Transnet Property

an Operating Division of **TRANSNET SOC LTD**

[hereinafter referred to as **Transnet**]

Registration Number 1990/000900/30

REQUEST FOR QUOTATION [RFQ] No TP/2026/10/0205/13638/RFQ

FOR THE SUPPLY DELIVERY OF PROVISION SUPPLY DELIVERY OF DRINKING WATER, REFLLING OF STANDBY TANKS, AND DESLUSGE AND DISPOSAL OF SEWER IN THE NORTHERN REGION [MPUMALANGA PROVINCE AND SURROUNDING AREAS] ON "AS AND WHEN REQUIRED BASIS" FOR A PERIOD OF TWELVE (12) MONTHS.

CLOSING DATE:	**REFER TO THE ONLINE SYSTEM**
CLOSING TIME:	**REFER TO THE ONLINE SYSTEM**
SUBMISSION TO:	**TRANSNET DIGITAL PROCUREMENT SYSTEM (TDPS) – SEE SBD 1 FOR DETAILS**

SECTION 1: SBD1 FORM
PART A
INVITATION TO BID

YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF THE (*NAME OF DEPARTMENT/ PUBLIC ENTITY*)					
BID NUMBER:	**TP/2026/10/0205/13638/RFQ**	CLOSING DATE:	**Refer to the online system**	CLOSING TIME:	**Refer to the online system**
DESCRIPTION	FOR THE SUPPLY DELIVERY OF PROVISION SUPPLY DELIVERY OF DRINKING WATER, REFLLING OF STANDBY TANKS, AND DESLUSGE AND DISPOSAL OF SEWER IN THE NORTHERN REGION [MPUMALANGA PROVINCE AND SURROUNDING AREAS] ON "AS AND WHEN REQUIRED BASIS" FOR A PERIOD OF TWELVE (12) MONTHS.				

BID RESPONSE DOCUMENTS SUBMISSION INSTRUCTIONS

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

The Transnet Digital Procurement System (TDPS) Supplier Submission Portal can be accessed as follows:

a) Log on to the Transnet eSupplier website/Portal (https://esupplierportal.transnet.net/portal/)

b) Click on "SIGN IN/REGISTER –to register new bidder information and ensure that all (must fill in all mandatory information is completed) OR;

- - to sign in if already registered;

c) Click on "ADVERTISED TENDERS" to view advertised tenders;

d) Toggle (click to switch) the "Log an Intent" button in order to be able to activate the submission of a bid;

e) Respondents are to submit bid documents by uploading them onto the system against each tender selected. **A Bidder can upload 30mb per upload and multiple uploads are permitted.**

f) Bidders to note that all pricing must be completed in the eSupplier portal, electronic pricing. No paper pricing schedule should be accepted.

g) Bidders should ensure that electronic bid submissions are submitted at least a day before the closing date and bidders should not wait for the last hour before the deadline to submit. This is to enable them to timeously address issues which they may encounter due to internet speed, bandwidth or the size of the number of uploads being submitted. Transnet will not be held liable for any challenges experienced by bidders as a result of their own technical challenges.

h) No late submissions will be accepted.

i) Each company must register its own profile using its company details and use the corresponding registered profile to log an intent to bid as well as submitting any bid.

j) Transnet will not accept a bid or will disqualify a bidder who submits a bid in the Transnet e-tender submission through another bidders'/Company's profile. In other words, each bidder must register the intent to bid and submit its bid through its own profile under the same company name that will eventually bid for the tender. No company shall submit a bid on behalf of another company regardless of the company being a subsidiary or holding company.

k) In case of a Joint Venture, any of the parties/companies to the Joint Venture may use its registered profile to submit a bid on behalf of the Joint Venture.

l) A detailed bidder guide can be found on the Transnet Portal transnetetenders.azurewebsites.net

Send all clarification on the Transnet Digital procurement system (TDPS

SUPPLIER INFORMATION

NAME OF BIDDER					
POSTAL ADDRESS					
STREET ADDRESS					
TELEPHONE NUMBER	CODE		NUMBER		
CELLPHONE NUMBER					
FACSIMILE NUMBER	CODE		NUMBER		
E-MAIL ADDRESS					
VAT REGISTRATION NUMBER					
SUPPLIER COMPLIANCE STATUS	TAX COMPLIANCE SYSTEM PIN:		OR	CENTRAL SUPPLIER DATABASE No:	MAAA
1 ARE YOU THE ACCREDITED REPRESENTATIVE IN SOUTH AFRICA FOR THE GOODS /SERVICES OFFERED?	☐Yes ☐No [IF YES ENCLOSE PROOF]		**2** ARE YOU A FOREIGN BASED SUPPLIER FOR THE GOODS /SERVICES OFFERED?		☐Yes ☐No [IF YES, ANSWER THE QUESTIONNAIRE BELOW]

QUESTIONNAIRE TO BIDDING FOREIGN SUPPLIERS

IS THE ENTITY A RESIDENT OF THE REPUBLIC OF SOUTH AFRICA (RSA)? ☐ YES ☐ NO

DOES THE ENTITY HAVE A BRANCH IN THE RSA? ☐ YES ☐ NO

DOES THE ENTITY HAVE A PERMANENT ESTABLISHMENT IN THE RSA? ☐ YES ☐ NO

DOES THE ENTITY HAVE ANY SOURCE OF INCOME IN THE RSA? ☐ YES ☐ NO

IS THE ENTITY LIABLE IN THE RSA FOR ANY FORM OF TAXATION? ☐ YES ☐ NO

IF THE ANSWER IS "NO" TO ALL OF THE ABOVE, THEN IT IS NOT A REQUIREMENT TO REGISTER FOR A TAX COMPLIANCE STATUS SYSTEM PIN CODE FROM THE SOUTH AFRICAN REVENUE SERVICE (SARS) AND IF NOT REGISTER AS PER 2.3 BELOW.

PART B

TERMS AND CONDITIONS FOR BIDDING

1. BID SUBMISSION:
1.1. BIDS MUST BE DELIVERED BY THE STIPULATED TIME TO THE CORRECT ADDRESS. LATE BIDS WILL NOT BE ACCEPTED FOR CONSIDERATION.
1.2. ALL BIDS MUST BE SUBMITTED ON THE OFFICIAL FORMS PROVIDED (NOT TO BE RE-TYPED) OR IN THE MANNER PRESCRIBED IN THE BID DOCUMENT.
1.3. THIS BID IS SUBJECT TO THE PREFERENTIAL PROCUREMENT POLICY FRAMEWORK ACT, 2000 AND THE PREFERENTIAL PROCUREMENT REGULATIONS, THE GENERAL CONDITIONS OF CONTRACT (GCC) AND, IF APPLICABLE, ANY OTHER SPECIAL CONDITIONS OF CONTRACT.
1.4. THE SUCCESSFUL BIDDER WILL BE REQUIRED TO FILL IN AND SIGN A WRITTEN CONTRACT FORM (SBD7).
2. TAX COMPLIANCE REQUIREMENTS
2.1 BIDDERS MUST ENSURE COMPLIANCE WITH THEIR TAX OBLIGATIONS.
2.2 BIDDERS ARE REQUIRED TO SUBMIT THEIR UNIQUE PERSONAL IDENTIFICATION NUMBER (PIN) ISSUED BY SARS TO ENABLE THE ORGAN OF STATE TO VERIFY THE TAXPAYER'S PROFILE AND TAX STATUS.
2.3 APPLICATION FOR TAX COMPLIANCE STATUS (TCS) PIN MAY BE MADE VIA E-FILING THROUGH THE SARS WEBSITE WWW.SARS.GOV.ZA.
2.4 BIDDERS MAY ALSO SUBMIT A PRINTED TCS CERTIFICATE TOGETHER WITH THE BID.
2.5 IN BIDS WHERE CONSORTIA / JOINT VENTURES / SUB-CONTRACTORS ARE INVOLVED; EACH PARTY MUST SUBMIT A SEPARATE TCS CERTIFICATE / PIN / CSD NUMBER.
2.6 WHERE NO TCS PIN IS AVAILABLE BUT THE BIDDER IS REGISTERED ON THE CENTRAL SUPPLIER DATABASE (CSD), A CSD NUMBER MUST BE PROVIDED.
2.7 NO BIDS WILL BE CONSIDERED FROM PERSONS IN THE SERVICE OF THE STATE, COMPANIES WITH DIRECTORS WHO ARE PERSONS IN THE SERVICE OF THE STATE, OR CLOSE CORPORATIONS WITH MEMBERS PERSONS IN THE SERVICE OF THE STATE**."**

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

SIGNATURE OF BIDDER: .....

CAPACITY UNDER WHICH THIS BID IS SIGNED: .....
(Proof of authority must be submitted e.g. company resolution)

DATE: .....

SECTION 2: NOTICE TO BIDDERS

---

1 Responses to RFQ

Responses to this RFQ [**Quotations]** must not include documents or reference relating to any other quotation or proposal. Any additional conditions that the bidder wants to bring to the attention of Transnet must be embodied in an accompanying letter.

2 Communication (Clarifications and Complaints)

2.1 Specific clarification queries relating to this RFQ before the closing date of the RFQ should be submitted to the Transnet Digital procurement system (TDPS). In the interest of fairness and transparency Transnet's response to such a query will then be made available to other bidders.

2.2 Specific complaints relating to this RFQ before or after the closing date should be formally submitted by emailing groupscmcomplaints@transnet.net. Once the complaint has been submitted, the Transnet SCM Complaints office will acknowledge your complaint and send you a complaint form for completion.

2.3 It is prohibited for Respondents to attempt, either directly or indirectly, to canvass any officer or employee of Transnet in respect of this RFQ between the closing date and the date of the award of the business.

2.4 Respondents found to be in collusion with one another will be automatically disqualified and restricted from doing business with organs of state for a specified period.

2.5 The outcome of the process will be communicated, via email, to all bidders as soon as the process is concluded. Should a bidder not receive any communication from Transnet 30 days after the expiry of the validity period of this bid, the bidder can consider its bid not being successful. All unsuccessful bidders have a right to request Transnet to furnish reasons for their bid not being successful. This requested must be directed to the contact person stated in the SBD 1 form

3 Legal Compliance

The successful Respondent shall be in full and complete compliance with any and all applicable national and local laws and regulations.

4 Employment Equity Act

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

5 Changes to Quotations

Changes by the Respondent to its submission will not be considered after the closing date and time.

6 Binding Offer

Any Quotation furnished pursuant to this Request shall be deemed to be an offer. Any exceptions to this statement must be clearly and specifically indicated.

7 Disclaimers

7.1 Respondents are hereby advised that Transnet is not committed to any course of action as a result of its issuance of this RFQ and/or its receipt of a Quotation in response to it. Please note that Transnet reserves the right to:

- modify the RFQ's goods / service(s);
- award only a portion of the proposed goods / services which are reflected in the scope of this RFQ;
- split the award of the order/s between more than one Supplier/Service Provider as may be explicitly articulated in the conditions or objective criteria to this RFQ;
- cancel the quotation process;
- validate any information submitted by Respondents in response to this bid. This would include, but is not limited to, requesting the Respondents to provide supporting evidence. By submitting a bid, Respondents hereby irrevocably grant the necessary consent to Transnet to do so;
- request audited financial statements or other documentation for the purposes of a due diligence exercise;
- not accept any changes or purported changes by the Respondent to the bid rates after the closing date and/or after the award of the business, unless the contract specifically provides for it;
- to cancel the contract and/request that National Treasury place the Respondent on its Database of Restricted Suppliers for a period not exceeding 10 years, on the basis that a contract was awarded on the strength of incorrect information furnished by the Respondent or on any other basis recognised in law;
- award the business to the next ranked bidder, provided that he/she is still prepared to provide the required Goods/Services at the quoted price, should the preferred bidder fail to sign or commence with the contract within a reasonable period after being requested to do so. Under such circumstances, the validity of the bids of the next ranked bidder(s) will be deemed to remain valid, irrespective of whether the next ranked bidder(s) were notified of their bid being unsuccessful. Bidders may therefore be requested to advise whether they would still be prepared to provide the required Goods/Services at their quoted price.
- Should a bidder fail to respond to a request for extension of the validity period before it expires, that bidder will be excluded from tender process.
- Request a bidder to furnish further information relating to its Environmental, Social and Governance (ESG) standing at any stage of the procurement or contracting process. This information may not be used for purposes of evaluation and/or disqualify bidder, but may be use for purpose of record and analysis of ESG compliance.
- Where sub-contracting is applied in the RFQ, conduct due diligence assessments on the sub-contractor(s) and this may entail requesting the bidder to provide further information relating to the sub-contractor(s) or directly requesting the information from the sub-contractor(s) as well as conducting any necessary investigations on the sub-contractor(s) to detect issues of "FRONTING".
- Bidders who submit unrealistically low quotations may be disqualified or overlooked during the evaluation process."

This is often done to avoid risks such as:

- Poor quality delivery due to under-pricing.
- Hidden costs or future price escalations.
- Non-compliance with specifications due to cost-cutting.

8 Specification/Scope of Work

Refer to Annexure A for a detailed scope of work.

9 Legal review

A Proposal submitted by a Respondent will be subjected to review and acceptance or rejection of its proposed contractual terms and conditions by Transnet's Legal Counsel, prior to consideration for an award of business.

10 Security clearance

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



SECTION 3

EVALUATION METHODOLOGY, CRITERIA AND RETURNABLE DOCUMENTS

1 Evaluation Criteria

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

Stage 1 Test for Responsiveness		Stage 2			Stage 3 Award
Step 1	Step 2	Step 3	Step 4	Step 5	Step 6
Administrative responsiveness	Substantive responsiveness	Evaluation and Final Weighted Scoring	Post Tender Negotiations	Objective Criteria	Award of business and conclusion of contract
Returnable documents/ schedules 	Mandatory Requirements • Fully Priced BOQ (online) per line item	Evaluation of the bid against set evaluation criteria and scoring.(80/20)	Post tender negotiation with preferred bidder [2nd and 3rd ranked bidders (if required) in a sequential and not simultaneous manner] if pricing is not market-related.	Transnet reserves the right to award the business to the highest scoring bidder/s unless objective criteria justify the award to another bidder. Objective criteria may apply in this bid process.  	
NB: Evaluation of the various stages will normally take place in a sequential manner. However, in order to expedite the process, Transnet reserves the right to conduct the different steps of the evaluation process in parallel. In such instances the evaluation of bidders at any given stage must not be interpreted to mean that bidders have necessarily passed any previous stage(s).					

1.1 STEP ONE: Test for Administrative Responsiveness

The test for administrative responsiveness will include the following:

Administrative responsiveness check	RFQ Reference
• Whether the Bid has been lodged on time	
• Whether all Returnable Documents and/or schedules [where applicable] were completed and returned by the closing date and time	*Section 3*
• Verify the validity of all returnable documents	*Section 3*
• Verify if the Bid document has been duly signed by the authorised respondent	*All sections*
• Whether any general and legislation qualification criteria set by Transnet, have been met	*All sections*
• Whether the Bid materially complies with the scope and/or specification given	*All Sections*

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

1.2 STEP TWO: Substantive responsiveness

Test for Substantive responsiveness will include the following:

Mandatory Returnable Documents	Submitted [Yes or No]
Online Pricing data to be captured on the Transnset Digital Procurement System (TDPS) the pricing schedule must be fully completed per line-item. Failure to do so will lead to disqualification of bid.	

The test for responsiveness [Step two] must be passed for a Respondent's Proposal to progress to Step three

1.3 STEP THREE: Evaluation and Final Weighted Scoring

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

Evaluation Criteria	RFP Reference
• Commercial offer	*Section 4*

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

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

Where:

Ps = Score for the Bid under consideration

Pt = Price of Bid under consideration

Pmin = Price of lowest acceptable Bid

b) **Specific Goals** [Weighted score 20 point]

- Specific goals preference points claim form
- Preference points will be awarded to a bidder for attaining the specific goals requirements in accordance with the table indicated in Section 4.1 of the specific goals Claim Form.

1.4 STEP FOUR: Price Negotiations (if applicable)

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

- Should Transnet conduct post tender negotiations, Respondents will be requested to provide their best and final offers to Transnet based on such negotiations. Where a market related price has been achieved through negotiation, the contract will be awarded to the successful Respondent(s).

1.5 STEP FIVE: Objective Criteria (if applicable)

Transnet reserves the right to award the business to the highest scoring bidder/s unless objective criteria justify the award to another bidder.

1.6 STEP SIX: Award of business and conclusion of contract

- Immediately after approval to award the contract has been received, the successful or preferred bidder(s) will be informed of the acceptance of his/their Quotation by way of a Letter of Award. Thereafter the final contract will be concluded with the successful Respondent(s), where applicable.
- Alternatively, the acceptance of a letter of award by the Successful Respondent will constitute the final contract read together with their RFQ response and the Standard Terms and Conditions. This will be stated in the letter of award.

2 Validity Period

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

Bidders are to note that they may be requested to extend the validity period of their bid, on the same terms and conditions, if the internal evaluation process has not been finalised within the validity period. However, once the adjudication body has approved the process and award of the business to the successful bidder(s), the validity of the successful bidder(s)' bid will be deemed to remain valid until a final contract has been concluded.

