

ANNEXURE D:

Transnet General Bids Conditions

GENERAL BID CONDITIONS

[June 2022]

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	4
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.....	7
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 and submit their Bid submissions by uploading them into the system against each tender selected. The bidder guide can be found on the Transnet Portal transnetetenders.azurewebsites.net.

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

A bid fee is not applicable. The Bid Documents may be downloaded directly from National Treasury's e-Tender Publication Portal at www.etenders.gov.za and may also be downloaded from the Transnet website at www.transnet.net free of charge.

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 upload questions onto the Transnet e-Tender Submission Portal or 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 contact person listed in the RFX Document.

10 UNAUTHORISED COMMUNICATION ABOUT BIDS

Respondents may at any time communicate with the contact person listed in the RFX Document on any matter relating to its Bid but, in the absence of written authority from the **delegated individual (BEC chairperson)**, no communication on a question affecting the subject of a Bid shall take place between Respondents or other potential service providers or any member of the Bid Adjudication Committee or official of Transnet during the period between the closing date for the receipt of the Bid and the date of the notification of the successful Respondent(s). A Bid, in respect of which any such unauthorised communication has occurred, may be disqualified.

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

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, 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, 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 244 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 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.

oooOOOooo



ANNEXURE E:

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.

oooOOOooo

ANNEXURE F:

Standard Terms and Conditions



STANDARD TERMS AND CONDITIONS OF CONTRACT

between

TRANSNET SOC LTD

Registration Number 1990/000900/30

And

**REQUEST FOR QUOTATION [RFQ] TNPA/2026/09/2032/11375/RFQ
FOR SUPPLY OF ROCK MATERIAL AND AD-HOC DELIVERY AT THE PORT OF PORT
ELIZABETH ON AN AS AND WHEN BASIS FOR A PERIOD OF TWENTY-FOUR (24)
MONTHS.**

CONTRACT NUMBER **TNPA/2026/09/2032/11375/RFQ**

DURATION **TWENTY-FOUR (24) MONTHS**

COMMENCEMENT DATE

EXPIRY DATE

TABLE OF CONTENTS

1	SOLE AGREEMENT	3
2	CONFORMITY WITH ORDER	3
3	DELIVERY AND TITLE	3
4	PRICE AND PAYMENT	3
5	Non-compliance penalties for subcontracting	4
6	PROPRIETARY RIGHTS LIABILITY	5
7	PROPRIETARY INFORMATION.....	5
8	PROTECTION OF personal INFORMATION.....	6
9	PUBLICITY	8
10	NON-CONFORMANCE OF SERVICES PROCURED.....	8
11	TERMINATION OF ORDER.....	8
12	ACCESS.....	9
13	WARRANTY	9
14	INSOLVENCY	10
15	subcontracting	10
16	PAYMENT TO SUB-CONTRACTORS	10
17	CESSIONS and ASSIGNMENTS as per NT Instruction Note 08 of 2022/2023.....	11
18	supplier integrity pact	11
19	DATABASE OF RESTRICTED SUPPLIERS.....	11
20	NOTICES	12
21	LAW.....	12
22	GENERAL.....	12
23	COUNTERPARTS	12

Schedule 1 – SCHEDULE OF REQUIREMENTS

1 SOLE AGREEMENT

Unless otherwise agreed in writing, these terms [**Terms** and each **Term**] and Transnet's purchase order(s) [**Order** or **Orders**] represent the only conditions upon which Transnet SOC Ltd [**Transnet**] procures Services [**Supply of Rock Material and Ad-Hoc Delivery at Transnet National Ports Authority (TNPA) Port of Port Elizabeth on an As and When Basis for a Period of Twenty-Four (24) Months**] specified in the Order from the person to whom the Order is addressed [**Service Provider**]. Transnet does not accept any other conditions which the Service Provider may specify, unless otherwise agreed to by Transnet in writing. In the event of any inconsistency between these Terms and any Order, these Terms shall take precedence.

2 CONFORMITY WITH ORDER

Services shall conform strictly with the Order. The Service Provider shall not vary the quantities specified and/or the specification, if any, stipulated in the Order, without the prior written consent of Transnet. The Service Provider warrants that the Services shall be fit for their purpose and of satisfactory quality.

3 DELIVERY AND TITLE

- 3.1 The delivery dates and addresses are those in the Order. Time shall be of the essence in respect of the Service Provider's obligations under the Order.
- 3.2 The Service Provider will not be excused for delay in delivery or performance except due to circumstances outside its control and then only subject to the Service Provider having notified Transnet in writing on becoming aware of such circumstances. Transnet may terminate an Order, in whole or in part, without incurring any liability to the Service Provider if such a delay becomes, in Transnet's absolute opinion, significant.
- 3.3 If on delivery, the services do not conform to the Order, Transnet may reject the Services and the Service Provider shall promptly rectify any defects or in Transnet's opinion, supply appropriate replacement Services at the Service Provider's expense within the specified delivery times, without any liability due by Transnet.

