below with a [✓]. All Sections must be signed and dated by the Respondent.

Minimum Requirements - Returnable Documents	Submitted [✓]
SECTION 1: SBD1 FORM	
SECTION 2 : Notice to Respondents	
SECTION 3 : RFI Scope of Requirements	
SECTION 4 : Transnet's RFI/EOI Information	
SECTION 5 : Expression of Interest	
Respondents are required to indicate their existing technical capability and full range of Products/ Services they can offer for their proposal.	
Technical Submission	
In the case of Joint Ventures, please indicate who is the partner	
SECTION 6 : Certificate Of Acquaintance with EOI, Terms & Conditions & Applicable Documents	
SECTION 8: SBD 8 - Certificate of Independent Bid Determination	
SECTION 9: Certificate of Attendance of non-compulsory EOI Briefing	
POPI Act	

CONTINUED VALIDITY OF RETURNABLE DOCUMENTS

The 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 this RFI/EOI process.

SIGNED at _____ on this _____ day of _____ 20____

SIGNATURE OF WITNESSES

ADDRESS OF WITNESSES

1 _____

Name _____

Respondent's Signature

Date and Company Stamp

2 _____
Name _____

SIGNATURE OF RESPONDENT'S AUTHORISED REPRESENTATIVE: _____

NAME: _____

DESIGNATION: _____

Respondent's Signature

Date and Company Stamp

SECTION 6 : CERTIFICATE OF ACQUAINTANCE WITH EOI, TERMS & CONDITIONS & APPLICABLE DOCUMENTS

By signing these EOI documents, the Respondent is deemed to acknowledge that he/she has made himself/herself thoroughly familiar with all the conditions governing this EOI, including those contained in any printed form stated to form part hereof including but not limited to the documents stated below. Transnet SOC Ltd will recognise no claim for relief based on an allegation that the Respondent overlooked any such term or condition.

1	Transnet's General Bid Conditions
2	Transnet's Supplier Integrity Pact
3	Non-disclosure Agreement
4	Specifications and drawings attached to this EOI
5	Supplier Declaration Form and all supporting documents (first time vendors only). Alternatively, for all existing vendors, please complete the table below under the heading "Existing vendors".

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

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

Should the Bidder find any terms or conditions stipulated in any of the relevant documents quoted in this EOI 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 EOI 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 EOI documents included in the EOI as a returnable document, is found not to be true and complete in every respect.

Respondent's Signature

Date and 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 and Company Stamp

SECTION 7 : EOI CLARIFICATION REQUEST FORM

EOI No: **PYP/W1/6/21/1995**

Deadline for EOI clarification submissions: Before **12:00 pm** on **10 November 2021**

TO: Transnet SOC Ltd
ATTENTION: Hlekane Maringa
EMAIL: Hlekane.Maringa@transnet.net
DATE:
FROM:

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

REQUEST FOR EOI CLARIFICATION:

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

SECTION 8: SBD 8 - CERTIFICATE OF INDEPENDENT BID DETERMINATION

1. Section 4(1)(b)(iii) of the Competition Act No. 89 of 1998, as amended, prohibits an agreement between, or concerted practice by, firms, or a decision by an association of firms, if it is between parties in a horizontal relationship and if it involves collusive bidding (or bid rigging). Collusive bidding is a per se prohibition meaning that it cannot be justified under any grounds. Bid rigging (or collusive bidding) occurs when businesses, that would otherwise be expected to compete, secretly conspire to raise prices or lower the quality of goods and / or services for purchasers who wish to acquire goods and / or services through a bidding process. Bid rigging is, therefore, an agreement between competitors not to compete.
2. Transnet will take all reasonable steps to prevent abuse of the supply chain management system and to:
 - a. disregard the bid of any bidder if that bidder, or any of its directors have abused the institution's supply chain management system and or committed fraud or any other improper conduct in relation to such system.
 - b. cancel a contract awarded to a supplier of goods and services if the supplier committed any corrupt or fraudulent act during the bidding process or the execution of that contract.
3. This SBD serves as a certificate of declaration that would be used by institutions to ensure that, when bids are considered, reasonable steps are taken to prevent any form of bid-rigging.
4. In order to give effect to the above, the following certificate of Bid Determination (SBD 9) must be completed and submitted with the bid:

Respondent's Signature

Date and Company Stamp

CERTIFICATE OF INDEPENDENT BID DETERMINATION

I, the undersigned, in submitting the accompanying bid:

(Bid Number and Description)

in response to the invitation for the bid made by:

(Name of Institution)

do hereby make the following statements that I certify to be true and complete in every respect:

I certify, on behalf of: _____ that:

(Name of Bidder)

1. I have read and I understand the contents of this Certificate;
2. I understand that the accompanying bid will be disqualified if this Certificate is found not to be true and complete in every respect;
3. I am authorized by the bidder to sign this Certificate, and to submit the accompanying bid, on behalf of the bidder;
4. Each person whose signature appears on the accompanying bid has been authorized by the bidder to determine the terms of, and to sign the bid, on behalf of the bidder;
5. For the purposes of this Certificate and the accompanying bid, I understand that the word "competitor" shall include any individual or organization, other than the bidder, whether or not affiliated with the bidder, who:
 - a. has been requested to submit a bid in response to this bid invitation;
 - b. could potentially submit a bid in response to this bid invitation, based on their qualifications, abilities or experience; and
 - c. provides the same goods and services as the bidder and/or is in the same line of business as the bidder
6. The bidder has arrived at the accompanying bid independently from, and without consultation, communication, agreement or arrangement with any competitor. However communication between partners in a joint venture or consortium¹ will not be construed as collusive bidding.
7. In particular, without limiting the generality of paragraphs 6 above, there has been no consultation, communication, agreement or arrangement with any competitor regarding:
 - a. prices;
 - b. geographical area where product or service will be rendered (market allocation)

¹ 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.

Respondent's Signature

Date and Company Stamp

- c. methods, factors or formulas used to calculate prices;
 - d. the intention or decision to submit or not to submit, a bid;
 - e. the submission of a bid which does not meet the specifications and conditions of the bid; or
 - f. bidding with the intention not to win the bid.
8. In addition, there have been no consultations, communications, agreements or arrangements with any competitor regarding the quality, quantity, specifications and conditions or delivery particulars of the products or services to which this bid invitation relates.
9. The terms of the accompanying bid have not been, and will not be, disclosed by the bidder, directly or indirectly, to any competitor, prior to the date and time of the official bid opening or of the awarding of the contract.
10. I am aware that, in addition and without prejudice to any other remedy provided to combat any restrictive practices related to bids and contracts, bids that are suspicious will be reported to the Competition Commission for investigation and possible imposition of administrative penalties in terms of section 59 of the Competition Act No 89 of 1998 and or may be reported to the National Prosecuting Authority (NPA) for criminal investigation and or may be restricted from conducting business with the public sector for a period not exceeding ten (10) years in terms of the Prevention and Combating of Corrupt Activities Act No 12 of 2004 or any other applicable legislation.

.....
Signature

.....
Date

.....
Position

.....
Name of Bidder

SECTION 9: CERTIFICATE OF ATTENDANCE OF NON-COMPULSORY EOI BRIEFING

It is hereby certified that –

1. _____

2. _____

Representative(s) of _____ *[name of entity]*

attended the EOI briefing in respect of the proposed Services to be rendered in terms of this EOI on
_____ 20____

TRANSNET'S REPRESENTATIVE

RESPONDENT'S REPRESENTATIVE

DATE _____

DATE _____

EMAIL _____

Respondent's Signature

Date and Company Stamp

SECTION 10: RECORD OF ADDENDA TO TENDER DOCUMENTS

We confirm that the following communications received from the Employer before the submission of this tender offer, amending the tender documents, have been taken into account in this tender offer:

	Date	Title or Details
1		
2		
3		
4		
5		
6		
7		
8		
9		

Attach additional pages if more space is required.

Respondent's Signature

Date and Company Stamp

SECTION 11: PROTECTION OF PERSONAL INFORMATION

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

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

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

Respondent's Signature

Date and Company Stamp

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

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

Respondents are required to provide consent below:

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

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

Signature of Respondent's authorised representative: _____

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

ANNEXURE A

SPECIFICATIONS AND DRAWINGS

ANNEXURE B

NON-DISCLOSURE AGREEMENT

NON DISCLOSURE AGREEMENT

[April 2020]

THIS AGREEMENT is made between

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

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

and

the Company as indicated in the RFP bid response hereto

WHEREAS

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

IT IS HEREBY AGREED

1. INTERPRETATION

In this Agreement:

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

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

2. CONFIDENTIAL INFORMATION

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

3. RECORDS AND RETURN OF INFORMATION

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

4. ANNOUNCEMENTS

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

5. DURATION

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

6. PRINCIPAL

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

7. ADEQUACY OF DAMAGES

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

8. PRIVACY AND DATA PROTECTION

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

9. GENERAL

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

oooOOOooo

ANNEXURE C

TRANSNET'S GENERAL BID CONDITIONS

GENERAL BID CONDITIONS

[June 2021]

TABLE OF CONTENTS

1	DEFINITIONS	3
2	GENERAL	3
3	SUBMITTING OF BID DOCUMENTS.....	3
4	USE OF BID FORMS	3
5	BID FEES	4
6	VALIDITY PERIOD.....	4
7	SITE VISITS / BRIEFING SESSIONS	4
8	CLARIFICATION BEFORE THE CLOSING DATE	4
9	COMMUNICATION AFTER THE CLOSING DATE	4
10	UNAUTHORISED COMMUNICATION ABOUT BIDS.....	4
11	RETURNABLE DOCUMENTS	4
12	DEFAULTS BY RESPONDENTS	5
13	CURRENCY	5
14	PRICES SUBJECT TO CONFIRMATION	5
15	ALTERATIONS MADE BY THE RESPONDENT TO BID PRICES	5
16	EXCHANGE AND REMITTANCE.....	5
17	ACCEPTANCE OF BID.....	6
18	NOTICE TO UNSUCCESSFUL RESPONDENTS.....	6
19	TERMS AND CONDITIONS OF CONTRACT	6
20	CONTRACT DOCUMENTS	6
21	LAW GOVERNING CONTRACT.....	6
22	IDENTIFICATION	7
23	RESPONDENT'S SAMPLES	7
24	SECURITIES.....	7
25	PRICE AND DELIVERY BASIS FOR GOODS	8
26	EXPORT LICENCE	8
27	QUALITY OF MATERIAL	8
28	DELETION OF ITEMS EXCLUDED FROM BID	8
29	VALUE-ADDED TAX	8
30	IMPORTANT NOTICE TO RESPONDENTS REGARDING PAYMENT	8
31	CONTRACT QUANTITIES AND DELIVERY REQUIREMENTS	9
32	PLANS, DRAWINGS, DIAGRAMS, SPECIFICATIONS AND DOCUMENTS	10
33	BIDS BY OR ON BEHALF OF FOREIGN RESPONDENTS	10
34	DATABASE OF RESTRICTED SUPPLIERS	11
35	CONFLICT WITH ISSUED RFX DOCUMENT	11

1 DEFINITIONS

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

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

2 GENERAL

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

3 SUBMITTING OF BID DOCUMENTS

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

4 USE OF BID FORMS

- 4.1 Where special forms and/or formats are issued by Transnet for the submission of Bids, Respondents are required to submit their Bids by completion of the appropriate sections on such official forms and/or formats and not in other forms and/or formats or documents bearing their own terms and conditions of contract. Non-compliance with this condition may result in the rejection of a Bid.
- 4.2 Respondents must note that the original Bid forms and/or formats must be completed for submission.

- 4.3 Only if insufficient space has been allocated to a particular response may a Respondent submit additional information under separate cover using the Company's letterhead. This must be duly cross-referenced in the RFX.