3 Disclosure of contract information

Johannesburg Stock Exchange Debt Listing Requirements

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

Domestic Prominent Influential Persons (DPIP) OR Foreign Prominent Public Officials (FPPO)

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

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

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

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

The below form contains personal information as defined in the Protection of Personal Information Act, 2013 (the "Act"). By completing the form, the signatory consents to the processing of her/his personal information in accordance with the requirements of the Act. Consent cannot unreasonably be withheld.					
Is the Respondent *(Complete with a "Yes" or "No")*					
A DPIP/FPPO		**Closely Related to a DPIP/FPPO**		**Closely Associated to a DPIP/FPPO**	

List all known business interests, in which a DPIP/FPPO may have a direct/indirect interest or significant participation or involvement.						
No	**Name of Entity / Business**	**Role in the Entity / Business** (Nature of interest/ Participation)	**Shareholding %**	**Registration Number**	**Status** (Mark the applicable option with an X)	
					Active	**Non-Active**
1						
2						

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

4 Returnable Documents

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

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

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

a) Mandatory Returnable Documents

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

Mandatory Returnable Documents	Submitted [Yes or No]
Online Pricing data to be captured on the Transnset Digital Procurement System (TDPS) the pricing schedule must be fully completed per line-item. Failure to do so will lead to disqualification of bid.	

b) Returnable Documents Used for Scoring

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

RETURNABLE DOCUMENTS USED FOR SCORING	SUBMITTED [Yes or No]
Valid proof of Respondent's compliance to Specific Goal requirements stipulated in Section 6 of this RFQ: Respondent's valid proof of evidence to claim points for compliance with Specific Goals' requirements as stipulated in Section 6 of this RFQ: Valid proof of Respondent's compliance to B-BBEE requirements stipulated in Section 6 of this RFQ (Valid B-BBEE certificate or Sworn- Affidavit as per DTIC guidelines) B-BBEE Level 1 • Must be certified Failure to do so bidder will be scored a zero.	

c) Essential Returnable Documents:

Respondents are further required to submit the following **Essential Returnable Documents** with their RFQ and to confirm submission of these documents by indicating [Yes or No] in the table below:

ESSENTIAL RETURNABLE DOCUMENTS & SCHEDULES	SUBMITTED [Yes or No]
SBD1 Form	
SECTION 5: RFQ Declaration, Certificate of Acquaintance & Breach of Law Form	
SECTION 6: Specific Goal Points Claim Form	
SECTION 7: Protection of Personal Information	
Certified copies of IDs of shareholder/directors/members [as applicable	

Certified copies of the relevant company registration documents from Companies and Intellectual	
Certified copy of VAT Registration Certificate [RSA entities only]	
TAX compliance certificate (TCS)	
Latest Financial Statements signed by your accounting officer or latest Audited Financial Statements plus 2 previous years this to determine Entity's financial stability and capability to deliver on the project	
Master Agreement	
schedule of requirements	
Transnet General Bid Conditions	
Supplier Integrity Pact	
Supplier Declaration Form	
Non- Disclosure Agreement	
In the case of Joint Ventures, a copy of the Joint Venture Agreement or written confirmation of the intention to enter into a Joint Venture Agreement	

5 CONTINUED VALIDITY OF RETURNABLE DOCUMENTS

The successful Respondent will be required to ensure the validity of all returnable documents for the duration of any contract emanating from this RFQ. Should the Respondent be awarded the contract [**the Agreement]** and fail to present Transnet with such renewals as and when they become due, Transnet shall be entitled, in addition to any other rights and remedies that it may have in terms of the eventual Agreement, to terminate such Agreement immediately without any liability and without prejudice to any claims which Transnet may have for damages against the Respondent.

SECTION 4
QUOTATION FORM

I/We_____

hereby offer to supply the goods/services at the prices quoted in the Price Schedule below, in accordance with the conditions related thereto.

I/We agree to be bound by those terms and conditions in:

- the Standard RFQ Terms and Conditions for the Supply of Goods or Services to Transnet; and
- any other standard or special conditions embodied in this Request for Quotation.

I/We accept that unless Transnet should otherwise decide and so inform me/us, this Quotation [and, if any, its covering letter and any subsequent exchange of correspondence], together with Transnet's acceptance thereof shall constitute a binding contract between Transnet and me/us. I/We further agree that if, after I/we have been notified of the acceptance of my/our Quotation, I/we fail to deliver the said goods/service/s within the delivery lead-time quoted, Transnet may, without prejudice to any other legal remedy which it may have, cancel the order and recover from me/us any expenses incurred by Transnet in calling for Quotations afresh and/or having to accept any less favourable offer.

Price Schedule

I/We quote as follows for the goods/services required, on a "delivered nominated destination" basis, including VAT:

I/We Acknowledge that an electronic pricing schedule for goods and/or services will be completed in the Transnet eSupplier portal (TDPS) in line with the scope of work requirements.

Delivery Lead-Time from date of purchase order: _____ [days/weeks]

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

Notes to Pricing:

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

   (i) negotiate a market-related price with the Respondent scoring the highest points or cancel the RFQ;

   (ii) if that Respondent does not agree to a market-related price, negotiate a market-related price with the Respondent scoring the second highest points or cancel the RFQ;

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

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

b) All Prices must be quoted in South African Rand, inclusive of VAT

c) Any disbursement not specifically priced for will not be considered/accepted by Transnet.

d) To facilitate like-for-like comparison bidders must submit pricing strictly in accordance with this price schedule and not utilise a different format. Deviation from this pricing schedule will result in a bid being disqualified.

e) Please note that should you have offered a discounted price(s), Transnet will only consider such price discount(s) in the final evaluation stage if offered on an unconditional basis.

f) In respect of incoterms conditions, if applicable, please refer to the General Bid Conditions which is attached to the RFQ.

SECTION 5
RFQ DECLARATION, CERTIFICATE OF ACQUAINTANCE & BREACH OF LAW FORM

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

1. Transnet's General Bid Conditions
2. Standard RFQ Terms and Conditions for the supply of Goods or Services to Transnet
3. Transnet's Supplier Integrity Pact
4. Non-disclosure Agreement

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

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

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

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

We hereby certify that:

1. Transnet has supplied and we have received appropriate responses to any/all questions [as applicable] which were submitted by ourselves for RFQ Clarification purposes;
2. We have received all information we deemed necessary for the completion of this Request for Quotation [**RFQ**];
3. We have been provided with sufficient access to the existing Transnet facilities/sites and all relevant information relevant to the Supply of the Goods as well as Transnet information and Employees, and have had sufficient time in which to conduct and perform a thorough due diligence of Transnet's operations and business requirements and assets used by Transnet. Transnet will therefore not consider or permit any pre- or post-contract verification or any related adjustment to pricing, service levels or any other provisions/conditions based on any incorrect assumptions made by the Respondent in arriving at his Bid Price.

4. At no stage have we received additional information relating to the subject matter of this RFQ from Transnet sources, other than information formally received from the designated Transnet contact(s) as nominated in the RFQ documents;
5. We have complied with all obligations of the Bidder/Supplier as indicated in the Transnet Supplier Integrity Pact which includes but are not limited to ensuring that we take all measures necessary to prevent corrupt practices, unfairness and illegal activities in order to secure or in furtherance to secure a contract with Transnet;
6. We are satisfied, insofar as our entity is concerned, that the processes and procedures adopted by Transnet in issuing this RFQ and the requirements requested from Bidders in responding to this RFQ have been conducted in a fair and transparent manner;
7. we declare that an owner / member / director / partner / shareholder/employee of our entity **has / has not been** [delete as applicable] a former employee or board member of Transnet in the past 10 years. I further declare that if they were a former employee or board member of Transnet in the past 10 years that they **were/were not** involved in the bid preparation or had access to the information related to this RFQ; and
8. If such a relationship as indicated in paragraph 7 exists, the Respondent is to complete the following section:

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

_____

_____

Indicate nature of relationship with Transnet:

_____

_____

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

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

BIDDER'S DISCLOSURE (SBD4)

10. PURPOSE OF THE FORM

10.1 Any person (natural or juristic) may make an offer or offers in terms of this invitation to bid. In line with the principles of transparency, accountability, impartiality, and ethics as enshrined in the Constitution of the

Republic of South Africa, 1996 (Constitution), and further expressed in the various applicable legislation, it is required for the bidder to make this declaration in respect of the details required hereunder.

10.2 If a person is listed in the Register for Tender Defaulters and/or the List of Restricted Suppliers, that person will automatically be disqualified from the bid process.

11. DECLARATION ON EMPLOYMENT BY ORGAN OF STATE

11.1 Is the bidder, or any of the directors / trustees / shareholders / members / partners of the bidder employed by an organ of state, as defined in section 239 of the Constitution? YES/NO

11.2 If YES, furnish particulars of the names, individual identity numbers, in the table below:

Full Name	Identity Number	Name of organ of state

11.3 Do you, or any person connected with the bidder, have a relationship with any person who is employed by the procuring institution? **YES/NO.**

11.3.1 If so, furnish particulars:

……

……

11.4 Does the bidder or any of its directors/trustees/shareholders members/partners or any person having a controlling interest in the enterprise have any interest in any other related enterprise, whether or not they are bidding for this contract? **YES/NO**

11.4.1 If so, indicate all companies registered in the CSD in the table below:

Supplier registration number (MAAA)	Status (active/inactive/deleted)

Failure to disclose all CSD-registered active companies linked to all Directors will lead to disqualification.

12. GENERAL DECLARATION

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

12.1 I have read and I understand the contents of this disclosure.

12.2 I understand that the accompanying bid will be disqualified if this disclosure is found to be false.

12.3 The bidder has arrived at the accompanying bid independently from, and without consultation, communication, agreement or arrangement with any competitor.

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

12.5 The terms of the accompanying bid have not been, and will not be, disclosed by the bidder, directly or indirectly, to any competitor, prior to the date and time of the official bid opening or of the awarding of the contract.

12.6 There have been no consultations, communications, agreements or arrangements made by the bidder with any official of the procuring institution in relation to this procurement process prior to and during the bidding process except to provide clarification on the bid submitted where so required by the institution; and the bidder was not involved in the drafting of the specifications or terms of reference for this bid.

12.7 I am aware that, in addition and without prejudice to any other remedy provided to combat any restrictive practices related to bids and contracts, bids that are suspicious will be reported to the Competition Commission for investigation and possible imposition of administrative penalties in terms of section 59 of the Competition Act, 1998 (Act No. 89 of 1998) and or may be referred to law enforcement agencies for criminal investigation and or may be restricted from conducting business with the state for a period not exceeding 10 years in terms of the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004) or any other applicable legislation.

I CERTIFY THAT THE ABOVE IS CORRECT.
I ACCEPT THAT THE PROCURING INSTITUTION MAY REJECT THE BID OR TAKE APPROPRIATE ACTION AGAINST ME IF THIS DECLARATION IS FALSE.

…… ……

Signature Date

…… ……...

Designation Name of bidder

.

13. REACH OF LAW

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

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

NATURE OF BREACH:

_____

DATE OF BREACH: _____

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

SIGNED at _____ on this _____ day of _____ 20___

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

SECTION 6: SPECIFIC GOALS POINTS CLAIM FORM

This preference form must form part of all bids invited. It contains general information and serves as a claim for preference points for specific goals Contribution. Transnet will award preference points to companies who provide valid proof of evidence of as per the table below.

NB: BEFORE COMPLETING THIS FORM, BIDDERS MUST STUDY THE GENERAL CONDITIONS, DEFINITIONS AND DIRECTIVES APPLICABLE IN RESPECT OF SPECIFIC GOALS, AS PRESCRIBED IN THE PREFERENTIAL PROCUREMENT POLICY FRAMEWORK ACT, 2000.

---

1. GENERAL CONDITIONS

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

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

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

1.3 Either the 80/20 preference point system will be applicable to this tender.

1.4 Preference points for this bid shall be awarded for:

(a) Price;

(b) B-BBEE Status Level of Contribution.

(c) Any other specific goal determined in Transnet preferential procurement policy.

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

	POINTS
PRICE	**80**
B-BBEE STATUS LEVEL OF CONTRIBUTOR **B-BBEE status level of contributor (level 1)** & 2	**20**
Total points for Price and Specific Goals must not exceed	**100**

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

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

2. DEFINITIONS

(a) **"all applicable taxes"** includes value-added tax, pay as you earn, income tax, unemployment insurance fund contributions and skills development levies;

(b) **"B-BBEE"** means broad-based black economic empowerment as defined in section 1 of the Broad-Based Black Economic Empowerment Act;

(c) "**B-BBEE status level of contributor"** means the B-BBEE status received by a measured entity based on its overall performance using the relevant scorecard contained in the Codes of Good Practice on Black Economic Empowerment, issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act;

(d) **"bid"** means a written offer in a prescribed or stipulated form in response to an invitation by an organ of state for the supply/provision of services, works or goods, through price quotations, advertised competitive bidding processes or proposals;

(e) **"Broad-Based Black Economic Empowerment Act"** means the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);

(f) **"EME"** means an Exempted Micro Enterprise as defines by Codes of Good Practice under section 9 (1) of the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);

(g) **"functionality"** means the ability of a bidder to provide goods or services in accordance with specification as set out in the bid documents;

(h) **"Price"** includes all applicable taxes less all unconditional discounts.

(i) **"Proof of B-BBEE Status Level of Contributor"** means:

1) B-BBBEE status level certificate issued by an unauthorised body or person;

2) A sworn affidavit as prescribed by the B-BBEE Codes of Good Practice;

3) Any other requirement prescribed in terms of the B-BBEE Act.

(j) **"QSE"** means a Qualifying Small Enterprise in terms of a Codes of Good Practice under section 9 (1) of the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);

(k) **"rand value"** means the total estimated value of a contract in South African currency, calculated at the time of bid invitations, and includes all applicable taxes and excise duties.

(l) **"Specific goals"** means targeted advancement areas or categories of persons or groups either previously disadvantaged or falling within the scope of the Reconstruction and Development Programme identified by Transnet to be given preference in allocation of procurement contracts in line with section 2(1) of the PPPFA.

3. POINTS AWARDED FOR PRICE

3.1 THE 80/20 PREFERENCE POINT SYSTEMS

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

80/20

$$Ps = 80\left(1 - \frac{Pt - P\min}{P\min}\right)$$

Where

Ps = Points scored for comparative price of bid under consideration

Pt = Comparative price of bid under consideration

Pmin = Comparative price of lowest acceptable bid

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

Where:

Ps = Points scored for the price of Bid under consideration

Pt = Price of Bid under consideration

Pmax = Price of highest acceptable Bid

In terms of Transnet Preferential Procurement Policy (TPPP) and Procurement Manuals, the following preference points must be awarded to a bidder who provides the relevant required evidence for claiming points

Selected Specific Goal	Number of points allocated (80/20)
B-BBEE Level of contributor 1 and 2	20
Non-Compliant and/or B-BBEE Level 2-8 contributors	0

4. EVEDINCE REQUIRED FOR CLAIMING SPECIFIC GOALS

4.1 In terms of Transnet Preferential Procurement Policy (TPPP) and Procurement Manuals, preference points must be awarded to a bidder for providing evidence in accordance with the table below:

Specific Goals	Acceptable Evidence
B-BBEE	B-BBEE Certificate / Sworn- Affidavit / B-BBEE CIPC Certificate (in case of JV, a consolidated scorecard will be accepted) as per DTIC guideline

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

Enterprise	**B-BBEE Certificate & Sworn Affidavit**
Large	Certificate issued by SANAS accredited verification agency
QSE	Certificate issued by SANAS accredited verification agency Sworn-Affidavit signed by the authorised QSE representative and attested by a Commissioner of Oaths confirming annual turnover and black ownership (only black-owned QSEs - 51% to 100% Black owned) [Sworn- affidavits must substantially comply with the format that can be obtained on the DTI's website at www.dti.gov.za/economic_empowerment/bee_codes.jsp.]
EME[1]	Sworn-Affidavit signed by the authorised EME representative and attested by a Commissioner of Oaths confirming annual turnover and black ownership Certificate issued by CIPC (formerly CIPRO) confirming annual turnover and black ownership Certificate issued by SANAS accredited verification agency only if the EME is being measured on the QSE scorecard

4.3 A trust, consortium or joint venture (including unincorporated consortia and joint ventures) must submit a consolidated B-BBEE Status Level verification certificate for every separate bid.

4.4 Tertiary Institutions and Public Entities will be required to submit their B-BBEE status level certificates in terms of the specialized scorecard contained in the B-BBEE Codes of Good Practice.

4.5 Bidders are to note that the rules pertaining to B-BBEE verification and other B-BBEE requirements may be changed from time to time by regulatory bodies such as National Treasury or the DTI. It is the Bidder's responsibility to ensure that his/her bid complies fully with all B-BBEE requirements at the time of the submission of the bid.

5. BID DECLARATION

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

6. B-BBEE STATUS LEVEL OF CONTRIBUTION CLAIMED

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

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

7. SUB-CONTRACTING

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

(***Tick applicable box***)

YES		NO	

7.1.1 If yes, indicate:

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

YES		NO	

v) Specify, by ticking the appropriate box, if subcontracting with any of the enterprises below:

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

8. **DECLARATION WITH REGARD TO COMPANY/FIRM**

8.1 Name of company/firm:……

8.2 VAT registration number:……

8.3 Company registration number:……

8.4 **TYPE OF COMPANY/ FIRM**

- □ Partnership/Joint Venture / Consortium
- □ One person business/sole propriety
- □ Close corporation
- □ Company

□ (Pty) Limited
[TICK APPLICABLE BOX]

8.5 **DESCRIBE PRINCIPAL BUSINESS ACTIVITIES**

.....
.....

8.6 **COMPANY CLASSIFICATION**

□ Manufacturer
□ Supplier
□ Professional service provider
□ Other service providers, e.g. transporter, etc.
[*TICK APPLICABLE BOX*]

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

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

i) The information furnished is true and correct;

ii) The preference points claimed are in accordance with the General Conditions as indicated in paragraph 1 of this form;

iii) In the event of a contract being awarded as a result of points claimed as shown in paragraph 4.1 and 6.1, the contractor may be required to furnish documentary proof to the satisfaction of the purchaser that the claims are correct;

iv) If the B-BBEE status level of contributor has been claimed or obtained on a fraudulent basis or any of the conditions of contract have not been fulfilled, the purchaser may, in addition to any other remedy it may have-

(a) disqualify the person from the bidding process;

(b) recover costs, losses or damages it has incurred or suffered as a result of that person's conduct;

(c) cancel the contract and claim any damages which it has suffered as a result of having to make less favourable arrangements due to such cancellation;

(d) if the successful bidder subcontracted a portion of the bid to another person without disclosing it, Transnet reserves the right to penalise the bidder up to 10 percent of the value of the contract;

(e) recommend that the bidder or contractor, its shareholders and directors, or only the shareholders and directors who acted on a fraudulent basis, be restricted by the National Treasury from obtaining business from any organ of state for a period not exceeding 10 years, after the *audi alteram partem* (hear the other side) rule has been applied; and

(f) forward the matter for criminal prosecution.

WITNESSES 1. …….. 2. ……	…… SIGNATURE(S) OF BIDDERS(S) DATE: …….. ADDRESS …….. ……..

SECTION 7

PROTECTION OF PERSONAL INFORMATION

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

   consent; data subject; electronic communication; information officer; operator; person; personal information; processing; record; Regulator; responsible party; special information; as well as any terms derived from these terms.

