



Transnet Request for Quotation No BLE/52090
[RFQ Template (Services) - October 2012]

TRANSNET FREIGHT RAIL

a division of

TRANSNET SOC LTD

Registration Number 1990/000900/30

[hereinafter referred to as **Transnet**]

REQUEST FOR QUOTATION [RFQ] No BLE/52090

**UPGRADE TRANSNET BOUNDARY FENCE WITH BETA FENCE NEAR DE GRENDEL
STATION TO FRANS CONRADIE DRIVE.**

ISSUE DATE : 21 JANUARY 2013
CLOSING DATE : 05 FEBRUARY 2013
CLOSING TIME : 10:00
BID VALIDITY PERIOD: 04 APRIL 2013

Respondent's Signature

Date & Company Stamp

SCHEDULE OF DOCUMENTS**Section**

- 1. Notice to Bidders**
- 2. Quotation Form**
- 3. Standard Terms and Conditions for the Supply of Goods or Services to Transnet**
- 4. General Bid Conditions (Services) – Appendix (i)**
- 5. Standard Terms and Conditions of Contract (Form ST&C - Services) – Appendix (ii)**
- 6. Vendor Application Form**

Annexure:

- ◆ **Annexure A : E7/1 (Specification for works on, over, under or adjacent to railway lines and near high voltage equipment)**
- ◆ **Annexure B – 2400 High Elevation**
- ◆ **Annexure C – 3000 Intermediate post & cover plate details**
- ◆ **Annexure D – Top and bottom rail details**
- ◆ **Annexure E – 3000 corner post & cover plate details**
- ◆ **Annexure E – 2400 high assembly details**

Section 1
NOTICE TO BIDDERS

Quotations which must be completed as indicated in Section 2 of this RFQ are to be submitted as follows:

METHOD FOR DELIVERY INSTRUCTIONS: (a) post, (b) hand delivered and/or courier

CLOSING VENUE : Refer to options below.

- a) **If posted**, the envelope must be addressed as below and must be dispatched in time for sorting by the Post Office to reach the Secretary before the closing time of the RFQ.

THE SECRETARIAT
Acquisition Council
P O Box 2986
Bellville
7535

- b) **If delivered by hand or by courier**, the envelope is to be deposited in the TRANSNET tender box and should be addressed as follows:

THE SECRETARIAT
Acquisition Council
Ground Floor
Transnet Park Building
Modderdam Road
Bellville

The measurements of the "tender slot" are **500mm wide x 100mm high**, and Respondents must please ensure that response documents or files are not larger than the above dimensions. Responses which are too bulky (i.e. more than 100mm thick) must be split into two or more files, and placed in separate envelopes.

It should also be noted that the above tender box is located at the main entrance and is accessible to the public 24 hours per day, 7 days a week.

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 must be embodied in an accompanying letter.

Quotations must reach the Chairperson, TRANSNET Freight Rail Acquisition Council before the closing hour on the date shown below, and must be enclosed in a sealed envelope which must have inscribed on the outside:

RFQ No	: BLE/52090
Description	: Upgrade Transnet boundary fence with Beta fence near De Grendel Station to Frans Conradie Drive.
Closing date and time : 05 February 2013 at 10h00	

2 Broad-Based Black Economic Empowerment [B-BBEE]

Transnet fully endorses and supports the Government's Broad-Based Black Economic Empowerment Programme and it would therefore prefer to do business with local business enterprises who share these same values. Transnet will accordingly allow a "preference" in accordance with the 10%/20% preference system, as per the Preferential Procurement Policy Framework Act 5 of 2000 [as amended], to companies who provide a B-BBEE Verification Certificate. All procurement transactions will be evaluated accordingly.

In compliance with the Government Gazette No 34612, Notice No. 754 dated 23 September 2011, as from 1 October 2011 valid B-BBEE Verification Certificates must be issued by:

- a) Verification Agencies accredited by the South African National Accreditation System [SANAS]; or
- b) Registered Auditors approved by the Independent Regulatory Board of Auditors [IRBA], in accordance with the approval granted by the Department of Trade and Industry.

Enterprises will be rated by such agencies based on the following:

- c) **Large Enterprises** [i.e. annual turnover greater than R35 million]:
 - Rating level based on all seven elements of the B-BBEE scorecard
- d) **Qualifying Small Enterprises – QSE** [i.e. annual turnover between R5 million and R35 million]:
 - Rating based on any four of the elements of the B-BBEE scorecard
- e) **Exempted Micro Enterprises – EME** [i.e. annual turnover less than R5 million]:
 - Automatic rating of Level 4 B-BBEE irrespective of race or ownership
 - Black ownership greater than 50% or Black Women ownership greater than 50% automatically qualify as Level 3 B-BBEE

EME's should only provide documentary proof of annual turnover [i.e. annual financials or a formal letter by an auditor, accountant or a SANAS accredited verification agency]. Such letter should also indicate the percentage of Blacks and Black-women ownership.

[Refer Section 6, Vendor Application Form, for Returnable Documents required]

3 Communication

- a) Respondents are warned that a response will be liable for disqualification should any attempt be made by a Respondent either directly or indirectly to canvass any officer(s) or employee of Transnet in respect of this RFQ between the closing date and the date of the award of the business.

- b) A Respondent may, however, before the closing date and time, direct any written enquiries relating to the RFQ to the following Transnet employee:

Name: **Tamara Dlamini**
 Email: Tamara.Dlamini@transnet.net

- c) Respondents may also, at any time after the closing date of the RFQ, communicate with the Secretariat of the Acquisition Council on any matter relating to its RFQ response:

Telephone **(021) 940-3831**
 Email Tamara.Dlamini@transnet.net

4 Tax Clearance

The Respondent's original valid Tax Clearance Certificate or letter of good standing from SARS must accompany the Quotation.

5 VAT Registration

The valid VAT registration number must be stated here: _____ [if applicable].

6 Legal Compliance

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

7 Changes to Quotations

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

8 Pricing

All prices must be quoted in South African Rand on a fixed price basis, excluding VAT.

9 Prices Subject to Confirmation

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

10 Negotiations

Transnet reserves the right to undertake post-bid negotiations with selected Respondents or any number of short-listed Respondents.

11 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.

12 Disclaimers

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) and request Respondents to re-bid on any changes;

- reject any Quotation which does not conform to instructions and specifications which are detailed herein;
- disqualify Quotations submitted after the stated submission deadline;
- not necessarily accept the lowest priced Quotation;
- reject all Quotations, if it so decides;
- place an order in connection with this Quotation at any time after the RFQ's closing date;
- award only a portion of the proposed goods / service/s which are reflected in the scope of this RFQ;
- split the award of the order/s between more than one Supplier; or
- make no award at all.

13 Performance Record/References

Please indicate below the company names and contact details of existing customers whom Transnet may contact to seek third party evaluations of your current service levels:

Name of Company	Nature of work & period	Telephone number	Contact Person

14 Evaluation Criteria

Transnet will utilise the following criteria [not necessarily in this order] in choosing a Supplier, if so required:

- Compliance with this RFQ - Completeness of response and returnable documents
- Technical: Compliance to specification / quality
- Previous performance
- Pricing and price basis [firm] - whilst not the sole factor for consideration, competitive pricing and overall level of discounts will be critical
- 90/10 (Price = 90 and B-BBEE Status = 10)

Please note bidders will be evaluated on functionality first before being evaluated on 90/10

15 Validity Period

Transnet desires a validity period of **90 [ninety] days** from the closing date of this RFQ. It should be noted that Respondents may offer an earlier validity period, but Quotations may be rejected for that reason. Should Respondents be unable to comply with this validity period, an alternative validity period must be stated hereunder:

This RFQ is valid until _____ [State alternative validity period/date].

16 Banking Details

BANK: _____

BRANCH NAME / CODE: _____

ACCOUNT HOLDER: _____

ACCOUNT NUMBER: _____

17 Company Registration

Registration number of company / C.C. _____

Registered name of company / C.C. _____

18 Disclosure of Prices Quoted

Respondents must indicate here whether Transnet may disclose their quoted prices and conditions to other Respondents:

YES NO

19 Returnable Documents

Returnable Documents or **Documents** means all the documents, Sections and Annexures, as listed in the tables below.

a) Respondents are required to submit with their Quotations the **mandatory Returnable Documents**, as detailed below.

Failure to provide all these Returnable Documents will result in a Respondent's disqualification. Respondents are therefore urged to ensure that all these Documents are returned with their Quotations.

All Sections, as indicated in the footer of each page, must be signed, stamped and dated by the Respondent. Please confirm submission of these **mandatory Returnable Documents** by so indicating [✓] in the table below:

Returnable Documents	Submitted [✓]
SECTION 2 : Quotation Form	
SECTION 3 : Standard Terms and Conditions of Contract for the Supply of Goods or Services to Transnet	

b) In addition to the requirements of section (a) above, Respondents are further required to submit with their Quotations the following **essential Returnable Documents** as detailed below.

Failure to provide all these Returnable Documents may result in a Respondent's disqualification. Respondents are therefore urged to ensure that all these documents are returned with their Quotations.

All Sections, as indicated in the footer of each page, must be signed, stamped and dated by the Respondent. Please confirm submission of these **essential Returnable Documents** by so indicating [√] in the table below:

Returnable Documents	Submitted [√]
SECTION 1 : Notice to Bidders	
- Valid B-BBEE Verification Certificate [RSA Large Enterprises and QSEs]	
- Valid B-BBEE Certificate from auditor, accounting officer or SANAS accredited Verification Agency [RSA EMEs]	
- Letter of Good Standing from Compensation Commissioner	
SECTION 4 : General Bid Conditions [Services]	
SECTION 5 : Standard Terms and Conditions of the Contract [Services]	
SECTION 6 : Vendor Application Form	
- Original cancelled cheque or bank verification of banking details	
- Certified copies of IDs of shareholder/directors/members [as applicable]	
- Certified copy of Certificate of Incorporation [CM29/CM9 name change]	
- Certified copy of share certificates [CK1/CK2 if C.C.]	
- Entity's letterhead	
- Original valid Tax Clearance Certificate [RSA entities only]. if a JV or subcontractor is involved, submit a Tax Clearance Certificate for each entity	
- Certified copy of VAT Registration Certificate [RSA entities only]	
- Certified copy of valid Company Registration Certificate [if applicable]	
- A signed letter from Respondent's auditor or accountant confirming most recent annual turnover figures	

FAILURE TO OBSERVE ANY OF THE AFOREMENTIONED REQUIREMENTS MAY RESULT IN A QUOTATION BEING REJECTED

Respondent's Signature

Date & Company Stamp

Section 2 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 Terms and Conditions for the Supply of Goods and Services to Transnet [Section 3 hereof]; and
- any other standard or special conditions mentioned and/or 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.

Project Specification & Price Schedule

1. PROJECT SPECIFICATION

A.1 SCOPE OF WORK

This specification covers the **erection of BETA Fencing along the Transnet boundary between De Grendel station and Frans Conradie Dr Bridge on the Cape Town to Bellville Railway Line.**

A2 REQUIREMENTS OF THE TENDER

A2.1 The contract will only be awarded to bidders who have experience in the field of erecting BETA fencing.

A.3 DURATION OF CONTRACT:

The contract will be for a period of 7 weeks.

A.4 PENALTIES FOR LATE COMPLETION:

A penalty for late completion of **R1000.00** per calendar day shall apply for each working day or part thereof. In addition, no extra payment will be made for delays suffered by the Contractor as a result of inclement weather, flooding or delays caused by Transnet Freight Rail.

A.5 MATERIAL

A.5.1 TO BE SUPPLIED BY TRANSNET FREIGHT RAIL:

Transnet Freight Rail will provide all the material for the BETA Fence except for the sand, stone, cement and water.

A.5.2 TO BE SUPPLIED BY THE CONTRACTOR:

All cement, sand, stone, and all necessary welding (if any), etc. used to erect the fence, shall be supplied by the Contractor.

A.5.3 SAFE KEEPING OF MATERIAL :

1. The Contractor shall be responsible for the safekeeping, proper staging and handling of all fencing materials.
2. All packaging or waste material associated with the material will be taken off site and properly disposed of by the Contractor.

A.6 TO BE PROVIDED BY THE CONTRACTOR :

1. The Contractor shall supply all labour, vehicles, machinery, small plant and any mechanised equipment for the proper execution of the works and in addition to this the Contractor shall provide all accommodation and toilet facilities for his/her employees. No accommodation shall be erected on Transnet Freight Rail property.
2. All tools and labour required to perform the work as stipulated in the schedule of quantities shall be provided by the Contractor and included in his tendered rates. These include:
 - 2.1. All fuel for small plant tools, lubricants, etc.
 - 2.2. Staff accommodations complete with ablutions and kitchen facilities.
 - 2.3. Fire prevention and fire fighting measures.
3. The maintenance, leasing, hiring and insurance of this equipment will solely rest with the Contractor.
4. The Contractor shall be responsible for his own arrangements with regards to the transport and safe staging of this equipment.
5. The Contractor shall appoint at each work site sufficient personnel whose sole task shall be to be on the look out for approaching rail traffic. These employees shall operate an audible warning device to timeously warn all people on the work site of approaching rail traffic.

An effective safety procedure to be followed by all personnel on any work site in the case of approaching rail traffic shall be compiled by the Contractor and implemented before any work commences. The procedure shall be updated whenever the need arises and any changes shall be communicated to all employees on a work site before work proceeds.

The personnel of the Contractor shall **at all times** during work **operations wear reflective safety jackets**. These reflective jackets must either be yellow or light blue. Any other colour must first be cleared with the Technical Officer or his Deputy.

Contractor's staff working on the site may not wear any form of visible red or green outer garments.

The Contractor shall make available employees to be trained, certificated and used as lookouts when required. The training shall be done at no cost to the Contractor.

6. The making of fires, for whatever purpose, on Transnet property is strictly prohibited.

A.7 ADVANCE PAYMENT FOR MATERIAL AND/OR PLANT AND/OR EQUIPMENT SUPPLIED BY THE CONTRACTOR:

No advancement of any monies will be considered.

A.8 CONTRACT PRICE ADJUSTMENT FACTOR :

The contract shall not be subject to cost escalation or de-escalation or foreign exchange rate fluctuations. All increases in cost from whatsoever cause shall be at the Contractor's risk, and all decreases in cost shall be to his benefit.

A.9 SCHEDULE OF QUANTITIES AND PRICES

A10.1 The quantities in the Schedule of Quantities and Prices (Service Fees and Costs), are estimated and may be more or less than stated. The Contractor shall submit with his/her tender a complete and detailed priced Schedule (prepared in black ink) for the Works.

A10.2 The Tenderer shall price each item. If the Contractor has omitted to price any items in the Schedule, the cost of the work included in such items will be held to be spread over and included in the prices given in the other items of work.

