

**TRANSNET SOC LIMITED**  
**(REGISTRATION NO 1990/000900/30)**

**trading as TRANSNET FREIGHT RAIL**  
**(hereinafter referred to as TRANSNET FREIGHT RAIL)**

**RFQ PTH/51846**

**PROJECT SPECIFICATIONS**

**ANNUAL CONTRACT**

TO READ THE ELECTRICITY METERS OF THE TRANSNET FREIGHT RAIL, REAL ESTATE MANAGEMENT, ASSETS AT CAMBRIDGE, CHISELHURST AND EAST LONDON AREA ON A MONTHLY BASIS. THIS CONTRACT WILL BE VALID FOR A PERIOD OF ONE YEAR.

**SCOPE OF WORK:**

Monthly reading of an estimated amount of 42 electricity meters, of Transnet Freight Rail, Real Estate Management, at Cambridge, Chisselhurst and East-London Area.

**1. MONTHLY READING OF ELECTRICAL METERS:**

- 1.1. Monthly Transnet will supply a list consisting of electricity meters to be read. These lists will be sent on or before the first day of the reading month.
- 1.2. Monthly Transnet will provide a job order.
- 1.3. Readings must be read each month and recorded on the list provided and returned to this office by the fifth day of the month. These readings must not be late for capturing reasons.
- 1.4. A meter from the list provided can be added or removed on a monthly basis according to operational requirements.
- 1.5. Transnet will pay the rate per meter as per schedule of rates and this will be for the duration of the contract.
- 1.6. Meters must be read between the first day of each month and the fifth day of each month and submitted as per fax to this office by the fifth day of each month. Fax number: 041-507-2395
- 1.7. If you find that a certain meter couldn't be read, an explanation must be submitted on the meter reading list, stating reasons why the reading could not be obtained. All efforts must be made to read that meter the following month.
- 1.8. All previous experience must be filled in on document E.4C. Previous experience. Previous experience will be to the successful bidder's advantage.
- 1.9. If the amount of meters to be read changes, the cost per meter will be applicable.
- 1.10. A copy of the job order must accompany each invoice for payment purposes.
- 1.11. It is the meter reader's responsibility to see that Transnet receives the invoice. Transnet will not take any liability for non-payment of invoices submitted due to loss in any way by the postal system.
- 1.12. A key will be supplied by Transnet to the successful Tenderer and it will be the responsibility of the Tenderer to return the key on completion of the contract. Final payment will only be made when this key has been returned to the project manager. No duplicates may be made of this key.

2. **LIABILITY**

2.1. The liability and safety of the meter reader will be the responsibility of the contractor and Transnet Freight Rail will not take any responsibility in this regard.

3. **RESPONSIBILITIES**

3.1. The contractor must have a fax machine on his premises as to be able to receive and send faxes to and from Transnet Freight Rail.

3.2. The successful tenderer must prove his ability to read any electrical meter correctly.

3.3. The meter reader must be able to visually check the meters and report any form of tampering, open connections or faulty meters or broken seals to Transnet Freight Rail immediately.

4. **PENALTIES**

4.1. Failing to submit the readings by the 6<sup>TH</sup> day of the month, a penalty of R200.00 per day will be charged after the 6<sup>th</sup> day.

5. **SITE DIARY**

5.1. The contractor shall provide a diary, in triplicate to record all day-to-day incidents that could occur during the contract period.

6. **ACCESS TO SITE**

6.1. The areas are restricted and the contractor must ensure he complies with the regulations of Transnet Freight Rail in every way. The Contractor and shall be required to apply for permission to enter the restricted area in writing.

7. **RISK ASSESMENT**

7.1. Contractor to wear luminous safety vest at all times on site.

7.2. Contractor must wear safety foot protection while working on site

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**TRANSNET FREIGHT RAIL**  
an Operating Division of  
**TRANSNET SOC LIMITED**  
(Registration No. 1990/000900/30)

## **REQUEST FOR QUOTATION (“RFQ”)**

**RFQ NUMBER PTH51846**

**MONTHLY READING OF ELECTRICITY METERS ( +/- 40 ) IN THE EAST LONDON ,  
CHISELHURST AND EAST LONDON AREA FOR A PERIOD OF A YEAR : :**

**ISSUE DATE : 3-Jul-12**  
**CLOSING DATE : 24-Jul-12**  
**CLOSING TIME :10h00**

**Please note that late responses and those delivered or posted  
to the incorrect address will be disqualified.**



**RFQ NUMBER : PTH 51846**

<b>Section</b>	<b>Pages to be completed</b>
1. <b>Notice to Bidders</b>	<b>6 ,8</b>
<b>Broad-based Black Economic-Empowerment (5,6)</b>	
2. <b>Background</b>	<b>10,11</b>
<b>Evaluation Criteria( 12)</b>	
<b>Declaration Form</b>	<b>13,14,15,16</b>
<b>Important Notice ( Complaints) (17)</b>	
<b>Index (18) General and Special conditions (19-23)</b>	
<b>Specification ( 23A-B)</b>	
3. <b>Quotation Form</b>	<b>24,25,26,27,28</b>
<u><b>Returnable documents (29)</b></u>	
4. <b>Resolution of Board of Directors (Respondent’s Representative)</b>	<b>30</b>
5. <b>Certificate of Acquaintance with RFQ Documents</b>	<b>31</b>
6. <b>Service Fees and Costs / Rates</b>	<b>33</b>
<b>Tax Declaration (34-38)</b>	
7 <b>General Tender Conditions (CSS5 – Services)(39 Attached)</b>	
8 <b>Standard Terms and Conditions of Contract (US7 - Services)( attached)</b>	
<u>9 <b>Certificate of Attendance ( Must be signed at tender briefing) 41</b></u>	
10 <b>Non-Disclosure Agreement ( 42 only when contract is awarded)</b>	
11 <b>Safety Arrangements ( 43-53 ) when contract is awarded)</b>	
12 <b>Suppliers code of conduct (Attached)</b>	
<b><u>NB: ALL PAGES TO BE SIGNED ( BOTTOM LEFT ) FIRMS STAMP/NAME ( BOTTOM RIGHT)</u></b>	

\_\_\_\_\_  
Respondent’s Signature

\_\_\_\_\_  
Date and Company Stamp



## SECTION 1

**RFQ NUMBER : PTH51846**

**FOR: MONTHLY READING OF ELECTRICITY METERS ( +/- 40 ) IN THE EAST LONDON , CHISELHURST AND EAST LONDON AREA FOR A PERIOD OF A YEAR ,**

### NOTICE TO BIDDERS

1. Quotations are requested from interested persons, companies, close corporations or enterprises (hereinafter referred to as the "Respondent(s)") to supply the above-mentioned requirement to Transnet.