4 PRICE AND PAYMENT

- 4.1 Prices specified in an Order cannot be increased. Payment for the Services shall be made by Transnet against an original undisputed invoice(s) [a Tax Invoice], supporting documentation and month-end statement from the Service Provider. Tax Invoices plus supporting documentation shall be posted to the address shown in the Order.
- 4.2 Payment of the Service Provider's valid Tax Invoice(s) will be made by Transnet in the South African currency and on the terms stated in the Order, the standard payment terms being 30 [thirty] days from date of receipt by Transnet of a month-end statement, unless otherwise agreed to in writing. Transnet shall arrange for payment of such Tax Invoices and any pre-authorised additional expenses incurred, provided that the authorised expenses

are supported by acceptable documentary proof of expenditure incurred [where this is available]. Any amounts due in terms of these Terms shall be paid to the Service Provider, taking into account any deduction or set-off and bank charges.

5 NON-COMPLIANCE PENALTIES FOR SUBCONTRACTING

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

Non-compliance Penalty Certificate:

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

Payment of Non-compliance Penalties:

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

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

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

6 PROPRIETARY RIGHTS LIABILITY

If any allegations should be made or any claim asserted against Transnet that ownership of, or any act or omission by Transnet in relation to Services or any written material provided to Transnet relating to any Services or pursuant to an Order being a violation or infringement of any third party's contractual, industrial, commercial or intellectual property rights including but not limited to any patent, registered design, design right, trade mark, copyright or service mark on any application thereof, the Service Provider hereby indemnifies Transnet against and hold it harmless from any and all losses, liabilities, costs, claims, damages and expenses [including any legal fees] arising directly or indirectly from such allegation or claim provided that this indemnity shall not apply where the allegation or claim arises solely as a result of the Service Provider following a design or process originated and furnished by Transnet. The Supplier/Service Provider shall either

6.1 procure for Transnet the right to continue using the infringing Services; or

6.2 modify or replace the services so that they become non-infringing,

provided that in both cases the services shall continue to meet Transnet's requirements and any specifications stipulated in the Order. Should neither option be possible, the Service Provider may remove, with Transnet's prior written consent, such services and will pay to Transnet a sum equivalent to the purchase price. If Transnet refuses to give such consent, the Service Provider shall have no liability in respect of any continued use of the infringing services after Service Provider's prior written request to remove the same.

7 PROPRIETARY INFORMATION

All information which Transnet has divulged or may divulge to the Service Provider and any information relating to Transnet's business which may have come into the Service Provider's possession whilst carrying out an Order, and the existence of the Order, shall be treated by the Service Provider as confidential information and shall not, without Transnet's prior written consent, be disclosed to any third party, or be used or copied for any purposes other than to perform the Order. This clause does not apply to information which is public knowledge or available from other sources other than by breach of this Term. Upon request by Transnet, the Service Provider shall return all materials issued pursuant to the Order and, pending this, shall protect Transnet's rights in any such materials. Such confidential information shall at all material times be the property of Transnet.

8 PROTECTION OF PERSONAL INFORMATION

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

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

8.1 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.

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

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

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

- such personal information is protected against unauthorized or unlawful processing, accidental loss, destruction or damage, alteration, disclosure or access.

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

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

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

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

8.8 The Parties agree that they will promptly return, destroy or de-identify any personal information in their possession or control which belongs to the other Party once it no longer serves the purpose for which it was collected in relation to this Agreement, subject to any legal retention requirements. This may be at the request of the other Party and includes circumstances where a person has requested the Parties to delete all instances of their personal information. The information will be destroyed or de-identified in such a manner that it cannot be reconstructed to its original form, linking it to any particular individual or organization.

8.9 Personal Information security breach:

- Each Party shall notify the other party in writing as soon as possible after it becomes aware of or suspects any loss, unauthorised access or unlawful use of any personal information and shall, at its own cost, take all necessary remedial steps to mitigate the extent of the loss or compromise of personal information and to restore the integrity of the affected personal information as quickly as is possible. The Parties shall also be required to provide each other with details of the persons affected by the compromise

and the nature and extent of the compromise, including details of the identity of the unauthorised person who may have accessed or acquired the personal information.

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

9 PUBLICITY

The Supplier/Service Provider shall not name Transnet or use its trademarks, service marks [whether registered or not] or Goods in connection with any publicity without Transnet's prior written consent.

10 NON-CONFORMANCE OF SERVICES PROCURED

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

10.2 Failure by the Service Provider to fully comply with NCR within the period stated in sub- clause 13.1 above, shall entitle Transnet to further conditions to which the Service Provider must discharge in order to close the NCR or to terminate the order without giving the Service Provider written notice of termination in terms of this Agreement.