5 BID FEES

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

6 VALIDITY PERIOD

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

7 SITE VISITS / BRIEFING SESSIONS

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

8 CLARIFICATION BEFORE THE CLOSING DATE

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

9 COMMUNICATION AFTER THE CLOSING DATE

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

10 UNAUTHORISED COMMUNICATION ABOUT BIDS

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

11 RETURNABLE DOCUMENTS

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

12 DEFAULTS BY RESPONDENTS

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

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

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

13 CURRENCY

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

14 PRICES SUBJECT TO CONFIRMATION

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

15 ALTERATIONS MADE BY THE RESPONDENT TO BID PRICES

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

16 EXCHANGE AND REMITTANCE

- 16.1 The Respondent should note that where the whole or a portion of the contract or order value is to be remitted overseas, Transnet shall, if requested to do so by the Supplier/Service Provider, effect payment overseas directly to the foreign principal or manufacturer of such percentage of the contract or order value as may be stipulated by the Respondent in its Bid Documents.
- 16.2 It is Transnet's preference to enter into Rand-based agreements. Transnet would request, therefore, that the Respondent give favourable consideration to obtaining forward exchange cover on the foreign currency portion of the Agreement at a cost that is acceptable to Transnet to protect itself against any currency rate fluctuation risks for the duration of any resulting contract or order.
- 16.3 The Respondent who desires to avail itself of the aforementioned facility must at the time of bidding furnish the information called for in the Exchange and Remittance section of the Bid Documents and also furnish full details of the principals or manufacturer to whom payment is to be made.
- 16.4 The South African Reserve Bank's approval is required before any foreign currency payments can be made to or on behalf of Respondents.
- 16.5 Transnet will not recognise any claim for adjustment of the order and/or contract price if the increase in price arises after the date on which the Goods/Services were to be delivered, as set out in the order and/or contract, or any subsequent agreement between the parties.

- 16.6 Transnet reserves the right to request a pro-forma invoice/tax invoice in order to ensure compliance with the contract and Value-Added Tax Act no. 89 of 1991 [VAT Act].

17 ACCEPTANCE OF BID

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

18 NOTICE TO UNSUCCESSFUL RESPONDENTS

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

19 TERMS AND CONDITIONS OF CONTRACT

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

20 CONTRACT DOCUMENTS

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

21 LAW GOVERNING CONTRACT

The law of the Republic of South Africa shall govern the contract created by the acceptance of a Bid. The *domicilium citandi et executandi* shall be a place in the Republic of South Africa to be specified by the Respondent in its Bid at which all legal documents may be served on the Respondent who shall agree to

submit to the jurisdiction of the courts of the Republic of South Africa. A foreign Respondent shall, therefore, state in its Bid the name of its authorised representative in the Republic of South Africa who is empowered to sign any contract which may be entered into in the event of its Bid being accepted and to act on its behalf in all matters relating to the contract.

22 IDENTIFICATION

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

23 RESPONDENT'S SAMPLES

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

24 SECURITIES

- 24.1 The successful Respondent, when called upon to do so, shall provide security to the satisfaction of Transnet for the due fulfilment of a contract or order. Such security shall be in the form of a Deed of Suretyship [Deed of Suretyship] furnished by an approved bank, building society, insurance or guarantee corporation carrying on business in South Africa.
- 24.2 The security may be applied in whole or part at the discretion of Transnet to make good any loss or damage which Transnet may incur in consequence of a breach of the contract or any part thereof.
- 24.3 Such security, if required, shall be an amount which will be stipulated in the Bid Documents.
- 24.4 For the purpose of clause 24.124.1 above, Transnet will supply a Deed of Suretyship form to the successful Respondent for completion and no guarantee in any other form will be accepted. A copy of such form will be supplied to Respondents on request. For this purpose a Deed of Suretyship form will be provided which shall be completed and returned to Transnet or a designated official by the successful Respondent within 30 [thirty] calendar days from the date of the letter of acceptance. No payment will be made until the form, duly completed, is delivered to Transnet. Failure to return the Deed of Suretyship within the prescribed time shall, save where prior extension has been granted, entitle Transnet without notice to the Supplier/Service Provider to cancel the contract with immediate effect.
- 24.5 Additional costs incurred by Transnet necessitated by reason of default on the part of the Supplier/Service Provider in relation to the conditions of this clause 24 will be for the account of the Supplier/Service Provider.

25 PRICE AND DELIVERY BASIS FOR GOODS

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

26 EXPORT LICENCE

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

27 QUALITY OF MATERIAL

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

28 DELETION OF ITEMS EXCLUDED FROM BID

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

29 VALUE-ADDED TAX

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

30 IMPORTANT NOTICE TO RESPONDENTS REGARDING PAYMENT

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

- b) However, in addition to the foregoing the Respondent is invited to submit offers based on alternative methods of payment and/or financing proposals.
- c) The Respondent is required to give full particulars of the terms that will be applicable to its alternative offer(s) and the financial merits thereof will be evaluated and taken into consideration when the Bid is adjudicated.
- d) The Respondent must, therefore, in the first instance, tender strictly in accordance with clause 30.1 (a) above. Failure to comply with clause 30.1 (a) above may preclude a Bid from further consideration.