On or after 3-Jul-12 the RFQ documents may be inspected at, and are obtainable from the office of Transnet Freight Rail , ( R.Blom ), Room 105, 1st Floor, SCS Building, Stow Road, Uitenhage or with prior arrangements (up to the date prior to the tender briefing) with R.Blom tel 041 994 2045 the documents can be collected at the site of the tender briefing)

Any additional information or clarification will be faxed or emailed to all potential Respondents, if necessary.

- 2 A compulsory pre-Quotation site meeting and/or briefing session will be conducted at site on the 11-Jul-12, at 14:00 AT TRANSNET CLIENT CENTRE, 46 NORTH STREET , EAST LONDON for a period of ± 40 min.. (Respondent to provide own transportation and accommodation).

Respondents failing to attend the compulsory site meeting and/or briefing session will be disqualified.

Respondents without a valid RFQ document or (made arrangements) in their possession will not be allowed to attend the site meeting and/or briefing session.

**The briefing session will start punctually at 14:00 AT TRANSNET CLIENT CENTRE, 46 NORTH STREET , EAST LONDON** For specific queries before the closing of the RFQ, the following Transnet employee(s) may be contacted:

Name : D.Diedericks  
Division : Transnet Freight Rail, SCS  
Tel: : 041 994 2033 Fax 041 994 2024  
E'mail : Dixie.Diedericks@transnet .net

: Quotations must reach Transnet Freight Rail (address as indicated) before the closing hour on the date shown below, and must be enclosed in a sealed envelope which must have inscribed on the outside:

<b>RFQ No</b>	<b>: PTH 51846</b>
<b>Description</b>	<b>: MONTHLY READING OF ELECTRICITY METERS ( +/- 40 ) IN THE EAST LONDON , CHISELHURST AND EAST LONDON AREA FOR A PERIOD OF A YEAR</b>
<b>Closing date and time</b>	<b>: 24-Jul-12 at 10h00</b>
<b>Closing address (refer options paragraph 4 below)</b>	

#### 4. DELIVERY INSTRUCTIONS FOR THIS RFQ

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

\_\_\_\_\_  
Date and Company Stamp



- 4.1 **If posted**, the envelope must be addressed to Transnet Freight Rail, P.O.Box 95 Uitenhage 6230 and must be dispatched in time for sorting by the Post Office to reach the Secretary before the closing time of the RFQ. In the event of the late receipt of a Quotation, the Respondent's franking machine impression will not be accepted as proof that the response was posted in time.
- 4.2 **If delivered by hand or by courier**, the envelope is to be deposited in the TRANSNET tender box which is located at the address below and should be addressed as follows:

**TRANSNET FREIGHT RAIL  
SCS BUILDING  
1 st Floor ( passage)  
Tenderbox  
STOW ROAD  
UITENHAGE  
6229**

The measurements of the "tender slot" are 370 mm wide x 45 mm 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 45 mm thick) must be split into two or more files, and placed in separate envelopes.

**It should also be noted that the above tender box is only accessible weeks days from 7:30 to 12:45 and 13:30 to 16:00**

- 4.3 **If posted**, the envelope must be addressed as follows .

**TRANSNET FREIGHT RAIL  
P.O.Box 95  
UITENHAGE  
6229**

- 5. Please note that this RFQ closes punctually at 10:00 on Tuesday 24-Jul-12.
- 6. If responses are not posted or delivered as stipulated herein, such responses will not be considered and will be treated as "UNRESPONSIVE."
- 7. NO EMAIL OR FACSIMILE RESPONSES WILL BE CONSIDERED.
- 8. The responses to this RFQ will be opened as soon as practicable after the expiry of the time advertised for receiving them.
- 9. Transnet shall not, at the opening of responses, disclose to any other company any confidential details pertaining to the Quotations / information received, i.e. service fees, deliverables, etc. The names and location of the Respondents will, however, be divulged to other Respondents upon request.
- 10. Envelopes must not contain documents relating to any RFQ other than that shown on the envelope. All envelopes must reflect the return address of the Respondent on the reverse side.



11. No slips are to be attached to the response documents. Any additional conditions must be embodied in an accompanying letter. Subject only to clause 22 (*Alterations made by the Respondent to Tendered Prices*) of the General Tender Conditions, alterations, additions or deletions must not be made by the Respondent to the actual RFQ documents.

12. **BROAD-BASED BLACK ECONOMIC EMPOWERMENT (“BBEE”)**

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

Transnet would therefore prefer to do business with local business enterprises who share these same values and who are prepared to contribute to meaningful B-BBEE initiatives [including, but not limited to subcontracting and Joint Ventures] as part of their tendered responses. Transnet will accordingly allow “preference” points to companies who provide a B-BBEE Accreditation Certificate. All procurement transactions will be evaluated accordingly.

Consequently, when Transnet invites prospective suppliers to submit Proposals for its various expenditure programmes, it urges Respondents [*Large Enterprises and QSE’s - see below*] to have themselves accredited in compliance with the Government Gazette No 34612, Notice No. 754 dated 23 September 2011. As from 1 October 2011 valid B-BBEE Accreditation Certificates must be issued by

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

A Verification Certificate issued must reflect the weighted points attained by the measured entity for each element of the scorecard as well as the overall B-BBEE rating.