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

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

3. The Parties acknowledge and agree that, in relation to personal information that will be processed pursuant to this RFQ, the Responsible party is "Transnet" and the Data subject is the "Respondent". Transnet will process personal information only with the knowledge and authorisation of the Respondent and will treat personal information which comes to its knowledge as confidential and will not disclose it, unless so required by law or subject to the exceptions contained in the POPIA.

4. Transnet reserves all the rights afforded to it by the POPIA in the processing of any of its information as contained in this RFQ and the Respondent is required to comply with all prescripts as detailed in the POPIA relating to all information concerning Transnet.

5. In responding to this bid, Transnet acknowledges that it will obtain and have access to personal information of the Respondent. Transnet agrees that it shall only process the information disclosed by Respondent in their response to this bid for the purpose of evaluating and subsequent award of business and in accordance with any applicable law.

6. Transnet further agrees that in submitting any information or documentation requested in this RFQ, the Respondent is consenting to the further processing of their personal information for the purpose of, but not limited to, risk assessment, assurances, contract award, contract management, auditing, legal opinions/litigations, investigations (if applicable), document storage for the legislatively required period, destruction, de-identification and publishing of personal information by Transnet and/or its authorised appointed third parties.

7. Furthermore, Transnet will not otherwise modify, amend or alter any personal data submitted by the Respondent or disclose or permit the disclosure of any personal data to any third party without the prior written consent from the Respondent. Similarly, Transnet requires the Respondent to process any personal information disclosed by Transnet in the bidding process in the same manner.

8. Transnet shall, at all times, ensure compliance with any applicable laws put in place and maintain sufficient measures, policies and systems to manage and secure against all forms of risks to any information that may be

shared or accessed pursuant to this RFQ (physically, through a computer or any other form of electronic communication).

9. Transnet shall notify the Respondent in writing of any unauthorised access to information, cybercrimes or suspected cybercrimes, in its knowledge and report such crimes or suspected crimes to the relevant authorities in accordance with applicable laws, after becoming aware of such crimes or suspected crime. The Respondent must take all necessary remedial steps to mitigate the extent of the loss or compromise of personal information and to restore the integrity of the affected personal information as quickly as is possible.

10. The Respondent may, in writing, request Transnet to confirm and/or make available any personal information in its possession in relation to the Respondent and if such personal information has been accessed by third parties and the identity thereof in terms of the POPIA. The Respondent may further request that Transnet correct (excluding critical/mandatory or evaluation information), delete, destroy, withdraw consent or object to the processing of any personal information relating to the Respondent in Transnet's possession in terms of the provision of the POPIA and utilizing Form 2 of the POPIA Regulations.

11. In submitting any information or documentation requested in this RFQ, the Respondent is hereby consenting to the processing of their personal information for the purpose of this RFQ and further confirming that they are aware of their rights in terms of Section 5 of POPIA

Respondents are required to provide consent below:

YES		**NO**	

12. Further, the Respondent declares that they have obtained all consents pertaining to other data subject's personal information included in its submission and thereby indemnifying Transnet against any civil or criminal action, administrative fines or other penalty or loss that may arise as a result of the processing of any personal information that the Respondent submitted.

13. The Respondent declares that the personal information submitted for the purpose of this RFQ is complete, accurate, not misleading, is up to date and may be updated where applicable.

Signature of Respondent's authorised representative: _____

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

Scope of Work: Service Information

Definitions

In this Scope of Work:-

1) **"access-delayed time"** means the time from the Service Provider's arrival at the Site / Affected Property and request for access until access is granted by the Employer, Tenant or authorised representative.
2) **"Ad hoc Services"** means any non-routine, unscheduled or once-off service related to the Scope of Work that is required by the Employer on an "as and when required" basis and is performed only upon receipt of an approved Task Order or authorised emergency instruction. Ad hoc Services may include the supply of goods, materials, plant, equipment, specialised services or subcontracted work necessary to complete the instructed service, subject to prior written approval and the required supporting quotations where applicable.
3) **"Affected Property"** means Transnet assets in the Northern Region in Mpumalanga Province, including any surrounding building, property or site owned, managed or leased by the Employer and identified for the Services.
4) **"Documentation"** means all records required to support the Services, including proof of delivery, job cards, completion certificates, service reports, waste disposal certificates or slips, water quality records where applicable, safety files, permits, licences and incident reports.
5) **"Emergency Service"** means any urgent service required to address or prevent interruption of potable water supply, empty or critically low standby water tanks, septic tank or manhole overflow, sewer spillage, sanitation risk, public health risk, environmental risk or operational disruption.
6) **"Installation"** means the standby water tanks, water storage facilities, septic tanks, manholes, associated access points, fittings, valves, pipes and related infrastructure directly connected to the Services under this Scope of Work.
7) **"Licences"** means all licences, permits, approvals, authorisations or registrations required by applicable legislation, municipal by-laws or competent authorities for the lawful performance of the Services.
8) **"Management"** means the planning, coordination, supervision, monitoring and control of all activities required to ensure that the Services are performed safely, lawfully, efficiently and in accordance with the Contract.
9) **"Normal working hours"** means 07h30 to 16h00, Monday to Friday, excluding public holidays in South Africa.
10) **"Operational Contract Manager"** means the Employer's authorised representative responsible for issuing, managing or overseeing Task Orders and liaising with the Service Provider to ensure that the requirements of the Contract are met.
11) **"Person"** includes a natural person, partnership, business trust, foundation, company, close corporation, body corporate or unincorporated body.
12) **"Property"** means any movable, immovable or intellectual property, or any right in such property.
13) **"Scope of Work"** bears the same meaning as Service Information.
14) **"Sensitive security area"** means any area identified by the Employer as requiring controlled access, including offices, records areas, operational areas, restricted areas or any other area communicated to the Service Provider.
15) **"Services"** means the supply and delivery of drinking water, refilling of standby water tanks, desludging of septic tanks and manholes, removal and lawful disposal of waste where applicable, cleaning and sanitising of affected areas, and provision of all labour, vehicles, equipment, tools, supervision, safety compliance, reports and completion documentation required to perform the services on an "as and when required" basis.

16) **"Site"** means any place, building, property, depot or structure owned, occupied, used, controlled or managed by the Employer where the Services are required.
17) **"Specifications"** means the standards, requirements, methods, materials and performance obligations described in this Scope of Work and any approved Task Order.
18) **"Supervisor"** means a competent person appointed by the Service Provider to manage, supervise and coordinate the Service Provider's personnel and activities on the Site / Affected Property.
19) **"Tenant"** means any person, business unit, employee group, client, third-party service provider or other occupier with whom the Employer has entered into an arrangement for the use or occupation of the whole or part of the Site / Affected Property.
20) **"Transnet Property"** means a specialist unit of Transnet SOC Ltd, a public company incorporated in accordance with the laws of South Africa with registration number 1990/000900/30, represented by its duly authorised delegate.

1. *Employer*'s Objectives

1.1. The *Employer's* objective is to enter into a term service contract with the *Service Provider* to supply and deliver drinking water, refill the standby tanks, and desludge septic tanks/manholes at Transnet assets in the Northern Region in Mpumalanga Province and any other surrounding building/property/site owned, managed or leased by the *Employer* for a period of six (6) months on an "as and when required" basis to ensure compliance with legislative requirements relating to the Occupational Health and Safety Act, 1993, (Act No 85 of 1993).

2. Executive Overview

2.1. The Employer requires the Service Provider to render the Services for the benefit of its Employees and Tenants, and to ensure that the Site / Affected Property remains compliant with all relevant health, safety, environmental, municipal and operational requirements throughout the duration of this Term Service Contract.

2.2. The Service covers the supply and delivery of 5-litre bottled drinking water, refilling of standby water tanks with potable water that meets the SANS 241 drinking water quality standard, desludging of septic tanks and manholes, removal and lawful disposal of waste, and cleaning and sanitising of areas affected by sewer overflow around septic tanks or manholes, on an "as and when required" basis for the duration of the contract. The Services shall be rendered at various depots in Mpumalanga Province and surrounding areas, as instructed by the Employer through an approved Task Order or emergency instruction where applicable.

3. Description of the Service

3.1. Service Information

3.1.1. Task Orders will be issued by the *Operational Contract Manager (OCM)* on an "as and when required" basis. The liability of the *Employer* is limited to the total of the Prices stated in the specific Task Order and not the total Price stated in the Service Information. The *Employer* is not obliged to issue any Task Order to the *Service Provider* despite the *Service Provider* being awarded the contract.

3.1.2. Emergency Task Orders may be issued at any time by the *Operational Contract Manager* and shall be managed in accordance with the requirements for emergency work and work done by Task Order.

3.1.3. The *Service Provider* shall comply with all applicable legislation, standards, by-laws, permits, licences and Employer requirements relevant to the Services, including potable water supply, standby tank refilling, septic tank/manhole desludging, sewer overflow cleaning, waste transportation and lawful disposal.

3.1.3.1. The Occupational Health and Safety Act, 1993 (Act No 85 of 1993) and the regulations promulgated in terms of the Act.

3.1.3.2. National Health Act, 2003 (Act No. 61 of 2003), where applicable to public health, sanitation and environmental health requirements.

3.1.3.3. Hazardous Substances Act, 1973 (Act No. 15 of 1973), where any hazardous substances, chemicals, disinfectants or cleaning agents are used.

3.1.3.4. Basic Conditions of Employment Act, 1997 (Act No. 75 of 1997).

3.1.3.5. SANS 241: Drinking Water Quality, applicable to potable water supplied or used to refill standby water tanks.

3.1.3.6. SANS 10252-1: Water Supply Installations for Buildings, where applicable to water tanks, fittings and water supply-related infrastructure.

3.1.3.7. SANS 10252-2: Drainage Installations for Buildings, where applicable to drainage, sewer and wastewater-related infrastructure.

3.1.3.8. SANS 10400: The Application of the National Building Regulations, where applicable to health, sanitation, drainage and building-related services.

3.1.3.9. Applicable municipal by-laws of the relevant local municipality in Mpumalanga Province, including by-laws relating to:

- water supply;
- sanitation and sewerage;
- waste removal and disposal;
- environmental health;
- nuisance control;
- discharge of wastewater or effluent;
- access to municipal disposal facilities; and
- emergency health and safety requirements.

3.1.3.10. Applicable Local Authority and Fire Department Regulations, where relevant to site access, emergency response, water storage, sanitation and safe work practices.

3.1.3.11. All applicable permits, licences and approvals required for potable water delivery, septic tank/manhole desludging, transportation of waste, discharge, treatment or lawful disposal of waste.

3.1.3.12. Employer's health, safety, environmental, quality, security and site access requirements, including the approved safety file, risk assessments, method statements, task orders, permits and site instructions issued by the Employer.

3.2. Scope of Works

3.2.1. The appointed Service Provider shall provide all labour, supervision, vehicles, equipment, tools, consumables, materials, safety equipment, permits, licences and documentation required to perform the Services on the Site / Affected Property, on an "as and when required" basis, as instructed by the Employer through an approved Task Order or emergency instruction where applicable.

3.2.2. The Service Provider shall conduct the following activities, where instructed by the Employer:

3.2.2.1. **Supply and delivery of bottled drinking water:**

- Supply and deliver 5-litre bottled drinking water to the required Site / Affected Property.
- Ensure that all bottled drinking water supplied is safe for human consumption and complies with applicable potable water quality requirements.
- Deliver the required quantities to the designated delivery point as instructed by the Employer.
- Obtain written proof of delivery signed by the recipient of the service, Transnet representative, tenant representative, or authorised person on site.

3.2.2.2. **Refilling of standby water tanks:**

- Supply and deliver potable water for the refilling of standby water tanks at the Site / Affected Property.
- Ensure that water used to refill standby tanks meets the SANS 241 drinking water quality standard.
- Use suitable water tankers, hoses, fittings and equipment that are clean, hygienic and appropriate for potable water use.

- Prevent contamination of water during loading, transportation, transfer and refilling.
- Refill standby tanks to the required level as instructed by the Employer.
- Inspect the immediate tank area before and after refilling and report any visible defects, leaks, contamination risks, unsafe conditions or access constraints to the Employer.

3.2.2.3. **Desludging of septic tanks and manholes:**

- Desludge septic tanks, conservancy tanks, manholes or related wastewater holding points as instructed by the Employer.
- Provide suitable vacuum tanker equipment, hoses, fittings, pumps and tools required to safely extract sludge, sewage or wastewater.
- Take reasonable precautions to prevent spillage, overflow, exposure to hazardous biological material, nuisance odours and environmental contamination.
- Ensure that all waste removed from the Site / Affected Property is transported and disposed of lawfully at an authorised disposal facility.
- Submit proof of lawful disposal, waste disposal slips or disposal certificates where applicable.

3.2.2.4. **Cleaning and sanitising of affected areas:**

- Clean areas around septic tanks, manholes or sewer overflow points affected by spillage, overflow or contamination.
- Remove visible sewage waste, sludge, debris and contaminated material from the affected area.
- Apply appropriate cleaning agents, disinfectants or sanitising chemicals suitable for the affected surface and the nature of contamination.
- Ensure that the area is left in a clean, safe and hygienic condition after completion of the service.
- Dispose of contaminated cleaning materials and waste in accordance with applicable environmental, health and municipal requirements.

3.2.2.5. **Emergency response and call-outs:**

- Respond to emergency instructions relating to water shortages, empty standby tanks, septic tank overflow, manhole overflow, sanitation risks or other urgent health and safety-related incidents.
- Mobilise suitable personnel, vehicles and equipment within the response times stipulated in the contract.
- Where emergency work is performed before a formal Task Order is issued, obtain a signed job card, completion certificate or proof of delivery and ensure that the Task Order is regularised on the following working day.

3.2.2.6. **Ad hoc services:**

- Where Ad hoc Services require the use of third-party suppliers, subcontractors or specialised service providers, the Service Provider shall obtain and submit a minimum of three supporting quotations for approval by the Employer before commencement, except where immediate action is required in an emergency or where the Employer approves a deviation in writing.
- The applicable value band and percentage fee shall be determined in accordance with the approved quotation or direct cost, excluding VAT, and no payment shall be made for any Ad hoc Service that was not properly instructed, approved, completed and supported by the required documentation.
- Where emergency Ad hoc Services are performed before a formal Task Order is issued, the Service Provider shall obtain the necessary signed job card, completion certificate, proof of delivery and supporting documentation, and the Task Order shall be regularised on the following working day.

3.3. Employer's Obligations

3.3.1. Report to the Service Provider any irregular performance, defect, damage, leakage, overflow, contamination, blockage, unsafe condition or service-related concern affecting the standby water tanks, septic tanks, manholes, access points, or any infrastructure relevant to the Services under this Contract.

3.3.2. Ensure, as far as reasonably practicable, that the standby water tanks, septic tanks, manholes and related infrastructure are used in a normal and proper manner, including preventing misuse, overloading, unauthorised discharge, contamination, obstruction, or any material change in use that may affect the proper rendering of the Services.

3.3.3. Where required and reasonably possible, arrange access, isolation, shutdowns or operational coordination of affected services, areas or equipment to enable the Service Provider to safely execute the Services during normal working hours or during an agreed emergency response period.

3.3.4. Ensure, as far as reasonably practicable, that the Site / Affected Property, including access routes, equipment spaces, water tank areas, septic tank areas, manholes and service points, complies with applicable regulations, municipal by-laws, access requirements, health and safety requirements and local authority requirements.

3.3.5. At the request of the Service Provider, arrange necessary shutdowns of services and equipment to facilitate the execution of the Service wherever possible during normal working hours.

3.3.6. Any disruption beyond the Service Provider's reasonable control, including denied or delayed access, unsafe conditions, operational restrictions, tenant-related constraints, blocked access, security restrictions, or circumstances requiring the Service Provider's personnel to leave the Site / Affected Property, shall be recorded in the applicable report book, job card, service report or completion documentation.

3.4. Emergency Call-Out Service

3.4.1. The Service Provider shall, for the duration of this Contract, provide and maintain a 24-hour, 7-days-a-week emergency call-out service to enable competent personnel, suitable vehicles, plant and equipment to be mobilised upon instruction by the Operational Contract Manager to attend to emergency water supply, standby tank refilling, septic tank/manhole desludging, sewer overflow cleaning or related public health and safety incidents within the response times stipulated below.

3.4.2. Emergency Services may be executed without prior receipt of an accepted Task Order, provided that such emergency work is performed solely on the instruction of the Operational Contract Manager or duly authorised Employer representative. The Service Provider shall ensure that the recipient of the service/client, Transnet representative, tenant representative or authorised person on site signs the job card, Completion Certificate and/or Proof of Delivery. The Service Provider shall further ensure that an accepted Task Order is obtained from the Operational Contract Manager on the following working day.

3.4.3. The Service Provider shall immediately inform the Operational Contract Manager verbally, and confirm in writing as soon as reasonably practicable, of any hazardous, unsafe, unhygienic or undesirable condition observed on the Site / Affected Property which may cause harm to persons, affect public health, contaminate potable water, cause sewer overflow, result in environmental pollution, damage Employer infrastructure, or disrupt operations, even where such condition falls outside the specific instruction issued to the Service Provider.

3.4.4. Only incidents that affect or may reasonably affect public health, safety, sanitation, continuity of potable water supply, availability of standby water tanks, sewer overflow control, environmental protection or operational continuity shall be treated as emergency call-outs. Incidents relating solely to convenience or personal comfort shall not be treated as emergencies unless authorised by the Operational Contract Manager.

3.4.5. For purposes of measuring emergency response times, the emergency response central point shall be **Ermelo Operations Depot,** and all kilometre distances shall be measured from that point to the relevant Site / Affected Property.

3.4.6. The response time for emergency call-outs, measured from the Service Provider's receipt of an official instruction from the Operational Contract Manager to attendance at the Site / Affected Property, shall be as follows:

3.4.6.1. Emergency call-outs shall not exceed:

3.4.6.1.1. One (1) hour within a twenty-five (25) kilometre radius from the emergency response central point;

3.4.6.1.2. Two (2) hours within a fifty (50) kilometre radius from the emergency response central point;

3.4.6.1.3. Three (3) hours where the Site / Affected Property is further than fifty (50) kilometres from the emergency response central point.