A10.3 The short descriptions of the items in the Schedule are for identification purposes only. The Special Conditions of Contract and Specifications shall be read in conjunction with the Schedule. In so far as these documents have any bearing, they shall be referred to for details of the description, quality, and test of plant and material used, and the workmanship, conditions, obligations, liabilities and instructions generally which shall be complied with in carrying out the Contract. The cost of complying with all conditions, obligations and liabilities described in the contract documents including profit, shall be deemed to be included in the rates quoted by the Contractor in the Schedule of Quantities and Prices.

A11 SITE MEETINGS

A11.1 The Contractor shall attend site meetings when required. These meetings will be held under the chairmanship of the Technical Officer or his/her deputy. When sub-contractors are required to attend, the Contractor shall ensure their attendance.

A11.2 An inaugural site meeting, under the chairmanship of the Technical Officer, will be held at the work site. The attendance of this meeting is compulsory by the Contractor and ALL his staff who will be working on the site. During this meeting, the Contractor and his staff will receive instruction from a Transnet Safety Officer Representative regarding:-

the specific hazards, safety, health and environment rules for Transnet Freight Rail premises and on-site instructions regarding Risk Assessment, action plans to mitigate risks, introduction to key personnel and substance abuse testing

A11.3 If for any reason the Contractor changes his staff, the new staff, before they enter on to the worksite, MUST undergo an induction session conducted by a Transnet Safety Officer Representative.

A11.4 Site meetings, will be held once a week as arranged with the Technical Officer and are to be attended by the Technical Officer and the Contractor.

A12 SITE BOOKS

- A12.1 The Contractor shall provide a **site instruction book and a daily diary (both in triplicate) as well as a Safety File at the site** as directed by the Technical Officer for the duration of the contract.
- A12.2 The site instruction book shall only be used by the Technical Officer or his/her deputy and will be used for the issuing of instructions to the Contractor.
- A12.3 The Contractor shall complete the daily diary and a detailed description of the work done shall be recorded on a daily basis. Neither of the books shall be removed from the site without the permission of the Technical Officer or his/her deputy.
- A12.4 Upon the completion of the contract, both books are to be handed in to the Technical Officer and both become the property of Transnet Freight Rail.

A13 INFORMATION TO BE PROVIDED WITH TENDER

- A13.1 A full description of the plant and equipment to be used by the Contractor for all aspects of the work required to ensure standard as specified.
- A13.2 Whether the tenderer intends to work on Saturdays, Sundays or statutory holidays or is prepared to work on such days if required to do so by Transnet freight Rail.
- A13.3 Proof of inspection of all sites on the enclosed Site Inspection Certificate.
- A13.4 An undertaking that all plant and equipment will be ready for operation and that the work can commence timeously, to comply with requirements of the contract.
- A13.5 The contractor must indicate whether he/she intends using sub-contractors. No sub-contractors will be allowed on site without the prior permission of the Technical Officer.

A.14 SAFETY REQUIREMENTS :**1. High voltage electrical equipment : (If applicable)**

The attention of the **Contractor** is drawn to the possibility of "live" electrical overhead wires or buried cables in the area covered by the contract and the danger of coming into contact with such wires. All personnel under the control of the **Contractor** shall be made aware of the danger of "live" electrical wires and cables before commencement of the work

- 1.1.** The **Contractor** shall comply with all requirements of the **E7/1 (July 1998)** Specification. In particular the **Contractor** shall not be allowed to drive or move mobile equipment on or over the ballast and track-work unless the Technical Officer grants suitable permission and proper methods are employed.

A.15 TECHNICAL REQUIREMENTS AND EXPERTISE :

1. The **Contractor** shall have a qualified **site agent**, fully conversant with fencing practices of Transnet, in his employment. The Contractor must furnish the name and qualifications of the site agent with his tender.
2. The **Contractor** shall have suitably qualified supervisors in charge of the contract work. The names and qualifications of the supervisors together with full details of their experience in this field of work must be furnished with the tender.

3. The **Contractor** shall have a min of 3 suitable qualified persons for the exclusive use as **protection staff** per work site under occupation conditions. The protection staff has to be trained and certified by a Transnet Track Inspector. Transnet reserves the right to test the protection staff at random to ensure that they are working safely and correctly according to the stipulated rules and regulations.
4. The **Contractor** shall note that all members of Transnet's personnel associated with the contract project are responsible for inspection only and will not render any assistance except at the instruction of the Technical Officer.

A.16 TIDINESS AND CLEARING OF SITE

The Contractor shall keep the site tidy at all times and remove all old material such as rubble, off-cuts, demolished material, surplus material and carry away and dump or store onto or at an approved site.

A permit must be obtained from the Municipalities to transport material on their roads, when required.

On completion of the **WORKS**, the Contractor shall clear the site of all leftover items of material, rubble, etc. to the satisfaction of the Technical Officer.

A.17 EXISTING SERVICES :

The **Contractor** shall take all reasonable precautions to protect existing services during construction and during relocation of such services.

Any pipe, cable, conduit or other services of any nature whatsoever indicated to the **Contractor** and subsequently damaged as a result of the **Contractor's** operations, shall be repaired and reinstated forthwith by the **Contractor** or by the Authority concerned, all at the expense of the **Contractor** and to the satisfaction of the Technical Officer.

Whenever unknown services are encountered which interfere with the execution of the Works and which require to be moved and relocated, the **Contractor** shall advise the Technical Officer, in writing within 24 hours of such encounter, and the Technical Officer will determine the extent of the work, if any, to be undertaken by the **Contractor** in removing, relocating and reinstating such services.

Any work required to be undertaken by the **Contractor** in the moving and relocation of unknown services for which no provision is made in the contract documents, or for which no applicable tender rates exists, will be dealt .

The sum allowed for in Schedule of Quantities (Section 2) shall be deemed to be full compensation for the location and protection of existing services.

FOR DELIVERY TO: ERECT PALISADE FENCE NEAR MONTE VISTA STATION AND N1 CITY.**SPECIAL CONDITIONS OF CONTRACT AND SPECIFICATIONS****PART B – PROJECT SPECIFICATION****B.1 GENERAL.**

This specification covers the **erection of BETA Fencing along the Transnet boundary between De Grendel station and Frans Conradie Dr Bridge on the Cape Town to Bellville Railway Line in the geographical area controlled by the Depot Engineer, Bellville**, hereinafter referred to as the "**Works**", and any other work arising out of or incidental to the above, or required of the **Contractor** for the proper completion of the **Works** in accordance with the true meaning and intent of the contract.

- B1.2 This part covers the techniques, required standards of workmanship, inspections, measurement, payment, and acceptability of the works in respect of erecting the BETA fence required in terms of the contract.
- B1.3 The ways and means by which the above-mentioned results are obtained are the responsibility of the Contractor. Transnet Freight Rail, however, shall have the right to monitor the materials and activities of the Contractor to ascertain that all procedures are in accordance with his/her tender and relevant legislation. Such right of monitoring shall be entirely without prejudice to Transnet Freight Rail and shall in no way relieve the Contractor of his/her responsibility for satisfactory erection of the fence
- B1.4 Failure to comply with the minimum standard proposed by the Contractor in his/her tender may form the basis for non-payment for work done, pending the standard as defined and/or termination or cancellation of the contract.

The performance due by the Contractor shall include any work arising from or incidental to the above or required of the Contractor for the proper completion of the contract in accordance with the true meaning and intent of the contract documents.

B.2 STANDARD SPECIFICATIONS

In so far as they can be applied and where they are not inconsistent with the terms of this specification, the following specifications shall be regarded as being embodied in this specification:

1. Concrete (Small works) – SABS 1200GA – 1982
2. Earthworks – Standardized specification for civil engineering construction Section D: Earthworks – SANS 1200D:1988
3. Guidelines for the provision of engineering services in Residential Townships - by Department of Community Development.

B3 WORK AREA.

From the corner of the 2.48m high weld mesh fence opposite km 15P10 on the right hand side to the wing wall of FRANS CONRADIE DR. BRIDGE (as will be shown on site) - a distance of ± 508 metres. The fence is to be erected on the existing boundary line. The existing Beta gate will be removed and re-instated (as will be shown on site)

B4. SETTING OUT AND EXCAVATION

The setting out of the work shall be the sole responsibility of the Contractor and shall be done in accordance with the "Guidelines for the provision of Engineering Services in Residential Townships" by The Department of Community Development.

Set out the work for the fence and spacing of the posts. Measure and mark a square area 600mm x 600mm to accommodate the post.

Excavate to the depth required (800mm minimum) for each post.

All work to be according to Beta fence South Africa (Pty) Ltd Specifications.

All excavated material, and other surplus material or backfill shall be carted to and disposed of by the contractor at an approved dumpsite.

B4.2 CONCRETE FOUNDATIONS

Cast concrete to set post in an upright and plumb position with concrete foundations of 20 MPa using 19 mm stone.

B5 FENCE WORK

Erect a 2.4m high BETA fence along the existing Transnet boundary starting from the corner of the 1.8m high weld mesh fence opposite km 15P10 on the right hand side to the wing wall of FRANS CONRADIE DR. BRIDGE - a distance of ± 508 metres.

An Existing Beta – gate to be moved as will be shown on site & a new 1m wide pedestrian gate with locking mechanism to be provided.

Total length of fence, is ± 508 m.

The extent of the work is according to Betafence South Africa (Pty) Ltd Specifications together with drawings **BB-STD-1 Sht 1 to 5**.

Top and bottom rails are required on all panels as per BETA specification.

B6 STANDARDS OF WORKMANSHIP

B6.1.1 The fence is to be neatly finished and is to be standing erect.

B6.1.2 All rough edges must be smoothed off.

B6.1 OVERALL STANDARD

B6.1.1 The overall standard to be achieved by the Contractor over the contract area, defined as "Overall Standard", will be determined visually by the Technical Officer

B6.1.2 The minimum percentage of the total work that shall comply with the standard, shall be 90%. This measurement will be applicable for each inspection carried out during the term of the contract.

B6.1.3 Failure by the Contractor to achieve the standard of "Overall Standard" shall enable the Project Manager to terminate the Contract.

B7 PERFORMANCE MONITORING, EVALUATION AND MEASUREMENT

B7.1 The Contractor shall at all times be responsible for supervision of the work and for follow-up inspections. He/she shall immediately take appropriate remedial action in areas where the specified standards are not achieved.

B7.2 The Technical Officer or his/her deputy shall at any time during the operation carry out inspections of the Contractor's performance methods and procedures. The Technical Officer may order the Contractor to re-do entire sections where necessary.

B7.3 The Technical Officer or his/her deputy shall, during the contract period, carry out weekly inspections of the work for the purpose of measuring progress and evaluating whether standards, as defined, has been achieved.

B7.3.1 During each of these inspections the progress of all completed work will be measured and evaluated. Any portion of the fence measured, which does not comply with the specified standard, will be recorded as rejected work.

All completed work must be recorded on an inspection sheet and produced to the Technical Officer or his duly authorised representative on the day of inspection. All such workmanship shall be to the satisfaction of the Technical Officer or his duly authorised representative.

B7.4 Should, at any stage in the progress of the said works, or on completion, an inspection visit reveal any defects in the construction, all rejected work shall be rectified prior to the commencement of the work of following week by the **Contractor** at his own expense and to the satisfaction of the Technical Officer or his duly authorised representative.

B7.5 In the case where the Technical Officer or his/her deputy and the Contractor fail to agree on rejected work, the rejected work shall be recorded as a "disputed work". The Contractor shall prepare an appropriate record of all disputed work in order that such disputes may be resolved by way of the disputes resolution procedures.

B7.6 The Project Manager reserves the right to forego any inspection by giving the Contractor written notice of his/her intention to do so. Should the Project Manager decide to forego any inspection, he/she would thereby indicate that he/she is satisfied with the standard of workmanship required for that specific inspection only. He/she would then make full payment to the Contractor to the value associated with that inspection.

The fact that the Project Manager may decide to forego any inspection at his/her discretion does not imply that further inspections would not be carried out. It only implies that for that inspection, the Project Manager is satisfied with the standard achieved and will not penalise the Contractor for that inspection.

The Contractor shall at his cost make good to the satisfaction of the Technical Officer all defective material and workmanship which is not in accordance with the Contract and which may appear within a period of 2 weeks after the date stated in the CERTIFICATE OF COMPLETION, and shall repair all damage caused thereby.

B8 PROGRAMME OF WORK AND METHOD STATEMENT:

A detail work program and method statement must be submitted to the Technical Officer within 7 days of acceptance of the tender. The program must indicate the quantities, type of work to be performed, as well as other obligations and responsibilities pertaining to the **WORKS**. The program will be updated regularly and communicated to the Technical Officer. No extension of time claims will be considered without a proper work program.

B9 MEASUREMENT AND PAYMENT:

The BETA fence shall be measured and paid for per finished linear metre. Tendered rates must therefore include supply and delivery of all materials (except the Beta Components) for the fence including the foundations. Site clearance, excavation, compaction, assembly, and all other activities necessary for the completion of the works are all to be included in tendered rates for the erection of the fence.

Payment for the work completed will be made upon receipt of an invoice from the Contractor.

“PREVIEW COPY ONLY”

Price Schedule

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

SCHEDULE OF QUANTITIES AND PRICES

ITEM	DESCRIPTION	UNIT		RATE	AMOUNT
1	Erect New BETA Fence	m	508		
2	Removal of old fence	m	508		
3	Removal and re-instalment of gate	Each	1		
4	Provide a new 1m wide pedestrian gate	Each	1		
TOTAL (Excluding VAT)					R

Price in Words: _____

"PREVIEW COPY ONLY"

Respondent's Signature

Date & Company Stamp

Section 3

STANDARD TERMS AND CONDITIONS FOR THE SUPPLY OF GOODS OR SERVICES TO TRANSNET

A Supplier shall be obliged to adhere to the Standard Terms and Conditions for the Supply of Goods and Services to Transnet as expressed hereunder. Should the Respondent find any condition(s) unacceptable, it should indicate which condition(s) is/are unacceptable and offer an alternative(s). A Quotation 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.

1 SOLE AGREEMENT

Unless otherwise agreed in writing, these terms [Terms and each Term] and Transnet's purchase order(s) [Order or Orders] represent the only conditions upon which Transnet SOC Ltd [Transnet] procures goods or services specified in the Order [collectively, the Products] from the person to whom the Order is addressed [the Supplier]. Transnet does not accept any other conditions which the Supplier may specify, unless otherwise agreed to by Transnet in writing. In the event of any inconsistency between these Terms and any Order, these Terms shall take precedence.

2 CONFORMITY WITH ORDER

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

3 DELIVERY AND TITLE

3.1 The delivery dates and addresses are those in the Order. Time shall be of the essence in respect of the Supplier's obligations under the Order.

3.2 The Supplier will not be excused for delay in delivery or performance except due to circumstances outside its control and then only subject to the Supplier having notified Transnet in writing on becoming aware of such circumstances. Transnet may terminate an Order, in whole or in part, without incurring any liability to the Supplier if such a delay becomes, in Transnet's absolute opinion, significant.