1.1 B-BBEE Rating

Enterprises will be rated by Verification Agencies or registered auditors based on the following:

**Large Enterprises [i.e. annual turnover greater than R35 million]:**

- Rating level based on all seven elements of the B-BBEE scorecard

**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

**Exempted Micro Enterprises - EME [i.e. annual turnover less than R5 million]:**

- EMEs are exempted from B-BBEE accreditation
- Automatic rating of Level 4 B-BBEE irrespective of race or ownership
- Black ownership greater than 50% or Black Women ownership greater than 50% automatically qualify as Level 3 B-BBEE



- EME’s should provide documentary proof of annual turnover [i.e. annual financials signed off by an accounting officer] plus proof of Black ownership if Black ownership is greater than 50% and/or Black Women ownership is greater than 50%

**Respondents will be required to furnish proof of the above to Transnet. [i.e. a detailed scorecard as stipulated above in respect of Large Enterprises and QSEs, or proof of turnover in respect of EMEs].**

***N.B. Failure to do so will result in a score of zero being allocated for B-BBEE.***

**Turnover: *Kindly indicate your entity’s annual turnover for the past year:***

**R**

***All Respondents must complete and return the B-BBEE Preference Points Claim Form attached hereto as Annexure A.***

**Joint Ventures and Subcontractors**

**In addition to the above, Respondents who wish to enter into a Joint Venture with, or subcontract portions of the contract to, B-BBEE entities must state in their RFPs, the percentage of the total contract value that will be allocated to such B-BBEE entities, should they be successful in being awarded any business. A rating certificate in respect of such B-BBEE JV-partners and/or subcontractor(s), as well as a breakdown of the distribution of the aforementioned percentage must also be furnished with the RFP response to enable Transnet to evaluate in accordance with the processes outlined in the B-BBEE Preference Points Claim Form appended hereto as Annexure A.**

Please note that a Respondent will not be awarded points for B-BBEE if it is indicated in its Proposal that such Respondent intends subcontracting more than 25% [twenty-five per cent] of the value of the contract to an entity that does not qualify for at least the same points that the Respondent qualifies for, unless the intended subcontractor is an EME with the capability to execute the contract.

**B-BBEE Registration**

**In addition to the accreditation certificate, Transnet recommends that Respondents register their B-BBEE compliance and supporting documentation on the Department of Trade and Industry’s [DTI] National B-BBEE IT Portal and Opportunities Network and provide Transnet with proof of registration in the form of an official B-BBEE Profile issued by the DTI.**

Transnet would wish to use the DTI B-BBEE IT Portal as a data source for tracking B-BBEE compliance.

*For instructions to register and obtain a DTI B-BBEE Profile go to <http://bee.thedti.gov.za>*

**Further Recognition Criteria**

Transnet encourages its suppliers to constantly strive to improve their B-BBEE rating. Whereas Respondents will be allocated points in terms of a preference point system based on its B-BBEE scorecard to be assessed as detailed in paragraph 5.1 above, in addition to such scoring, a further **10% [ten per cent]** will be allocated to a Respondent’s score based on the “Further Recognition Criteria” [FRC] on an ascending scale. This will be calculated based on the extent to which the Respondent commits to meet and/or exceed the minimum compliance targets with its proposed target score to be achieved during the contract period.

Respondents are required to submit their Further Recognition Criteria with their Proposals. *[Refer Section ..... for further instructions]*

\_\_\_\_\_  
Respondent’s Signature

\_\_\_\_\_  
Date and Company Stamp





## 12 COMMUNICATION

Respondents are warned that a response will be liable to 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.

A respondent may, however, BEFORE THE CLOSING DATE AND TIME, direct any enquiries relating to the RFQ to the Transnet employee as indicated in clause 2 above, **RFQ SCHEDULE**

Respondents will be contacted as soon as practicable with a status update. At this time short-listed Respondents may be asked to meet with Transnet representatives at a location to be agreed.

## 13 INSTRUCTIONS FOR COMPLETING THE RFQ

- (i) Sign documents (sign and date the bottom of each page). This set will serve as the legal and binding copy. .
- (ii) Documents to be submitted to the address specified above.
- (iii) The following returnable documents must accompany all Quotations:
  - Respondent's valid Tax Clearance Certificate.
  - Worksmans Compensation

## 14 COMPLIANCE

The successful Respondent (hereinafter referred to as the "Supplier") shall be in full and complete compliance with any and all applicable State and Local Laws and Regulations.

## 15 ADDITIONAL NOTES:

- All returnable documents as indicated in the Quotation Form (Section 3) must be returned with the response
- Respondents are to note that Quotations in which firm prices are quoted for the duration of any resulting contract may receive precedence over prices which are subject to adjustment
- Changes by the Respondent to its submission will not be considered after the closing date
- The person or persons signing the Quotation must be legally authorised by the Respondent to do so (Refer Section 4). A list of those person(s) authorised to negotiate on your behalf (if not the authorised signatories) must also be submitted along with the Quotation together with their contact details.
- All prices must be quoted in South African Rands
- Transnet reserves the right to undertake post-tender negotiations with selected Respondents or any number of short-listed Respondents and may wish to visit the Respondent's place of work during this process.

**NB: Unless otherwise expressly stated, all Quotations furnished pursuant to this Request shall be deemed to be offers. Any exceptions to this statement must be clearly and specifically indicated. Transnet reserves the right to reject any or all offers.**

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



**16 DISCLAIMERS**

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

- modify the RFQ's Services 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
- award a contract in connection with this Quotation at any time after the RFQ's closing date
- award only a portion of the proposed Services which are reflected in the scope of this RFQ
- split the award of the contract between more than one Supplier
- make no award of a contract

Kindly note that Transnet will not reimburse any Respondent for any preparatory costs or other work performed in connection with this Quotation, whether or not the Respondent is awarded a contract.

**17 LEGAL REVIEW**

Any Quotation submitted by a Respondent is subject to review and negotiation of the proposed contract by Transnet's Legal Counsel Respondents to complete this section:

NAME OF RESPONDENT .....

PHYSICAL ADDRESS .....

.....

Respondent's contact person:

Name.....

Designation.....

Telephone.....

Cell Phone.....

Facsimile.....

Email.....

Website.....

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

\_\_\_\_\_  
Date and Company Stamp



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

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## SECTION 2

**RFQ NUMBER PTH51846**

**PROVISION OF MONTHLY READING OF ELECTRICITY METERS ( +/- 40 ) IN THE EAST LONDON , CHISELHURST AND EAST LONDON AREA FOR A PERIOD OF A YEAR**

### BACKGROUND, OVERVIEW AND SCOPE OF REQUIREMENTS

**1. BACKGROUND**

**MONTHLY READING OF ELECTRICITY METERS ( +/- 40 ) IN THE EAST LONDON , CHISELHURST AND EAST LONDON AREA FOR A PERIOD OF A YEAR**

**2. EXECUTIVE OVERVIEW**

- Transnet end users must be able to rely on the chosen Supplier's personnel for service enquiries, recommendations and substitutions.