3.4.7. For emergency work, the Service Provider shall mobilise all personnel, vehicles, equipment, tools, consumables and documentation required to complete the emergency service safely, hygienically and lawfully.

3.4.8. Upon completion of the emergency service, the Service Provider shall submit all relevant documentation, including the job card, Completion Certificate, Proof of Delivery, service report, photographs where required, waste disposal certificate or disposal slip where applicable, and any other documentation reasonably required by the Employer.

3.4.9. No additional payment shall be made for maintaining emergency standby availability unless specifically provided for in the Price List / Rate Schedule. Payment for actual emergency services rendered shall be made in accordance with the approved rates, Task Order and supporting documentation.

3.4.10. Failure by the Service Provider to meet the stipulated emergency response times under normal circumstances may be regarded as poor performance and may entitle the Employer to apply Low Service Damages, issue a non-conformance notice, or exercise any other contractual remedy available to it.

3.4.11. The Service Provider shall ensure that the Operational Contract Manager is at all times in possession of current emergency contact numbers, escalation contacts and communication details required to request emergency services without delay.

4. Management Structures

4.1. Performance Measures

4.1.1. It is recorded and agreed that, where the Service Provider fails to deliver goods or render the Services stipulated in this Scope of Work in accordance with the approved Task Order, emergency instruction, agreed response time, applicable standards or contractual requirements, the Employer shall be entitled to impose Low Service Damages on the Service Provider as set out in Table 1 below.

4.1.2. The Employer's right to impose Low Service Damages shall not limit or detract from any other rights or remedies available to the Employer under the Contract, including the right to claim proven damages arising from any breach by the Service Provider of the terms and conditions of this Agreement.

Table 1: Low Service Damages

Low Service Damages Description	Value of Low Service Damages	Limit of Low Service Damages
Delays in submitting a quotation, priced Task Order or programme where required by the Operational Contract Manager within the stipulated timeframe	0.5% of the Task Order value per day	10% of the Task Order value
Delay in commencing the Task as stipulated in the accepted Task Order, approved programme or authorised emergency instruction	1.5% of the Task Order value per day	10% of the Task Order value
Delay in completing the Task as stipulated in the accepted Task Order, approved programme or authorised emergency instruction	1.5% of the Task Order value per day	10% of the Task Order value
Delay in responding to an emergency call-out relating to potable water supply, standby tank refilling, septic tank/manhole overflow, sewer spillage, sanitation risk or related public health and safety incident, as set out in clause 3.4	0.5% of the Task Order value per hour	10% of the Task Order value
Rework required due to poor workmanship, incomplete service, spillage, failure to clean/sanitise affected areas, non-compliant water delivery, non-compliant desludging, or failure to dispose of waste lawfully.	2% of the Task Order value per day	10% of the Task Order value
Failure to respond to a Non-Conformance Report within three working days from receipt.	1% of the Task Order value per day	10% of the Task Order value

4.1.3. The Low Service Damages shall apply per Task Order and per breach, where applicable.

4.1.4. The maximum Low Service Damages recoverable per breach shall be limited to 10% of the applicable Task Order value, unless otherwise provided for in the Contract.

4.1.5. The imposition of Low Service Damages shall not relieve the Service Provider of its obligation to complete the Service, rectify defective work, submit outstanding documentation, or comply with all applicable contractual, statutory, safety, health, environmental and municipal requirements.

4.2. Management Meetings

4.2.1. The Service Provider, or its duly authorised representative, shall be required to attend monthly meetings, or meetings as required, with the Employer, Operational Contract Manager or duly authorised Employer representative to discuss the provision of the Services, service performance, risks, incidents, emergency call-outs, Task Orders, compliance matters, and any operational issues affecting the Site / Affected Property. The Service Provider warrants that any representative attending such meetings on its behalf shall be duly authorised to bind the Service Provider in respect of decisions taken and agreements reached, subject to the conditions of contract. Minutes and records of such meetings shall be the responsibility of the Employer, unless otherwise agreed. Minutes shall be made available to the Service Provider within seven working days.

4.2.2. Regular meetings of a general nature may be convened and chaired by the Operational Contract Manager as follows:

Title and purpose	Approximate time & interval	Location	Attendance by:
Risk register, service constraints and compensation events	As soon as a risk, constraint or compensation event is notified	*Operational Contract Manager*'s Office and/or Microsoft Teams	*Operational Contract Manager, Service Provider, Coordinator, Contract Supervisor and/or competent representative*

Overall contract progress, service performance and feedback	Monthly, or as required	*Operational Contract Manager*'s Office and/or Microsoft Teams	*Operational Contract Manager, Service Provider, Coordinator, Contract Supervisor and/or competent representative*
Emergency service events, including emergency water supply, standby tank refilling, septic tank/manhole overflow, sewer spillages and sanitation risks	Daily during an emergency event, or as required	Site / Affected Property and/or Microsoft Teams	*Operational Contract Manager, Service Provider, Coordinator, Contract Supervisor and/or competent representative*

4.2.3. If the Service Provider is unable to attend any scheduled meeting, the Service Provider shall formally submit written feedback to the Operational Contract Manager before the meeting, unless prevented by circumstances beyond its reasonable control.

4.2.4. The Service Provider shall provide a detailed feedback report on a daily basis, or as required, during emergency service events. The report shall provide accurate feedback on the status of the Services rendered, progress achieved, resources mobilised, constraints experienced, risks identified, mitigation measures implemented, and any further support or instruction required from the Operational Contract Manager.

4.2.5. Meetings of a specialist nature may be convened as specified elsewhere in this Service Information or, where not specified, by agreement between the Parties at times and locations suitable to the nature, urgency and progress of the Services. Records of such meetings shall be submitted to the Operational Contract Manager by the person convening the meeting within five working days of the meeting.

4.2.6. All meetings shall be recorded by way of minutes, an attendance register or an action register prepared and circulated by the person who convened the meeting. Such minutes, attendance register or action register shall not be used as a substitute for formal contractual notices, Task Orders, instructions, approvals, compensation event notifications or any other actions required under the conditions of contract, which shall be issued separately by the person authorised under the Contract.

4.3. Service Provider's Management, Supervision and Key People

4.3.1. The Service Provider shall submit a list of key personnel, relevant competencies, contact details and an escalation organogram to the Operational Contract Manager before commencement of the Services.

4.3.2. The Service Provider shall appoint a competent supervisor or authorised representative to manage the Services on the Site / Affected Property and receive instructions on behalf of the Service Provider.

4.3.3. The Service Provider shall ensure that sufficient trained, competent and supervised personnel are available to perform potable water delivery, standby tank refilling, septic tank/manhole desludging, sewer overflow cleaning and related emergency services safely and lawfully.

4.3.4. All personnel shall wear appropriate personal protective equipment, maintain proper hygiene and conduct, and comply with site access, security, health, safety, environmental and Employer requirements.

4.3.5. The Service Provider shall provide fit-for-purpose, properly maintained and identifiable vehicles, tankers, equipment, tools and materials required to render the Services.

4.3.6. The Service Provider shall immediately notify the Operational Contract Manager of any incident, unsafe condition, access constraint, labour issue or operational matter that may affect service delivery.

4.4. Deliverables

4.4.1. The Service Provider shall submit the following deliverables with each invoice, where applicable:

4.4.1.1. Signed job card, completion certificate or proof of delivery confirming the service rendered, site, date, quantity delivered or removed, and authorised recipient;

4.4.1.2. Service report confirming potable water delivery, standby tank refilling, septic tank/manhole desludging, sewer overflow cleaning, or other approved ad hoc service performed;

4.4.1.3. Waste disposal certificate, disposal slip or other proof of lawful disposal for sludge, sewage or contaminated waste removed from the Site / Affected Property;

4.4.1.4. Record of water quality compliance where required, including confirmation that potable water supplied for standby tanks meets SANS 241 requirements;

4.4.1.5. Checklist, photographs, incident report, chemical/disinfectant record or emergency call-out report, where applicable;

4.4.1.6. Any service constraint, access issue, labour issue, unsafe condition or operational matter that affected or may affect service delivery.

4.4.1.7. All incidents shall be reported immediately to the Operational Contract Manager. A flash report shall be submitted within the same shift, and a detailed investigation report with corrective and preventative actions shall be submitted within 48 hours where required.

4.5. Invoicing and Payment

4.5.1. The Service Provider may submit a VAT invoice only after the Services have been completed, verified and accepted by the Operational Contract Manager or authorised Employer representative.

4.5.2. Each invoice shall be supported by the applicable approved Task Order or authorised emergency instruction, signed job card, completion certificate or proof of delivery, service report, waste disposal certificate or disposal slip where applicable, water quality confirmation where required, approved quotations for Ad hoc Services where applicable, and any other supporting documentation reasonably required by the Employer.

4.5.3. Each VAT invoice shall clearly reflect the contract number, purchase order number, Task Order number, Site / Affected Property, description of the Services rendered, date of service, quantities delivered or removed, approved rates, approved ad hoc value band and percentage fee where applicable, VAT amount and total amount payable.

4.5.4. Where Ad hoc Services are claimed, the invoice shall be accompanied by the approved Task Order, prior written approval, the approved quotation or approved direct cost, a minimum of three supporting quotations unless a written deviation has been approved by the Employer, and documentation confirming completion and acceptance of the Ad hoc Services.

4.5.5. Where emergency Services or emergency Ad hoc Services are performed before a formal Task Order is issued, payment shall only be made where the work was instructed by the Operational Contract Manager or authorised Employer representative, supported by the signed job card, completion certificate, proof of delivery, service report and other applicable documentation, and the Task Order has been regularised on the following working day.

4.5.6. No invoice shall be processed for payment where the required supporting documentation is incomplete, incorrect, inconsistent with the approved Task Order, not approved by the Operational Contract Manager, or where the Services were not properly instructed, completed and accepted.

4.5.7. Payment shall be made within thirty (30) days from receipt of a correct, signed and approved VAT invoice, subject to compliance with the Contract, the approved Task Order, Employer payment processes and all applicable supporting documentation requirements.

4.5.8. The Service Provider shall follow the correct submission and approval process to ensure payment is effected in accordance with the contractual payment terms.

4.6. Working on Affected Property

4.6.1. *Employer*'s site entry and security control, permits, and site regulations

4.6.2. Report to the Operational Contract Manager, site representative or authorised Employer representative upon arrival at the Site / Affected Property.

4.6.3. Comply with all access, security, safety, environmental and operational requirements applicable to the Site / Affected Property.

4.6.4. Barricade or demarcate work areas where necessary to protect Employees, Tenants, visitors, the public and the Service Provider's personnel.

4.6.5. Ensure that hoses, vehicles, equipment and work activities do not create unnecessary obstruction, damage, pollution, nuisance or unsafe conditions.

4.6.6. Make good any damage caused by the Service Provider, its employees, agents, subcontractors, vehicles or equipment.

4.7. Equipment, Vehicles and Personnel

4.7.1. Provide roadworthy and fit-for-purpose vehicles, water tankers, vacuum tankers, pumps, hoses, fittings, containers, protective equipment and tools required to perform the Services.

4.7.2. Ensure that all equipment used for potable water is clean, hygienic and suitable for drinking water-related services.

4.7.3. Ensure that all equipment used for sewage or sludge removal is appropriate, leak-free, properly maintained and suitable for safe waste handling.

4.7.4. Ensure that all personnel are competent, properly supervised, adequately trained and provided with suitable personal protective equipment.

4.8. Health and Safety Facilities on the Affected Property

4.8.1. The Service Provider shall comply with the Employer's health, safety, environmental, emergency, access and site procedures at all times while on the Site / Affected Property.

4.8.2. All chemicals, disinfectants, cleaning agents and related materials used for the Services shall be procured, stored, transported, handled and applied safely, lawfully and in accordance with applicable legislation, standards, by-laws and manufacturer requirements.

4.8.3. No poisonous, hazardous or highly flammable material may be brought onto or stored at the Site / Affected Property without the prior approval of the Operational Contract Manager.

4.8.4. The Service Provider shall take all reasonable precautions to protect Employees, Tenants, visitors, the public, Employer property, surrounding property and the Service Provider's personnel from injury, contamination, damage, nuisance or environmental harm arising from the Services.

4.8.5. The Service Provider shall immediately report to the Operational Contract Manager any hazardous, unsafe, unhygienic or undesirable condition that may affect public health, potable water quality, sanitation, safety, the environment or service delivery.

4.8.6. The Service Provider shall not cause or permit any obstruction, spillage, pollution, nuisance, unsafe condition or damage on the Site / Affected Property.

4.8.7. The Service Provider shall demarcate work areas and display visible warning signs where the Services may pose a risk to persons, vehicles, property or operations.

4.8.8. Where required, warning signs, notices or safety information displayed on the Site / Affected Property shall be clear, visible and presented in English and at least one other official language.

5. Pricing Clarification

5.1.1. Ad hoc services related to the Scope of Work, priced using the applicable value band and subject to an approved Task Order. The percentage fee shall be applied to the approved third-party quotation or approved direct cost of the required goods, materials, plant, equipment, specialised service or subcontracted work, excluding VAT. A minimum of three supporting quotations and prior written approval are required before commencement.

5.1.2. For ad hoc services, the applicable value band shall be determined by the approved total value of the required goods, materials, plant, equipment, specialised service or subcontracted work, excluding VAT and before applying the percentage fee. The Service Provider's percentage fee shall cover coordination, sourcing, administration, supervision and management of the ad hoc service. No ad hoc work may commence without an approved Task Order and prior written approval by Employer.

MASTER AGREEMENT

entered into by and between

TRANSNET SOC LTD

and

.....

FOR THE SUPPLY DELIVERY OF PROVISION SUPPLY DELIVERY OF DRINKING WATER, REFLLING OF STANDBY TANKS, AND DESLUSGE AND DISPOSAL OF SEWER IN THE NORTHERN REGION [MPUMALANGA PROVINCE AND SURROUNDING AREAS] ON "AS AND WHEN REQUIRED BASIS" FOR A PERIOD OF TWELVE (12) MONTHS.

Agreement Number	**TP/2026/10/0205/13638/RFQ**
Commencement Date	**TBA**
Expiry Date	**TBA**

FOR THE SUPPLY DELIVERY OF PROVISION SUPPLY DELIVERY OF DRINKING WATER, REFLLING OF STANDBY TANKS, AND DESLUSGE AND DISPOSAL OF SEWER IN THE NORTHERN REGION [MPUMALANGA PROVINCE AND SURROUNDING AREAS] ON "AS AND WHEN REQUIRED BASIS" FOR A PERIOD OF TWELVE (12) MONTHS.

TABLE OF CONTENTS

1 INTRODUCTION 4
2 DEFINITIONS 4
3 INTERPRETATION 8
4 NATURE AND SCOPE 8
5 AUTHORITY OF PARTIES 9
6 DURATION/TERM AND CANCELLATION 9
7 RISK MANAGEMENT 9
8 TRANSNET'S OBLIGATIONS 9
9 GENERAL OBLIGATIONS OF THE SUPPLIER/SERVICE PROVIDER 10
10 SERVICE PROVIDER'S PERSONNEL 12
11 SUBCONTRACTING 13
12 PAYMENT TO SUB-CONTRACTORS 13
13 B-BBEE AND SOCIO-ECONOMIC OBLIGATIONS 14
14 THE NATIONAL INDUSTRIAL PARTICIPATION PROGRAMME (NIPP) 15
15 JOB-CREATION 15
16 PENALTIES 15
17 FEES AND EXPENSES RELATING TO SERVICES 18
18 INVOICES AND PAYMENT 18
19 PRICE ADJUSTMENTS 19
20 WARRANTIES APPLICABLE TO GOODS 20
21 WARRANTIES APPLICABLE TO SERVICES 20
22 THIRD PARTY INDEMNITY 22
23 INSPECTION APPLICABLE TO GOODS 22
24 DEFECTIVE GOODS 23
25 TOTAL OR PARTIAL FAILURE TO PERFORM 24
26 NON CONFORMANCE OF GOODS/SERVICES PROCURED 24
27 RIGHTS ON CANCELLATION 25
28 BREACH AND TERMINATION 25
29 CESSIONS AND ASSIGNMENTS AS PER NT INSTRUCTION NOTE 08 OF 2022/2023 26
30 FORCE MAJEURE 26
31 PROTECTION OF PERSONAL INFORMATION 27
32 CONFIDENTIALITY 29
33 INSURANCES 31
34 LIMITATION OF LIABILITY 31
35 INTELLECTUAL PROPERTY RIGHTS 32
36 NON-WAIVER 34
37 PARTIAL INVALIDITY 34
38 DISPUTE RESOLUTION 34

39 ADDRESSES FOR NOTICES 35
40 WHOLE AND ONLY AGREEMENT 36
41 AMENDMENT AND CHANGE CONTROL 36
42 GENERAL 36
43 DATABASE OF RESTRICTED SUPPLIER 37

SCHEDULE 1 – WORK ORDER / SCHEDULE OF REQUIREMENTS

1 INTRODUCTION

This Agreement is entered into by and between:

Transnet SOC Ltd [Registration Number 1990/000900/30] whose registered address is **175 Minnaar Street, Pretoria**, Republic of South Africa [**Transnet**]

and

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

NOW THEREFORE, IT IS AGREED:

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

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

2 DEFINITIONS

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

2.1 **AFSA** means the Arbitration Foundation of South Africa;

2.2 **Agreement** means this Agreement and its associated schedules and/or annexures and/or appendices, and/or schedules, including the Schedule of Requirements/Work Orders, the technical specifications for the Goods/Services and such special conditions as shall apply to this Agreement, together with the General Tender Conditions and any additional provisions in the associated bid documents tendered by the Supplier/Service Provider [as agreed, in writing, between the Parties], which collectively and exclusively govern the supply of Goods / provision of Services and provision of ancillary Services by the Supplier/Service Provider to Transnet;

2.3 **Assignment** refers to the transfer of rights and obligations in a contract from an assigner to an assignee.