3.3 Risk of loss or damage to Products shall pass to Transnet on delivery, and title shall pass to Transnet when payment to the Supplier for the Products has been effected.

3.4 If on delivery, the Products do not conform to the Order, Transnet may reject the Products and the Supplier shall promptly rectify any defects or in Transnet's opinion, supply appropriate replacement Products at the Supplier's expense within the specified delivery times, without any liability due by Transnet. Products shall be subject to such testing and/or inspection as Transnet may consider necessary.

4 PRICE AND PAYMENT

- 4.1 Prices specified in an Order cannot be increased. Payment for the Products shall be made by Transnet against an original undisputed invoice(s) [a **Tax Invoice**], supporting documentation and month-end statement from the Supplier. Tax Invoices plus supporting documentation shall be posted to the address shown in the Order.
- 4.2 Payment of the Supplier's valid Tax Invoice(s) will be made by Transnet in the South African currency and on the terms stated in the Order, the standard payment terms being 30 [thirty] days from date of receipt by Transnet of a month-end statement, unless otherwise agreed to in writing. Transnet shall arrange for payment of such Tax Invoices and any pre-authorized additional expenses incurred, provided that the authorised expenses are supported by acceptable documentary proof of expenditure incurred [where this is available]. Any amounts due in terms of these Terms shall be paid to the Supplier, taking into account any deduction or set-off and bank charges.

5 PROPRIETARY RIGHTS LIABILITY

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

- a) procure for Transnet the right to continue using the infringing Products; or
- b) modify or replace the Products so that they become non-infringing,

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

6 PROPRIETARY INFORMATION

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

7 DEVELOPMENT WORK IN THE PRODUCTION OF PRODUCTS

If the production or provision of any Products involves research and/or development which is wholly or partly funded by Transnet, then all intellectual property or other rights as a result thereof shall be the property of Transnet on creation.

8 PUBLICITY

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

9 AFTER SALES SERVICE

The Supplier shall provide replacement parts necessary to ensure the uninterrupted operation of the Products supplied for the duration of the warranty period, from delivery of any particular item of the Products and if requested by Transnet shall make these parts available to a third party maintainer of Transnet's choice at the same price as if the parts had been supplied to Transnet. The Supplier undertakes to provide a maintenance service for Products, should Transnet so request, on terms to be agreed. If the Order so indicates, the Supplier will provide a warranty service for the Products at a level to be agreed with Transnet.

10 TERMINATION OF ORDER

- 10.1 Transnet may cancel an Order in whole or in part at any time upon at least 7 [seven] days' written notice to the Supplier, or when there is a change in control of the Supplier or the Supplier commits any serious breach or any repeated or continued material breach of its obligations under these Terms and/or Order or shall have been guilty of conduct tending to bring itself into disrepute, on written notice to the Supplier when such work on the Order shall stop.
- 10.2 Transnet shall pay the Supplier a fair and reasonable price for justified work in progress, where such price reflects only those costs not otherwise recoverable by the Supplier, at the time of termination, and the Supplier shall give Transnet full assistance to check the extent of such work in progress. Payment of such price shall be in full and final satisfaction of any claims arising out of such termination and upon such payment the Supplier shall deliver to Transnet all work, including any materials, completed or in progress. The sum payable to the Supplier under this clause will not in any event exceed the total amount that would have been payable to the Supplier had the Order not been terminated.
- 10.3 In the event of termination the Supplier must submit all claims within 2 [two] months of termination after which time claims will only be met in what Transnet considers exceptional circumstances.
- 10.4 If the Products are not provided in accordance with an Order, the Order shall be deemed terminated and the Supplier shall compensate Transnet for any costs incurred in obtaining substitute Products or any damage caused due to the failure or delay in the delivery.

11 ACCESS

The Supplier shall be liable for the acts, omissions and defaults of its personnel or agents who, for the purposes of the Order, shall be treated as if they are the Supplier's employees. The Supplier shall ensure

that any such personnel or agents, whilst on Transnet's premises, shall comply with Transnet's health and safety, security and system security rules and procedures as and where required.

12 WARRANTY

The Supplier warrants that it is competent to supply the Products in accordance with these Terms to the reasonable satisfaction of Transnet and that all Products delivered under the Order: (a) conform and comply in all relevant legislation, standards, directives and orders related to *[inter alia]* the supply, manufacture and use of the Products in force at the time of delivery, and to any specifications referred to in the Order; (b) will not cause any deterioration in the functionality of any Transnet equipment; and (c) do not infringe any third party rights of any kind. The Supplier hereby indemnifies Transnet against all losses, liabilities, costs, claims, damages, expenses and awards of any kinds incurred or made against Transnet in connection with any breach of this warranty.

13 INSOLVENCY

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

14 ASSIGNMENT

The Supplier shall not assign its obligations under an Order without Transnet's prior written consent, which consent shall not be unreasonably withheld or delayed.

15 NOTICES

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

16 LAW

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

17 GENERAL

Completion or termination of an Order shall be without prejudice to any Term herein which by its nature would be deemed to continue after completion or termination, including but not limited to clauses 5, 6, 7,

8 and 12. Headings are included herein for convenience only. If any Term herein be held illegal or unenforceable, the validity or enforceability of the remaining Terms shall not be affected. No failure or delay by Transnet to enforce any rights under these Terms will operate as a waiver thereof by Transnet. All rights and remedies available to either party under these Terms shall be in addition to, not to the exclusion of, rights otherwise available at law.

18 COUNTERPARTS

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

By signing this RFQ document, the Respondent is deemed to acknowledge that he/she has made himself/herself thoroughly familiar with all the conditions governing this RFQ, including those contained in any printed form stated to form part hereof and Transnet SOC Ltd will recognise no claim for relief based on an allegation that the Respondent overlooked any such condition or failed to properly take it into account for the purpose of calculating quoted prices or otherwise.

SIGNED at _____ on this _____ day of _____ 2013

.....
SIGNATURE OF RESPONDENT'S AUTHORISED REPRESENTATIVE

NAME: _____

DESIGNATION: _____

REGISTERED NAME OF COMPANY: _____

PHYSICAL ADDRESS: _____

Respondent's contact person: *[Please complete]*

Name	:
Designation	:
Telephone	:
Cell Phone	:
Facsimile	:
Email	:
Website	:

**Transnet urges its clients, suppliers and the general public
to report any fraud or corruption to
TIP-OFFS ANONYMOUS: 0800 003 056**

Substance Abuse Testing

The OHS Act (Act 85 of 1993) clearly states in the Safety Regulations no. 2A **"INTOXICATION"** **An employer or user, as the case may be, shall not permit any person who appears to be under the influence of intoxicating liquor or drugs, to enter or remain at the workplace".** Transnet Freight Rail enforces this legislation by means of its Substance Abuse Policy, and therefore reserves the right to do substance abuse testing on anyone who enters their premises.

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Section 4
GENERAL BID CONDITIONS - SERVICES

Copy available on request.

"It is the responsibility of the Bidder to ensure they are familiar with the General Bid Conditions."

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Section 5
STANDARD TERMS AND CONDITIONS OF CONTRACT FOR THE PROVISION OF SERVICES
TO TRANSNET

Refer Form ST&C - Copy available on request.

"It is the responsibility of the Bidder to ensure they are familiar with the Standard Terms and Conditions of Contract."

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Respondent's Signature

Date & Company Stamp

**Section 6
VENDOR APPLICATION FORM**

Respondents are to furnish the following documentation and complete the Vendor Application Form below:

1. **Original** cancelled cheque **OR** letter from the Respondent's bank verifying banking details **[with bank stamp]**
2. **Certified** copy of Identity Document(s) of Shareholders/Directors/Members [where applicable]
3. **Certified** copy of Certificate of Incorporation, CM29 / CM9 [name change]
4. **Certified** copy of Share Certificates [CK1/CK2 if CC]
5. A letter on the company's letterhead confirm physical and postal addresses
6. **Original** valid SARS Tax Clearance Certificate
7. **Certified copy** of VAT Registration Certificate
8. **Certified copy** of valid Company Registration Certificate [if applicable]
9. A signed letter from your auditor or accountant confirming most recent annual turnover figures

Vendor Application Form

Company trading name						
Company registered name						
Company Registration Number or ID Number if a Sole Proprietor						
Form of entity [v]	<input type="checkbox"/> CC	<input type="checkbox"/> Trust	<input type="checkbox"/> Pty Ltd	<input type="checkbox"/> Limited	<input type="checkbox"/> Partnership	<input type="checkbox"/> Sole Proprietor
VAT number [if registered]						
Company tel phone number						
Company fax number						
Company email address						
Company website address						
Bank name				Branch & Branch code		
Account holder				Bank account number		
Postal address						Code
Physical Address						

Respondent's Signature _____

_____ Date & Company Stamp

			Code	
Contact person				
Designation				
Telephone				
Email				
Annual turnover range [last financial year]	< R5 m		R5 - 35 m	
				> R35 m
Does your company provide	Products		Services	Both
Area of delivery	National		Provincial	Local
Is your company a public or private entity			Public	Private
Does your company have a Tax Directive or IRP30 Certificate			Yes	No
Main product or services [e.g. Stationery/Consulting]				

Complete B-BBEE Ownership Details:

% Black ownership		% Black women ownership		% Disabled Black ownership	
Does your company have a B-BBEE certificate	Yes		No		
What is your B-BBEE status [Level 1 to 9 / Unknown]					
How many personnel does the firm employ	Permanent		Part time		

If you are an existing Vendor with Transnet please complete the following:

Transnet contact person	
Contact number	
Transnet Operating Division	

Duly authorised to sign for and on behalf of Company / Organisation:

Name		Designation	
Signature		Date	

SPECIFICATION

1.0 POSTS

70 x 70 x 6mm x 3000 long galv. angles set vertically into foundations at 3000mm centres. Refer to sheets 2 & 3 for post details.

2.0 FOUNDATIONS:

700 x 400 x 400 (15MPa/19mm stone at each post. Ground conditions may require additional conc.

3.0 MESH PANELS:

Constructed from high tensile steel with a weld strength of 75%.

Apertures on types 358 (4mm) are 72.2 x 8.7mm & 3510 (3mm) single are 73.2 x 9.7mm.

Single mesh panels: coated with ZincAlu Super as SANS spec. 10244-2: 2003.

4.0 RAILS:

Refer to sheet 4 for details of types of rails.

5.0 COVER STRIPS:

Refer to sheets 2 & 3 for details.

6.0 ASSEMBLY DETAILS:

Refer to sheet 5.

7.0 FIXINGS:

Rails to posts:

Stainless steel 8mm dia. x 40mm cup square security bolts with washers & anti-vandal shear off nuts.

Cover plates to posts:

Countersunk stainless steel 8mm dia. x 40mm button head security screws with washers & shear off nuts.

Mesh to rail:

As rails to posts, length to be 30mm.

8.0 GALVANISING:

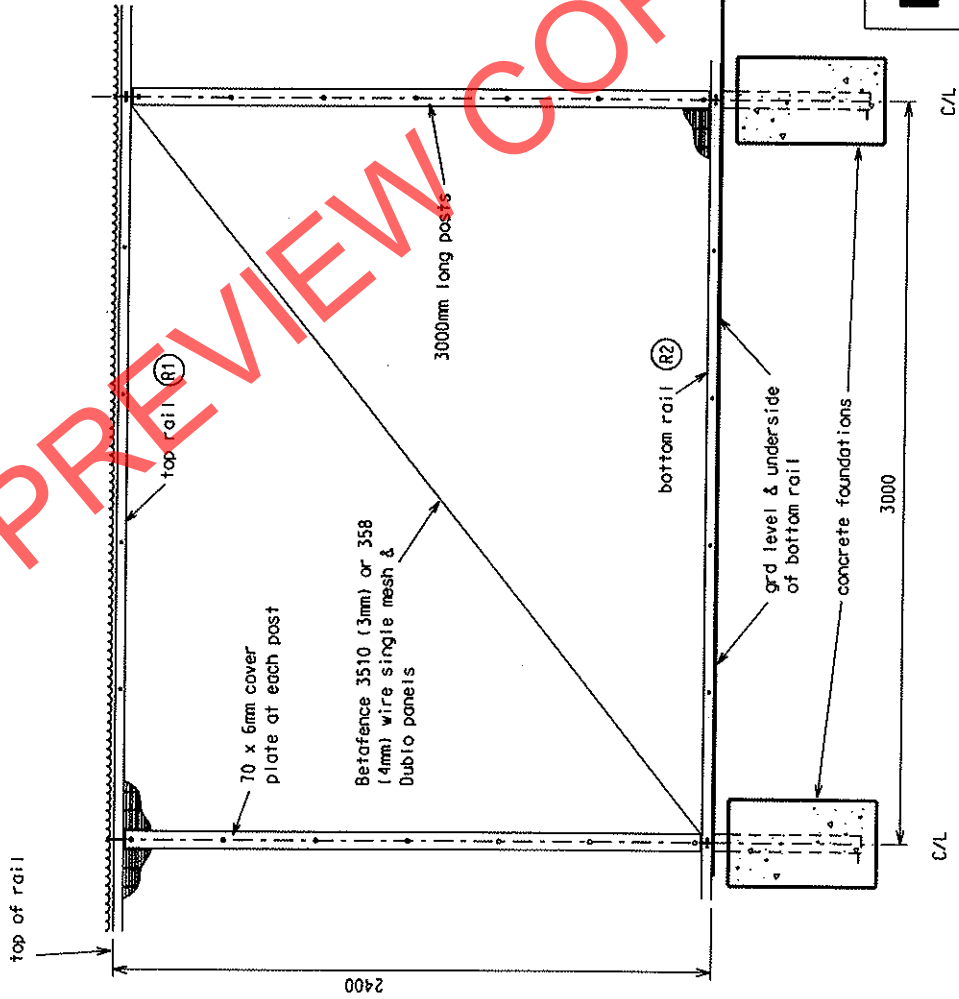
All posts, rails and cover plates to be hot dip galvanised after manufacture in accordance with ISO 1461, for top & bottom rails to be 55 microns, 70 microns for posts & cover plates.

Specification continues on sheet 2.