**3. NATIONAL RAILWAY SAFETY REGULATOR ACT**

In compliance with the **National Railway Safety Regulator Act, 16 of 2002**, the successful Respondent (the "Supplier") shall ensure that the Services to be supplied to Transnet, under the terms and conditions of a contract between the parties, comply fully with the specifications as set forth in this RFQ, and shall thereby adhere to railway safety requirements and/or regulations. Permission for the engagement of a subcontractor by the Supplier, as applicable, both initially and during the course of a contract, shall be subject to a review of the capability of the proposed subcontractor to comply with the specified railway safety requirements and/or regulations. The Supplier and/or its subcontractor shall grant Transnet access, during the term of the contract, to review any safety-related activities, including the coordination of such activities across all parts of the organisation.

**Accepted:**

<b>YES</b>	
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<b>NO</b>	
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**4. SERVICE LEVELS**

- Failure of the Supplier to comply with stated service level requirements will give Transnet the right to cancel the contract in whole, without penalty, giving 30 (thirty) days' notice to the Supplier.

**Accepted:**

<b>YES</b>	
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<b>NO</b>	
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**5. RISK**

Respondents must elaborate on the control measures put in place by their company, which mitigate the risk to Transnet, pertaining to potential non-performance by a Supplier in relation to -

(i) quality of the Service(s) provided:

.....

.....

.....

.....

(ii) continuity of provision of the Service(s) (refer clause 6.9 of Form US7)::

.....

.....

.....

(iii) compliance with the Occupational Health and Safety Act, 85 of 1993 (refer clause 8.1(f) of Form US7)

.....

.....

.....

(iv) compliance with the National Railway Safety Regulator Act, 16 of 2002 (refer clause 16 above)

.....

.....

.....

**6. 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	Contact Person	Telephone number


**7. EVALUATION CRITERIA**

Transnet will utilise the following criteria (not necessarily in this order) in choosing a Supplier, if so required: ( 90:10 ) 90 Financial : 10 BBBEE

- Pricing (fees) - Whilst not the sole factor for consideration, competitive pricing will be critical in indicating how much you value Transnet's business
- Compliance - Completeness of your responses and content of the Quotation will be considered
- BBBEE status of company

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**RFQ DECLARATION FORM**  
**RFQ FOR : ( PTH51846)**  
**MONTHLY READING OF ELECTRICITY METERS ( +/- 40 ) IN THE EAST LONDON ,**  
**CHISELHURST AND EAST LONDON AREA FOR A PERIOD OF A YEAR**

NAME OF COMPANY: \_\_\_\_\_

We \_\_\_\_\_ do hereby certify  
that:

1. Transnet has supplied and we have received appropriate responses to any/all questions (as applicable) which were submitted by ourselves for bid clarification purposes;
2. we have received all information we deemed necessary for the completion of this Request for Proposal (RFP);
3. at no stage have we received additional information relating to the subject matter of this RFP from Transnet sources, other than information formally received from the designated Transnet contact(s) as nominated in the RFP documents;
4. we are satisfied, insofar as our company is concerned, that the processes and procedures adopted by Transnet in issuing this RFP and the requirements requested from bidders in responding to this RFP have been conducted in a fair and transparent manner; and
5. furthermore, we acknowledge that a direct relationship exists between a family member and/or an owner / member / director / partner / shareholder (unlisted companies) of our company and an employee or board member of the Transnet Group as indicated below:  
*[Respondent to indicate if this section is not applicable]*

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

ADDRESS:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Indicate nature of relationship with Transnet:

\_\_\_\_\_  
\_\_\_\_\_

*[Failure to furnish complete and accurate information in this regard may lead to the disqualification of your response and may preclude a Respondent from doing future business with Transnet]*



1. We declare, to the extent that we are aware or become aware of any relationship between ourselves and Transnet (other than any existing and appropriate business relationship with Transnet) which could unfairly advantage our company in the forthcoming adjudication process, we shall notify Transnet immediately in writing of such circumstances.
2. We accept that any dispute pertaining to this bid will be resolved through the Ombudsman process and will be subject to the Terms of Reference of the Ombudsman. The Ombudsman process must first be exhausted before judicial review of a decision is sought. (Refer “Important Notice to Respondents” overleaf).
3. We further accept that Transnet reserves the right to reverse a tender award or decision based on the recommendations of the Ombudsman without having to follow a formal court process to have such award or decision set aside.

SIGNED at \_\_\_\_\_ on this \_\_\_\_ day of \_\_\_\_\_ 20\_\_

For and on behalf of ..... duly authorised thereto	AS WITNESS:
Name:	Name:
Position:	Position:
Signature:	Signature:
Date:	
Place:	

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We \_\_\_\_\_ do hereby certify that:

- 4. Transnet has supplied and we have received appropriate responses to any/all questions [as applicable] which were submitted by ourselves for bid clarification purposes;
- 5. we have received all information we deemed necessary for the completion of this Request for Proposal [RFP];
- 6. at no stage have we received additional information relating to the subject matter of this RFP from Transnet sources, other than information formally received from the designated Transnet contact(s) as nominated in the RFP documents;
- 7. we are satisfied, insofar as our entity is concerned, that the processes and procedures adopted by Transnet in issuing this RFP and the requirements requested from bidders in responding to this RFP have been conducted in a fair and transparent manner; and
- 8. furthermore, we declare that a family, business and/or social relationship *exists / does not exist [delete as applicable]* between an owner / member / director / partner / shareholder of our entity and an employee or board member of the Transnet Group.  
*If such a relationship exists, Respondent is to complete the following section:*

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

ADDRESS:

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Indicate nature of relationship with Transnet:

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*[Failure to furnish complete and accurate information in this regard may lead to the disqualification of a response and may preclude a Respondent from doing future business with Transnet]*

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9. We declare, to the extent that we are aware or become aware of any relationship between ourselves and Transnet [other than any existing and appropriate business relationship with Transnet] which could unfairly advantage our entity in the forthcoming adjudication process, we shall notify Transnet immediately in writing of such circumstances.
10. We accept that any dispute pertaining to this bid will be resolved through the Ombudsman process and will be subject to the Terms of Reference of the Ombudsman. The Ombudsman process must first be exhausted before judicial review of a decision is sought. [Refer "Important Notice to Respondents" overleaf].
11. We further accept that Transnet reserves the right to reverse an award of business or decision based on the recommendations of the Ombudsman without having to follow a formal court process to have such award or decision set aside.