11 TERMINATION OF ORDER

11.1 Notwithstanding the date of signature hereof, the commencement date of this Order isand will expire on, unless:

- this Order is terminated by either Party in accordance with the provisions incorporated herein or in any schedules or annexures appended hereto, or otherwise in accordance with law or equity; or
- this Order is extended at Transnet's option for a further period to be agreed by the Parties; or

- the allocated maximum contract value is depleted before the contract expiry date.
- 11.2 Transnet may cancel this Order in whole or in part at any time upon at least 30 [thirty] days' written notice to the Service Provider, or when there is a change in control of the Service Provider or the Service Provider commits any serious breach or any repeated or continued material breach of its obligations under these Terms and/or Order or shall have been guilty of conduct tending to bring itself into disrepute, on written notice to the Service Provider when such work on the Order shall stop.
- 11.3 Transnet shall pay the Service Provider a fair and reasonable price for justified work in progress, where such price reflects only those costs not otherwise recoverable by the Service Provider, at the time of termination, and the Service Provider shall give Transnet full assistance to check the extent of such work in progress. Payment of such price shall be in full and final satisfaction of any claims arising out of such termination and upon such payment the Service Provider shall deliver to Transnet all work, including any materials, completed or in progress. The sum payable to the Service Provider under this clause will not in any event exceed the total amount that would have been payable to the Service Provider had the Order not been terminated.
- 11.4 In the event of termination, the Service Provider must submit all claims within 2 [two] months of termination after which time claims will only be met in what Transnet considers exceptional circumstances.
- 11.5 If the services are not provided in accordance with an Order, the Order shall be deemed terminated and the Service Provider shall compensate Transnet for any costs incurred in obtaining substitute services or any damage caused due to the failure or delay in the delivery.
- 11.6 Both parties to this agreement reserve the right to terminate this agreement:
- If the other commits a material breach of this contracts and fails to remedy such breach within a stipulated time frame or within a reasonable time;
 - There is non-performance from either of the parties; or
 - If the other party is unable to perform its obligations under this agreement.

12 ACCESS

The Service Provider shall be liable for the acts, omissions and defaults of its personnel or agents who, for the purposes of the Order, shall be treated as if they are the Service Provider's employees. The Service Provider shall ensure that any such personnel or agents, whilst on Transnet's premises, shall comply with Transnet's health and safety, security and system security rules and procedures as and where required.

13 WARRANTY

The Service Provider warrants that it is competent to supply the services in accordance with these Terms to the reasonable satisfaction of Transnet and that all services delivered under the Order:

(a) conform and comply in all relevant legislation, standards, directives and orders related to *[inter alia]* the services in force at the time of delivery, and to any specifications referred to in the Order; (b) will not cause any deterioration in the functionality of any Transnet equipment; and (c) do not infringe any third party rights of any kind. The Service Provider hereby indemnifies Transnet against all losses, liabilities, costs, claims, damages, expenses and awards of any kinds incurred or made against Transnet in connection with any breach of this warranty.

14 INSOLVENCY

If the Service Provider shall have a receiver, manager, administrator, liquidator or like person appointed over all or any part of its assets or if the Service Provider compounds with its creditors or passes a resolution for the writing up or administration of the Service Provider, Transnet is at liberty to terminate the Order or Orders forthwith, or at its option, to seek performance by any such appointed person.

15 SUBCONTRACTING

- 15.1 The Service Provider may only enter into a subcontracting arrangement with the approval of Transnet. If the Supplier subcontracts a portion of the contract to another person without declaring it to Transnet, Transnet must penalise the Supplier up to 10% of the value of the contract.
- 15.2 Should Transnet approve the Service Provider's subcontracting arrangement, the Service Provider and not the sub-contractor will at all times be held liable for performance in terms of its contractual obligations.
- 15.3 The Service Provider may not subcontract in such a manner that the local production and content of the overall value of the contract is reduced to below the stipulated minimum threshold.
- 15.4 The Service Provider may not subcontract more than 25% of the value of the contract to any other enterprise that does not have an equal or higher B-BBEE status level of contributor than the Supplier, unless the contract is subcontracted to an Exempted Micro Enterprise (EME) that has the capability and ability to execute the subcontract.

16 PAYMENT TO SUB-CONTRACTORS

- 16.1 Transnet reserves the right, in its sole discretion, to make payment directly to the sub-contractor of the Service Provider, subject to the following conditions:
 - Receipt of an undisputed invoice from the sub-contractor; and
 - Receipt of written confirmation from the Service Provider that the amounts claimed by the sub-contractor are correct and that the services for which the sub-contractor has requested payment were rendered to the satisfaction of the Service Provider, against the required standards.
- 16.2 Nothing contained in this clause must be interpreted as bestowing on any sub-contractor a right or legitimate expectation to be paid directly by Transnet. Furthermore, this clause does

not bestow any right or legitimate expectation on the Service provider to demand that Transnet pay its sub-contractor directly. The decision to pay any sub-contractor directly, remains that of Transnet alone.

- 16.3 The Service Provider remains liable for its contractual obligations under the Agreement, including all services rendered by the sub-contractor.
- 16.4 This clause does not establish any contractual relationship between Transnet and any sub-contractor of the Service Provider, whatsoever.