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

30.2 Conditional Discount

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

31 CONTRACT QUANTITIES AND DELIVERY REQUIREMENTS

31.1 Contract Quantities

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

31.2 Delivery Period

- a) Period Contracts and Fixed Quantity Requirements

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

- b) Progress Reports

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

- c) Emergency Demands as and when required

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

32 PLANS, DRAWINGS, DIAGRAMS, SPECIFICATIONS AND DOCUMENTS

32.1 Copyright

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

32.2 Drawings and specifications

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

32.3 Respondent's drawings

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

32.4 Foreign specifications

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

33 BIDS BY OR ON BEHALF OF FOREIGN RESPONDENTS

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

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

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

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

Transnet by the South African representative or agents authorising them to enter into and sign such contract.

- a) Such Power of Attorney must comply with Rule 63 (Authentication of documents executed outside the Republic for use within the Republic) of the Uniform Rules of Court: Rules regulating the conduct of the proceedings of the several provincial and local divisions of the Supreme Court of South Africa.
- b) The Power of Attorney must be signed by the principal under the same title as used in the Bid Documents.
- c) If a Power of Attorney held by the South African representative or agent includes matters of a general nature besides provision for the entering into and signing of a contract with Transnet, a certified copy thereof should be furnished.
- d) The Power of Attorney must authorise the South African representative or agent to choose the *domicilium citandi et executandi*.

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

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

33.6 The attention of the Respondent is directed to clause 24 above [Securities] regarding the provision of security for the fulfilment of contracts and orders and the manner and form in which such security is to be furnished.

34 DATABASE OF RESTRICTED SUPPLIERS

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

35 CONFLICT WITH ISSUED RFX DOCUMENT

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

ooo000ooo

ANNEXURE D

TRANSNET'S SUPPLIER INTEGRITY PACT

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

INTEGRITY PACT

Between

TRANSNET SOC LTD

Registration Number: 1990/000900/30

("Transnet")

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

PREAMBLE

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

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

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

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

1 OBJECTIVES

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

2 COMMITMENTS OF TRANSNET

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

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

3 OBLIGATIONS OF THE BIDDER / SUPPLIER

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

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

4 INDEPENDENT BIDDING

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

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

5 DISQUALIFICATION FROM BIDDING PROCESS

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

6 DATABASE OF RESTRICTED SUPPLIERS

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

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

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

7 PREVIOUS TRANSGRESSIONS

- 7.1 The Bidder / Supplier hereby declares that no previous transgressions resulting in a serious breach of any law, including but not limited to, corruption, fraud, theft, extortion and contraventions of the Competition Act 89 of 1998, which occurred in the last 5 (five) years with any other public sector undertaking, government department or private sector company that could justify its exclusion from its registration on the Bidder's / Supplier's database or any bidding process.
- 7.2 If it is found to be that the Bidder / Supplier made an incorrect statement on this subject, the Bidder / Supplier can be rejected from the registration process or removed from the Bidder / Supplier database, if already registered, for such reason (refer to the Breach of Law Form contained in the applicable RFX document.)

8 SANCTIONS FOR VIOLATIONS

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

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

9 CONFLICTS OF INTEREST

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

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

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

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

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

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

- a) must disclose the interest and its general nature, in the Request for Proposal ("RFX") declaration form; or
- b) must notify Transnet immediately in writing once the circumstances has arisen.

9.4 The Bidder / Supplier shall not lend to or borrow any money from or enter into any monetary dealings or transactions, directly or indirectly, with any committee member or any person involved in the sourcing process, where this is done, Transnet shall be entitled forthwith to rescind the contract and all other contracts with the Bidder / Supplier.

10 DISPUTE RESOLUTION

10.1 Transnet recognises that trust and good faith are pivotal to its relationship with its Bidders / Suppliers. When a dispute arises between Transnet and its Bidder / Supplier, the parties should use their best endeavours to resolve the dispute in an amicable manner, whenever possible. Litigation in bad faith negates the principles of trust and good faith on which commercial relationships are based. Accordingly, following a restriction process as mentioned in paragraph 6 above, Transnet will not do business with a company that litigates against it in bad faith or is involved in any action that reflects bad faith on its part. Litigation in bad faith includes, but is not limited to the following instances:

- a) **Vexatious proceedings:** these are frivolous proceedings which have been instituted without proper grounds;
- b) **Perjury:** where a supplier make a false statement either in giving evidence or on an affidavit;
- c) **Scurrilous allegations:** where a supplier makes allegations regarding a senior Transnet employee which are without proper foundation, scandalous, abusive or defamatory; and
- d) **Abuse of court process:** when a supplier abuses the court process in order to gain a competitive advantage during a bid process.

11 GENERAL

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

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

ooo000ooo