3	Logo changed.	LDJ	11/04/2007
2	Notes and title block changed.	LDJ	06/10/2005
1	Galvanising spec. altered.	LDJ	19/06/2002
Rev	Revision description	by	Date

Title: STANDARD FENCE TYPE 1	
2400 HIGH ELEVATION	
A3	
Drwg No: BB-STD-1 sht 1	sheet 1 of 5
Date: 03/09/2001	Rev: 13
Scale: 1:20	

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ELEVATION OF FENCE
SCALE: 1:20

IBI BETAFENCE
SOUTH AFRICA (PTY) LTD
Gooderson Ave Blockheath 7581, Tel: 081 905-4535
www.betafence.co.za

This drawing and design are the property of Betafence South Africa (Pty) Ltd

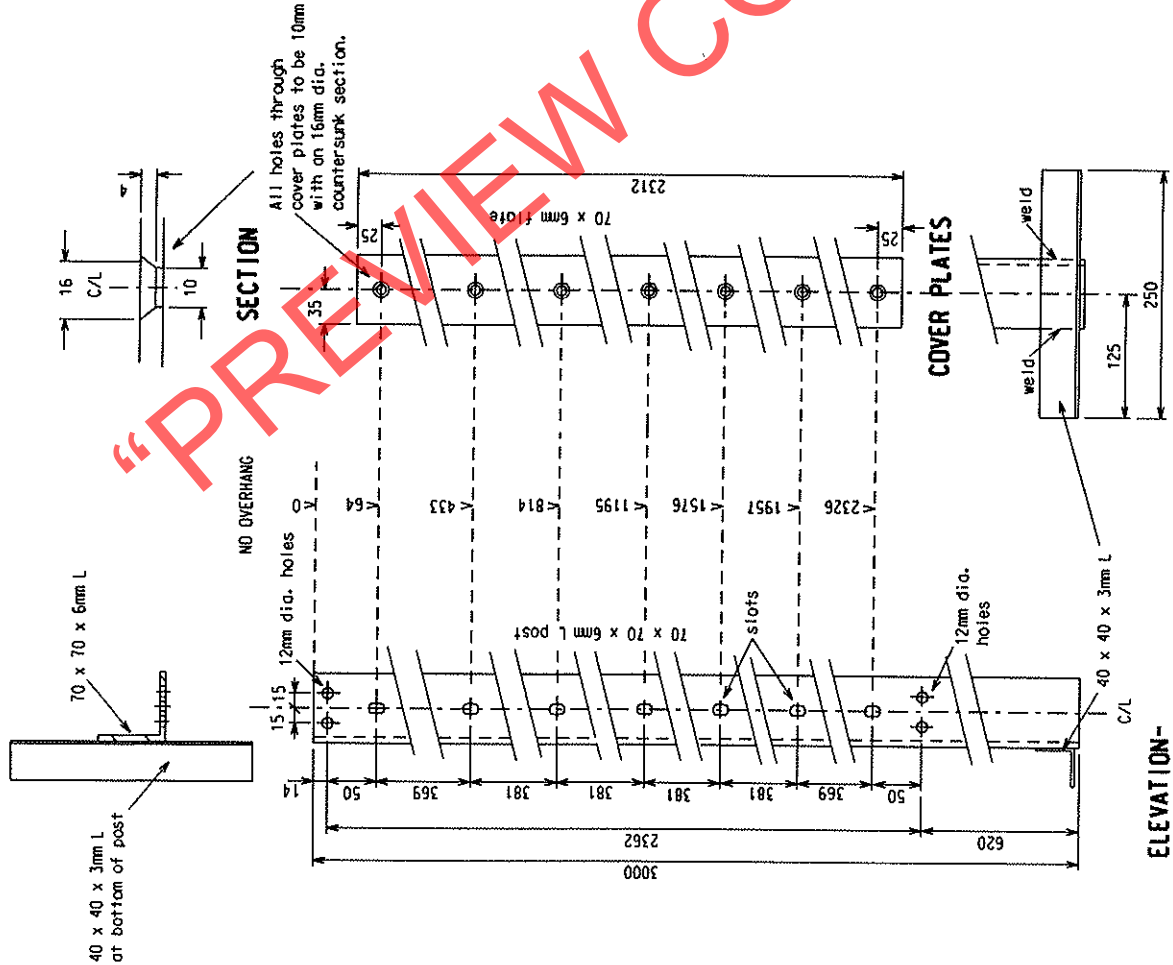
SPECIFICATION cont'd from sheet 1

9.0 WORKMANSHIP:
All welds to be continuous unless otherwise specified.

All welds, cutting and holes to be buffed smooth prior to galvanising.
All weld splashes to be removed prior to galvanising.

10.0 STEEL SECTIONS:
All steel sections to be checked for straightness before manufacture and after galvanising.

11.0 SERRATED STRIP:
Clamp angle in a jig. Spot weld strip at ends to the angle and intermediately along length of strip at 200mm c/c on alternating sides. Ensure welds have coated before removing from the jig.



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Tolerances:
position of holes: 2mm
other dimensions: 5mm in 3000.
Third angle projection unless indicated.

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www.betafence.co.za

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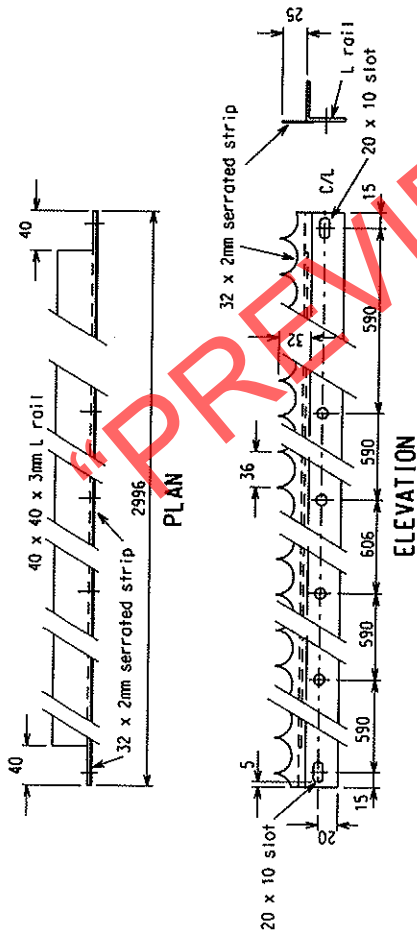
4	Logg changed.	LDJ	11/04/2007
3	Rail and corner post removed.	LDJ	06/10/2005
2	Drawing redrawn.	LDJ	21/07/2005
1	Slots changed to 12mm holes.	LDJ	21/07/2005
Rev	Revision description	by	Date
Tech. Approved:		Title:	
LDJ		STANDARD FENCE TYPE 1	
D.-C. Approved:		3000 INTERMEDIATE POST & COVER PLATE DETAILS	
AV		Drwg No: BB-STD-1 sht 2 4	
Mng. Approved:		sheet 2 of 5 Rev:	
08		10/10/2001	
Date:		Scale: 1:5	

ANNEXURE D

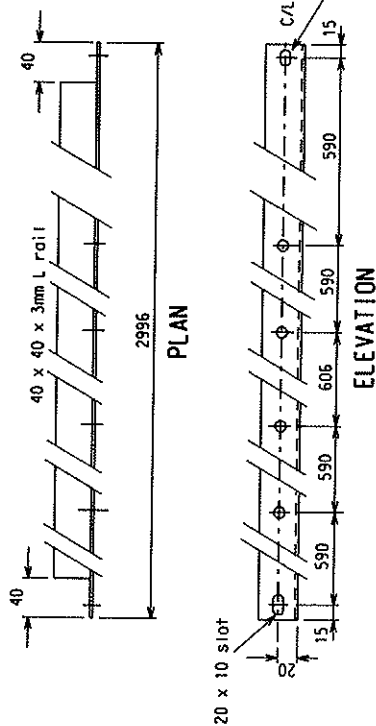
RAIL SPECIFICATION:

All steel sections to be checked for straightness before manufacture and after galvanising.

Clamp angle in a jig. Spot weld strip at ends to angle and intermediately along length of strip at 200mm c/c on alternate sides. Ensure welds have cooled before removing from the jig.



RAIL DETAILS - type R1
All round holes to be 11mm dia.



RAIL DETAILS - type R2
All round holes to be 11mm dia.

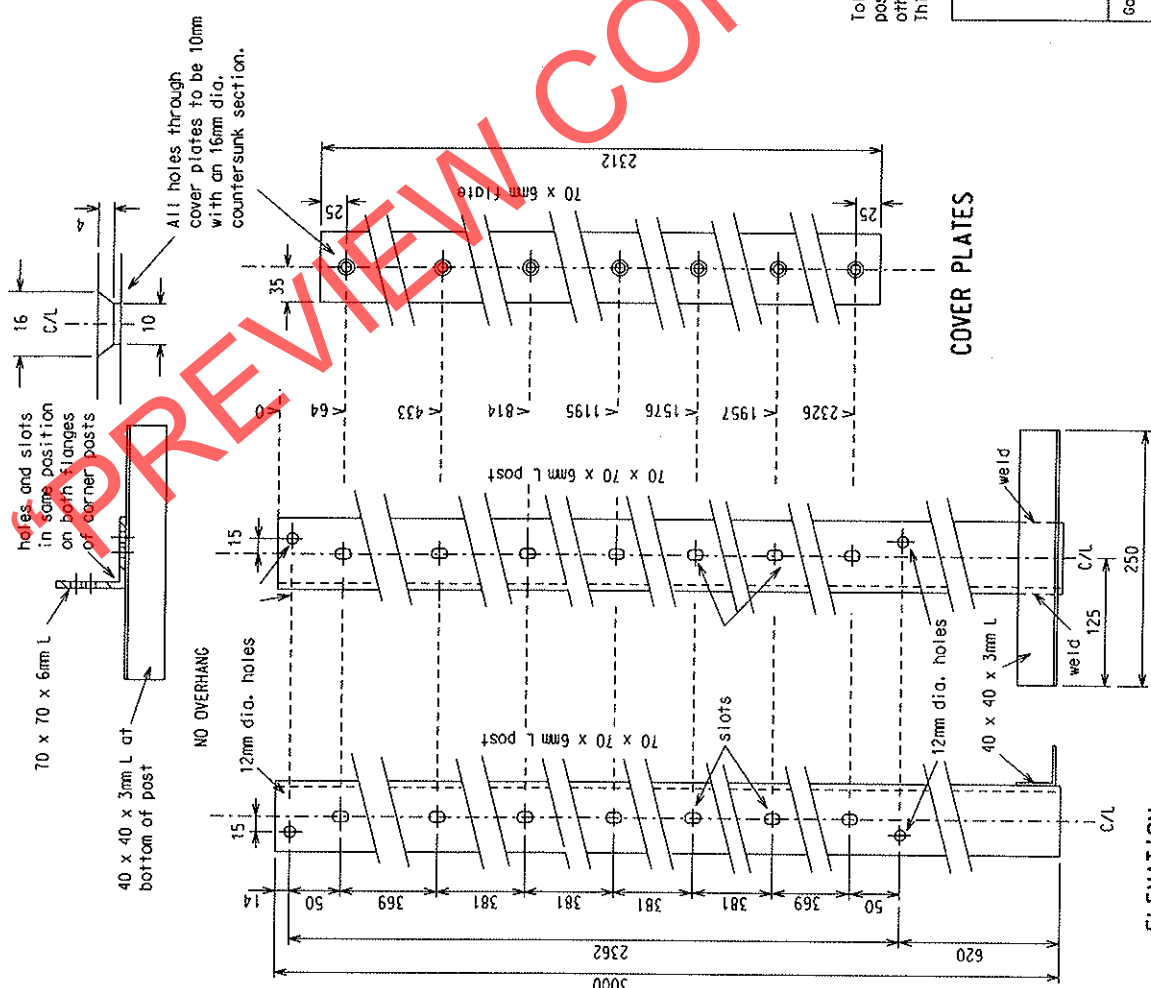
Tolerances:
position of holes: 2mm
other dimensions: 5mm in 3000

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1	Logo changed.	LDJ	11/04/2007
Rev	Revision description	by	Date
Tech. Approved:	Title: STANDARD FENCE TYPE 1 TOP & BOTTOM RAIL DETAILS		
LDJ			
O.C. Approved:	Draw No: BB-STD-1 sht 4 1		
AV	sheet 4 of 5 Rev: 4 1		
Monq. Approved:	Date: 10/10/2001		
68	Scale: 1:5		



Tolerances:
 position of holes: 2mm
 other dimensions: 5mm in 3000.
 Third angle projection unless indicated.

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 www.betafence.co.za

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2	Logo changed.	LDJ	11/04/2007
1	Drawing revised.	LDJ	06/10/2005
Rev.	Revision description	by	Date
LDJ			
Title: STANDARD FENCE TYPE 1 3000 CORNER POST & COVER PLATE DETAILS			
O.C. Approved: AV			
Mng. Approved: CB			
Date: 06/10/2005			
Scale: 1:5			
Drawg No: BB-STD-1 sht 3 of 5 Rev: 2			

M8 x 40mm cup sq. bolts

40 x 40 x 3mm top rail, mesh bolted between posts and rails.

70 x 70 x 6mm L post

single mesh (sheets overlap 70mm at post)

70 x 6mm vertical cover plate

PLAN - SINGLE MESH

70 x 70 x 6mm L corner post

40 x 40 x 3mm bottom rail

M8 x 40mm cup sq. security bolts

position of mesh

3000 C/L of posts

PLAN - BOTTOM RAIL ASSEMBLY - PLAN

serrated strip

40 x 40 x 3mm top rail

70 x 6mm cover plates

M8 x 30mm countersunk bolts

ELEVATION

70 x 70 x 6mm intermediate post

3000

70 x 70 x 6mm L post

3000 C/L of posts

PLAN - TOP RAIL ASSEMBLY - PLAN

ELEVATION

3000

top rail

70 x 70 x 6mm corner post

3000 C/L of posts

70 x 70 x 6mm L intermediate post

40 x 40 x 3mm bottom rail

3000 C/L of posts

position of mesh

PLAN - CORNER POST SINGLE & DOUBLE MESH

70 x 6mm vertical cover plates

NB top and bottom rails can be used to set out posts.

BETA FENCE SOUTH AFRICA (PTY) LTD		1 Logo changed. Rev. 11/04/2007
Gooderson Ave Blackheath 7581. Tel: 081 905-4535 www.betafence.co.za		by Date
Title: STANDARD FENCE TYPE 1 - 2400 HIGH ASSEMBLY DETAILS		17/04/2007
Date: 06/10/2005		Rev: 5 of 5
Scale: 1:2.5		Drwg No: BB-STD-1 sht 5 1
This drawing and design are the property of Betafence South Africa (Pty) Ltd		Rev: A3

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TRANSNET



Appendix (i)

GENERAL BID CONDITIONS - SERVICES

[October 2012]

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TRANSNET



Appendix (i)

GENERAL BID CONDITIONS - SERVICES

[October 2012]

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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 **Day** shall mean any day other than a Saturday, Sunday or public holiday;
- 1.4 **Respondent(s)** shall mean a respondent/bidder to a Bid Document;
- 1.5 **RFP** shall mean Request for Proposal;
- 1.6 **RFQ** shall mean Request for Quotation;
- 1.7 **RFX** shall mean RFP or RFQ, as the case may be;
- 1.8 **Services** shall mean the services required by Transnet as specified in its Bid Document;
- 1.9 **Service Provider** shall mean the successful Respondent;
- 1.10 **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;
- 1.11 **Transnet** shall mean Transnet SOC Ltd, a State Owned Company; and
- 1.12 **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 SUBMISSION 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 Bids shall be delivered in a sealed envelope in accordance with the instructions indicated in the Bid Documents with the Bid number and subject marked on the front of the envelope.
- 3.3 The Respondent's return address must be stated on the reverse side of the sealed envelope.