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

- 17.1 The Service Provider is not allowed to cede its rights for payment in terms of this Agreement without prior written approval from Transnet. Cession shall only be applicable as follows:
- Cession must only be applicable to the transfer of right to payment for services rendered by a Service Provider to an FSP or State Institutions.
 - The written request for cession must be by the Service Provider and not a third party; and
 - The written request by the Service Provider must be accompanied by the cession agreement.
- 17.2 The Service Provider is prohibited from transferring its rights and obligations to perform under this contract. Assignments are against the principles of section 217 of the Constitution mainly, fairness, transparency and competitiveness.

18 SUPPLIER INTEGRITY PACT

The Service Provider shall observe and ensure compliance with all requirements and objectives of the Transnet Supplier Integrity Pact as agreed to in response to the RFQ. The general purpose of the Supplier Integrity Pact is to agree to avoid all forms of dishonesty, fraud and corruption by following a system that is fair, transparent and free from any undue influence prior to, during and subsequent to the currency of the procurement event leading to this Agreement and this Agreement itself.

19 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.

20 NOTICES

Notices under these Terms shall be delivered by hand to the relevant addresses of the parties in the Order or may be served by facsimile or by email, in which event notice shall be deemed served on acknowledgement of receipt by the recipient.

21 LAW

Orders shall be governed by and interpreted in accordance with South African law and any disputes arising herein shall be subject to South African arbitration under the rules of the Arbitration Foundation of South Africa, which rules are deemed incorporated by reference in this clause. The reference to arbitration shall not prevent Transnet referring the matter to any South African courts, having jurisdiction, to which the Service Provider hereby irrevocably submits but without prejudice to Transnet's right to take proceedings against the Service Provider in other jurisdictions and/or obtaining interim relief on an urgent basis from a court of competent jurisdiction pending the decision in other courts or from instituting in any court of competent jurisdiction any proceedings for an interdict or any other injunctive relief. If the Service Provider does not have a registered office in the South Africa it will at all times maintain an agent for service of process in South Africa and shall give Transnet the name and address of such agent as such may be amended, in writing, from time to time.

22 GENERAL

Completion or termination of an Order shall be without prejudice to any Term herein which by its nature would be deemed to continue after completion or termination, including but not limited to clauses 5, 6, 7, 8 and 10. Headings are included herein for convenience only. If any Term herein be held illegal or unenforceable, the validity or enforceability of the remaining Terms shall not be affected. No failure or delay by Transnet to enforce any rights under these Terms will operate as a waiver thereof by Transnet. All rights and remedies available to either party under these Terms shall be in addition to, not to the exclusion of, rights otherwise available at law.

23 COUNTERPARTS

These Terms and conditions may be signed in any number of counterparts, all of which taken together shall constitute one and the same instrument. Any party may enter into this agreement by signing any such counterpart.

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

SIGNED for and on behalf of Transnet SOC Ltd duly authorised hereto	SIGNED for and on behalf of duly authorised hereto
Registration Number 1990/000900/30	Registration Number
Signature	Signature
Name:	Name:
Position:	Position:
Date:	Date:
Place:	Place:
AS WITNESS: Signature Name	AS WITNESS: Signature Name



ANNEXURE G:

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 H:

HSE Management Plan

ANNEXURE H:

CONTRACTOR MANAGEMENT SHE DOCUMENTATION

(TO BE SUBMITTED ON AWARD – IF APPLICABLE)

Date of inspection/ Evaluation:

Client	
Employer (Principal contractor)	
Registered name of the enterprise	
Trade name of the Enterprise	
Company Registration No	
SARS registration No(PAYE)	
UIF registration No	
CIDA registration no	
Relevant SETA for EEA purpose	
Industry sector	
Bargaining Council	
Contact person & position	
Contact number	
Site Address	
Postal Address	
Chief Executive Officer	
Chief Executive officer's email and contact number	
Construction Manager	
Health and Safety Representative	
Activities/ Service rendered	
Commencement date	
Completion date	
Site Phone	
Total number of employees on site:	
Female	
Male	
People with disabilities	

CONTRACTOR	Complying	Not Complying (i.e. Comments)	Not Applicable
1. Site Specific Organogram of reporting structure. This document must provide all persons appointed in terms of OHS Act No. 85 of 1993 including contact details. (rev, date, approval)			
2. Contractor scope of work information (Company Profile)			