SIGNED at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_ 2012

For and on behalf of _____	AS WITNESS:
duly authorised hereto	
Name:	Name:
Position:	Position:
Signature:	Signature:
Date:	
Place:	

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**IMPORTANT NOTICE TO RESPONDENTS**

- **Transnet has appointed a Procurement Ombudsman to investigate any material complaint in respect of RFPs exceeding R5,000,000.00 [five million S.A. Rand] in value. Should a Respondent have any material concern regarding an RFP process which meets this value threshold, a complaint may be lodged with Transnet's Procurement Ombudsman for further investigation.**
- **It is incumbent on the Respondent to familiarise himself/herself with the Terms of Reference for the Transnet Procurement Ombudsman, details of which are available for review at Transnet's website [www.transnet.net](http://www.transnet.net).**
- **An official complaint form may be downloaded from this website and submitted, together with any supporting documentation, within the prescribed period, to [procurement.ombud@transnet.net](mailto:procurement.ombud@transnet.net)**
- **For transactions below the R5,000,000.00 [five million S.A. Rand] threshold, a complaint may be lodged with the Chief Procurement Officer of the relevant Transnet Operating Division.**
- **All Respondents should note that a complaint must be made in good faith. If a complaint is made in bad faith, Transnet reserves the right to place such a bidder on its List of Excluded Bidders.**

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RFQ: PTH51846

Description :**MONTLY READING OF ELECTRICITY METERS ( +/- 40 ) IN THE EAST LONDON , CHISELHURST AND EAST LONDON AREA FOR A PERIOD OF A YEAR**

**General and Special conditions**

**Specification**

**Drawing /Photos ( If applicable)**

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**RFQ: WR/PTH/ 51846**

**GENERAL TENDER CONDITIONS - SERVICES**

**Refer Form CSS5 attached hereto.**

**1 Scope of work**

MONTHLY READING OF ELECTRICITY METERS ( +/- 40 ) IN THE EAST LONDON , CHISELHURST AND EAST LONDON AREA FOR A PERIOD OF A YEAR

**2. Site location**

The site is situated at per specification

**3. Time to complete the work**

The tenderer shall indicate at section 6 the time he will require to complete the work, however, this time should not exceed time as per specification. This period shall be exclusive of weekends, public holidays and statutory holiday periods.

Failing completion of the work within the period as stipulated above or with any shorter period offered by the contenders and accepted by Transnet, the contractor shall pay to Transnet the sum of as per specification for every day or part thereof during which the works remain incomplete.

**4. Guarantee**

All workmanship and material shall be guaranteed for a period as indicated in specification of completion of work.

**5. Inspection of works**

**5.1** No work shall be covered up or put out of view without the approval of the Project Manager. The Contractor shall afford full opportunity for the Project Manager to examine and measure any work, which is about to be covered up or put out of view and to examine foundations before permanent work is placed thereon.

**5.2** The Contractor shall give due notice to the Project Manager whenever any such work of formations is or are ready or about to be ready for examination. The Project Manager shall, without unreasonable delay, unless he considers it necessary and advises the Contractor accordingly, examine and or measuring such work as required.



5.3 The Contractor shall uncover any part or parts of the work or make openings in or through the same as the Project Manager may from time to time direct and shall reinstate and make good such part or parts to the satisfaction of the Project Manager and are found to be executed in accordance with the Contract, the expenses of uncovering, making openings in or through, reinstating and making good the same shall be done by the Contractor .

## 6. Site records

### 6.1 Site Instruction Book

The Contractor shall provide a **site instruction book ( not smaller than A5) , in triplicate for the Project Manager to place all instructions** that are needed to compliment the specifications and drawings and any other instruction that may affect the cost of the work.

**No work will be recognized for additional payment unless it has been recorded and signed by the Project Manager in the aforesaid book.**

### 6.2 Site Diary

The contractor shall provide a diary, in triplicate to record all day to day incidents that could occur during the contract period. This includes weather, names & numbers of workers on site, material that has been delivered, material that has been loaded and disposed off, incidents that have occurred, nature of work to be done on that day, etc.

### 6.3. Programming & Planning of the work

The contractor shall provide to the Project Manager a detail plan of how he intends to do the work and this plan must be to the requirements of the operation of Transnet Freight Rail workshop with minor disruptions as no delays must be allowed in this regard.

The program must be agreed to (in the site instruction book) before any work will be allowed to commence on the workshops, per se. The programme can be in a form of a pert (bar) chart and will be used as a guide to measure progress of the work.

## 7. Water supply.

Water may be made available for the purpose of construction of the works only. The water shall be used conservatively and if not, this privilege shall be removed and the water shall be metered, and the cost of the metered water shall be borne by the Contractor as well as all charges as entertained by Transnet Freight Rail. The Contractor must supply all drums, connections, hoses, clamps etc., as necessary and to provide water to the working site .

## 8. Electricity supply.

Electricity may be made available to the Contractor. The contractor must adhere to the safety standards as per the General Safety Regulations, Electrical Machine Regulations, Electrical Installation Regulations of the **Health and Safety Act, (Act 85 of 1993)** and SANS 10142.

The Contractor must supply all leads and plugs as necessary and to provide power to the working site



9. **Access to site**

The areas are restricted and the contractor must ensure he complies with the regulations of Transnet Freight Rail in every way. The Contractor and/or any sub-contractors shall be required to apply for permission to enter the restricted area in writing. A list of workmen shall be given to the Project Manager to arrange for the necessary permits. 48 Hours minimum notice is necessary for the processing these permits. This includes changes to staff during the contract period.

9. **Materials found on site**

No material that is lying on the site (other than that as specified in this document) or any Transnet Freight Rail's properties may be removed or used (even if deemed as scrap) by the contractor.

11. **Clearing of site**

The Contractor shall provide for cleaning up and sorting all rubbish and debris of whatever kind, generated by this work only, throughout the duration of the contract. Upon completion the Contractor shall clear away and remove all rubbish, unused material, plant and debris caused by the works and leave the site and the whole of the works clean and tidy to the satisfaction of the Project Manager.