2.4 **Background Intellectual Property** means all Intellectual Property introduced and required by either Party to give effect to their obligations under this Agreement owned in whole or in part by or licensed to either Party or their affiliates prior to the Commencement Date or developed after the Commencement Date otherwise pursuant to this Agreement;

2.5 **Business Day(s)** means Mondays to Fridays between 07:30 and 16:00, excluding public holidays as proclaimed in South Africa;

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

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

2.8 **Confidential Information** means any information or other data, whether in written, oral, graphic or in any other form such as in documents, papers, memoranda, correspondence, notebooks, reports, drawings, diagrams, discs, articles, samples, test results, prototypes, designs, plans, formulae, patents, or inventor's certificates, which a Party discloses or provides to the other Party [intentionally or unintentionally, or as a result of one Party permitting the representative of the other Party to visit any of its premises], or which otherwise becomes known to a Party, and which is not in the public domain and includes, without limiting the generality of the term:

a) information relating to methods of operation, data and plans of the disclosing Party;

b) the contents of this Agreement;

c) private and personal details of employees or clients of the disclosing Party or any other person where an onus rests on the disclosing Party to maintain the confidentiality of such information;

d) any information disclosed by either Party and which is clearly marked as being confidential or secret;

e) information relating to the strategic objectives and planning of the disclosing Party relating to its existing and planned future business activities;

f) information relating to the past, present and future research and development of the disclosing Party;

g) information relating to the business activities, business relationships, products, services, customers, clients and Subcontractors of the disclosing Party where an onus rests on the disclosing Party to maintain the confidentiality of such information;

h) information contained in the software and associated material and documentation belonging to the disclosing Party;

i) technical and scientific information, Know-How and trade secrets of a disclosing Party including inventions, applications and processes;

j) Copyright works;

k) commercial, financial and marketing information;

l) data concerning architecture, demonstrations, tools and techniques, processes, machinery and equipment of the disclosing Party;

m) plans, designs, concepts, drawings, functional and technical requirements and specifications of the disclosing Party;

n) information concerning faults or defects in Goods, equipment, hardware or software or the incidence of such faults or defects; and

o) information concerning the charges, fees and/or costs of the disclosing Party or its authorised Subcontractors, or their methods, practices or service performance levels actually achieved;

2.9 **Copyright** means the right in expressions, procedures, methods of operations or mathematical concepts, computer program codes, compilations of data or other material, literary works, musical

works, artistic works, sound recordings, broadcasts, program carrying signals, published editions, photographic works, or cinematographic works of the copyright owner to do or to authorise the doing of certain acts specified in respect of the different categories of works;

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

2.11 **Designs** mean registered Designs and/or Design applications and will include the monopoly right granted for the protection of an independently created industrial design including designs dictated essentially by technical or functional considerations as well as topographies of integrated circuits and integrated circuits;

2.12 **Expiry Date** means TBA;

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

2.14 **Goods** means the material / products specified in the Schedule of Requirements appended as Schedule 1 hereto;

2.15 **ICC Incoterms** means the the latest version of commercial trade terms as published by the International Chamber of Commerce, Paris [ICC], which are otherwise referred to as purchase terms and which define precisely the responsibilities, costs and risks of the buyer [**Transnet**] and the seller [**the Supplier].** Incoterms are only applicable to contracts involving the import or export of Goods from one country to another and for the purpose of this Agreement, if applicable, shall mean the designated Incoterm as stipulated in Schedule 1 hereto. Further details of the Incoterm [purchase terms] for this Agreement, if applicable, can be viewed at the International Business Training website - http://www.i-b-t.net/incoterms.html;

2.16 **Intellectual Property** means Patents, Designs, Know-How, Copyright and Trade Marks and all rights having equivalent or similar effect which may exist anywhere in the world and includes all future additions and improvements to the Intellectual Property;

2.17 **Know-How** means all Confidential Information of whatever nature relating to the Intellectual Property and its exploitation as well as all other Confidential Information generally relating to Transnet's field of technology, including technical information, processing or manufacturing techniques, Designs, specifications, formulae, systems, processes, information concerning materials and marketing and business information in general;

2.18 **Parties** mean the Parties to this Agreement together with their subsidiaries, divisions, business units, successors-in-title and assigns;

2.19 **Party** means either one of these Parties;

2.20 **Patents** mean registered Patents and Patent applications, once the latter have proceeded to grant, and includes a right granted for any inventions, products or processes in all fields of technology;

2.21 **Permitted Purpose** means any activity or process to be undertaken or supervised by a Staff member of one Party during the term of this Agreement, for which purpose authorised disclosure of the other Party's Confidential Information or Intellectual Property is a prerequisite in order to enable such activity or process to be accomplished;

2.22 **Price(s)** means the agreed Price(s) for the Goods/Services to be purchased from the Supplier/Service Provider by Transnet, as detailed in the Schedule of Requirements, issued in accordance with this Agreement, as amended by mutual agreement between the Parties and in accordance with the terms and conditions in this Agreement from time to time;

2.23 **Purchase Order(s)** means official orders issued by an operating division of Transnet to the Supplier/Service Provider for the supply of Goods or Services;

2.24 **Service(s)** means the Service(s) provided to Transnet by the Service Provider, pursuant to the Work Order(s) in terms of this Agreement;

2.25 **Service Level Agreement** or **SLA** means the processes, deliverables, key performance indicators and performance standards relating to the Goods/Services to be provided by the Supplier/Service Provider;

2.26 **Service Provider Materials** means all works of authorship, products and materials [including, but not limited to, data, diagrams, charts, reports, specifications, studies, inventions, software, software development tools, methodologies, ideas, methods, processes, concepts and techniques] owned by, or licensed to, the Service Provider prior to the Commencement Date or independently developed by the Service Provider outside the scope of this Agreement at no expense to Transnet, and used by the Service Provider in the performance of the Services;

2.27 **Staff** means any partner, employee, agent, consultant, independent associate or contractor, Subcontractor and the staff of such Subcontractor, or other authorised representative of either Party;

2.28 **Schedule of Requirements** means Schedule 1 hereto;

2.29 **Subcontract** means any contract or agreement or proposed contract or agreement between the Supplier/Service Provider and any third party whereby that third party agrees to provide to the Supplier the Goods or related Services or any part thereof or material used in the manufacture of the Goods or any part thereof;

2.30 **Subcontractor** means the third party with whom the Supplier/Service Provider enters into a Subcontract;

2.31 **Tax Invoice** means the document as required by Section 20 of the VAT Act, as may be amended from time to time;

2.32 **Trade Marks** mean registered Trade Marks and Trade Mark applications and include any sign or logo, or combination of signs and/or logos capable of distinguishing the goods or services of one undertaking from those of another undertaking;

2.33 **VAT** means Value-Added Tax chargeable in terms of the VAT Act, 89 of 1991, as may be amended from time to time; and

2.34 **VAT Act** means the Value Added Tax Act, No 89 of 1991, as may be amended from time to time.

2.35 **Work Order(s)** means a detailed scope of work for a Service required by Transnet, including **timeframes**, Deliverable, Fees and costs for the supply of the Service to Transnet, which may be appended to this Agreement from time to time.

3 INTERPRETATION

3.1 Clause headings in this Agreement are included for ease of reference only and do not form part of this Agreement for the purposes of interpretation or for any other purpose. No provision shall be construed against or interpreted to the disadvantage of either Party hereto by reason of such Party having or being deemed to have structured or drafted such provision.

3.2 Any term, word or phrase used in this Agreement, other than those defined under the clause heading *"Definitions"* shall be given its plain English meaning, and those terms, words, acronyms, and phrases used in this Agreement will be interpreted in accordance with the generally accepted meanings accorded thereto.

3.3 A reference to the singular incorporates a reference to the plural and *vice versa*.

3.4 A reference to natural persons incorporates a reference to legal persons and *vice versa*.

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

4 NATURE AND SCOPE

4.1 This Agreement is an agreement under the terms and conditions of which the Supplier/Service Provider will arrange for the supply/provision to Transnet of the Goods/Services which meet the requirements and specifications of Transnet, the delivery of which is controlled by means of Purchase Orders to be issued by Transnet and executed by the Supplier/Service Provider in accordance with this Agreement.

4.2 Such Purchase Orders and deliveries to Transnet shall be agreed between the Parties from time to time, subject to the terms of the Schedule of Requirements/Work Order.

4.3 Each properly executed Purchase Order forms an inseparable part of this Agreement as if it were fully incorporated into the body of this Agreement.

4.4 During the period of this Agreement, both Parties can make written suggestions for amendments to the Schedule of Requirements/Work Orders in accordance with procedures set out in clause 412 *[Amendment and Change Control]*. A Party will advise the other Party within 14 [fourteen] Business Days, or such other period as mutually agreed, whether the amendment is acceptable.

4.5 Insofar as any term, provision or condition in the Schedule of Requirements/Work Order conflicts with a like term, provision or condition in this Agreement and/or a Purchase Order, the term or provision or condition in this Master Agreement shall prevail, unless such term or provision or condition in this Master Agreement has been specifically revoked or amended by mutual written agreement between the Parties.

4.6 Time will be of the essence and the Supplier/Service Provider will perform its obligations under this Agreement in accordance with the timeframe(s) [if any] set out in the relevant schedule, save that the Supplier/Service Provider will not be liable under this clause if it is unable to meet such obligation within the time required as a direct result of any act or omission by Transnet and it has used its best endeavours to advise Transnet of such act or omission. In the event of such delay, any time deadlines detailed in the relevant schedule shall be extended by a period equal to the period of that delay.

5 AUTHORITY OF PARTIES

5.1 Nothing in this Agreement will constitute or be deemed to constitute a partnership between the Parties, or constitute or be deemed to constitute the Parties as agents or employees of one another for any purpose or in any form whatsoever.

5.2 Neither Party shall be entitled to, or have the power or authority to:

a) enter into an agreement in the name of the other; or

b) give any warranty, representation or undertaking on the other's behalf; or

c) create any liability against the other or bind the other's credit in any way or for any purpose whatsoever.

6 DURATION/TERM AND CANCELLATION

6.1 Notwithstanding the date of signature hereof, the Commencement Date if this Agreement TBA and the duration shall be for a TBA year period, expiring on TBA, unless:

a) this Agreement is terminated by either Party in accordance with the provisions incorporated herein or in any schedules or annexures appended hereto, or otherwise in accordance with law or equity; or

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

6.2 Notwithstanding clause 289 *[Breach and Termination]*, either Party may cancel this Agreement without cause by giving 07 [seven] calendar days prior written notice thereof to the other Party, provided that in such instance, this Agreement will nevertheless be applicable in respect of all Purchase Orders which have been placed prior to the date of such cancellation.

7 RISK MANAGEMENT

7.1 Where Transnet determines appropriate, within 2 weeks from the date of contract signature, the Parties are to meet to prepare and maintain a contract Risk Register. The Risk Register shall include a description of the risks and a description of the actions which are to be taken to avoid or reduce these risks which both Parties shall jointly determne.

7.2 Contract progress meetings shall be held monthly, or unless otherwise agreed between the Parties in writing. The purposes of these progress meetings shall be to capture the number of late deliverables against agreed milestones, actual costs against payment plans, performance issues or concerns, contract requirements not achieved, the status of previous corrective actions and risk management. Minutes of meetings shall be maintained and signed off between the Parties throughout the contract period

8 TRANSNET'S OBLIGATIONS

8.1 Transnet undertakes to promptly comply with any reasonable request by the Supplier/Service Provider for information, including information concerning Transnet's operations and activities, that relates to the Goods/Services as may be necessary for the Supplier/Service Provider to provide the Goods/Services, but for no other purpose. However, Transnet's compliance with any request for information is subject to any internal security rules and requirements and subject to the observance by the Supplier/Service Provider of its confidentiality obligations under this Agreement.

8.2 The Supplier/Service Provider shall give Transnet reasonable notice of any information it requires.

8.3 Transnet agrees to provide the Supplier/Service Provider or its Personnel such access to and use of its facilities as is necessary to allow the Supplier/Service Provider to perform its obligations under this Agreement.

9 GENERAL OBLIGATIONS OF THE SUPPLIER/SERVICE PROVIDER

9.1 The Supplier/Service Provider shall:

a) respond promptly to all complaints and enquiries from Transnet;

b) inform Transnet immediately of any dispute or complaint arising in relation to the storage or delivery of the Goods;

c) conduct its business in a professional manner which will reflect positively upon the Supplier/Service Provider and the Supplier's/Service Provider's products/services;

d) keep full records clearly indicating all transactions concluded by the Supplier/Service Provider relating to the delivery of the Goods/Services and keep such records for at least 5 [five] years from the date of each such transaction;

e) obtain, and at all times maintain in full force and effect, any and all licences, permits and the like required under applicable laws for the provision of the Goods/Services and ancillary Services and the conduct of the business and activities of the Supplier/Service Provider;

f) observe and ensure compliance with all requirements and obligations as set out in the labour and related legislation of South Africa, including the Occupational Health and Safety Act, 85 of 1993, as may be amended from time to time;

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

h) comply with all applicable environmental legislation and regulations, demonstrate sound environmental performance and have an environmental management policy which ensures that its products, including the Goods/Services or ancillary Services are procured, produced, packaged, delivered and are capable of being used and ultimately disposed of in a way that is environmentally appropriate; and

i) ensure the validity of all renewable certifications, including but not limited to its B-BBEE Verification Certificate, throughout the entire term of this Agreement. Should the Supplier/Service Provider fail to present Transnet with such renewals as they become due, Transnet shall be entitled, in addition to any other rights and remedies that it may have in

terms of the Agreement, to terminate this Agreement forthwith without any liability and without prejudice to any claims which Transnet may have for damages against the Supplier/Service Provider.

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

a) render the supply of the Goods/Services and ancillary Services (if applicable) and perform all its duties with honesty and integrity;

b) communicate openly and honestly with Transnet regarding the supply and performance of the Goods/Services and demonstrate a commitment to effecting the supply and performing ancillary Services timeously, efficiently and at least to the required standards;

c) endeavour to provide the highest possible standards of service and workmanship, with a reasonable degree of care and diligence;

d) use its best endeavours and make every diligent effort to meet agreed deadlines;

e) treat its own Staff, as well as all Transnet's Staff, with fairness and courtesy and respect for their human rights;

f) practice and promote its own internal policies aimed at prohibiting and preventing unfair discrimination;

g) treat all enquiries from Transnet in connection with the supply of the Goods/Services and/or ancillary Services with courtesy and respond to all enquiries promptly and efficiently. Where the Supplier/Service Provider is unable to comply with the provisions of this clause, the Supplier/Service Provider will advise Transnet of the delay and the reasons therefor and will keep Transnet informed of progress made regarding the enquiry;

h) when requested by Transnet, provide clear and accurate information regarding the Supplier's/Service Provider's own policies and procedures, excluding Know-How and other Confidential Information, except where a non-disclosure undertaking has been entered into between the Parties;

i) not allow a conflict of interest to develop between its own interests [or the interests of any of its other customers] and the interests of Transnet;

j) not accept or offer, nor allow, induce or promote the acceptance or offering of any gratuity, enticement, incentive or gift that could reasonably be regarded as bribery or an attempt to otherwise exert undue influence over the recipient;

k) not mislead Transnet or its officers, employees and stakeholders, whether by act or omission;

l) not otherwise act in an unethical manner or do anything which could reasonably be expected to damage or tarnish Transnet's reputation or business image;

m) immediately report to Transnet any unethical, fraudulent or otherwise unlawful conduct of which it becomes aware in connection with Transnet or the supply of Goods/Services or ancillary Services to Transnet;

n) ensure that at all times, during the currency of this Agreement, it complies with all obligations and commitments in terms of the provisions of the Income Tax Act, No 58 of 1962, the VAT Act or any other tax legislation relating to their liability for Income Tax, VAT, Pay as You Earn or any other tax. The Supplier/Service Provider shall further ensure Tax Clearance Compliance, for the duration of this Agreement;

o) not victimise, harass or discriminate against any employee of either Party to this Agreement or any applicant for employment with either Party to this Agreement due to their gender, race, disability, age, religious belief, sexual orientation or part-time status. This provision applies, but is not limited to employment, upgrading, work environment, demotion, transfer, recruitment, recruitment advertising, termination of employment, rates of pay or other forms of compensation and selection for training.

p) shall ensure that its employees, agents and Subcontractors will not breach any applicable discrimination legislation and any amendments and re-enactments thereof.

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

10 SERVICE PROVIDER'S PERSONNEL

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

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

10.3 The Service Provider will ensure that its Personnel comply with all reasonable requirements made known to the Service Provider by Transnet concerning conduct at any Transnet premises or any other premises upon which the Services are to be performed [including but not limited to security regulations, policy standards and codes of practice and health and safety requirements]. The Service Provider will ensure that such Personnel at all times act in a lawful and proper manner in accordance with these requirements.

10.4 Transnet reserves the right to refuse to admit or to remove from any premises occupied by or on behalf of it, any Service Provider Personnel whose admission or presence would, in the reasonable opinion of Transnet, be undesirable or who represents a threat to confidentiality or security or whose presence would be in breach of any rules and regulations governing Transnet's Personnel, provided that Transnet notifies the Service Provider of any such refusal [with reasons why]. The reasonable exclusion of any such individual from such premises shall not relieve the Service Provider from the performance of its obligations under this Agreement.

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

11 SUBCONTRACTING

11.1 The Supplier/Service Provider may only enter into a subcontracting arrangement or replace a subcontractor with the approval of Transnet.

11.2 If the Supplier/Service Provider subcontracts a portion of the contract to another person without declaring it to Transnet reserves the right to penalise the Supplier/Service Provider up to 10% of the value of the contract.

11.3 Where the Supplier/Service Provider seeks to replace a subcontractor Transnet shall be entitled to obtain representations or input from the initial subcontractor who was part of the tender process whose credentials were used in the Supplier/Service Provider's tender submission. Transnet shall consider input from all parties concerned, in order to take a decision on the proposed replacement of the subcontractor. The subcontracting arrangement or contract remains between the Supplier/Service Provider (main contractor) and the subcontractor.

11.4 Should Transnet approve the Supplier's/Service Provider's subcontracting arrangement, the Supplier/Service Provider and not the Sub-contractor will at all times be held liable for performance in terms of its contractual obligations.

11.5 The Supplier/Service Provider may not subcontract in such a manner that the the overall value of the contract is reduced to below the stipulated minimum threshold.

11.6 The Supplier/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/Service Provider, unless the contract is subcontracted to an Exempted Micro Enterprise (EME) that has the capability and ability to execute the Subcontract.