3.	Notification of Construction Work to the Department of Labour: Document to display required information as per OHS Act No.85 of 1993 – Construction Regulations Annexure A, Must carry the stamp of acceptance from the Department of Labour (<i>if applicable</i>)			
4.	Application for a permit to do construction work (<i>if applicable</i>)			
5.	Valid Letter of Good Standing with FEM/WCA: And proof of relevant insurances to carry out work.			
MANAGEMENT PLANS				
6.	Copy of reference documents: Health & Safety, Security, Quality, Environmental, and other applicable Specifications Including a signed register of communication to Managers, Supervisors & Safety Officers			
7.	Approved Contractor Execution Plan correlating with Specification provided by Transnet (i.e. Approved health and safety plan, environmental plan, security plan etc.)			
8.	Contractors Health and Safety Policy			
9.	Site Specific Emergency Plan			
10.	Contractors Traffic Management Plan (<i>if applicable</i>)			
11.	Procedure for handling Hazardous Chemical Substance's and Applicable Safety Data Sheet (<i>if applicable</i>).			
APPOINTMENTS				
12.	Fully completed appointments of the following (depends on the scope of work) but not limited to:			
	16. Risk Assessment (HIRA), Method Statement, Safe Work Procedure to be generated for each specific task to be performed on the contract			
	CR 8(1) – Construction Manager			
	CR 8(7) – Construction Supervisor			
	CR 8(8) – Assistant Construction Supervisor			
	CR 8(5) – Construction Safety Officer			
	CR 9(1) – Risk assessment			
	CR 10. (1)(a) – Fall Prevention Planner (<i>if applicable</i>)			
	CR 10.(2)(b) (fall risk) Physical & Psychological fitness			
	CR 23.(d)(k) – Vehicle operator and Inspector			
	GSR 3.4 – First aider			
	CR 29 (h) – Fire Fighter			
	Sec 24, GAR 9(2) – Incident Investigator			
	CR 13(1)(a) – Excavation Supervisor			
	CR 28(a) – Stacking and Storage Supervisor			
	CR 12(1) – Temporary works designer			
	CR 14(1) – Demolition work supervisor			
	CR 16(1) – Scaffolding work supervisor			
	CR 17 (1) – Suspended platform work supervisor			
	CR 18(1)(a) – Rope access supervisor			
	CR 19(8)(a) – Material host Inspector			
	CR 20(1) – Bulk mixing plant supervisor			
	CR 21(2) – Explosive actuated fastening devices inspector			
	Sec 17(1) – SHE Rep (more than 20 employees)			
	GSR 13(a) – Ladder Inspector An abbreviated CV of the above appointed persons shall be attached to the appointment. Competency certificates will also be attached as required in specifications			
13.	Elevated work training (Rescue/ Safety harnesses) – accredited Training (<i>if applicable</i>)			
14.	Fall Protection Plan by competent person / Rescue Plan (<i>if applicable</i>)			
15.	Contract/Project Specific Risk Assessment indicating the full scope of work and risk profile – High risk task inventory registers to be attached.			

16.	Risk Assessment (HIRA), Method Statement, Safe Work Procedure to be generated for each specific task to be performed on the contract/project i.e. Site establishment, confined spaces, working at heights, working near water, excavations etc. Note: before establishment they can supply what they will start with – site establishment, fencing, clear & grub...so only request what is relevant at the time.			
17.	PPE Policy and most recent issue register.			
INDUCTION				
18.	Induction application forms completed for every employee of the contractor performing work on site; The following shall be attached:			
	- Employee Dossier with applicable documentation; - Proof of site specific induction; - Copy of ID Document; - Legal Letter of Appointment; - Proof of competence i.e.: Artisans, drivers, operators etc.; - Valid medical certificate of fitness done by an Occupational Health Practitioner (i.e. Annexure 3 for construction work)			
REGISTERS				
19.	Copy of equipment registers to be used with copy of each item's inspection checklist. The registers are not limited to the following, depends on the scope of work:			
	- Site visitors register - Excavation Inspection Register - Hand tools Inspection register - Barricading Inspection Register - Traffic Inspection Register - Mobile Toilet Inspection Register - Daily Risk Assessment and Toolbox Talk - PPE Inspection Register - First Aid kit Inspection Register - Fire Fighting Equipment Register - Portable electrical Equipment Register - Pneumatic Tool Register - Compressor Checklist - Ladder Inspection Register - Vehicle Inspection Register - Working at Height Equipment Register			
INCIDENT/ACCIDENT MANAGEMENT				
20.	Incident /Accident Management Procedure including reporting, recording and investigation of incidents and accidents			
21.	Register of first aid injuries			
22.	Register of reportable injuries to the Provincial Director			
OTHERS				
23.	Section 37(2) mandatory agreement between client - contractor and contractor - sub contractor. As well as:			
	- CR 5.1(k) Principal Contractor appointment - CR 7(1)(v) Sub Contractor appointment			
24.	Training Matrix (Management, Supervisors and Employees)			
25.	Copy of the OHS act and its Regulations , COID Act Regulations			

CONTRACTOR'S COMPLIANCE FILE REVIEW

Date	Print Full Name	Designation	Signature

Status		
Approved		
Not Approved		
Reasons for not approving		

ANNEXURE I:

Section 37(2) Mandatory Agreement



Mandatory Agreement

OCCUPATIONAL HEALTH AND SAFETY ACT 85 of 1993 (AS AMENDED)

AGREEMENT WITH MANDATORY

In terms of Section 37(1) & (2)

WRITTEN AGREEMENT ENTERED INTO AND BETWEEN

Transnet SOC Ltd

(Hereinafter referred to as the Employer)

AND

(Hereinafter referred to as Mandatory (Principal Contractor))

Compensation Fund Number :

Project Name :