12. **Working outside normal working hours**

The normal working hours are between 07:30 and 16:00 Mondays to Fridays. If it is required to work outside the stated normal working hours the Contractor must obtain written permission at least 24 hours before such work needs to be undertaken. Transnet Freight Rail will not unreasonably withhold permission, however the Contractor may have to pay for Transnet Freight Rail's supervisory personnel.

13. **Escalation**

This contract does not make provision for compensation in respect of increased costs. The contenders must allow in his fixed price for any increased costs, which he may encounter during the contract period or such extended period as agreed upon by both parties.

14. **Retention**

Transnet Freight Rail reserves the right to retain up to ten (10) percent of the value of the contract, for a period of six months, (the maintenance period) or such further period beyond the maintenance period if defects have not yet been made good to the satisfaction of the Project Manager.

15. **Safety Precautions and Insurance**

15.1. **Act 85**

The contractor shall comply with the Occupational Health & Safety Act, 1993 (Act 85 of 1993). The form E 4E as placed in this Specification must be adhered to.

15.2 **Environment**

The Contractor shall, at all times, comply with the statutes that prohibit pollution of any kind. These statutes are enacted in the following legislation.



- ❑ The National Environmental Management Act, 107/1998;
- ❑ The Environmental Conservation Act, 73/1989; and
- ❑ The National Water Act, 36/1998.

The Contractor shall appoint a responsible person to ensure that no incident shall occur on site that could cause pollution. Where the Contractor was negligent and caused any form of pollution the damage shall be rectified at the Contractors cost.

### **15.3 SUBSTANCE ABUSE TESTING**

The OHS Act (Act 85 of 1993) clearly states in the Safety Regulations 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 a 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.

### **16. Health and Safety Requirements.**

As per the E4E (Health and Safety requirements) no work can commence before the certificate of Good Standing by the Compensation Commissioner, or proof of payment, has been delivered to this office, for this project.

### **17. Note:**

**17.1** For further descriptions of materials to be used and methods to be adopted, the Contractor is referred to the various Codes and Standards, where relevant, and this shall be deemed to form part of the descriptions of any items in the following Specification. Except where any specification provision in a description in this specification is at variance with the above, in which case the specific provision in this Specification description shall apply.

**17.2** Where trade names and catalogue references have been used in these Specifications to specify a product, Tenderers must tender on that particular or similar product. In addition, Tenderers must tender on the design specified. The accepted tenderer (i.e. Contractor) may, after obtaining written authority from the Project Manager, use an alternative product or design.

**17.3** Where such written authority is given by the Project Manager at the request of the Contractor, for the contractor's convenience, all additional costs involved will be done for the Contractor's account. In the event of a less expensive product or design being used, a variation order reflecting the saving in cost will be issued.





## 18. GENERAL

### 18.1 Standard Specification

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.

#### SANS Specifications (To be obtained by the contenders)

National Building Regulations	SANS 10400 – 11990
General Structural	SANS 11200AH- 11982
Electrical Code of Practice	SANS 10142

### 18.2 To be supplied by the Contractor

The Contractor shall provide all labour, transport, consumable stores, plant, equipment, tools, services, materials and ingredients of every description required for the carrying out and completion of the WORKS as per this specification and as may be ordered by the Manager.

### 18.3 Site meetings

The Contractor shall be called upon to attend meetings on the site to discuss the progress of WORKS with the Transnet Freight Rail representatives.

### 18.4 Setting out of the works

The setting out of the work shall be the sole responsibility of the Contractor and shall be done in accordance with this Specification, the drawings and the design.

### 18.5 Keep site tidy

The Contractor shall keep the site tidy at all times and remove all old material and 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.

## 19. Preliminary and General (P & G)

The P & G shall be as per General & Special Conditions and will include all costs not directly related to the execution of the work as stated. All items not specifically mentioned in the Annexure B must form part of P & G 's



### SECTION 3

RFQ NUMBER PTH51846

**PROVISION OF MONTHLY READING OF ELECTRICITY METERS ( +/- 40 ) IN THE EAST LONDON ,  
CHISELHURST AND EAST LONDON AREA FOR A PERIOD OF A YEAR**

#### QUOTATION FORM

I/We \_\_\_\_\_  
(name of company, close corporation or partnership)

of (full address) \_\_\_\_\_

\_\_\_\_\_ carrying on business under style or title of (trading as)

represented by \_\_\_\_\_

in my capacity as \_\_\_\_\_

being duly authorised thereto by a Resolution of the Board of Directors or Members or Certificate of Partners, as the case may be, dated \_\_\_\_\_ a certified copy of which is annexed hereto, hereby offer to supply the above-mentioned Services at the prices quoted in the schedule of Service Fees in accordance with the terms set forth in the accompanying letter(s) reference \_\_\_\_\_ and dated \_\_\_\_\_ (if any) and the documents listed in the accompanying schedule of RFQ documents.

I/We agree to be bound by those conditions in Transnet's:

- (i) Standard Terms and Conditions of Contract, Form No. US7 - Services;
- (ii) General Tender Conditions, Form CSS5 – Services; and
- (iii) any other standard or special conditions mentioned and/or embodied in the Request for Quotation form; and;-

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

\_\_\_\_\_  
Date and Company Stamp



I/We accept that unless Transnet should otherwise decide and so inform me/us in the facsimile or letter of acceptance, 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.

Should Transnet decide that a formal contract should be signed and so inform me/us in the facsimile or letter of acceptance, this Quotation (and, if any, its covering letter and any subsequent exchange of correspondence) together with Transnet's letter of acceptance/intent, shall constitute a binding contract between Transnet and me/us until the formal contract is signed.

I/We further agree that if, after I/we have been notified of the acceptance of my/our Quotation, I/we fail to enter into a formal contract if called upon to do so, or fail to commence the provision of the Services within 4 (four) weeks, Transnet may, without prejudice to any other legal remedy which it may have, recover from me/us any expense to which it may have been put in calling for Quotations afresh and/or having to accept any less favourable Quotation.

I/We accept that any contract resulting from this offer will be for a period of as specification only; and agree to a penalty clause to be negotiated with Transnet, which will allow Transnet to invoke a penalty (details to be negotiated) against us should the delivery of the Services be delayed due to non-performance by us.