4 USE OF BID FORMS

- 4.1 Where special forms 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 not in other forms 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 must be completed for submission and not a reprocessed copy thereof.

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

5 BID FEES

- 5.1 A non-refundable fee may be charged for Bid Documents, depending on the administrative cost of preparing and issuing such Bid Documents.
- 5.2 Only Respondents that have paid the Bid fee and provided proof of payment when submitting their Bid will be considered.

6 VALIDITY PERIOD

- 6.1 Respondents must hold their Bid valid for acceptance by Transnet at any time within the requested validity period after the closing date of the RFX.
- 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 VISIT / BRIEFING SESSION

Respondents may be requested to attend (i) a site visit where it is considered necessary to view the site prior to the preparation of Bids, or (ii) an RFX briefing session when Transnet deems it necessary to provide Respondents with additional information relevant to the compilation of their Bids. When such visits or sessions are indicated as compulsory in the Bid 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 RFX before the closing date, the Respondent must direct such queries to the contact person identified in the Bid Document.

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 Secretary of the relevant Acquisition Council.

10 UNAUTHORISED COMMUNICATION ABOUT BIDS

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

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

- a) enter into a formal contract when called upon to do so within such period as Transnet may specify; or
- b) accept an order in terms of the Bid;
- c) furnish satisfactory security when called upon to do so for the fulfilment of the contract; or
- d) 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.

12.2 If any Respondent, who has submitted a Bid and/or concluded a contract with Transnet [hereinafter referred to as the **Service Provider**], or in the capacity of agent or subcontractor who has been associated with such Bid or contract:

- a) has withdrawn such Bid after the advertised date and hour for the receipt of Bids; or
- b) has, after having been notified of the acceptance of its 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; or
- c) has carried out any contract resulting from such Bid in an unsatisfactory manner or has breached any condition of such contract; or
- d) has offered, promised or given a bribe in relation to the obtaining or the execution of such contract; or
- e) has acted in a fraudulent or improper manner or in bad faith towards Transnet or any government department or towards any public body, company or person; or
- f) has made any misleading or incorrect statement either
 - (i) in the affidavit or certificate referred to in clause 18 [*Notice to Unsuccessful Respondents*]; or
 - (ii) in any other document submitted as part of its Bid submission and is unable to prove to the satisfaction of Transnet that
 - it made the statement in good faith honestly believing it to be correct; and
 - before making such statement, it took all reasonable steps to satisfy itself of its correctness; or
- g) caused Transnet damage, or to incur costs in order to meet the Service Provider's requirements which could not be recovered from the Service Provider;
- h) has litigated against Transnet in bad faith;

- i) has been found guilty by a court of law, tribunal or other administrative body of a serious breach of any law, during the preceding 5 [five] years;
 - j) has been included as a company or person prohibited from doing business with the public sector on National Treasury's database of Restricted Suppliers or Register of Bid Defaulters;
- then a Bid from any such Respondent shall be disqualified and the person, enterprise or company [including any directors] shall, subject to clause 12.3 below, be disqualified from bidding for any Transnet business through its "blacklisting" process.

12.3 Any person or enterprise or company against whom a decision to blacklist has been taken, may make representations to the Chief Financial Officer of Transnet SOC Ltd, whose decision shall be final.

12.4 Any disqualification [**Blacklisting**] imposed upon any person or enterprise or company, may also apply to any other enterprise under the same or different names of disqualified persons or enterprise or company [or associates thereof] and may also be applied to any agent or employee of the person or enterprise or company concerned.

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 RFX.

14 PRICES SUBJECT TO CONFIRMATION

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

14.2 Firm prices quoted for the duration of any resulting order and/or contract will receive precedence over prices which are subject to fluctuation if this is in Transnet's best interests.

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 Service Provider, effect payment overseas directly to the foreign principal of such percentage of the contract or order value as may be stipulated by the Respondent in its Bid Documents.

16.2 In instances where an overall Rand agreement cannot be concluded Transnet would request the Respondent to give favourable consideration to obtaining forward exchange cover on the foreign currency portion of the contract 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 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 agreement on an overall Rand contract has been reached.
- ~~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].~~

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17 ACCEPTANCE OF BID

- 17.1 Transnet does not bind itself to accept the lowest priced or any Bid.
- 17.2 Transnet reserves the right to accept any Bid in whole or in part.
- 17.3 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.
- 17.4 Where the Respondent has been informed by Transnet per fax message or email of the acceptance of its Bid, the acknowledgement of receipt transmitted shall be regarded as proof of delivery to the Respondent.

18 NOTICE TO UNSUCCESSFUL RESPONDENTS

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 shall be informed of the name of the successful Respondent and of the reason as to why their Bids have not been successful.

19 TERMS AND CONDITIONS OF CONTRACT

- 19.1 The 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 its 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.

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 award / intent, subject to all additional amendments and/or special conditions thereto as agreed to by the parties.
- 20.3 Should Transnet inform the Respondent that a formal contract will be signed, the abovementioned documents together with the Respondent's Bid response {and, if any, its covering letter and any

subsequent exchange of correspondence] as well as Transnet's Letter of Intent, shall constitute a binding contract until the final contract is signed.

21 LAW GOVERNING CONTRACT

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

22 IDENTIFICATION

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

23 CONTRACTUAL SECURITIES

- 23.1 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 an advanced payment guarantee [APG] and/or a performance bond [Performance Bond], as the case may be, to be furnished by an approved bank, building society, insurance or guarantee corporation carrying on business in South Africa.
- 23.2 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.
- 23.3 Such security, if required, shall be an amount which will be stipulated in the Bid Documents.
- 23.4 The successful Respondent shall be required to submit to Transnet or Transnet's designated official the specified security document(s) within 30 [thirty] Days from the date of signature of the contract. Failure to return the securities within the prescribed time shall, save where prior extension has been granted, entitle Transnet without notice to the Service Provider to cancel the contract with immediate effect.
- 23.5 Additional costs incurred by Transnet necessitated by reason of default on the part of the Service Provider in relation to the conditions of this clause 23 will be for the account of the Service Provider.

24 DELETION OF ITEMS TO BE EXCLUDED FROM BID

The Respondent must delete items for which it does not wish to tender.

25 VALUE-ADDED TAX

- 25.1 In respect of local Services, i.e. Services to be rendered in the Republic of South Africa, the prices quoted by the Respondent are to be exclusive of VAT which must be shown separately at the standard rate on the Tax Invoice.

25.2 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.

26 IMPORTANT NOTICE TO RESPONDENTS REGARDING PAYMENT

26.1 Method of Payment

- a) The attention of the Respondent is directed to the Terms and Conditions of Contract which set out the conditions of payment on which Bid price(s) shall be based.
- b) However, in addition to the foregoing the Respondent is invited to submit offers based on alternative methods of payment and/or financing proposals.
- c) The Respondent is required to give full particulars of the terms that will be applicable to its alternative offer(s) and the financial merits thereof will be evaluated and taken into consideration when the Bid is adjudicated.
- d) The Respondent must, therefore, in the first instance, tender strictly in accordance with clause 26.1a) above. Failure to comply with clause 26.1a) above may preclude a Bid from further consideration.

NOTE: The successful Respondent [the **Service Provider**], where applicable, shall be required to furnish a guarantee covering any advance payments, as set out in clause 23 above [*Contractual Securities*].

26.2 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 from the date of receipt by Transnet of the 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 in terms of the contract or order. Incomplete and/or incorrect Tax Invoices shall be returned and the conditional discount period will be recalculated from the date of receipt of the correct documentation.

27 DELIVERY REQUIREMENTS

27.1 Period Contracts

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.

27.2 Progress Reports

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

27.3 Emergency Demands as and when required

If, due to unforeseen circumstances, the rendering of the Services covered by the Bid are required at short notice for immediate delivery, the 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 services 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 Services*” section in the Terms and Conditions of Contract will not be applicable in these circumstances.

28 SPECIFICATIONS AND COPYRIGHT

28.1 Specifications

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 the Services strictly in accordance with the specifications supplied by Transnet.

28.2 Copyright

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

29 BIDS BY OR ON BEHALF OF FOREIGN RESPONDENTS

- 29.1 Bids submitted by foreign principals may be forwarded directly by the principals or by its South African representative or agent to the Secretary of the Acquisition Council or to a designated official of Transnet according to whichever officer is specified in the Bid Documents.
- 29.2 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.
- 29.3 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.
- 29.4 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* as provided for in the Terms and Conditions of Contract.

29.5 If payment is to be made in South Africa, the foreign 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 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.

30 CONFLICT WITH BID DOCUMENT

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

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“PREVIEW COPY ONLY”



Appendix (ii)

**STANDARD TERMS AND CONDITIONS OF CONTRACT
FOR THE PROVISION OF SERVICES TO TRANSNET
[October 2012]**

“PREVIEW COPY ONLY”

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1 INTRODUCTION

When an Agreement is entered into between Transnet SOC Ltd [**Transnet**] and the appointed supplier of Services to Transnet [**the Service Provider**], these Standard Terms and Conditions of Contract, the technical specifications for the Services, a Work Order including such special conditions as may be applicable, and any terms in the associated Bid Documents, exclusively govern the provision of Services by the Service Provider to Transnet.

2 DEFINITIONS

Where the following words or phrases are used in the 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 the Agreement and its associated schedules and/or annexures and/or appendices, including the Work Order(s), specifications for the Services and such special conditions as shall apply to the Agreement, together with the General Tender Conditions and any additional provisions in the associated bid documents tendered by the Service Provider [as agreed in writing between the Parties], which collectively and exclusively govern the provision of Services by the Service Provider to Transnet;
- 2.3 **Background Intellectual Property** means all Intellectual Property introduced and required by either Party to give effect to their obligations under the 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 the Agreement;
- 2.4 **Business Day(s)** means Mondays to Fridays between 07:30 and 16:00, excluding public holidays as proclaimed in South Africa;
- 2.5 **Commencement Date** means [●], notwithstanding the signature date of the Agreement;
- 2.6 **Confidential Information** means any information or other data, whether in written, oral, graphic or in any other form such as in documents, papers, memoranda, correspondence, notebooks, reports, drawings, diagrams, discs, articles, samples, test results, prototypes, designs, plans, formulae, patents, or inventor's certificates, which a Party discloses or provides to the other Party [intentionally or unintentionally, or as a result of one Party permitting the representative of the other Party to visit any of its premises], or which otherwise becomes known to a Party, and which is not in the public domain and includes, without limiting the generality of the term:
 - a) information relating to methods of operation, data and plans of the disclosing Party;
 - b) the contents of the Agreement;
 - c) private and personal details of employees or clients of the disclosing Party or any other person where an onus rests on the disclosing Party to maintain the confidentiality of such information;
 - d) any information disclosed by either Party and which is clearly marked as being confidential or secret;
 - e) information relating to the strategic objectives and planning of the disclosing Party relating to its existing and planned future business activities;

- f) information relating to the past, present and future research and development of the disclosing Party;
 - g) information relating to the business activities, business relationships, products, services, customers, clients and Subcontractors of the disclosing Party where an onus rests on the disclosing Party to maintain the confidentiality of such information;
 - h) information contained in the software and associated material and documentation belonging to the disclosing Party;
 - i) technical and scientific information, Know-How and trade secrets of a disclosing Party including inventions, applications and processes;
 - j) Copyright works;
 - k) commercial, financial and marketing information;
 - l) data concerning architecture, demonstrations, tools and techniques, processes, machinery and equipment of the disclosing Party;
 - m) plans, designs, concepts, drawings, functional and technical requirements and specifications of the disclosing Party;
 - n) information concerning faults or defects in goods, equipment, hardware or software or the incidence of such faults or defects; and
 - o) information concerning the charges, Fees and / or costs of the disclosing Party or its authorised Subcontractors, or their methods, practices or service performance levels actually achieved;
- 2.7 **Copyright** means the right in expressions, procedures, methods of operations or mathematical concepts, computer program codes, compilations of data or other material, literary works, musical works, artistic works, sound recordings, broadcasts, program carrying signals, published editions, photographic works, or cinematographic works of the copyright owner to do or to authorise the doing of certain acts specified in respect of the different categories of works;
- 2.8 **Default** means any breach of the obligations of either Party [including but not limited to fundamental breach or breach of a fundamental term] or any Default, act, omission, negligence or statement of either Party, its employees, agents or Subcontractors in connection with or in relation to the subject of the Agreement and in respect of which such Party is liable to the other;
- 2.9 **Deliverable(s)** means any and all works of authorship, products and materials developed, written, prepared, assembled, integrated, modified or provided by the Service Provider in relation to the Services;
- 2.10 **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;
- 2.11 **Fee(s)** shall mean the agreed Fees for the Services to be purchased from the Service Provider by Transnet, as detailed in the Work Order(s), issued in accordance with the Agreement, as amended by mutual agreement between the Parties and in accordance with the provisions of the Agreement from time to time;
- 2.12 **Foreground Intellectual Property** means all Intellectual Property developed by either Party pursuant to the Agreement;

- 2.13 **Intellectual Property** means Patents, Designs, Know-How, Copyright and Trade Marks and all rights having equivalent or similar effect which may exist anywhere in the world and includes all future additions and improvements to the Intellectual Property;
- 2.14 **Know-How** means all Confidential Information of whatever nature relating to the Intellectual Property and its exploitation as well as all other Confidential Information generally relating to Transnet's field of technology, including technical information, processing or manufacturing techniques, Designs, specifications, formulae, systems, processes, information concerning materials and marketing and business information in general;
- 2.15 **Materials** means the Deliverables, the Service Provider Materials and the Third Party Materials;
- 2.16 **Parties** mean the Parties to the Agreement together with their subsidiaries, divisions, business units, successors-in-title and their assigns;
- 2.17 **Party** means either one of these Parties;
- 2.18 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;
- 2.19 **Permitted Purpose** means any activity or process to be undertaken or supervised by Personnel or employees of one Party during the term of the 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;
- 2.20 **Personnel** means any partner, employee, agent, consultant, independent associate or supplier, Subcontractor and the staff of such Subcontractor, or other authorised representative of either Party;
- 2.21 **Purchase Order(s)** means official orders issued by an operating division of Transnet to the Service Provider for the provision of Services;
- 2.22 **Service(s)** means [●], the Service(s) provided to Transnet by the Service Provider, pursuant to the Work Order(s) in terms of the Agreement;
- 2.23 **Service Level Agreement** or **SLA** means the processes, deliverables, key performance indicators and performance standards relating to the Services to be provided by the Service Provider;
- 2.24 **Subcontract** means any contract or agreement or proposed contract or agreement between the Service Provider and any third party whereby that third party agrees to provide to the Service Provider the Services or any part thereof;
- 2.25 **Subcontractor** means the third party with whom the Service Provider enters into a Subcontract;
- 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 the Agreement at no expense to Transnet, and used by the Service Provider in the performance of the Services;
- 2.27 **Tax Invoice** means the document as required by Section 20 of the Value-Added Tax Act, 89 of 1991, as may be amended from time to time;

- 2.28 **Third Party Material** means software, software development tools, methodologies, ideas, methods, processes, concepts and techniques owned by, or licensed to a third party and used by the Service Provider in the performance of the Services;
- 2.29 **Trade Marks** mean registered Trade Marks and trade mark applications and includes any sign or logo, or combination of signs and/or logos capable of distinguishing the goods or services of one undertaking from those of another undertaking;
- 2.30 **VAT** means Value-Added Tax chargeable in terms of the Value-Added Tax Act, 89 of 1991, as may be amended from time to time; and
- 2.31 **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 the Agreement from time to time.