TABLE OF CONTENTS

- 1. DEFINITIONS**
- 2. INTERPRETATION**
- 3. REPORTING**
- 4. WARRANTY OF COMPLIANCE**
- 5. APPOINTMENTS AND TRAINING**
- 6. SUPERVISION, DISCIPLINE AND REPORTING**
- 7. ACCESS TO THE OHS ACT**
- 8. COOPERATION**
- 9. WORK PROCEDURES**
- 10. HEALTH AND SAFETY MEETINGS**
- 11. COMPENSATION REGISTRATION**
- 12. MEDICAL EXAMINATIONS**
- 13. INCIDENT REPORTING AND INVESTIGATION**
- 14. SUBCONTRACTORS**
- 15. SECURITY AND ACCESS**
- 16. FIRE PRECAUTIONS AND FACILITIES**
- 17. ABLUTION FACILITIES**
- 18. HYGIENE AND CLEANLINESS**
- 19. NO NUISANCE**
- 20. INTOXICATION NOT ALLOWED**
- 21. PERSONAL PROTECTIVE EQUIPMENT**
- 22. PLANT, MACHINERY AND EQUIPMENT**
- 23. NO USAGE OF EMPLOYER'S EQUIPMENT**
- 24. TRANSPORT**
- 25. CLARIFICATION**
- 26. DURATION OF AGREEMENT**
- 27. NON COMPLINCE**

28. HEADING

PREAMBLE

WHEREAS section 37(1) & (2) of the Occupational Health and Safety Act No 85 of 1993 ("the Act") requires that parties have an agreement in writing to ensure compliance by a mandatory in line with the provisions of the Act.

AND WHEREAS Transnet SOC Ltd requires the services of the Contractors to execute certain projects within its workshops.

AND WHEREAS TRANSNET SOC LTD can be better served by Contractors who have the infrastructure, specialist employees and expertise to execute such projects at the highest level of efficiency on short notice.

NOW THEREFORE the parties agree as follows;

1. DEFINITIONS

For the purpose of this agreement, unless the context indicates otherwise, the following definitions are set out for the terms indicated:

- 1.1 "Act" means the Occupational Health and Safety Act No 85 of 1993;
- 1.2 "Agreement" means this Mandatory agreement;
- 1.3 "Contractor" means the Mandatory;
- 1.4 "COID Act" means the Compensation for Occupational Injuries and Diseases Act No 130 of 1993.
- 1.5 "Effective Date" means the date of signature of this Agreement by the last party signing hereto;
- 1.6 "Employer" refers to TRANSNET SOC LTD;
- 1.7 "Mandatory" means an agent, Contractor or sub-contractor for work, but without derogating from the status in his own right as an employer or user;
- 1.8 "Parties" means TRANSNET SOC LTD and the Contractor, and "Party" shall mean either one of them, as the context indicates;
- 1.9 "Principal Contract" means the appointed contractor whereby such contractor has to provide goods and or services to TRANSNET SOC LTD.
- 1.10 "Regulations" means regulations promulgated in terms of the relevant legislation.
- 1.11 "Section" means the relevant section of the Occupational Health and Safety Act No 85 of 1993
- 1.12 "Services" means the services to be provided by the Contractor to TRANSNET SOC LTD.
- 1.13 "TRANSNET SOC LTD" means Transnet Group and all its operating divisions and Specialist units with (Registration No. **1990/000900/06**), a public company incorporated in accordance with the company laws of the Republic of South Africa;

2. INTERPRETATION

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

3. REPORTING

- 3.1 The Mandatary and/or his designated person appointed in terms of Section 16(2) of the Occupational Health and Safety Act 85 of 1993 ("the OHS Act") shall report to the Risk Manager and/or a Project Manager and/or a representative designated by the Employer prior to commencing the work at the premises of the Employer.

4. WARRANTY OF COMPLIANCE

- 4.1 In terms of this Agreement the Mandatary warrants that he agrees to any of the arrangements and procedures as prescribed by the Employer and as provided for in terms of Section 37(2) of the OHS Act for the purposes of compliance with the OHS Act.
- 4.2 The Mandatary further warrants that he and/or his employees undertake to maintain such compliance with the OHS Act. Without derogating from the generality of the above, nor from the provisions of the said Agreement, the Mandatary shall ensure that the clauses as hereunder described are at all times adhered to by himself and his employees.
- 4.3 The Mandatary hereby undertakes to ensure that the health and safety of any other person on the premises is not endangered by the conduct of his activities and that of his employees.

5. APPOINTMENTS AND TRAINING

- 5.1 The Mandatary shall appoint competent persons as per Section 16(2) of the OHS Act. Any such appointed person shall be trained on any occupational health and safety matter and the OHS Act provisions pertinent to the work is to be performed under his responsibility. Copies of any appointments made by the Mandatary shall immediately be provided to the Employer.
- 5.2 The Mandatary shall further ensure that all his employees are trained on the health and safety aspects relating to the work to be done on the premises of the Employer and that they understand the hazards associated with such work being carried out on the premises. Without derogating from the foregoing, the Mandatary shall, in particular, ensure that all his users or operators of any materials, machinery or equipment are properly trained in the use of such materials, machinery or equipment.
- 5.3 Notwithstanding the provisions of the above, the Mandatary shall ensure that he, his appointed responsible persons and his employees are at all times familiar with the provisions of the OHS Act, and that they comply with the provisions of the Act.