The law of the Republic of South Africa shall govern the contract created by the acceptance of this RFQ. The *domicillium citandi et executandi* shall be a place in the Republic of South Africa to be specified by the Respondent hereunder, 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. Foreign Respondents shall, therefore, state hereunder, the name of their accredited agent in the Republic of South Africa who is empowered to sign any contract which may have to be entered into in the event of their Quotation being accepted and to act on their behalf in all matters relating to the contract.

Respondent to indicate *domicillium citandi et executandi* hereunder:

Four horizontal lines for signature/agent information.

**NOTIFICATION OF AWARD OF RFQ**

As soon as possible after approval to award the contract/s, the successful Respondent (the Supplier) will be informed of the acceptance of its Quotation. Unsuccessful Respondents will be advised in writing of the name of the successful Supplier and the reason as to why their Quotations have been unsuccessful, for example, in the category of price, delivery period, quality, BBBEE status or for any other reason.

**VALIDITY PERIOD**

Transnet desires a validity period of 3 (three) months (from closing date) against this RFQ. It should be noted that Respondents may offer an earlier validity period, but that their Quotations may be disregarded for that reason. Should Respondents be unable to comply with this validity period, an alternative validity period must be stated hereunder:

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

\_\_\_\_\_  
Date and Company Stamp



This RFQ is valid until \_\_\_\_\_ (State alternative validity period/date).

**TAX (VAT) REGISTRATION NUMBER**

The Respondent must state hereunder the tax registration number which is applicable to Value-Added Tax:

\_\_\_\_\_

**TAX CLEARANCE CERTIFICATE**

Respondents are required to forward a valid copy of their company's Tax Clearance Certificate with their Quotation.

Indicate tax clearance certificate expiry date: \_\_\_\_\_

**BANKING DETAILS**

BANK: \_\_\_\_\_

BRANCH NAME / CODE: \_\_\_\_\_

ACCOUNT HOLDER: \_\_\_\_\_

ACCOUNT NUMBER: \_\_\_\_\_

**NAME(S) AND ADDRESS / ADDRESSES OF DIRECTOR(S) OR MEMBER(S)**

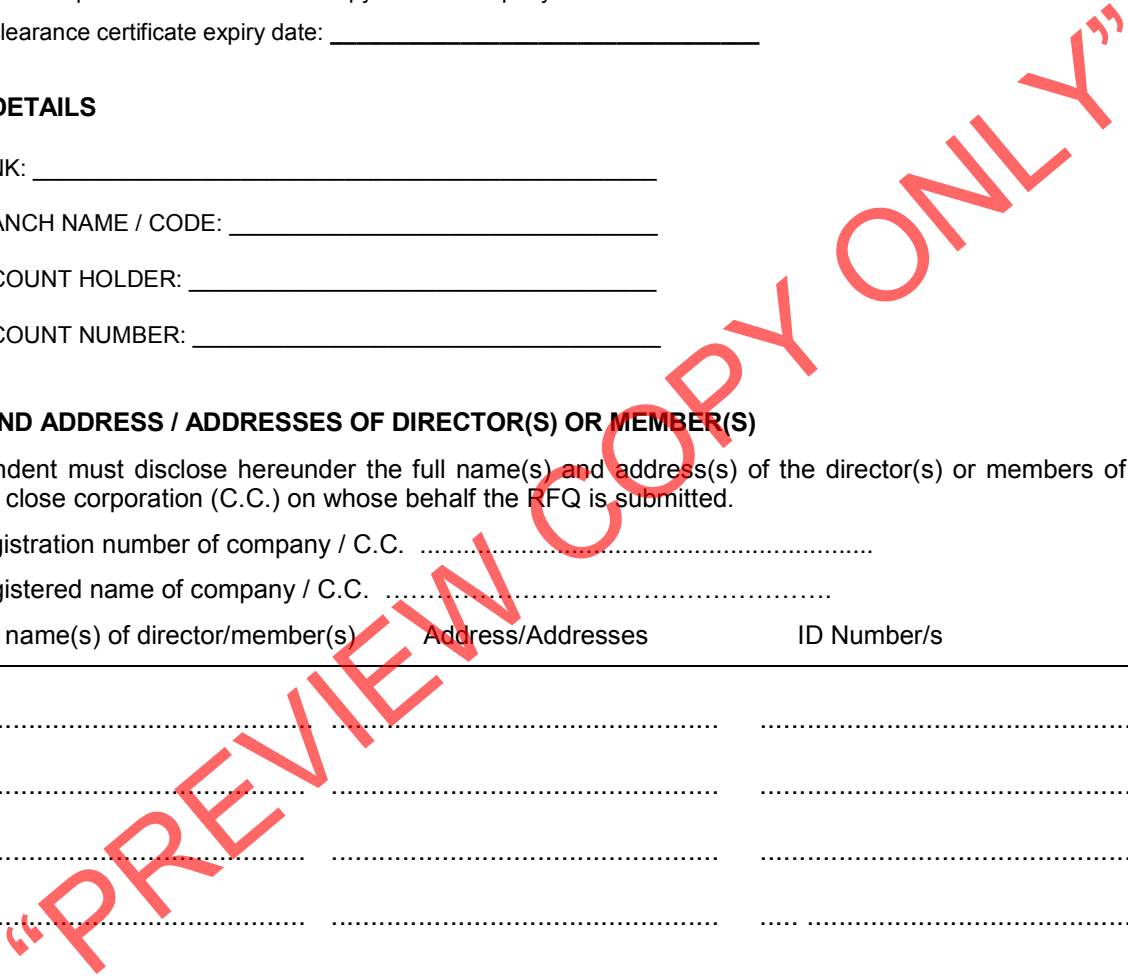
The Respondent must disclose hereunder the full name(s) and address(s) of the director(s) or members of the company or close corporation (C.C.) on whose behalf the RFQ is submitted.

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

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

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

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



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

\_\_\_\_\_  
Date and Company Stamp



**REGISTRATION CERTIFICATE**

Respondents must submit a certified copy of their company’s Registration Certificate with their Quotation.

**NAME AND ADDRESS OF ACCREDITED AGENT**

Provide hereunder, if applicable, details of the accredited agent in the Republic of South Africa appointed as local representative by foreign Respondents and whose address shall be regarded as the Respondent’s domicilium citandi et executandi in terms of the Standard Terms and Conditions of Contract, US7 – Services.

Name	.....
Address	..... .....