3 INTERPRETATION

- 3.1 Clause headings in the Agreement are included for ease of reference only and do not form part of the 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, acronym or phrase used in the 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 the 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 The Agreement is an agreement under the terms and conditions of which the Service Provider will arrange for the provision to Transnet of the Services which meet the requirements of Transnet, the delivery of which Services is controlled by means of Purchase Orders to be issued by Transnet and executed by the Service Provider, in accordance with the Agreement.
- 4.2 Such Purchase Orders shall be agreed between the Parties from time to time, subject to the terms of the relevant Work Order(s).
- 4.3 Each properly executed Purchase Order forms an inseparable part of the Agreement as if it were fully incorporated into the body of the Agreement.
- 4.4 During the period of the Agreement, both Parties can make written suggestions for amendments to the Work Order(s), in accordance with procedures set out in clause 28 [*Amendment and Change Control*] below. 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 Work Order(s) conflicts with a like term, provision or condition in the Agreement and/or a Purchase Order, or where the Agreement is silent on the matter, the term, provision or condition in this Master Agreement shall prevail, unless such term or provision or condition in this Master Agreement has been specifically revoked or amended by mutual written agreement between the Parties.

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

5 AUTHORITY OF PARTIES

- 5.1 Nothing in the 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 enter into an agreement in the name of the other; or give any warranty, representation or undertaking on the other's behalf; or create any liability against the other or bind the other's credit in any way or for any purpose whatsoever.

6 WARRANTIES

- 6.1 The Service Provider warrants to Transnet that:
- a) it has full capacity and authority to enter into and to perform the Agreement and that the Agreement is executed by a duly authorised representatives of the Service Provider;
 - b) it will discharge its obligations under the 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.
- 6.2 The Service Provider warrants that it will perform its obligations under the 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 6.3 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.
- 6.3 The Service Provider warrants that for a period of 90 [ninety] 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] 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.

- 6.4 The Service Provider will remedy any defect within 30 [thirty] days of being notified of that defect by Transnet in writing.
- 6.5 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.
- 6.6 The Service Provider shall advise Transnet of the effects of any steps proposed by Transnet pursuant to clause 6.5 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 28 [Amendment and Change Control].
- 6.7 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.

- 6.8 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 the 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.
- 6.9 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 the 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.
- 6.10 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 the 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 the Agreement, to review any safety-related activities, including the coordination of such activities across all parts of its organisation.

7 TRANSNET'S OBLIGATIONS

- 7.1 Transnet undertakes to promptly comply with any reasonable request by the Service Provider for information, including information concerning Transnet's operations and activities, that relates to the Services as may be necessary for the Service Provider to perform the Services, but for no other purpose. However, Transnet's compliance with any request for information is subject to any internal security rules and requirements and subject to the observance by the Service Provider of its confidentiality obligations under the Agreement.
- 7.2 The Service Provider shall give Transnet reasonable notice of any information it requires in accordance with clause 7.1 above.
- 7.3 Subject to clause 13 [*Service Provider's Personnel*], Transnet agrees to provide the Service Provider or its Personnel such access to and use of its facilities as is necessary to allow the Service Provider to perform its obligations under the Agreement.

8 GENERAL OBLIGATIONS OF THE SERVICE PROVIDER

- 8.1 The Service Provider shall:
- a) respond promptly to all complaints and enquiries from Transnet;
 - b) inform Transnet immediately of any dispute or complaint arising in relation to the provision of the Services;
 - c) conduct its business in a professional manner that will reflect positively upon the Service Provider and the Service Provider's Services;
 - d) keep full records clearly indicating all transactions concluded by the Service Provider relating to the performance of the Services and keep such records for at least 5 [five] years from the date of each such transaction;
 - e) obtain, and at all times maintain in full force and effect, any and all licences, permits and the like required under applicable laws for the provision of the Services and the conduct of the business and activities of the Service Provider;
 - f) observe and ensure compliance with all requirements and obligations as set out in the labour and related legislation of South Africa, including the Occupational Health and Safety Act, 85 of 1993;
 - g) comply with all applicable environmental legislation and regulations, and demonstrate sound environmental policies, management and performance; and
 - h) ensure the validity of all renewable certifications, including but not limited to its Tax Clearance Certificate and B-BBEE Verification Certificate, for the duration of the Agreement. Should the Service Provider fail to present Transnet with such renewals as they become due, Transnet shall be entitled, in addition to any other rights and remedies that it may have in terms of the Agreement, to terminate the Agreement forthwith without any liability and without prejudice to any claims which Transnet may have for damages against the Service Provider.
- 8.2 The Service Provider acknowledges and agrees that it shall at all times:
- a) render the Services and perform all its duties with honesty and integrity;
 - b) communicate openly and honestly with Transnet and demonstrate a commitment to performing the Services timeously, efficiently and to the required standards;

- c) endeavour to provide the highest possible standards of service and professionalism, 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 Personnel, as well as all Transnet's officers, employees, agents and consultants, 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 [as further referred to in clause 22 – *Equality and Diversity*];
- g) treat all enquiries from Transnet in connection with the Services with courtesy and respond to all enquiries promptly and efficiently. Where the Service Provider is unable to comply with the provisions of this clause, the Service Provider will advise Transnet of the delay and the reasons therefor and will keep Transnet informed of progress made regarding the enquiry;
- h) when requested by Transnet, provide clear and accurate information regarding the Service Provider's own policies and procedures, excluding Know-How and other Confidential Information, except where a non-disclosure undertaking has been entered into between the Parties;
- i) not allow a conflict of interest to develop between its own interests [or the interests of any of its other customers] and the interests of Transnet;
- j) not accept or offer, nor allow, induce or promote the acceptance or offering of any gratuity, enticement, incentive or gift that could reasonably be regarded as bribery or an attempt to otherwise exert undue influence over the recipient;
- k) not mislead Transnet or its officers, employees and stakeholders, whether by act or omission;
- l) not otherwise act in an unethical manner or do anything which could reasonably be expected to damage or tarnish Transnet's reputation or business image; and
- m) immediately report to Transnet any unethical, fraudulent or otherwise unlawful conduct of which it becomes aware in connection with Transnet or the provision of Services.

9 FEES AND EXPENSES

- 9.1 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.
- 9.2 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].
- 9.3 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.

- 9.4 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.

10 INVOICING AND PAYMENT

- 10.1 Transnet shall pay the Service Provider the amounts stipulated in the relevant schedule or Work Order, subject to the terms and conditions of the Agreement.
- 10.2 Transnet shall pay such amounts to the Service Provider, upon receipt of a valid and undisputed Tax Invoice together with the supporting documentation as specified in the Work Order appended hereto, once the undisputed Tax Invoices, or such portion of the Tax Invoices which are undisputed become due and payable to the Service Provider for the provision of the Services, in terms of clause 10.4 below.
- 10.3 All Fees and other sums payable under the Agreement are exclusive of VAT, which will be payable at the applicable rate.
- 10.4 Unless otherwise provided for in the Work Order(s) appended to the 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] days after date of receipt by Transnet of the statement together with all undisputed Tax Invoices and supporting documentation.
- 10.5 Where the payment of any Tax Invoice, or any part thereof which is not in dispute, is not made in accordance with this clause 10, the Service Provider shall be entitled to charge interest on the outstanding amount, at The Standard Bank of South Africa's prime rate of interest in force, for the period from the due date of payment until the outstanding amount is paid.

11 FEE ADJUSTMENTS

- 11.1 Fees for Services rendered in terms of the Agreement shall be subject to review as indicated in the Work Order(s) annexed hereto from time to time.
- 11.2 No less than 2 [two] months prior to any proposed Fee adjustment, the Parties shall commence negotiations for Fees for the next period or as otherwise indicated and appended hereto.
- 11.3 Should Transnet and the Service Provider fail to reach an agreement on Fees for the successive period, either Party shall be entitled to submit this matter to dispute resolution in accordance with clause 25 of this Master Agreement [*Dispute Resolution*].

12 INTELLECTUAL PROPERTY RIGHTS

12.1 Title to Confidential Information

- a) Transnet will retain all right, title and interest in and to its Confidential Information and Background Intellectual Property and the Service Provider acknowledges that it has no claim of any nature in and to the Confidential Information and Background Intellectual Property that is proprietary to Transnet. For the avoidance of doubt, all the Service Provider's Background Intellectual Property shall remain vested in the Service Provider.
- b) Transnet shall grant to the Service Provider an irrevocable, royalty free, non-exclusive licence to use Transnet's Background Intellectual Property only for the Permitted Purpose. This license shall not permit the Service Provider to sub-license to other parties.

- c) The Service Provider shall grant to Transnet an irrevocable, royalty free, non-exclusive licence to use the Service Provider's Background Intellectual Property for the Permitted Purpose. This licence shall not permit Transnet to sub-license to other parties.
- d) The Service Provider shall grant Transnet access to the Service Provider's Background Intellectual Property on terms which shall be *bona fide* negotiated between the Parties for the purpose of commercially exploiting the Foreground Intellectual Property, to the extent that such access is required.

12.2 Title to Intellectual Property

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

12.3 Title to Improvements

Any improvements, developments, adaptations and/or modifications to the Foreground Intellectual Property, and any and all new inventions or discoveries, based on or resulting from the use of Transnet's Background Intellectual Property and/or Confidential Information shall be exclusively owned by Transnet. The Service Provider shall disclose promptly to Transnet all such improvements, developments, adaptations and/or modifications, inventions or discoveries. The

Service Provider hereby undertakes to sign all documents and do all things as may be necessary to effect, record and perfect the assignment of such improvements, developments, adaptations and/or modifications, inventions or discoveries to Transnet and the Service Provider shall reasonably assist Transnet in attaining, maintaining or documenting ownership and/or protection of the improved Foreground Intellectual Property.

12.4 Unauthorised Use of Confidential Information

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

12.5 Unauthorised Use of Intellectual Property

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

13 SERVICE PROVIDER'S PERSONNEL

- 13.1 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.
- 13.2 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.
- 13.3 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.

- 13.4 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 the Agreement.
- 13.5 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.

14 LIMITATION OF LIABILITY

- 14.1 Neither Party excludes or limits liability to the other Party for:
- a) death or personal injury due to negligence; or
 - b) fraud.
- 14.2 The Service Provider shall indemnify and keep Transnet indemnified from and against liability for damage to any Transnet property [whether tangible or intangible] or any other loss, costs or damage suffered by Transnet to the extent that it results from any act of or omission by the Service Provider or its Personnel in connection with the Agreement. The Service Provider's liability arising out of this clause 14.2 shall be limited to a maximum amount payable in respect of any one occurrence or a series of related occurrences in a single calendar year, such amount to be agreed in writing by the Parties.
- 14.3 Subject always to clauses 14.1 and 14.2 above, the liability of either the Service Provider or Transnet under or in connection with the 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.
- 14.4 Subject to clause 14.1 above, and except as provided in clauses 14.2 and 14.3 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.
- 14.5 If for any reason the exclusion of liability in clause 14.4 above is void or unenforceable, either Party's total liability for all loss or damage under the Agreement shall be as provided in clause 14.3 above.
- 14.6 Nothing in this clause 14 shall be taken as limiting the liability of the Service Provider in respect of clause 12 [*Intellectual Property Rights*] or clause 16 [*Confidentiality*].

15 INSURANCES

- 15.1 Without limiting the liability of the Service Provider under the Agreement, the Service Provider shall take out insurance in respect of all risks for which it is prudent for the Service Provider to insure against, including any liability it may have as a result of its activities under the Agreement for theft, destruction, death or injury to any person and damage to property. The level of insurance will be kept under review by Transnet, on an annual basis, to ensure its adequacy, provided that any variation to the level of such insurance shall be entirely at the discretion of the Service Provider.
- 15.2 The Service Provider shall arrange insurance with reputable insurers and will produce to Transnet evidence of the existence of the policies on an annual basis within 30 [thirty] days after date of policy renewals.
- 15.3 Subject to clause 15.4 below, if the Service Provider fails to effect adequate insurance under this clause 15, 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. The Service Provider shall promptly reimburse Transnet for any premiums paid provided such insurance protects the Service Provider's liability. Transnet assumes no responsibility for such insurance being adequate to protect all of the Service Provider's liability.
- 15.4 In the event that the Service Provider receives written notice from its insurers advising of the termination of its insurance cover referred to in clause 15.1 above or if the insurance ceases to be available upon commercially reasonable terms, the Service Provider shall immediately notify Transnet in writing of such termination and/or unavailability, whereafter either the Service Provider or Transnet may terminate the Agreement on giving the other Party not less than 30 [thirty] days prior written notice to that effect.

16 CONFIDENTIALITY

- 16.1 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 the 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 the 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 the 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 the 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 the 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 the 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 the Agreement as if such person or entity has signed the Agreement. The Party disclosing the Confidential Information shall be responsible for any breach of the provisions of the Agreement by the 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.

16.2 The duties and obligations with regard to Confidential Information in this clause 16 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 the Agreement by that Party, or its Personnel; 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.

16.3 This clause 16 shall survive termination for any reason of the Agreement and shall remain in force and effect from the Commencement Date of the Agreement and 5 [five] years after the termination of the Agreement. Upon termination of the Agreement, all documentation furnished to the Service Provider by Transnet pursuant to the Agreement shall be returned to Transnet including, without limitation all corporate identity equipment including dyes, blocks, labels, advertising matter, printing matter and the like.

17 TOTAL OR PARTIAL FAILURE TO PERFORM THE SCOPE OF SERVICES

Should the Service Provider fail or neglect to execute the work or to deliver any portion of the Service, as required by the terms of the Agreement or Work Order, Transnet may cancel the Agreement or Work Order in so far as it relates to the unexecuted work or rejected portion of the Service, and, in such event, the provision of any remaining commitment shall remain subject in all respects to these conditions.