12 PAYMENT TO SUB-CONTRACTORS

12.1 Transnet reserves the right, in its sole discretion, to make payment directly to the sub-contractor of the Supplier/Service Provider, subject to the following conditions:

a) Receipt of an undisputed invoice from the sub-contractor; and

b) Receipt of written confirmation from the Supplier/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 Supplier/Service Provider, against the required standards.

12.2 Nothing contained in this clause must be interpreted as bestowing on any sub-contractor a right or legitimate expectation to be paid directly by Transnet. Furthermore, this clause does not bestow any right or legitimate expectation on the Supplier/Service provider to demand that Transnet pay its sub-contractor directly. The decision to pay any sub-contractor directly, remains that of Transnet alone.

12.3 The Supplier/Service Provider remains liable for its contractual obligations under the Agreement, including all services rendered by the sub-contractor.

12.4 This clause does not establish any contractual relationship between Transnet and any sub-contractor of the Supplier/Service Provider, whatsoever.

13 B-BBEE AND SOCIO-ECONOMIC OBLIGATIONS

13.1 B-BBEE Scorecard

a) Transnet fully endorses and supports the Broad-Based Black Economic Empowerment Programme and is strongly of the opinion that all South African business enterprises have an equal obligation to redress the imbalances of the past.

b) In response to this requirement, the Supplier/Service Provider shall submit to Transnet's Contract Manager or such other designated person details of its B-BBEE status in terms of the latest Codes of Good Practice issued in terms of the B-BBEE Act and proof thereof at the beginning of March each year during the currency of this Agreement.

c) The Supplier/Service Provider undertakes to notify and provide full details to Transnet in the event there is:

(i) a change in the Supplier's/Service Provider's B-BBEE status which is less than what it was at the time of its appointment including the impact thereof; and

(ii) a corporate or internal restructure or change in control of the Supplier/Service Provider which has or likely to impact negatively on the Supplier's/ Service Provider's B-BBEE status.

d) Notwithstanding any other reporting requirement in terms hereof, the Supplier Service Provider undertakes to provide any B-BBEE data (underlying data relating to the Supplier /Service Provider which has been relied upon or utilised by a verification agency or auditor for the purposes of issuing a verification certificate in respect of the Supplier/Service Provider B-BBEE status) which Transnet may request on written notice within 07 (thirty) calendar days of such request. A failure to provide such data shall constitute a Supplier/ Service Provider Default and may be dealt with in accordance with the provisions of clause 289.

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

13.2 Green Economy/Carbon Footprint

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

14 THE NATIONAL INDUSTRIAL PARTICIPATION PROGRAMME (NIPP)

14.1 In terms of SBD 5, the Supplier has undertaken to enter into a NIPP obligation agreement with the DTIC. In consultation with the DTIC, Transnet may monitor compliance to the NIPP obligation agreement and in the event of non-compliance by the Supplier, penalties will be applied as per paragraph 8.3 of the NIPP Guidelines as issued by the DTIC.

15 JOB-CREATION

15.1 In terms of Section TBA of the RFP, the Supplier has undertaken to create new jobs (either by them or their subcontractor).

16 PENALTIES

16.1 **Penalties for Non-compliance to Service Level Agreement**

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

a) and shall have no further claim against Transnet for the repayment of such amount.

Non-compliance Penalty Certificate:

b) If any Non-compliance Penalty arises, the Supplier Development Manager shall issue a Non-compliance Penalty Certificate on the last day of each month during such Non-compliance indicating the Non-compliance Penalties which have accrued during that period.

c) A Non-compliance Penalty Certificate shall be prima facie proof of the matters to which it relates. If the Supplier 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 Supplier owes any amount to Transnet pursuant to the Non-compliance Penalty Certificate, then the Supplier 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:

d) Subject to Clause i) above, the Supplier 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 Supplier for the amount set out in that certificate. If Transnet does not issue a valid Tax Invoice to the Supplier for Non-compliance Penalties accrued during any relevant period, those Non-compliance Penalties shall be carried forward to the next period.

e) The Supplier 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 appropriate.

f) It is agreed that Transnet, the DTI, the South African Bureau of Standards and/or any of their appointed agents shall be entitled to monitor, evaluate and audit the Contractor's compliance with its obligations under the Local Content Plan. To this end, the Contractor shall provide its full cooperation to the respective bodies referred to in this clause to ensure that effective monitoring, evaluation and auditing takes place.

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

16.2 **Non-compliance penalties for subcontracting**

a) Breach of subcontracting obligations provides Transnet cause to terminate the contract in certain cases where there is a material Non-compliance.

b) If the Supplier/Service Provider fails to achieve its subcontracting commitments as per their bid submission ("a **Non-Compliance**"), the Supplier/Service Provider shall pay a Non-Compliance penalty ("Non-compliance Penalty") to Transnet in respect of such Non-compliance.

c) Such penalty shall be calculated based on the difference in value between the committed and delivered subcontracting value (i.e. 100% of the undelivered subcontracting value) plus an additional 10% (ten per cent) of such difference.

Non-compliance Penalty Certificate:

d) If any Non-compliance Penalty arises, the Supplier Development Manager shall issue a Non-compliance Penalty Certificate 90 business days before the expiry of the contract indicating the Non-compliance Penalties which have accrued during that period.

e) A Non-compliance Penalty Certificate shall be prima facie proof of the matters to which it relates. If the Supplier/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 Supplier/Service Provider owes any amount to Transnet pursuant to the Non-compliance Penalty Certificate, then the Supplier/Service Provider shall pay such amount to Transnet within 10 (ten) Business Days of the determination made pursuant to such determination and an accompanying valid Tax Invoice.

Payment of Non-compliance Penalties:

f) Subject to Clause (e) above, the Supplier/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 Supplier/Service Provider for the amount set out in that certificate. If Transnet does not issue a valid Tax Invoice to the Supplier/Service

Provider for Non-compliance Penalties accrued during any relevant period, those Non-compliance Penalties shall be carried forward to the next period.

g) The Supplier/Service Provider shall pay the amount due within 10 (ten) days after receipt of a valid Tax Invoice from Transnet, failing which Transnet shall, without prejudice to any other rights of Transnet under this Agreement, be entitled to call for payment which may be in any form Transnet deems reasonable and/or appropriate.

h) Should the Supplier/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 Supplier/Service Provider from the account of the Supplier/Service Provider in the ensuing month.

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

16.3 **Non-compliance penalties for Job Creation**

a) Breach of job creation obligations provides Transnet cause to terminate the contract in certain cases where there is a material Non-compliance.

b) If the Supplier/Service Provider fails to achieve its job creation commitments as per their bid submission ("a **Non-Compliance**"), the Supplier/Service Provider shall pay a Non-Compliance penalty ("Non-compliance Penalty") to Transnet in respect of such Non-compliance.

c) Such penalty shall be calculated based on the difference between the committed and delivered jobs. For every job not created, a penalty of 2% of the contract value will be applied.

Non-compliance Penalty Certificate:

d) If any Non-compliance Penalty arises, the Supplier Development Manager shall issue a Non-compliance Penalty Certificate 90 business days before the expiry of the contract indicating the Non-compliance Penalties which have accrued during that period.

e) A Non-compliance Penalty Certificate shall be prima facie proof of the matters to which it relates. If the Supplier/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 Supplier/Service Provider owes any amount to Transnet pursuant to the Non-compliance Penalty Certificate, then the Supplier/Service Provider shall pay such amount to Transnet within 10 (ten) Business Days of the determination made pursuant to such determination and an accompanying valid Tax Invoice.

Payment of Non-compliance Penalties:

f) Subject to Clause (e) above, the Supplier/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 Supplier/Service Provider for the amount set out in that certificate. If Transnet does not issue a valid Tax Invoice to the Supplier/Service

Provider for Non-compliance Penalties accrued during any relevant period, those Non-compliance Penalties shall be carried forward to the next period.

g) The Supplier/Service Provider shall pay the amount due within 10 (ten) days after receipt of a valid Tax Invoice from Transnet, failing which Transnet shall, without prejudice to any other rights of Transnet under this Agreement, be entitled to call for payment which may be in any form Transnet deems reasonable and/or appropriate.

h) Should the Supplier/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 Supplier/Service Provider from the account of the Supplier/Service Provider in the ensuing month.

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

17 FEES AND EXPENSES RELATING TO SERVICES

17.1 In consideration of the provision of the Services, Transnet will pay to the Service Provider the Fees detailed in the relevant schedule or Work Order.

17.2 Transnet will not be invoiced for materials used in the provision of the Services save for those materials [if any] set out in the Work Order and accepted by Transnet or in any relevant Work Order [which will be invoiced to Transnet at cost].

17.3 Unless otherwise agreed in a schedule or Work Order, Transnet will reimburse to the Service Provider all reasonable and proper expenses incurred directly and solely in connection with the provision of the Services, provided that all such expenses:

a) are agreed by Transnet in advance;

b) are incurred in accordance with Transnet's standard travel and expenses policies;

c) are passed on to Transnet at cost with no administration fee; and

d) will only be reimbursed if supported by relevant receipts.

17.4 All Tax Invoices relating to Fees, out of pocket expenses and, if applicable, travel and accommodation costs, will provide the detail for each of the Personnel carrying out the Services and incurring the expenses, and the Tax Invoice will, where appropriate, include VAT as a separate item.

18 INVOICES AND PAYMENT

18.1 Transnet shall pay the Supplier/Service Provider the amounts stipulated in each Purchase Order/Work Order, subject to the terms and conditions of this Agreement.

18.2 Transnet shall pay such amounts to the Supplier/Service Provider upon receipt of a valid and undisputed Tax Invoice together with the supporting documentation, as specified in the Schedule of Requirements appended hereto, once the valid and undisputed Tax Invoices or such portions of the Tax Invoices which are valid and undisputed become due and payable to the Supplier/Service Provider for the delivery of the Goods/Services ordered, in terms of clause 18.5 below.

18.3 Transnet may, pending an investigation, withhold any payments to the Supplier/Service Provider, in the case where irregular expenditure has been identified in the particular contract and that

there is reasonable suspicion that the Supplier/Service Provider is involved or was aware that the contract transgressed any legislation.

18.4 All Prices set out in this Agreement and the Schedule of Requirements hereto are to be indicated inclusive and exclusive of VAT, which will be payable at the applicable rate in ZAR.

18.5 Unless otherwise provided for in the Schedule of Requirements appended to this Agreement, Tax Invoices shall be submitted together with a month-end statement. Payment against such month-end statement shall be made by Transnet within 30 [thirty] calendar days after date of receipt by Transnet of the Supplier's/Service Provider's statement together with the relevant valid and undisputed Tax Invoice(s) and supporting documentation.

18.6 Where the payment of any Tax Invoice, or any part of a Tax Invoice which is not in dispute, is not made in accordance with this clause, the Supplier/Service Provider shall be entitled to charge interest on the outstanding amount, at The Standard Bank of South Africa's prime rate of interest in force, for the period from the due date of payment until the outstanding amount is paid.

18.7 The Supplier/Service Provider shall remain the owner of all plant, material, machinery, equipment and the like [collectively, **the Supplier's Goods**] provided to Transnet until Transnet has paid in full for the Supplier's Goods, it being specifically agreed that Transnet shall acquire no rights [including liens] of whatsoever nature in such Supplier's Goods until date of final payment by Transnet. Subject to the aforegoing, all risk and benefit to the Supplier's Goods shall pass from the Supplier to Transnet on delivery of the Supplier's Goods by the Supplier to Transnet.

19 PRICE ADJUSTMENTS

19.1 Prices for Goods/Services supplied in terms of this Agreement shall be subject to review as indicated in the Schedule of Requirements/Works Order annexed hereto.

19.2 No less than 2 [two] months prior to any proposed Price adjustment, the Parties shall commence negotiations for Prices for the next period or as otherwise indicated in Schedule 1 hereto. The Parties shall have regard for market-related pricing of equivalent goods, continuous improvement initiatives, costs [including labour, raw materials and transport/delivery], order size and frequency and changes to the specification of the Goods/Services.

19.3 Pursuant to clause 19.2 above, the Supplier/Service Provider shall keep full and accurate records of all costs associated with the supply of the Goods/Services to Transnet, in a form to be approved in writing by Transnet. The Supplier/Service Provider shall produce such records to Transnet for inspection at all reasonable times on request and such records may, at Transnet's option, be audited by Transnet or its designated representatives.

19.4 Should Transnet and the Supplier/Service Provider fail to reach an agreement on Price for the successive period, either Party shall be entitled to submit this matter to dispute resolution in accordance with clause 39 of the Master Agreement [Dispute Resolution].

19.5 If during the period of this Agreement Transnet can purchase similar Goods/Services of a like quality from another supplier at a total delivered cost to a Transnet facility that is lower than the total delivered cost of the Goods/Services purchased hereunder from the Supplier/Service Provider, Transnet may notify the Supplier/Service Provider of such total delivered cost and the Supplier/Service Provider shall have an opportunity to adjust the Price of the Goods/Services purchased hereunder, on such a basis as to result in the same total delivered cost to Transnet,

within 30 [thirty] calendar days of such notice. If the Supplier/Service Provider fails to do so or cannot legally do so, Transnet may (i) purchase the Goods/Services from such other supplier in which case the obligations, including, but not limited to, any purchase and sale requirements and/or commitments, if any, of Transnet and the Supplier/Service Provider hereunder shall be reduced accordingly; (ii) terminate this Agreement without any penalty, liability or further obligation; or (iii) continue purchases under this Agreement.

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

20 WARRANTIES APPLICABLE TO GOODS

The Supplier warrants that:

20.1 pursuant to clause 9.3 [General Obligations of the Supplier], the Goods will be manufactured in accordance with the specifications appended hereto at Schedule 1, or the manufacturer's specifications, as agreed in writing by both Parties;

20.2 the execution and performance of this Agreement by the Supplier does not infringe any rights of a third party or breach any obligation of the Supplier to any third party; and

20.3 it has taken all reasonable precautions to ensure that, in the event of a disaster, the impact of such disaster on the ability of the Supplier to comply with its obligations under this Agreement will be reduced to the greatest extent possible, and that the Supplier shall ensure that it has appropriate, tested and documented recovery arrangements in place.

21 WARRANTIES APPLICABLE TO SERVICES

21.1 The Service Provider warrants to Transnet that:

a) it has full capacity and authority to enter into and to perform this Agreement and that this Agreement is executed by a duly authorised representatives of the Service Provider;

b) it will discharge its obligations under this Agreement and any annexure, appendix or schedule hereto with all due skill, care and diligence;

c) it will be solely responsible for the payment of remuneration and associated benefits, if any, of its Personnel and for withholding and remitting income tax for its Personnel in conformance with any applicable laws and regulations;

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

e) the use or possession by Transnet of any Materials will not subject Transnet to any claim for infringement of any Intellectual Property Rights of any third party.

21.2 The Service Provider warrants that it will perform its obligations under this Agreement in accordance with the Service Levels as defined in the relevant schedule. Transnet may at its discretion audit compliance with the Service Levels, provided that any such audit is carried out with reasonable prior notice and in a reasonable way so as not to have an adverse effect on the performance of the Services. Without prejudice to clause 21.3 below, in the event that the Service Provider fails to meet the Service Levels, Transnet may claim appropriate service credits or invoke a retention of Fees as detailed in the relevant schedule and/or Work Order.

21.3 The Service Provider warrants that for a period of 90 [ninety] calendar days from Acceptance of the Deliverables they will, if properly used, conform in all material respects with the requirements set out in the relevant schedule. The Service Provider will at its expense remedy any such non-conformance as soon as possible but in any event within 30 [thirty] calendar days of notification by Transnet. In the event that the Service Provider fails or is unable to remedy such non-conformance within such time-scale, Transnet will be entitled to employ a third party to do so in place of the Service Provider and any excess charges or costs incurred by Transnet as a result shall be paid by the Service Provider.

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

21.5 The Service Provider will not be liable to remedy any problem arising from or caused by any modification made by Transnet to the Deliverables, or any part thereof, without the prior approval of the Service Provider.

21.6 The Service Provider shall advise Transnet of the effects of any steps proposed by Transnet pursuant to clause 21.5 above, including but not limited to any cost implications or any disruption or delay in the performance of the Services. The Parties agree that any changes to the Services, including the charges for the Services or any timetables for delivery of the Services, will be agreed in accordance with the change control procedure, as set out in clause 412 *[Amendment and Change Control].*

21.7 The Service Provider warrants that:

a) it has, using the most up-to-date software available, tested for [and deleted] all commonly known viruses in the Materials and for all viruses known by the Service Provider at the date of the relevant Work Order; and

b) at the time of delivery to Transnet, the Materials do not contain any trojan horse, worm, logic bomb, time bomb, back door, trap door, keys or other harmful components.

The Service Provider agrees that, in the event that a virus is found, it will at its own expense use its best endeavours to assist Transnet in reducing the effect of the virus and, particularly in the event that a virus causes loss of operational efficiency or loss of data, to assist Transnet to the same extent to mitigate such losses and to restore Transnet to its original operating efficiency.

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

21.9 The Service Provider warrants that it has taken all reasonable precautions to ensure that, in the event of a disaster, the impact of such disaster on the ability of the Service Provider to comply with its obligations under this Agreement will be reduced to the greatest extent possible, and that the Service Provider shall ensure that it has appropriate, tested and documented recovery arrangements in place.

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

22 THIRD PARTY INDEMNITY

The Supplier/Service Provider hereby indemnifies and shall hold Transnet harmless against any direct damages suffered by or claims arising against Transnet in respect of clause 20.2 above.

23 INSPECTION APPLICABLE TO GOODS

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

23.2 When inspection at the Supplier's works or warehouse is specified, Transnet's authorised inspector shall have free access to the premises of the Supplier at all times during working hours on a Business Day; shall have liberty to inspect work which is the subject of the Purchase Order at any stage of manufacture, and may reject any Goods which are found to be incomplete, defective or in any way not in conformity with the terms and specifications of this Agreement; and the Supplier shall afford all reasonable facilities for such access and inspection.

23.3 The Supplier shall provide inspection gauges, measuring and test equipment to ensure that the requirements of this Agreement are satisfied. All gauges, templates, tools and other equipment required to check the accuracy of the work shall be calibrated at regular and reasonable intervals by a laboratory which has been approved in writing by Transnet. This certificate shall not be more than 12 [twelve] months old.

23.4 The Supplier shall prepare and supply, without charge to Transnet, all test pieces, samples and specimens; shall provide all labour and apparatus for carrying out tests and analyses in accordance with the terms of this Agreement or Purchase Order, and render all reasonable assistance in making such tests and analyses.

