



Transnet Request for Quotation No BLE/52091  
[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/52091**

**ERECT PALISADE FENCE NEAR MONTE VISTA STATION AND N1 CITY FOR A  
PERIOD OF 1 MONTH (4 WEEKS).**

**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)**
- 5. Standard Terms and Conditions of Contract (Form ST&C - Services)**
- 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)**

“PREVIEW COPY ONLY”

**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.

|   |
|---|
| <p><b>THE SECRETARIAT</b><br/>Acquisition Council<br/>P O Box 2986<br/>Bellville<br/>7535</p> |
|---|

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

|  |
|--|
| <p><b>THE SECRETARIAT</b><br/>Acquisition Council<br/>Ground Floor<br/>Transnet Park Building<br/>Modderdam Road<br/>Bellville</p> |
|--|

The measurements of the "bidder 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 bidder 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/52091  |
| Description  | : Erect palisade fence near Monte Vista Station and N1 City. |
| <b>Closing date and time : 05 February 2013 at 10h00</b> |  |

## 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

EMEs 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     |               |

| Returnable Documents   | Submitted<br>[√] |
|--|------------------|
| 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

##### PART A: GENERAL

#### A.1 SCOPE OF WORK :

This specification covers the **erection of Palisade Fencing along the Transnet boundary between Monte Vista Station and N1 City on the right hand side 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.

#### A.2 SUFFICIENCY OF BIDDER

- A2.1 The contract will only be awarded to a bidder who has experience in the field of erecting Palisade fencing.
- A2.2 The Certificate of Attendance of the Briefing Session/Site Meeting signed by the Technical Officer or his/her deputy (compulsory) must be submitted with the bidder. The attendance of this briefing session/site meeting is compulsory.

#### A.3 DURATION OF CONTRACT :

Contract will be for a period of 4 weeks (1 month). The contract will commence within 7 working days of the date of acknowledgement of receipt of the notification of acceptance of bidder with Transnet Freight Rail.

Transnet Freight Rail requires that the works be completed within four (4) weeks from the date of commencement of the work.

**A.4 PENALTIES FOR LATE COMPLETION:**

A penalty for late completion as per Clause A.3 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 TO BE SUPPLIED BY TRANSNET FREIGHT RAIL:**

Transnet Freight Rail will provide all the material for the Palisade Fence ( in sections ) except for the bolts and shear off nuts as well as the sand, stone, cement and water.

**A.6 TO BE SUPPLIED BY THE CONTRACTOR:**

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

**A.7. SAFE KEEPING OF MATERIAL :**

The Contractor shall be responsible for the safekeeping, proper staging and handling of all fencing materials.

All packaging or waste material associated with the material will be taken off site and properly disposed of by the Contractor.

**A.8 TO BE PROVIDED BY THE CONTRACTOR :**

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.

1. 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. All fuel for small plant tools, lubricants, etc.
3. Staff accommodations complete with ablutions and kitchen facilities.
4. Fire prevention and fire fighting measures.
5. The maintenance, leasing, hiring and insurance of this equipment will solely rest with the Contractor.
6. The Contractor shall be responsible for his own arrangements with regards to the transport and safe staging of this equipment.

**8.2** 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.

**8.3** 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.

1. 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.
2. Contractor's staff working on the site may not wear any form of visible red or green outer garments.
3. 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.
- 4 The making of fires, for whatever purpose, on Transnet property is strictly prohibited.

#### **A.9 ADVANCE PAYMENT FOR MATERIAL AND/OR PLANT AND/OR EQUIPMENT SUPPLIED BY THE CONTRACTOR:**

No advancement of any monies will be considered.

#### **A.10 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.11 SCHEDULE OF QUANTITIES AND PRICES**

The quantities in the Schedule of Quantities and Prices, located at section 6 (Service Fees and Costs), are estimated and may be more or less than stated. The Contractor shall submit with his/her bidder a complete and detailed priced Schedule (prepared in black ink) for the Works.

The Bidder 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.

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.

#### **A.12 PROTECTION FROM STORMS AND FLOODS :**

The sum allowed for in the Schedule of Quantities shall be deemed to be full compensation for any damage to the works due to storms, rains, floods, storm-water or subsurface water.

Under no circumstances shall the **Contractor** be entitled to any additional payment in this regard. The **Contractor** shall accept full responsibility and costs to handle water from any source on site.