18 TERM AND TERMINATION

18.1 Notwithstanding the date of signature hereof, the Commencement Date if the Agreement is [●] and the duration shall be for a [●] [[●]] year period, expiring on [●], unless:

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

18.2 Either Party may terminate the Agreement forthwith by notice in writing to the other Party where the other Party has committed a material Default and, where such Default is capable of remedy, has failed to remedy such Default within 30 [thirty] days of receiving notice specifying the Default and requiring its remedy.

18.3 Either Party may terminate the 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 may be 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; or
- d) any similar action, application or proceeding in any jurisdiction to which it is subject.

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

18.5 Transnet may cancel any schedule or Work Order hereto at any time on giving the Service Provider 30 [thirty] days' written notice.

18.6 Notwithstanding this clause 18, either Party may cancel the Agreement without cause by giving 30 [thirty] days prior written notice thereof to the other Party.

19 CONSEQUENCE OF TERMINATION

19.1 Termination in accordance with clause 18 [*Term and Termination*] 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 the Agreement or impliedly do so shall remain in force and in effect.

19.2 On termination of the 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.

19.3 To the extent that any of the Deliverables and property referred to in clause 19.2 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.

19.4 In the event that the Agreement is terminated by the Service Provider under clause 18.2 [*Term and Termination*], or in the event that a Work Order is terminated by Transnet under clause 18.5 [*Term and 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.

19.5 The provisions of clauses 1 [*Definitions*], 6 [*Warranties*], 12 [*Intellectual Property Rights*], 14 [*Limitation of Liability*], 16 [*Confidentiality*], 19 [*Consequence of Termination*], 25 [*Dispute Resolution*] and 29 [*Governing Law*] shall survive termination or expiry of the Agreement.

19.6 If either Party [**the Defaulting Party**] commits a material breach of the Agreement and fails to remedy such breach within 30 [thirty] Business 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 the Agreement, to terminate the Agreement forthwith without any liability and without prejudice to any claims which the Aggrieved Party may have for damages against the Defaulting Party.

19.7 Should:

- a) the Service Provider effect or attempt to effect a compromise or composition with its creditors; or
- b) either Party be provisionally or finally liquidated or placed under judicial management, whether provisionally or finally; or
- c) either Party cease or threaten to cease to carry on its normal line of business or default or threaten to default in the payment of its liabilities generally, or commit any act or omission which would be an act of insolvency in terms of the Insolvency Act, 24 of 1936 [as may be amended from time to time];

then the other Party shall be entitled, but not obliged, to terminate the Agreement on written notice, in which event such termination shall be without any liability and without prejudice to any claims which either Party may have for damages against the other.

20 ASSIGNMENT

Neither Party may assign the benefit of the Agreement or any interest hereunder except with the prior written consent of the other. Further, in the event that Transnet wishes to assign or novate the Agreement to any third party, the Service Provider agrees that it shall not unreasonably withhold or delay its consent to such assignment or novation and that it shall only be entitled to recover from Transnet any reasonable legal costs incurred by it as a direct result of such assignment or novation.

21 FORCE MAJEURE

21.1 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 the Agreement caused by an act of *force majeure* such as acts of God, fire, flood, war, strike, lockout, industrial dispute, government action, laws or regulations, riots, terrorism or civil disturbance, defaults, delays or discontinuance on the part of independent contractors, suppliers, or other circumstances or factors beyond the reasonable control of either Party, and to the extent that the performance of obligations of either Party hereunder is delayed by virtue of the foregoing, any period stipulated for any such performance shall be reasonably extended.

21.2 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 the Agreement in order to accommodate the new circumstances caused by the act of *force majeure*. If a Party fails to agree to such modifications proposed by the other Party within 90 [ninety] days of the act of *force majeure* first occurring, either Party may thereafter terminate the Agreement with immediate notice.

22 EQUALITY AND DIVERSITY

22.1 The Service Provider will not victimise, harass or discriminate against any employee of either Party to the Agreement or any applicant for employment with either Party to the 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.

22.2 Both Parties to the Agreement undertake that they will not, and shall procure that its employees, agents and Subcontractors will not breach any applicable discrimination legislation and any amendments and re-enactments thereof.

23 NON-WAIVER

23.1 Failure or neglect by either Party, at any time, to enforce any of the provisions of the 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 the Agreement.

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

24 PARTIAL INVALIDITY

If any provision of the 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.

25 DISPUTE RESOLUTION

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

25.2 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.

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

25.4 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 25.

25.5 This clause 25 is severable from the rest of the Agreement and shall remain in effect even if the Agreement is terminated for any reason.

25.6 This clause 25 shall not preclude either Party from seeking urgent relief in a court of appropriate jurisdiction, where grounds for urgency exist.

26 ADDRESSES FOR NOTICES

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

a) **Transnet**

(i) For legal notices: [●]
Fax No. [●]
Attention: Legal Counsel

(ii) For commercial matters: [●]
Fax No. [●]
Attention: [●]

b) **The Service Provider**

(i) For legal notices: [●]
Fax No. [●]
Attention: [●]

(ii) For commercial matters: [●]

Fax No. [●]

Attention: [●]

26.2 Any notice shall be addressed to a Party at its physical address or delivered by hand, or sent by facsimile.

26.3 Any notice shall be deemed to have been given:

- a) if hand delivered, on the day of delivery; or
- b) if posted by prepaid registered post, 10 [ten] days after the date of posting thereof; or
- c) 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.

27 WHOLE AND ONLY AGREEMENT

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

27.2 The Parties hereby confirm that the Agreement replaces all other agreements which exist or may have existed in any form whatever between them, with regard to the subject matter dealt with in the Agreement, including any annexures, appendices, schedules or Work Order(s) appended hereto.

28 AMENDMENT AND CHANGE CONTROL

28.1 Any requirement for an amendment or change to the Agreement or to a Work Order shall only be valid if it is in writing, signed by both Parties and added to the Agreement as an addendum hereto.

28.2 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 25 [*Dispute Resolution*].

29 GOVERNING LAW

The 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.

29.1 Change of Law

In the 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 the Agreement as may be appropriate in the circumstances. If, within a reasonable period of time, the Service Provider and Transnet cannot reach agreement on the nature of the changes required or on modification of Fees, Deliverables, warranties, or other terms and conditions, either Party may seek to have the matter determined in accordance with clause 25 [*Dispute Resolution*] above.

30 COUNTERPARTS

The 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 the Agreement by signing any such counterpart.

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TRANSNET LIMITED

E7/1 (July 1998)

**SPECIFICATION FOR WORKS ON, OVER, UNDER OR ADJACENT TO RAILWAY LINES AND NEAR
HIGH VOLTAGE EQUIPMENT**

(This Specification shall be used in Transnet Contracts)

“PREVIEW COPY ONLY”

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1 DEFINITIONS

The following definitions shall apply :

Authorised Person. A person whether an employee of Transnet or not, who has been specially authorised to undertake specific duties in terms of Spoornet's publication SAFETY INSTRUCTIONS: HIGH-VOLTAGE ELECTRICAL EQUIPMENT, and who holds a certificate or letter of authority to that effect.

Barrier. Any device designed to restrict access to "live" high-voltage electrical equipment.

Bond. A short conductor installed to provide electrical continuity.

Contractor. Any person or organisation appointed by Transnet to carry out work on its behalf.

Dead. Isolated and earthed.

Electrical Officer (Contracts). The person appointed in writing by the responsible Electrical Engineer in Transnet as the person who shall be consulted by the Contractor in all electrical matters to ensure that adequate safety precautions are taken by the Contractor.

Executive Officer. The person appointed by Transnet from time to time as the Executive Officer to act according to the rights and powers held by and obligations placed upon him in terms of the Contract.

High-Voltage. A voltage normally exceeding 1 000 volts.

Live. A conductor is said to be "live" when it is at a potential different from that of the earth or any other conductor of the system of which it forms a part.

Near. To be in such a position that a person's body or the tools he is using or any equipment he is handling may come within 3 metres of live exposed high-voltage electrical equipment.

Occupation. An authorisation granted by Transnet for work to be carried out under specified conditions on, over under or adjacent to railway lines.

Occupation Between Trains. An occupation during an interval between successive trains.

Project Manager. The person or juristic person appointed by Transnet from time to time as the Project Manager, to administer the Contract according to the powers and rights held by and obligations placed upon him in terms of the Contract.

Responsible Representative. The responsible person in charge, appointed by a contractor, who has undergone specific training (and holds a certificate) to supervise staff under his control to work on, over, under or adjacent to railway lines and in the vicinity of high-voltage electrical equipment.

Technical Officer. The person or juristic person appointed by Transnet from time to time as the Technical Officer, to administer the Contractor's performance and execution of the Works according to the powers and rights held by and obligations placed upon the Technical Officer in terms of the Contract.

Total Occupation. An occupation for a period when trains are not to traverse the section of line covered by the occupation.

Work on. Work undertaken on or so close to the equipment that the specified working clearances to the live equipment cannot be maintained.

Work Permit. A combined written application and authority to proceed with work on or near dead electrical equipment.

PART A - GENERAL SPECIFICATION**2. AUTHORITY OF OFFICERS OF TRANSNET**

- 2.1 The Contractor shall co-operate with the officers of Transnet and shall comply with all instructions issued and restrictions imposed with respect to the Works which bear on the existence and operation of Transnet's railway lines and high-voltage equipment.
- 2.2 Without limiting the generality of the provisions of 2.1, any duly authorised representative of Transnet, having identified himself, may stop the work if, in his opinion, the safe passage of trains or the safety of Transnet assets or any person is affected. **CONSIDERATIONS OF SAFETY SHALL TAKE PRECEDENCE OVER ALL OTHER CONSIDERATIONS.**

3. CONTRACTOR'S REPRESENTATIVES

- 3.1 The Contractor shall nominate Responsible Representatives of whom at least one shall be available at any hour for call-out in cases of emergency. The Contractor shall provide the Technical Officer with the names, addresses and telephone numbers of the representatives.
- 3.2 The Contractor guarantees that he has satisfied himself that the Responsible Representative is fully conversant with this specification and that he shall comply with all his obligations in respect thereof.

4. OCCUPATIONS AND WORK PERMITS

- 4.1 Work to be done during total occupation or during an occupation between trains or under a work permit shall be done in a manner decided by the Technical Officer and at times to suit Transnet requirements.
- 4.2 The Contractor shall organise the Works in a manner, which will minimise the number and duration of occupations and work permits required.
- 4.3 Transnet will not be liable for any financial or other loss suffered by the Contractor arising from his failure to complete any work scheduled during the period of an occupation or work permit.
- 4.4 The Contractor shall submit to the Technical Officer, in writing, requests for occupations or work permits together with details of the work to be undertaken, at least 14 days before they are required. Transnet does not undertake to grant an occupation or work permit for any particular date, time or duration.
- 4.5 Transnet reserves the right to cancel any occupation or work permit at any time before or during the period of occupation or work permit. If, due to cancellation or change in date or time, the Contractor is not permitted to start work under conditions of total occupation or work permit at the time arranged, all costs caused by the cancellation shall be born by the Contractor except as provided for in clauses 4.6 to 4.8.
- 4.6 When the Contractor is notified less than 2 hours before the scheduled starting time that the occupation or work permit is cancelled, he may claim reimbursement of his direct financial losses caused by the loss of working time up to the time his labour and plant are employed on other work, but not exceeding the period of the cancelled occupation or work permit.
- 4.7 When the Contractor is notified less than 2 hours before the schedule starting time, or during an occupation or work permit, that the duration of the occupation or work permit is reduced, he may claim reimbursement of his direct financial losses caused by the loss of working time due to the reduced duration of the occupation or work permit.
- 4.8 Reimbursement the Contractor for any loss of working time in terms of 4.6 and 4.7, shall be subject to his claims being submitted within 14 days of the event with full details of labour and plant involved, and provided that the Technical Officer certifies that no other work on which the labour and plant could be employed was immediately available.
- 4.9 Before starting any work for which an occupation has been arranged, the Contractor shall obtain

from the Technical Officer written confirmation of the date, time and duration of the occupation.

- 4.10 Before starting any work for which a work permit has been arranged, the Responsible Representative shall read and sign portion C of form No. T.1276 signifying that he is aware of the limits within which work may be undertaken. After the work for which the permit was granted has been completed, or when the work permit is due to be terminated, or if the permit is cancelled after the start, the same person who signed portion C shall sign portion D of the T.1276 form, thereby acknowledging that he is aware that the electrical equipment is to be made "live". The Contractor shall advise all his workmen accordingly.

5. **SPEED RESTRICTIONS AND PROTECTION**

- 5.1 When speed restrictions are imposed by Transnet because of the Contractor's activities, the Contractor shall organise and carry out his work so as to permit the removal of the restrictions as soon as possible.
- 5.2 When the Technical Officer considers protection to be necessary the Contractor shall, unless otherwise agreed, provide all protection including flagmen, other personnel and all equipment for the protection of Transnet's and the Contractor's personnel and assets, the public and including trains. Transnet will provide training free of charge of the Contractor's flagmen and other personnel performing protection duties. The Contractor shall consult with the Technical Officer, whenever he considers that protection will be necessary, taking into account the minimum permissible clearances set out in appendixes 1 to 4.
- 5.3 The Contractor shall appoint a Responsible Representative to receive and transmit any instruction, which may be given by Transnet personnel providing protection.

6. **ROADS ON TRANSNET PROPERTY**

The provision of clause 25 of the E.5, General Conditions of Contract, or clause 23 of the E.5 (MW), General Conditions of Contract for Maintenance Works, shall apply to the use of existing roads on Transnet's property.

7. **CLEARANCES**

- 7.1 No temporary works shall encroach on the appropriate minimum clearances set out in Appendixes 1 to 4.

8. **STACKING OF MATERIAL**

- 8.1 The Contractor shall not stack any material closer than 3 m from the centre line of any railway line without prior approval of the Technical Officer.

9. **EXCAVATION, SHORING, DEWATERING AND DRAINAGE**

- 9.1 Unless otherwise approved by the Technical Officer any excavation adjacent to a railway line shall not encroach on the hatched area shown in Figure 1.

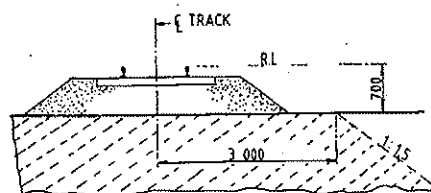


Fig. 1.

- 9.2 The Contractor shall provide at his own cost any shoring, dewatering or drainage of any excavation unless otherwise stipulated elsewhere in the Contract.

9.3 Where required by the Technical Officer, drawings of shoring for any excavation under or adjacent to a railway line shall be submitted and permission to proceed obtained, before the excavation is commenced.

9.4 The Contractor shall prevent ingress of water to the excavation but where water does enter, he shall dispose of it as directed by the Technical Officer.