6. SUPERVISION, DISCIPLINE AND REPORTING

- 6.1 The Mandatary shall ensure that all work performed on the Employer's a premise is done under strict supervision and that no unsafe or unhealthy work practices are permitted. Discipline regarding health and safety matters shall be strictly enforced against any of his employees regarding non-compliance by such employee with any health and safety matters.
- 6.2 The Mandatary shall further ensure that his employees report to him all unsafe or unhealthy work situations immediately after they become aware of such conditions and that he in turn immediately reports these to the Employer and/or his representative.

7. ACCESS TO THE OHS ACT

- 7.1 The Mandatary shall ensure that he has an updated copy of the OHS Act on site at all times and that this is accessible to his appointed responsible persons and employees, save that the parties may make arrangements for the Mandatary and his appointed responsible persons and employees to have access to the Employer's updated copy/copies of the Act.

8. COOPERATION

- 8.1 The Mandatary and/or his responsible persons and employees shall provide full co-operation and information if and when the Employer or his representative inquires into any occupational health and safety issues concerning the Mandatary. It is hereby recorded that the Employer and his representative shall at all times be entitled to make such inquiry.
- 8.2 Without derogating from the generality of the above, the Mandatary and his responsible persons shall make available to the Employer and his representative, on request, all and/or any checklists and inspection registers required to be kept by him in respect of any of his materials, machinery or equipment.

9. WORK PROCEDURES

- 9.1 The Mandatary shall, after having established the dangers associated with the work performed, develop and implement mitigation measures to minimize or eliminate such dangers for the purpose of ensuring a healthy and safe working environment. The Mandatary shall then ensure that his responsible persons and employees are familiar with such mitigation measures.
- 9.2 The Mandatary shall implement any other safe work practices as prescribed by the Employer and shall ensure that his responsible persons and employees are made conversant with such other safe work practices as prescribed by the Employer and that his responsible persons and employees adhere to such safe work practices.
- 9.3 The Mandatary shall ensure that work for which any permit is required by the Employer is not performed by his employees prior to the Employer obtaining such permit from the Mandatary.

10. HEALTH AND SAFETY MEETINGS

- 10.1 If required in terms of the OHS Act, the Mandatary shall establish his own health and safety committee(s) and ensure that his employees, being the committee members, provide health and safety representatives to attend the Employer's health and safety committee meetings.

11. COMPENSATION REGISTRATION

- 11.1 The Mandatary shall ensure that he has a valid proof of registration with the Compensation Commissioner, as required in terms of **COID Act**, and that all payments owing to the Commissioner are discharged. The Mandatary shall further ensure that the cover remain in force while any such employee is present on the premises.

12. MEDICAL EXAMINATIONS

- 12.1 The Mandatary shall ensure that all his employees undergo routine medical examinations and that they are medically fit for the purposes of the work they are to perform.

13. INCIDENT REPORTING AND INVESTIGATION

- 13.1 All incidents referred to in Section 24 of the OHS Act shall be reported by the Mandatary to the Department of Labour and to the Employer. The Employer shall further be provided with copies of any written documentation relating to any incident.
- 13.2 The Employer retains an interest in the reporting of any incident as described above as well as in any formal investigation and/or inquiry conducted in terms of section 32 of the OHS-Act into such incident.

14. SUBCONTRACTORS

- 14.1 The Mandatary shall notify the Employer of any subcontractor he may wish to perform work on his behalf on the Employer's premises. It is hereby recorded that all the terms and provisions contained in this clause shall be equally binding upon the subcontractor prior to the subcontractor commencing with the work. Without derogating from the generality of this paragraph:
- 14.1.1 The Mandatary shall ensure that training as discussed under appointments and training, is provided prior to the subcontractor commencing work on the Employer's premises.
- 14.1.2 The Mandatary shall ensure that work performed by the subcontractor is done under his strict supervision, discipline and reporting.
- 14.1.3 The Mandatary shall inform the Employer of any health and safety hazards and/or issue that the subcontractor may have brought to his attention.
- 14.1.4 The Mandatary shall inform the Employer of any difficulty encountered regarding compliance by the subcontractor with any health and safety instruction, procedure and/or legal provision applicable to the work the subcontractor performs on the Employer's premises.

15. SECURITY AND ACCESS

- 15.1 The Mandatary and his employees shall enter and leave the premises only through the main gate(s) and/or checkpoint(s) designated by the Employer. The Mandatary shall ensure that employees observe the security rules of the Employer at all times and shall not permit any person who is not directly associated with the work from entering the premises.
- 15.2 The Mandatary and his employees shall not enter any area of the premises that is not directly associated with their work.
- 15.3 The Mandatary shall ensure that all materials, machinery or equipment brought by him onto the premises are recorded at the main gate(s) and/or checkpoint(s). Failure to do this may result in a refusal by the Employer to allow the materials, machinery or equipment to be removed from the Employer's premises.