**A13 SITE MEETINGS**

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.

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

**A14.** 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.

**A14.1** 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.

**A15 SITE BOOKS**

**A15.1** 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.

**A15.2** 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.

**A15.3** 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.

**A15.4** 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.

**A16 INFORMATION TO BE PROVIDED WITH BIDDER**

**A16.1** 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.

**A16.2** Whether the bidder 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.

**A16.3** Proof of inspection of all sites on the enclosed Site Inspection Certificate.

**A16.4** 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.

A16.5 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.17 SAFETY REQUIREMENTS:**

##### **1. High voltage electrical equipment : (If applicable)**

1.1. 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

1.2. 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.

1.3. **Protection:** The Contractor shall provide all protection functions at the work area as required by the Technical Officer and according to the rules and regulations as stipulated in the **Infrastructure safety guidelines, page 51 to 72.**

The **Contractor** shall be liable for costs incurred by Transnet as a result of failure on the part of the **Contractor** or his personnel, to observe any safety and security regulations of Transnet regarding the entry of personnel into all sites. Transnet will determine such costs.

#### **A.18 TECHNICAL REQUIREMENTS AND EXPERTISE :**

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 bidder.

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 bidder.

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.

**FAILURE TO COMPLY WITH SUB CLAUSES A.18.1 TO A.18.3 WILL AUTOMATICALLY DISQUALIFY THE BIDDERER.**

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.19 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.20 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 bidder rates exists, will be dealt with according to Clause A13 hereto.

The sum allowed for in Schedule of Quantities (Section 6) shall be deemed to be full compensation for the location and protection of existing services.

#### **A21 DAMAGE TO ADJOINING PROPERTY**

The Contractor shall ensure that no damage occurs to adjoining property.

The Contractor shall negotiate with the property owner(s) for permission to work on their land for the purpose of carrying out the work (if necessary)

The Contractor shall ensure that his workmen do not abuse any permissions granted by adjoining property owners allowing them on to their property for the execution of the work.

## PART B – PROJECT SPECIFICATION

### B.1 GENERAL.

This specification covers the **erection of Palisade Fencing along the Transnet boundary near N1 City and Monte Vista Station 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 Palisade 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 bidder 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 bidder 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:

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



**B3 WORK AREA.**

From the end of the exist fence ( near Monte Vista Station ) to the Palisade fence ( on N1 City's side ) for a distance of  $\pm 284\text{m}$  on the right hand side as will be shown on site. The fence is to be erected on the existing boundary line.

**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  $300\text{mm} \times 300\text{mm}$  to accommodate the post.

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

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

**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 **1.8m** high Steel Palisade fence along the existing Transnet boundary starting at the . Palisade fence ( on N1 City's side ) towards Monte Vista Station for a distance of  $\pm 250\text{m}$  on the right hand side as will be shown on site.

**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 bidder. 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 Palisade fence shall be measured and paid for per finished linear metre. Tendered rates must therefore include supply and delivery of all materials 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”

---

Respondent's Signature

---

Date & Company Stamp

**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                            | Clearing and cleaning 2m wide ( 1m on both sides of the fence ) | m    | 284 |      |          |
| 2                            | Erecting of palisade fence                                      | m    | 284 |      |          |
| <b>TOTAL (Excluding VAT)</b> |   |      |     |      | <b>R</b> |

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-authorised additional expenses incurred, provided that the authorised expenses are supported by acceptable documentary proof of expenditure incurred [where this is available]. Any amounts due in terms of these Terms shall be paid to the 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.

**"PREVIEW COPY ONLY"**

\_\_\_\_\_  
Respondent's Signature

\_\_\_\_\_  
Date & Company Stamp

**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."*

**“PREVIEW COPY ONLY”**

---

Respondent's Signature

---

Date & Company Stamp

**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."*

**“PREVIEW COPY ONLY”**

\_\_\_\_\_  
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 telephone 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        |  |

TRANSNET



**Appendix (i)**

**GENERAL BID CONDITIONS - SERVICES**

**[October 2012]**

**“PREVIEW COPY ONLY”**

TRANSNET



**Appendix (i)**

**GENERAL BID CONDITIONS - SERVICES**

**[October 2012]**

**“PREVIEW COPY ONLY”**

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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.