9.5 The Contractor shall not block, obstruct or damage any existing drains either above or below ground level unless he has made adequate prior arrangements to deal with drainage.

10. **FALSEWORK FOR STRUCTURES**

10.1 Drawings of falsework for the construction of any structure over, under or adjacent to any railway line shall be submitted to the Technical Officer and his permission to proceed obtained before the falsework is erected. Each drawing shall be given a title and a distinguishing number and shall be signed by a registered professional engineer certifying that he has checked the design of the falsework and that the drawings are correct and in accordance with the design.

10.2 After the falsework has been erected and before any load is applied, the Contractor shall submit to the Technical Officer a certificate signed by a registered professional engineer certifying that he has checked the falsework and that it has been erected in accordance with the drawings. Titles and numbers of the drawings shall be stated in the certificate. Notwithstanding permission given by the Technical Officer to proceed, the Contractor shall be entirely responsible for the safety and adequacy of the falsework.

11. **PILING**

11.1 The Technical Officer will specify the conditions under which piles may be installed on Transnet property.

12. **UNDERGROUND SERVICES**

12.1 No pegs or stakes shall be driven or any excavation made before the Contractor has established that there are no underground services, which may be damaged thereby.

12.2 Any damage shall be reported immediately to the Technical Officer, or to the official in charge at the nearest station, or to the traffic controller in the case of centralised traffic control.

13. **BLASTING**

13.1 The provisions of clause 23 of the E.5, General Conditions of Contract or clause 21 of the E.5 (MW), General Conditions of Contract for Maintenance Work, shall apply to all blasting operations undertaken in terms of the Contract.

13.2 The Contractor shall provide proof that he has complied with the provisions of clauses 10.17.1 to 10.17.4 of the Explosives Regulations (Act 26 of 1956 as amended).

13.3 Blasting within 500m of a railway line will only be permitted during intervals between trains. A person appointed by the Technical Officer, assisted by flagmen with the necessary protective equipment, will be in communication with the controlling railway station. Only this person will be authorised to give the Contractor permission to blast, and the Contractor shall obey his instructions implicitly regarding the time during which blasting may take place.

13.4 The flagmen described in 13.3, where provided by Transnet, are for the protection of trains and Transnet property only, and their presence does not relieve the Contractor in any manner of his responsibilities in terms of Explosives Act or Regulations, or any obligation in terms of this Contract.

13.5 The person described in 13.3 will record in a book provided and retained by Transnet the dates and times -

- (i) when each request is made by him to the controlling station for permission to blast;
- (ii) when blasting may take place;

- (iii) when blasting actually takes place; and
- (iv) when he advises the controlling station that the line is safe for the passage of trains.

13.6 Before each blast the Contractor shall record in the same book, the details of the blast to be carried out. The person appointed by the Technical Officer and the person who will do the blasting shall both sign the book whenever an entry described in 13.5 is made.

13.7 The terms of clause 27 hereof shall be strictly adhered to.

14. **RAIL TROLLEYS**

14.1 The use of rail trolleys or trestle trolleys on a railway line for working on high voltage equipment will be permitted only if approved by the Technical Officer and under the conditions stipulated by him.

14.2 All costs in connection with such trolley working requested by the Contractor shall, unless otherwise agreed, be borne by the Contractor, excluding the costs of any train protection services normally provided free of charge by Transnet.

15. **SIGNAL TRACK CIRCUITS**

15.1 Where signal track circuits are installed, the Contractor shall ensure that no material capable of conducting an electrical current makes contact between rails of a railway line/lines.

15.2 No signal connections on track-circuited tracks shall be severed without the Technical Officer's knowledge and consent.

16. **PENALTY FOR DELAYS TO TRAINS**

16.1 If any trains are delayed by the Contractor and the Technical Officer is satisfied that the delay was avoidable, a penalty will be imposed on the Contractor of R5 000 per hour or part thereof for the period of delay, irrespective of the number of trains delayed.

PART B - ADDITIONAL SPECIFICATION FOR WORK NEAR HIGH-VOLTAGE ELECTRICAL EQUIPMENT

17. **GENERAL**

- 17.1 This specification is based on the contents of Spoornet's publication SAFETY INSTRUCTIONS, HIGH-VOLTAGE ELECTRICAL EQUIPMENT, as amended, a copy of which will be made available on loan to the Contractor for the duration of the contract. These instructions apply to all work near live high-voltage equipment maintained and/or operated by Transnet, and the onus rests on the Contractor to ensure that he obtains a copy.
- 17.2 The Contractor's attention is drawn in particular to the contents of Part I, Sections 1 and 2 of the Safety Instructions : High-Voltage Electrical Equipment.
- 17.3 The Safety Instructions : High-Voltage Electrical Equipment cover the minimum safety precautions which must be taken to ensure safe working on or near high-voltage electrical equipment, and must be observed at all times. Should additional safety measures be considered necessary because of peculiar local conditions, these may be ordered by and at the discretion of the Electrical Officer (Contracts).
- 17.4 This specification must be read in conjunction with and not in lieu of the Safety Instructions : High-Voltage Electrical Equipment.
- 17.5 The Contractor shall obtain the approval of the Electrical Officer (Contracts) before any work is done which causes or could cause any portion of a person's body or the tools he is using or any equipment he is handling, to come within 3 metres of any live high-voltage equipment.
- 17.6 The Contractor shall regard all high-voltage equipment as live unless a work permit is in force.
- 17.7 Safety precautions taken or barriers erected shall comply with the requirements of the Electrical Officer (Contracts), and shall be approved by him before the work to be protected is undertaken by the Contractor. The Contractor shall, unless otherwise agreed, bear the cost of the provision of the barriers and other safety precautions required, including the attendance of Transnet staff where this is necessary.
- 17.8 No barrier shall be removed unless authorised by the Electrical Officer (Contracts).

18. **WORK ON BUILDINGS OR FIXED STRUCTURES**

Before any work is carried out or measurements are taken on any part of a building, fixed structure or earthworks of any kind above ground level situated within 3 metres of live high-voltage equipment, the Electrical Officer (Contracts) shall be consulted to ascertain the conditions under which the work may be carried out.

- 18.2 No barrier erected to comply with the requirements of the Electrical Officer (Contracts) shall be used as temporary staging or shuttering for any part of the Works.
- 18.3 The shuttering for bridge piers, abutments, retaining walls or parapets adjacent to or over any track may be permitted to serve as a barrier, provided that it extends at least 2,5 metres above any working level in the case of piers, abutments and retaining walls and 1,5 metres above any working level in the case of parapets.

19. **WORK DONE ON OR OUTSIDE OF ROLLING STOCK, INCLUDING LOADING OR UNLOADING**

- 19.1 No person shall stand, climb or work whilst on any platform, surface or foothold higher than the normal unrestricted places of access, namely -
- (i) the floor level of trucks;
 - (ii) external walkways on diesel, steam and electric locomotives, steam heat vans, etc. and

(iii) walkways between coaches and locomotives.

When in these positions, no person may raise his hands or any equipment or material he is handling above his head.

- 19.2 In cases where the Contractor operates his own rail mounted equipment, he shall arrange for the walkways on this plant to be inspected by the Electrical Officer (Contracts) and approved, before commencement of work.
- 19.3 The handling of long lengths of material such as metal pipes, reinforcing bars, etc should be avoided, but if essential they shall be handled as nearly as possible in a horizontal position below head height.
- 19.4 The Responsible Representative shall warn all persons under his control of the danger of being near live high-voltage equipment, and shall ensure that the warning is fully understood.
- 19.5 Where the conditions in 19.1 to 19.3 cannot be observed the Electrical Officer (Contracts), shall be notified. He will arrange for suitable Safety measures to be taken. The Electrical Officer (Contracts), may in his discretion and in appropriate circumstances, arrange for a suitable employee of the Contractor to be specially trained by Spoornet and at its costs, as an Authorised Person to work closer than 3 metres from live overhead conductors and under such conditions as may be imposed by the Senior responsible Electrical Engineer in Transnet.

20. USE OF EQUIPMENT

20.1 Measuring Tapes and Devices

20.1.1 Measuring tapes may be used near live high-voltage equipment provided that no part of any tape or a person's body comes within 3 metres of the live equipment.

20.1.2 In windy conditions the distance shall be increased to ensure that if the tape should fall it will not be blown nearer than 3 metres from the live high-voltage equipment.

20.1.3 Special measuring devices longer than 2 metres such as survey staves and rods may be used if these are of non-conducting material and approved by the responsible Electrical Engineer in Transnet, but these devices must not be used within 3 metres of live high-voltage equipment in rainy or wet conditions.

20.1.4 The assistance of the Electrical Officer (Contracts) shall be requested when measurements within the limits defined in 20.1.1 to 20.1.3 are required.

20.1.5 The restrictions described in 20.1.1 to 20.1.3 do not apply on a bridge deck between permanent parapets nor in other situations where a barrier effectively prevents contact with the live high-voltage equipment.

20.2 Portable Ladders

20.2.1 Any type of portable ladder longer than 2 metres may only be used near live high-voltage equipment under the direct supervision of the Responsible Representative. He shall ensure that the ladder is always used in such a manner that the distance from the base of the ladder to any live high-voltage equipment is greater than the fully extended length of the ladder plus 3 metres. Where these conditions cannot be observed, the Electrical Officer (Contracts) shall be advised, and he will arrange for suitable safety measures to be taken.

21. CARRYING AND HANDLING MATERIAL AND EQUIPMENT

- 21.1 Pipes, scaffolding, iron sheets, reinforcing bars and other material, which exceeds 2 metres in length, shall be carried completely below head height near live high-voltage equipment. For maximum safety two or more persons so as to maintain it as nearly as possible in a horizontal position should carry such material. The utmost care must be taken to ensure that no part of the material comes within 3 metres of any live high-voltage equipment.
- 21.2 Long lengths of wire or cable shall never be run out in conditions where a part of a wire or cable can come within 3 metres of any live high-voltage equipment unless the Electrical Officer (Contracts) has been advised and has approved appropriate safety precautions.
- 21.3 The presence of overhead power lines shall always be taken account of especially when communications lines or cables or aerial cables, stay wires, etc. are being erected above ground level.

22. PRECAUTIONS TO BE TAKEN WHEN ERECTING OR REMOVING POLES, ANTENNAE, TREES ETC.

- 22.1 A pole may be handled for the purpose of erection or removal near high-voltage equipment under the following conditions:
- (i) If the distance between the point at which the pole is to be erected or removed and the nearest live high-voltage equipment is more than the length of the pole plus 3 metres, the work shall be supervised by the Responsible Representative.
 - (ii) If the distance described in (i) is less than the length of the pole plus 3 metres, the Electrical Officer (Contracts) shall be consulted to arrange for an Authorised Person to supervise the work and to ensure that the pole is earthed where possible. The pole shall be kept in contact with the point of erection, and adequate precautions shall be taken to prevent contact with live high-voltage equipment.
- 22.2 The cost of supervision by an Authorised Person and the provision of earthing shall, unless otherwise agreed, be borne by the Contractor.
- 22.3 The provisions of clauses 22.1 and 22.2 shall also apply to the erection or removal of columns, antennae, trees, posts, etc.

23. USE OF WATER

- 23.1 No water shall be used in the form of a jet if it can make contact with any live high-voltage equipment or with any person working on such equipment.

24. USE OF CONSTRUCTION PLANT

- 24.1 "Construction plant" entails all types of plant including cranes, piling frames, boring machines, excavators, draglines, dewatering equipment and road vehicles with or without lifting equipment.
- 24.2 When work is being undertaken in such a position that it is possible for construction plant or its load to come within 3 metres of live high-voltage equipment, the Electrical Officer (Contracts) shall be consulted. He will arrange for an Authorised Person to supervise the work and to ensure that the plant is adequately earthed. The Electrical Officer (Contracts) will decide whether further safety measures are necessary.
- 24.3 The cost of any supervision by an Authorised Person and the provision of earthing shall, unless otherwise agreed, be borne by the Contractor.
- 24.4 When loads are handled by cranes, non-metallic rope hand lines shall be used, affixed to such loads so as to prevent their swinging and coming within 3 metres of live high-voltage equipment.
- 24.5 Clauses 24.1 to 24.4 shall apply mutatis mutandis to the use of maintenance machines of any nature.

25. **WORK PERFORMED UNDER DEAD CONDITIONS UNDER COVER OF A WORK PERMIT**

25.1 If the Responsible Representative finds that the work cannot be done in safety with the high-voltage electrical equipment live, he shall consult the Electrical Officer (Contracts) who will decide on the action to be taken.

25.2 If a work permit is issued the Responsible Representative shall -

- (i) before commencement of work ensure that the limits within which work may be carried out have been explained to him by the Authorised Person who issued the permit to him, and that he fully understands these limits.
- (ii) sign portion C of the permit before commencement of work;
- (iii) explain to all persons under his control the limits within which work may be carried out, and ensure that they fully understand these limits;
- (iv) care for the safety of all persons under his control whilst work is in progress; and
- (v) withdraw all personnel under his control from the equipment on completion of the work before he signs portion D of the work permit.

26. **TRACTION RETURN CIRCUITS IN RAILS**

26.1 DANGEROUS CONDITIONS CAN BE CREATED BY REMOVING OR SEVERING ANY BOND.

26.2 Broken rails with an air gap between the ends, and joints, at which fishplates are removed under "broken bond" conditions, are potentially lethal. The rails on either side of an air gap between rail ends on electrified lines shall not be touched simultaneously until rendered safe by Transnet personnel.

26.3 The Contractor shall not break any permanent bonds between rails or between rails and any structure. He shall give the Technical Officer at least 7 days written notice when removal of such bonds is necessary.

26.4 No work on the track which involves interference with the traction return rail circuit either by cutting or removing the rails, or by removal of bonds shall be done unless the Electrical Officer (Contracts) is consulted. He will take such precautions as may be necessary to ensure continuity of the return circuit before permitting the work to be commenced.

27. **BLASTING**

27.1 The Contractor shall obtain the permission of the Electrical Officer (Contracts) before blasting, and shall give at least 14 days notice of his intention to blast.

27.2 No blasting shall be done in the vicinity of electrified lines unless a member of Transnet's electrical personnel is present.

27.3 The terms of clause 13 hereof shall be strictly adhered to.

28. **HIGH-VOLTAGE ELECTRICAL EQUIPMENT NOT MAINTAINED AND/OR OPERATED BY TRANSNET**

Where the work is undertaken on or near high-voltage electrical equipment which is not maintained and/or operated by Transnet, the Occupational Health and Safety Act No. 85 of 1993, and Regulations and Instructions, or the Mines Health and Safety Act (Act 29 of 1996), shall apply.

Such equipment includes: -

- (i) Eskom and municipal equipment;
- (ii) the Contractor's own power supplies; and

- (iii) electrical equipment being installed but not yet taken over from the Contractor.

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