23.5 All special rules governing gauging, testing, analysis and other inspection procedures shall be adhered to strictly in accordance with the terms of this Agreement or Purchase Order and the conditions of any specifications and drawings quoted therein.

23.6 Inspection will be arranged by the Staff of Transnet, as indicated in the Purchase Order(s).

23.7 When Goods are ready for inspection, the Supplier shall apply promptly to the appropriate authority for instructions regarding such inspection. All applications for inspection shall quote Transnet's Agreement or Purchase Order number. 7 [seven] Business Days' notice of readiness from the Supplier shall be given to the authorised inspector appointed by Transnet to carry out such inspection.

23.8 Transnet shall have the right to recover from the Supplier the cost of inspection of any Goods that have been rejected by its authorised inspector in terms of this clause 234.

24 DEFECTIVE GOODS

24.1 Notwithstanding any certificate and/or receipt that may have been issued by or on behalf of Transnet either in South Africa or overseas, Goods will be accepted at the place of delivery or at the port of shipment, as specified in this Agreement, only as regards outward condition of packages and Transnet retains the right to reject the Goods supplied, on or after arrival at the place to which they are consigned, or after they have been placed in use in South Africa, should they be found defective.

24.2 If Goods are rejected owing to latent defects becoming apparent during machining operations or other preparation necessary on the part of Transnet before they can be put into use, the Supplier shall bear all expenses incurred by Transnet in carrying out such necessary operations.

24.3 If such Goods are rejected, the Supplier will pay the following costs:

a) for Goods purchased in South Africa on an ex works basis, the cost of transport from the Supplier's works in South Africa to the named destination where the Goods have been rejected by Transnet, plus handling charges and storage, if leviable; or

b) for Goods manufactured overseas, the Supplier shall pay all replacement costs including the overseas inland transport cost, freight and insurance charges incurred plus railage or other inland transport costs from the South African port to the place where the Goods have been rejected by Transnet, including handling charges, storage, landing charges, customs duty and surcharges, if leviable.

24.4 If Transnet requires rejected Goods to be replaced, the Supplier shall, when called upon to do so, arrange prompt replacement of the Goods within the prescribed manufacturing lead times for such Goods, as indicated in Schedule 1.

24.5 If Goods are found to be defective but the defects are, in the opinion of Transnet, not of so serious a nature as to warrant total rejection of the Goods, the Supplier shall, when called upon to do so, remedy or make good such defects at its own cost, or Transnet may remedy or make good

such defects at the request of the Supplier and recover from the Supplier all costs or expenses reasonably incurred by it in doing so.

24.6 Should the Supplier fail, when called upon to remedy or make good such defects within a reasonable time or to request Transnet to do so, Transnet may proceed to remedy or make good such defects and thereafter recover from the Supplier all such costs and expenses as aforementioned.

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

25 TOTAL OR PARTIAL FAILURE TO PERFORM

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

a) no manufacturing of the Goods specified in a Purchase Order has commenced and there is little or no prospect, in Transnet's opinion, that manufacturing will commence within a reasonable time; or

b) delivery of any of the Goods is being or is likely to be delayed beyond the promised delivery date(s), and there is little or no prospect of the Purchase Order(s) being carried out within reasonable adherence to the promised delivery rate(s) or time(s),

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

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

25.3 Whenever, in any case not covered by clause 25.1 above, the Supplier fails or neglects to execute the work or to deliver any portion of the Goods/Services as required by the terms of this Agreement or Purchase Order, or if any Goods/Services are rejected on any of the grounds mentioned in clause 245 [Defective Goods], Transnet may cancel this Agreement or Purchase Order in so far as it relates to the unexecuted work or the undelivered or rejected portion of the Goods/Services, and in such event, the supply of the remaining portion shall remain subject in all respects to these conditions.

26 NON CONFORMANCE OF GOODS/SERVICES PROCURED

26.1 In the case of Goods/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 Supplier/Service Provider whose Goods/ Services do not conform to Transnet standards, specifications and requirements directing the Supplier/Service Provider to

investigate and remedy the non-conformance within the stipulated time frame as may be determined by Transnet at its discretion.

26.2 Failure by the Supplier/Service Provider to fully comply with NCR within the period stated in sub-clause 26.1 above, shall entitle Transnet to further conditions to which the Supplier/ Service Provider must discharge in order to close the NCR or to terminate the order without giving the Supplier/Service Provider written notice of termination in terms of this Agreement.

27 RIGHTS ON CANCELLATION

27.1 If this Agreement or Purchase Order is cancelled in whole or in part in terms of clause 256 *[Total or Partial Failure to Perform]*, Transnet may execute or complete this Agreement with any other entity and do so on such terms as it may deem proper, or may procure other comparable Goods/Services in substitution for those neglected to be manufactured or supplied or rejected as aforesaid, and may recover from the Supplier the difference between the cost of such Goods/Services and the Price [if the latter was lower] as well as any costs and expenses [including any additional transport costs] which Transnet may have had to incur in consequence of the Supplier's/Service Provider's default.

27.2 Any amount which may be recoverable from the Supplier/Service Provider in terms of clause 27.1 above, without prejudice to any other legal remedies available to Transnet, may be deducted in whole or in part from any monies in the hands of Transnet and due for payment to the Supplier/Service Provider.

28 BREACH AND TERMINATION

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

28.2 On termination of this Agreement or a Work Order, the Service Provider will immediately deliver up, and procure that its Personnel will immediately deliver up to Transnet, all Deliverables and property belonging to Transnet [or, in the event of termination of a Work Order, such as is relevant to that Work Order] which may be in the possession of, or under the control of the Service Provider, and certify to Transnet in writing that this has been done.

28.3 To the extent that any of the Deliverables and property referred to in clause 28.2 above are in electronic form and contained on non-detachable storage devices, the Service Provider will provide Transnet with unencrypted copies of the same on magnetic media and will irretrievably destroy and delete copies so held.

28.4 In the event that this Agreement is terminated by the Service Provider under clause **Error! Reference source not found.** [Term and Cancellation], or in the event that a Work Order is terminated by Transnet under clause **Error! Reference source not found.**9 [Breach and Consequences of Termination], Transnet will pay to the Service Provider all outstanding Fees [apportioned on a pro rata basis] relating to the work undertaken by the Service Provider up until the date of such termination. Transnet will also pay the costs of any goods and materials ordered by the Service Provider in relation to the such work for which the Service Provider has paid or is legally obliged to pay, in which case, on delivery of such goods or materials, the Service Provider will promptly deliver such goods and materials to Transnet or as it may direct.

28.5 If either Party [**the Defaulting Party**] commits a material breach of this Agreement and fails to remedy such breach within 30 [thirty] calendar days of written notice thereof, the other Party [hereinafter **the Aggrieved Party**], shall be entitled, in addition to any other rights and remedies that it may have in terms of this Agreement, to terminate this Agreement forthwith without any liability and without prejudice to any claims which the Aggrieved Party may have for damages against the Defaulting Party.

28.6 Either Party may terminate this Agreement forthwith by notice in writing to the other Party when the other Party is unable to pay its debts as they fall due or commits any act or omission which would be an act of insolvency in terms of the Insolvency Act, 24 of 1936 [as amended from time to time], or if any action, application or proceeding is made with regard to it for:

a) a voluntary arrangement or composition or reconstruction of its debts;

b) its winding-up or dissolution;

c) the appointment of a liquidator, trustee, receiver, administrative receiver or similar officer;

d) any similar action, application or proceeding in any jurisdiction to which it is subject.

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

28.8 Notwithstanding this clause 289, Transnet may cancel this Agreementwithout cause by giving 30 [thirty] calendar days prior written notice thereof to the Supplier/Service Provider, or

28.9 The provisions of clauses 2 *[Definitions]*, 202 *[Warranties]*, 278 *[Rights on Cancellation]*, 313 *[Confidentiality]*, 345 *[Limitation of Liability]*, 36 *[Intellectual Property Rights]*, 389 *[Dispute Resolution]* and 42.1 *[Governing Law]* shall survive termination or expiry of this Agreement.

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

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

a) Cession must only be applicable to the transfer of right to payment for goods/services delivered/rendered by a Supplier/Service Provider to an FSP or State Institutions;

b) The written request for cession must be by the Supplier/Service Provider and not a third party; and

c) The written request by the Supplier/Service Provider must be accompanied by the cession agreement.

29.2 The Supplier/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.

30 FORCE MAJEURE

30.1 Neither Party shall have any claim against the other Party arising from any failure or delay in the performance of any obligation of either Party under this Agreement caused by an act of force majeure such as acts of God, fire, flood, war, lockout, government action, laws or regulations,

terrorism or civil disturbance, defaults or other circumstances or factors beyond the reasonable control of either Party, and to the extent that the performance of obligations of either Party hereunder is delayed by virtue of the aforegoing, any period stipulated for any such performance shall be reasonably extended. Transnet may however rely on strikes, industrial dispute and riots as a ground of force majeure.

30.2 Each Party will take all reasonable steps by whatever lawful means that are available to resume full performance as soon as practicable and will seek agreement to modification of the relevant provisions of this Agreement in order to accommodate the new circumstances caused by the act of *force majeure*. If a Party fails to agree with such modifications proposed by the other Party within 90 [ninety] calendar days of the act of *force majeure* first occurring, either Party may thereafter terminate this Agreement with immediate notice.

31 PROTECTION OF PERSONAL INFORMATION

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

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

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

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

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

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

i. they process personal information only for the express purpose for which it was obtained;

ii. once processed for the purposes for which it was obtained, all personal information will be destroyed to an extent that it cannot be reconstructed to its original form, subject to any legal retention requirements;

iii. Personal information is provided only to authorised personnel who strictly require the personal information to carry out the Parties' respective obligations under this Agreement;

iv. they do not disclose personal information of the other Party, other than in terms of this Agreement;

v. they have all reasonable technical and organisational measures in place to protect all personal information from unauthorised access and/or use;

vi. they have appropriate technical and organisational measures in place to safeguard the security, integrity and authenticity of all information in their possession or under their control in terms of this Agreement;

vii. they identify all reasonably foreseeable internal and external risks to personal information in their possession or under their control; establish and maintain appropriate safeguards against the risks identified; regularly verify that the safeguards are effectively implemented; and ensure that the safeguards are continually updated in response to new risks or deficiencies in previously implemented safeguards;

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

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

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

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

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

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

31.6 Personal Information security breach:

a) Each Party shall notify the other party in writing as soon as possible after it becomes aware of or suspects any loss, unauthorised access or unlawful use of any personal information and shall, at its own cost, take all necessary remedial steps to mitigate the extent of the loss or

compromise of personal information and to restore the integrity of the affected personal information as quickly as is possible. The Parties shall also be required to provide each other with details of the persons affected by the compromise and the nature and extent of the compromise, including details of the identity of the unauthorised person who may have accessed or acquired the personal information.

b) The Parties shall provide on-going updates on the progress in resolving the compromise at reasonable intervals until such time as the compromise is resolved.

c) Where required, the Parties must notify the South African Police Service; and/or the State Security Agency and the Information Regulator and the affected persons of the security breach. Any such notification shall always include sufficient information to allow the persons to take protective measures against the potential consequences of the compromise.

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

32 CONFIDENTIALITY

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

a) not to divulge or disclose to any person whomsoever in any form or manner whatsoever, either directly or indirectly, any Confidential Information of the other without the prior written consent of such other Party, other than when called upon to do so in accordance with a statute, or by a court having jurisdiction, or by any other duly authorised and empowered authority or official, in which event the Party concerned shall do what is reasonably possible to inform the other of such a demand and each shall assist the other in seeking appropriate relief or the instituting of a defensive action to protect the Confidential Information concerned;

b) not to use, exploit, permit the use of, directly or indirectly, or in any other manner whatsoever apply the Confidential Information disclosed to it as a result of this Agreement, for any purpose whatsoever other than for the purpose for which it is disclosed or otherwise than in strict compliance with the provisions in this Agreement;

c) not to make any notes, sketches, drawings, photographs or copies of any kind of any part of the disclosed Confidential Information without the prior written consent of such other Party, except when reasonably necessary for the purpose of this Agreement, in which case such copies shall be regarded as Confidential Information;

d) not to de-compile, disassemble or reverse engineer any composition, compilation, concept application, item, component de-compilation, including software or hardware disclosed and shall not analyse any sample provided by Transnet, or otherwise determine the composition or structure or cause to permit these tasks to be carried out except in the performance of its obligations pursuant to this Agreement;

e) not to exercise less care to safeguard Transnet Confidential Information than the Party exercises in safeguarding its own competitive, sensitive or Confidential Information;

f) Confidential Information disclosed by either Party to the other or by either Party to any other party used by such party in the performance of this Agreement, shall be dealt with as "restricted" or shall be dealt with according to any other appropriate level of confidentiality relevant to the nature of the information concerned, agreed between the Parties concerned and stipulated in writing for such information in such cases;

g) the Parties shall not make or permit to be made by any other person subject to their control, any public statements or issue press releases or disclose Confidential Information with regard to any matter related to this Agreement, unless written authorisation to do so has first been obtained from the Party first disclosing such information;

h) each Party shall be entitled to disclose such aspects of Confidential Information as may be relevant to one or more technically qualified employees or consultants of the Party who are required in the course of their duties to receive the Confidential Information for the Permitted Purpose provided that the employee or consultant concerned has a legitimate interest therein, and then only to the extent necessary for the Permitted Purpose, and is informed by the Party of the confidential nature of the Confidential Information and the obligations of the confidentiality to which such disclosure is subject and the Party shall ensure such employees or consultants honour such obligations;

i) each Party shall notify the other Party of the name of each person or entity to whom any Confidential Information has been disclosed as soon as practicable after such disclosure;

j) each Party shall ensure that any person or entity to which it discloses Confidential Information shall observe and perform all of the covenants the Party has accepted in this Agreement as if such person or entity has signed this Agreement. The Party disclosing the Confidential Information shall be responsible for any breach of the provisions of this Agreement by such person or entity; and

k) each Party may by written notice to the other Party specify which of the Party's employees, officers or agents are required to sign a non-disclosure undertaking.

32.2 The duties and obligations with regard to Confidential Information in this clause 323 shall not apply where:

a) a Party can demonstrate that such information is already in the public domain or becomes available to the public through no breach of this Agreement by that Party, or its Staff; or

b) was rightfully in a Party's possession prior to receipt from the other Party, as proven by the first-mentioned Party's written records, without an infringement of an obligation or duty of confidentiality; or

c) can be proved to have been rightfully received by a Party from a third party without a breach of a duty or obligation of confidentiality; or

d) is independently developed by a Party as proven by its written records.

32.3 This clause 323 shall survive termination for any reason of this Agreement and shall remain in force and effect from the Commencement Date of this Agreement and 5 [five] years after the termination of this Agreement. Upon termination of this Agreement, all documentation furnished to the Supplier/Service Provider by Transnet pursuant to this Agreement shall be returned to Transnet

including, without limitation, all corporate identity equipment including dyes, blocks, labels, advertising matter, printing matter and the like.

33 INSURANCES

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

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

33.3 Subject to clause 33.4 below, if the Supplier/Service Provider fails to effect adequate insurance under this clause 334, it shall notify Transnet in writing as soon as it becomes aware of the reduction or inadequate cover and Transnet may arrange or purchase such insurance on behalf of the Supplier/Service Provider. The Supplier/Service Provider shall promptly reimburse Transnet for any premiums paid provided such insurance protects the Supplier/Service Provider's liability. Transnet assumes no responsibility for such insurance being adequate to protect all of the Supplier/Service Provider's liability.

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

34 LIMITATION OF LIABILITY

34.1 The Supplier/Service Provider's liability under this clause 345 shall be in addition to any warranty or condition of any kind, express or implied by law or otherwise, relating to the Goods/Services or ancillary Services, including the quality of the Goods/Services or ancillary Services or any materials delivered pursuant to this Agreement.

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

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

b) fraud or theft.

34.3 The Supplier/Service Provider shall indemnify and keep Transnet indemnified from and against liability for damage to any Transnet property [whether tangible or intangible] or any other loss, costs or damage suffered by Transnet to the extent that it results from any act of or omission by the Supplier/Service Provider or its Personnel in connection with this Agreement. The Supplier/Service Provider's liability arising out of this clause 34.3 shall be limited to direct damages.

34.4 Subject always to clauses 34.1 and 34.2 above, the liability of either the Supplier/Service Provider or Transnet under or in connection with this Agreement, whether for negligence, misrepresentation, breach of contract or otherwise, for direct loss or damage arising out of each Default or series of related Defaults shall not exceed 100% [one hundred per cent] of the Fees paid under the schedule or Work Order to which the Default(s) relates.

34.5 Subject to clauses 34.1 to 34.4 above, in no event shall either Party be liable to the other for indirect or consequential loss or damage or including indirect or consequential loss of profits, business, revenue, goodwill or anticipated savings of an indirect nature or loss or damage incurred by the other Party as a result of third party claims.

34.6 If for any reason the exclusion of liability in clause 34.5 above is void or unenforceable, either Party's total liability for all loss or damage under this Agreement shall be as provided in clause 34.3 above.

34.7 Nothing in this clause 345 shall be taken as limiting the liability of the Parties in respect of clauses 313 *[Confidentiality]* and 356 *[Intellectual Property Rights]*.

35 INTELLECTUAL PROPERTY RIGHTS

35.1 **Title to Confidential Information**

a) Transnet will retain all right, title and interest in and to its Confidential Information and Background Intellectual Property and the Supplier/Service Provider acknowledges that it has no claim of any nature in and to the Confidential Information and Background Intellectual Property that is proprietary to Transnet. For the avoidance of doubt all the Supplier/Service Provider's Background Intellectual Property shall remain vested in the Supplier/Service Provider.

b) Transnet shall grant to the Supplier/Service Provider an irrevocable, royalty free, non-exclusive licence to use Transnet's Background Intellectual Property only for the Permitted Purpose. This licence shall not permit the Supplier/Service Provider to sub-license to other parties.

c) The Supplier/Service Provider shall grant to Transnet an irrevocable, royalty free, non-exclusive licence to use the Supplier/Service Provider's Background Intellectual Property for the Permitted Purpose. This licence shall not permit Transnet to sub-license to other parties.

d) The Supplier/Service Provider shall grant Transnet access to the Supplier/Service Provider's Background Intellectual Property on terms which shall be *bona fide* negotiated between the Parties for the purpose of commercially exploiting the Foreground Intellectual Property, to the extent that such access is required.

e) The above shall not pertain to any software licenses procured by the Supplier/Service Provider from third parties and used in the supply of the Goods/Services.