16. FIRE PRECAUTIONS AND FACILITIES

- 16.1 The Mandatary shall ensure that an adequate supply of fire-protection and first-aid facilities are provided for the work to be performed on the Employer's premises, save that the Parties may mutually make arrangements for the provision of such facilities.

- 16.2 The Mandatary shall further ensure that all his employees are familiar with fire precautions at the premises, which includes fire-alarm signals and emergency exits, and that such precautions are adhered to.

17. ABLUTION FACILITIES

- 17.1 The Mandatary shall ensure that an adequate supply of ablution facilities are provided for his employees performing work on the Employer's premises, save that the parties may mutually make arrangements for the provision of such facilities.

18. HYGIENE AND CLEANLINESS

- 18.1 The Mandatary shall ensure that the work site and surround area is at all times maintained to the reasonably practicable level of hygiene and cleanliness. In this regard, no loose materials shall be left lying about unnecessarily and the work site shall be cleared of waste material regularly and on completion of the work.

19. NO NUISANCE

- 19.1 The Mandatary shall ensure that neither he nor his employees undertake any activity that may cause environmental impairment or constitute any form of nuisance to the Employer and/or his surroundings.
- 19.2 The Mandatary shall ensure that no hindrance, hazard, annoyance or inconvenience is inflicted on the Employer, another Mandatary or any tenants. Where such situations are unavoidable, the Mandatary shall give prior notice to the Employer.

20. INTOXICATION NOT ALLOWED

- 20.1 No intoxicating substance of any form shall be allowed on site. Any person suspected of being intoxicated shall not be allowed on the site. Any person required to take medication shall notify the relevant responsible person thereof, as well as the potential side effects of the medication.

21. PERSONAL PROTECTIVE EQUIPMENT

- 21.1 The Mandatary shall ensure that his responsible persons and employees are provided with adequate personal protective equipment (PPE) for the work they may perform and in accordance with the requirements of General Safety Regulation 2 (1) of the OHS Act. The Mandatary shall further ensure that his responsible persons and employees wear the PPE issued to them at all material times.

22. PLANT, MACHINERY AND EQUIPMENT

- 22.1 The Mandatary shall ensure that all the plant, machinery, equipment and/or vehicles he may wish to utilize on the Employer's premises is/are at all times of sound order and fit for the purpose for which it/they is/are attended to, and that it/they complies/comply with the requirements of Section 10 of the OHS Act.
- 22.2 In accordance with the provisions of Section 10(4) of the OHS Act, the Mandatary hereby assumes the liability for taking the necessary steps to ensure that any article or substance that it erects or installs at the premises, or manufactures, sells or supplies to or for the Employer, complies with all the prescribed requirements and will be safe and without risks in terms of health and safety when properly used.

23. NO USAGE OF THE EMPLOYER'S EQUIPMENT

- 23.1 The Mandatary hereby acknowledges that his employees are not permitted to use any materials, machinery or equipment of the Employer unless the prior written consent of the Employer has been obtained, in which case the Mandatary shall ensure that only those persons authorized to make use of such materials, machinery or equipment, have access thereto.

24. TRANSPORT

- 24.1 The Mandatary shall ensure that all road vehicles used on the premises are in a roadworthy condition and are licensed and insured. The Mandatary shall ensure that all drivers shall have relevant and valid driving licenses and the Mandatary shall ensure that no vehicle/s shall carry passengers unless it is specifically designed to do and that all drivers shall adhere to the speed limits and road signs on the premises at all times.
- 24.2 In the event that any hazardous substances are to be transported on the premises, the Mandatary shall ensure that the requirements of the Hazardous Substances Act 15 of 1973 are complied with fully all times.

25. CLARIFICATION

- 25.1 In the event that the Mandatary requires clarification of any of the terms or provisions of this Agreement, he should take the necessary steps to contact the Risk Manager of the Employer to obtain such clarification.

26. DURATION OF AGREEMENT

- 26.1 This Agreement shall remain in force for the duration of the work to be performed by the Mandatary and/or while any of the Mandatary's employees are present on the Employer's premises.

27. NON COMPLIANCE WITH THE AGREEMENT

- 27.1 If the Mandatary fails to comply with any provisions of this Agreement, the Employer shall be entitled to give the mandatory 7 (seven) days written notice to remedy such non-compliance and if the Mandatary fails to comply with such notice, then the Employer shall forthwith be entitled but not obliged, without prejudice to any other rights or remedies which the mandatory may have in law,
- 271.1 to suspend the main Agreement; or
- 27.1.2 To claim immediate performance and/or payment of such obligations.
- 27.2 Should mandatory continue to breach the contract on three occasions, then the Employer is authorised to suspend the main contract without complying with the condition stated in the clause above.

28. HEADINGS

The headings as contained in this Agreement are for reference purposes only and shall not be construed as having any interpretative value in them or as giving any indication as to the meaning of the contents of the paragraphs contained in this Agreement.



Thus done and signed

at _____ on the _____ day of _____ 201_____

For and on behalf of the Employer

Witnesses:

1. _____

2. _____

at _____ on the _____ day of _____ 201_____

for and on behalf of the Mandatary

Witnesses:

3. _____

4. _____