35.2 **Title to Intellectual Property**

a) All right, title and interest in and to Foreground Intellectual Property prepared, conceived or developed by the Supplier/Service Provider, its researchers, agents and employees shall vest in Transnet and the Supplier/Service Provider acknowledges that it has no claim of any nature in and to the Foreground Intellectual Property. The Supplier/Service Provider shall not

at any time during or after the termination or cancellation of this Agreement dispute the validity or enforceability of such Foreground Intellectual Property, or cause to be done any act or anything contesting or in any way impairing or tending to impair any part of that right, title and interest to any of the Foreground Intellectual Property and shall not counsel or assist any person to do so.

b) Transnet shall be entitled to seek protection in respect of the Foreground Intellectual Property anywhere in the world as it shall decide in its own absolute discretion and the Supplier/Service Provider shall reasonably assist Transnet in attaining and maintaining protection of the Foreground Intellectual Property.

c) Where the Foreground Intellectual Property was created by the Supplier/Service Provider or its researchers, agents and employees and where Transnet elects not to exercise its option to seek protection or decides to discontinue the financial support of the prosecution or maintenance of any such protection, Transnet shall notify the Supplier/Service Provider who shall have the right of first refusal to file or continue prosecution or maintain any such applications and to maintain any protection issuing on the Foreground Intellectual Property.

d) No consideration shall be paid by Transnet to the Supplier/Service Provider for the assignment of any Foreground Intellectual Property from the Supplier/Service Provider to Transnet, over and above the sums payable in terms of this Agreement. The Supplier/Service Provider undertakes to sign all documents and do all things as may be necessary to effect, record and perfect the assignment of the Foreground Intellectual Property to Transnet.

e) Subject to anything contrary contained in this Agreement and/or the prior written consent of Transnet [which consent shall not be unreasonably be withheld], the Supplier/Service Provider shall under no circumstances be entitled as of right, or to claim the right, to use Transnet's Background Intellectual Property and/or Foreground Intellectual Property.

35.3 **Title to Improvements**

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

35.4 **Unauthorised Use of Confidential Information**

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

35.5 **Unauthorised Use of Intellectual Property**

a) The Supplier/Service Provider agrees to notify Transnet in writing of any conflicting uses of, and applications of registrations of Patents, Designs and Trade Marks or any act of infringement, unfair competition or passing off involving the Intellectual Property of Transnet of which the Supplier/Service Provider acquires knowledge and Transnet shall have the right, as its own option, to proceed against any party infringing its Intellectual Property.

b) It shall be within the sole and absolute discretion of Transnet to determine what steps shall be taken against the infringer and the Supplier/Service Provider shall co-operate fully with Transnet, at Transnet's cost, in whatever measure including legal action to bring any infringement of illegal use to an end.

c) The Supplier/Service Provider shall cooperate to provide Transnet promptly with all relevant ascertainable facts.

d) If proceedings are commenced by Transnet alone, Transnet shall be responsible for all expenses but shall be entitled to all damages or other awards arising out of such proceedings. If proceedings are commenced by both Parties, both Parties will be responsible for the expenses and both Parties shall be entitled to damages or other awards arising out of proceedings.

36 NON-WAIVER

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

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

37 PARTIAL INVALIDITY

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

38 DISPUTE RESOLUTION

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

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

38.3 Such dispute shall be finally resolved in accordance with the rules of AFSA by an arbitrator or arbitrators appointed by AFSA.

38.4 This clause constitutes an irrevocable consent by the Parties to any proceedings in terms hereof, and neither of the Parties shall be entitled to withdraw from the provisions of this clause or claim at any such proceedings that it is not bound by this clause 38.

38.5 This clause 389 is severable from the rest of this Agreement and shall remain in effect even if this Agreement is terminated for any reason.

38.6 This clause 389 shall not preclude either Party from seeking urgent relief in a court of appropriate jurisdiction, where grounds for urgency exist.

39 ADDRESSES FOR NOTICES

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

a) **Transnet**

(i) For legal notices: ……

……

……

Fax No. ……

Attention: Group Legal Department

(ii) For commercial notices: ……

……

……

Fax No. ……

Attention: ……

b) **The Supplier/Service Provider**

(i) For legal notices: ……

……

……

Fax No. ……

Attention: ……

(ii) For commercial notices: ……

……

……

Fax No. ……

Attention: ……

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

39.3 Any notice shall be deemed to have been given:

a) if hand delivered, on the day of delivery;

b) if faxed, on the date and time of sending of such fax, as evidenced by a fax confirmation printout, provided that such notice shall be confirmed by prepaid registered post on the date of dispatch of such fax, or, should no postal facilities be available on that date, on the next Business Day; or

c) if sent by email, on the date and time received, provided that such notice shall be confirmed by prepaid registered post on the date of dispatch of such email, or, should no postal facilities be available on that date, on the next Business Day.

40 WHOLE AND ONLY AGREEMENT

40.1 The Parties hereby confirm that this Agreement constitutes the whole and only agreement between them with regard to the subject matter of this Agreement.

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

41 AMENDMENT AND CHANGE CONTROL

41.1 Any amendment or change of any nature made to this Agreement and the Schedule of Requirements thereof shall only be valid if it is in writing, signed by both Parties and added to this Agreement as an addendum hereto. In this regard a Change Notice must first be defined and issued by the requesting Party. A Change Notice Response must then be issued by responding Party. A formal approval of the Change Request will then trigger the issue of the addendum to this Agreement.

41.2 In the event the Parties cannot agree upon changes, the Parties shall in good faith seek to agree any proposed changes using the dispute resolution procedures in clause 389 *[Dispute Resolution*].

42 GENERAL

42.1 **Governing Law**

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

42.2 **Change of Law**

In this Agreement, unless the context otherwise requires, references to a statutory provision include references to that statutory provision as from time to time amended, extended or re-enacted and any regulations made under it, provided that in the event that the amendment, extension or re-enactment of any statutory provision or introduction of any new statutory provision has a material impact on the obligations of either Party, the Parties will negotiate in good faith to agree such amendments to this Agreement as may be appropriate in the circumstances. If, within a reasonable period of time, the Supplier/Service Provider and Transnet cannot reach agreement on the nature of the changes required or on modification of Prices, delivery schedules, warranties, or other terms and conditions, either Party may seek to have the matter determined in accordance with clause 389 [*Dispute Resolution*] above.

42.3 **Counterparts**

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

43 DATABASE OF RESTRICTED SUPPLIER

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

FOR THE SUPPLY DELIVERY OF PROVISION SUPPLY DELIVERY OF DRINKING WATER, REFLLING OF STANDBY TANKS, AND DESLUSGE AND DISPOSAL OF SEWER IN THE NORTHERN REGION [MPUMALANGA PROVINCE AND SURROUNDING AREAS] ON "AS AND WHEN REQUIRED BASIS" FOR A PERIOD OF TWELVE (12) MONTHS.

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

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

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

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

SCHEDULE 1 – SCHEDULE OF REQUIREMENTS

FOR THE SUPPLY DELIVERY OF PROVISION SUPPLY DELIVERY OF DRINKING WATER, REFLLING OF STANDBY TANKS, AND DESLUSGE AND DISPOSAL OF SEWER IN THE NORTHERN REGION [MPUMALANGA PROVINCE AND SURROUNDING AREAS] ON "AS AND WHEN REQUIRED BASIS" FOR A PERIOD OF TWELVE (12) MONTHS.

SERVICE PROVIDER	**……**
CONTRACT NUMBER	**TP/2026/10/0205/13638/RFQ**
DURATION	**Twelve (12) MONTHS**
COMMENCEMENT DATE	**TBA**
EXPIRY DATE	**TBA**

With reference to the Standard Terms and Conditions of Contract, Reference Number TP/2026/10/0205/13638/RFQ ("Contract") between Transnet SOC Ltd ("Transnet") and ..... (the "Supplier/Service Provider") pursuant to which you have agreed to supply/perform certain goods to/services for and on behalf of Transnet subject to such Contract.

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

1. Description of the Goods/Services

The scope of services required is to be performed by the service provider for a period of the twelve (12) months. The details for the goods/services to be provided are as stipulated in clause 2 below.

2. Scope of Goods/Services

2.1 Deliverables

The supplier/service provider shall perform the duties that have been mentioned in but not limited to the Annexure A of the Tender Document.

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

Transnet Contract Manager	**TBA**
Designation	General Manager:
Operating Division	Transnet Property
Address	175 Minnaar St, Pretoria
Telephone	
Email	

Service Provider's Account Manager	
Designation	
Address	
Telephone	
Email	

4. Performance Review Meetings

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

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

SIGNED for and on behalf of	**SIGNED** for and on behalf of
	Transnet SOC Ltd
Signature.....	Signature.....
Name.....	Name.....
Position.....	Position.....
Date.....	Date.....

APPENDIX 1

Address for Notices

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

i. by email transmission – when the sender receives confirmation of receipt;

ii. by hand delivery - immediately upon receipt by the recipient.

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

The Service Provider	**Transnet**
Addressee:	Addressee:
…….	Transnet SOC Ltd
Attention:	Attention : Group Legal Counsel
Physical Address:	Physical Address:
…….	175 Minnar St,
…….	Tshwane
…….	
Postal Address:	
…….	
…….	
…….	
email:	email:
…….	

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

APPENDIX 2

Non- Disclosure Agreement

Date: …… 20--

I (*name*) …….

Of (*address*) …….
…….
…….

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

1. I shall keep confidential and not to disclose or make available to any third party, except with the express prior written consent of Transnet, any Confidential Information relating to Transnet business, assets, customers or staff which is disclosed to me or to which I may have access during the course of providing Goods/Services to Transnet ("my assignment"); and

2. Upon termination of my assignment, I shall return to Transnet all documents, books, discs, tapes or other records (in whatever medium) which I may have in my possession, custody or control and which are the property of Transnet, its customers, staff or agents and any copies thereof.

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

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

SIGNED at _____ on _____20--

(Signature) ……

in the presence of:-

Witness name: …….

Witness Signature: …….

Witness address: …….

…….

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

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 (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 aforegoing 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

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

SUPPLIER DECLARATION FORM

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

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

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

General Terms and Conditions:

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

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

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

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

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

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

2. **If your annual turnover is between R10 million and R50 million ,** then in terms of the DTI codes, you are classified as a Qualifying Small Enterprise (QSE) and you claim a specific B-BBEE level based on any 4 of the 7 elements of the B-BBEE score-card, please include your B-BBEE certificate in your submission as confirmation of your status. Or if the Supplier is a QSE with More than 51% black owned, they can submit a sworn affidavit (Appendix E).

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

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

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

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

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

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

PROTECTION OF PERSONAL INFORMATION

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

   consent; data subject; electronic communication; information officer; operator; person; personal information; processing; record; Regulator; responsible party; special information; as well as any terms derived from these terms.

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

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

3. The Parties acknowledge and agree that, in relation to personal information that will be processed pursuant to this Supplier Declaration Form, the Responsible party is “Transnet” and the Data subject is the “Respondent”. Transnet will process personal information only with the knowledge and authorisation of the Respondent and will treat personal information which comes to its knowledge as confidential and will not disclose it, unless so required by law or subject to the exceptions contained in the POPIA.

4. Transnet reserves all the rights afforded to it by the POPIA in the processing of any of its information as contained in this Supplier Declaration Form and the Respondent is required to comply with all prescripts as detailed in the POPIA relating to all information concerning Transnet.

5. In completing this Supplier Declaration form, Transnet acknowledges that it will obtain and have access to personal information of the Respondent. Transnet agrees that it shall only process the information disclosed by the Respondent in their response to this Supplier Declaration Form for the purpose of registering the Respondent as a Transnet Vendor to facilitate for payment in the execution of the Agreement between Transnet and the Respondent and in accordance with any applicable law.

6. Transnet further agrees that in submitting any information or documentation requested in this Supplier Declaration Form, the Respondent is consenting to the further processing of their personal information for the purpose of, but not limited to, risk assessment, assurances, vendor management, contract award, contract management, auditing, legal opinions/litigations, investigations (if applicable), document storage for the legislatively required period, destruction, de-identification and publishing of personal information by Transnet and/or its authorised appointed third parties.

7. Furthermore, Transnet will not otherwise modify, amend or alter any personal data submitted by the Respondent or disclose or permit the disclosure of any personal data to any third party without the prior written consent from the Respondent. Similarly, Transnet requires the Respondent to process any personal information disclosed by Transnet in the bidding process in the same manner.

8. Transnet shall, at all times, ensure compliance with any applicable laws put in place and maintain sufficient measures, policies and systems to manage and secure against all forms of risks to any information that may be shared or accessed pursuant to this Supplier Declaration Form (physically, through a computer or any other form of electronic communication).

9. Transnet shall notify the Respondent in writing of any unauthorised access to information, cybercrimes or suspected cybercrimes, in its knowledge and report such crimes or suspected crimes to the relevant authorities in accordance with applicable laws, after becoming aware of such crimes or suspected crime. The Respondent must take all necessary remedial steps to mitigate the extent of the loss or compromise of personal information and to restore the integrity of the affected personal information as quickly as is possible.

10. The Respondent may, in writing, request Transnet to confirm and/or make available any personal information in its possession in relation to the Respondent and if such personal information has been accessed by third parties and their identity thereof in terms of the POPIA.

11. The Respondent may further request that Transnet correct (excluding critical/mandatory or evaluation information), delete, destroy, withdraw consent or object to the processing of any personal information relating to the Respondent in Transnet's possession in terms of the provision of the POPIA and utilizing Form 2 of the POPIA Regulations.

12. In submitting any information or documentation requested in this Supplier Declaration Form, the Respondent is hereby consenting to the processing of their personal information for the purpose of this Supplier Declaration Form and further confirming that they are aware of their rights in terms of Section 5 of POPIA.

Respondents are required to provide consent below:

YES		**NO**	

13. Further, the Respondent declares that they have obtained all consents pertaining to other data subject's personal information included in its submission and thereby indemnifying Transnet against any civil or criminal action, administrative fines or other penalty or loss that may arise as a result of the processing of any personal information that the Respondent submitted to it.

14. The Respondent declares that the personal information submitted for the purpose of this Supplier Declaration Formis complete, accurate, not misleading, is up to date and may be updated where applicable.

Signature of Respondent's authorised representative: _____

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

Supplier Declaration Form

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

CSD Number (MAAA xxxxxxx):	

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

Did your company previously operate under another name?	Yes		No	
If **YES** state the previous details below:				

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

Your Current Company's VAT Registration Status

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

Company Banking Details		Bank Name	
Universal Branch Code		Bank Account Number	

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

Company Contact Person Name	
Designation	
Telephone	
Email	

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

Most recent Financial Year's Annual Turnover	<R10Million		>R10Million <R50Million		>R50Million	

Does your company have a valid B-BBEE certificate?			Yes		No		
What is your Broad Based BEE status (Level 1 to 9)							
Majority Race of Ownership							
% Black Ownership		% Black Women ownership		% Black Disabled person(s) ownership		% Black Youth ownership	
Please Note: Please provide proof of B-BBEE status as per Appendix V. If you qualify as an EME or QSE then provide an affidavit following the examples provided in Appendix III and IV respectively. If you have indicated Black Disabled person(s) ownership, then provide a **certified** letter signed by a physician, on the physician's letterhead, confirming the disability.							

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

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

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

Affidavit or Solemn Declaration

I, _____ solemnly swear/declare that _____

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

Signature: _____

Designation: _____

Date: _____

Commissioner of Oaths

Thus signed and sworn to before me at _____ on this the _____day of ____

_____ 20_____,

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

_____

Commissioner of Oaths

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

Affidavit or Solemn Declaration

I, _____ solemnly swear/declare that _____

_____employs three or more full time employees, which employees are engaged in the business of rendering the services of the organisation and are not connected persons as defined in the Income Tax Act.

Signature: _____

Designation: _____

Date: _____

Commissioner of Oaths

Thus signed and sworn to before me at _____ on this the _____day of ____

_____ 20_____,

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

_____

Commissioner of Oaths

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

SWORN AFFIDAVIT – B-BBEE EXEMPTED MICRO ENTERPRISE

I, the undersigned,

Full Name & Surname	
Identity Number	

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

Enterprise Name	
Trading Name	
Registration Number	
Enterprise Address	

3. I hereby declare under oath that:
   - The enterprise is _____% black owned;
   - The enterprise is _____% black woman owned;
   - The enterprise is _____% black youth owned;
   - The enterprise is _____% black disabled owned;
   - Based on the management accounts and other information available for the _____ financial year, the income did not exceed R10,000,000.00 (ten million rand).

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

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

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

Deponent Signature: _____

Date: _____

_____
Commissioner of Oaths
Signature & stamp

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

SWORN AFFIDAVIT – B-BBEE QUALIFYING SMALL ENTERPRISE

I, the undersigned,

Full Name & Surname	
Identity Number	

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

Enterprise Name	
Trading Name	
Registration Number	
Enterprise Address	

3. I hereby declare under oath that:
- The enterprise is _____% black owned;
- The enterprise is _____% black woman owned;
- The enterprise is _____% black youth owned;
- The enterprise is _____% black disabled owned;
- Based on the management accounts and other information available for the _____ financial year, the income did not exceed R50,000,000.00 (fifty million rand);
- The entity is an empowering supplier in terms of Clause 3.3 (a) or (b) or (c) or (d) or as amended 3.3 (e) of **the DTI** Codes of Good Practice. **(Tick appropriate box in table below).**

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

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

100% black owned	**Level One** (135% B-BBEE procurement recognition)	
More than 51% black owned	**Level Two** (125% B-BBEE procurement recognition)	

5. I know and understand the contents of this affidavit and I have no objection to take the prescribed oath and consider the oath binding on my conscience and on the owners of the enterprise which I represent in this matter.
6. The sworn affidavit will be valid for a period of 12 months from the date signed by commissioner.

Deponent Signature: _____

Date: _____

_____
Commissioner of Oaths
Signature & stamp

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