**CONFIDENTIALITY**

All information related to a subsequent contract, both during and after completion, is to be treated with strict confidence. Should the need however arise to divulge any information gleaned from provision of the Services, which is either directly or indirectly related to Transnet’s business, written approval to divulge such information will have to be obtained from Transnet.

**DISCLOSURE OF PRICES TENDERED**

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

YES	<input type="checkbox"/>	NO	<input type="checkbox"/>
-----	--------------------------	----	--------------------------

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\_\_\_\_\_  
Respondent’s Signature

Date and Company Stamp



**DECLARATION**

Respondents to declare hereunder whether any family and/or direct relationship exists between any of the owners / members / directors / partners / shareholders (unlisted companies) of the responding company and any employee or board member of the Transnet Group:

YES	
-----	--

NO	
----	--

If YES, please indicate below:

FULL NAME OF OWNER/MEMBER/DIRECTOR/  
PARTNER/SHAREHOLDER

ADDRESS

---

---

---

Indicate nature of relationship (if any):

---

---

*(Failure to furnish complete and accurate information in this regard may lead to the disqualification of a response and may preclude a Respondent from future business with Transnet)*

**PRICE REVIEW**

Transnet will be benchmarking this price offering(s) against the lowest price received as per the benchmarking exercise. If the Respondent's price(s) is/are found to be higher than the benchmarked price(s), then the Respondent shall match or better such price(s) within 30 days - failing which the Contract may be terminated at Transnet's discretion or the particular item(s) or service(s) purchased outside the contract.

“PREVIEW COPY ONLY”

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

\_\_\_\_\_  
Date and Company Stamp

## RETURNABLE DOCUMENTS

Respondents are required to submit the following returnable documents with their responses (see tick):

Notice to Bidders – Section 1	✓
Background overview – Section 2	✓
Quotation Form – Section 3	✓
Resolution of Board of Directors (Respondent's Representative) - Section 4	✓
Certificate of Acquaintance with RFQ Documents – Section 5	✓
Service Fees and Costs - Section 6	✓
General Tender Conditions - Form CSS5 – Section 7	✓
Conditions of Contract - Form US7 – Section 8	✓
Audited Financials for previous year	✓
Valid Tax Clearance Certificate	✓
VAT Registration Certificate	✓
BBBEE Accreditation Certificate	✓
Works man compensation	✓
Certificate of attendance of RFQ Briefing – Section 9	✓
Non-Disclosure Agreement – Section 10	✓

NOTE: Sections 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10, as indicated in the footer of each page, must be signed and dated by the Respondent.

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**SECTION 4**

**RFQ NUMBER : PTH51846**

**PROVISION OF MONTHLY READING OF ELECTRICITY METERS ( +/- 40 ) IN THE EAST LONDON , CHISELHURST AND EAST LONDON AREA FOR A PERIOD OF A YEAR**

**SIGNING POWER : RESOLUTION OF BOARD OF DIRECTORS**

NAME OF COMPANY: \_\_\_\_\_

It was resolved at a meeting of the Board of Directors held on \_\_\_\_\_ that

FULL NAME(S)	CAPACITY	SIGNATURE
_____	_____	_____
_____	_____	_____
_____	_____	_____

in his/her capacity as indicated above is/are hereby authorised to enter into, sign, execute and complete any documents relating to Tenders, Quotations and/or Contracts for the supply of Goods.

FULL NAME \_\_\_\_\_

\_\_\_\_\_  
SIGNATURE CHAIRMAN

FULL NAME \_\_\_\_\_

\_\_\_\_\_  
SIGNATURE SECRETARY





**SECTION 5**

**RFQ NUMBER PTH51846**

**PROVISION OF MONTHLY READING OF ELECTRICITY METERS ( +/- 40 ) IN THE EAST LONDON ,  
CHISELHURST AND EAST LONDON AREA FOR A PERIOD OF A YEAR**

**CERTIFICATE OF ACQUAINTANCE WITH RFQ DOCUMENTS**

NAME OF COMPANY: \_\_\_\_\_

I/We \_\_\_\_\_ do

hereby certify that I/we acquainted myself/ourselves with all the documentation comprising this RFQ and all conditions contained therein, as laid down by Transnet Limited for the carrying out of the proposed supply/service/works for which I/we submitted my/our response.

I/We furthermore agree that Transnet Limited shall recognise no claim from me/us for relief based on an allegation that I/we overlooked any RFQ/contract condition or failed to take it into account for the purpose of calculating my/our offered prices or otherwise.

SIGNED at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_ 2012

WITNESS : \_\_\_\_\_

\_\_\_\_\_  
SIGNATURE OF RESPONDENT



**SECTION 6**

**RFQ Number: WR/PTH/51846**

**Service Fees/Cost/Rates**

**Schedule of work and prices:**

**Quote form( Total price) \_\_\_\_\_:**

**“PREVIEW COPY ONLY”**

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

\_\_\_\_\_  
Date and Company Stamp

**TRANSNET SOC LIMITED**  
(REGISTRATION NO.19 90/000900/06)

trading as TRANSNET FREIGHT RAIL  
(hereinafter referred to as TRANSNET FREIGHT RAIL)

**RFQ. No: PTH 51846**

**MONTLY READING OF ELECTRICITY METERS ( +/- 40 ) IN THE EAST LONDON ,  
CHISELHURST AND EAST LONDON AREA FOR A PERIOD OF A YEAR**

Quote Form

I, We \_\_\_\_\_

carrying on as business under the style and title of \_\_\_\_\_

\_\_\_\_\_ hereby offer to undertake and complete the abovementioned work at a tender price and in accordance with the terms set in this Request for Quote , General and/or Special Conditions and Project Specifications for the sum of :

R \_\_\_\_\_ (in words) \_\_\_\_\_

\_\_\_\_\_ **NB PER METER** (Exclusive of VAT)

**Time to complete the work:** \_\_\_\_\_ (Work days)

I/We undertake to complete the work for the duration of the contract as specified in the special conditions and particular specifications from the date of notification of the acceptance of my/our tender.

N.B. (i) In the event of any discrepancy, the amount in words will take precedence over the amount in figures.

(ii) **NOTE: The price as transferred to this form shall be the tendered price, any error in pricing in this schedule, even an arithmetic error will have to be adjusted to comply with the tendered price as given on this page**

\_\_\_\_\_  
Sign

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

\_\_\_\_\_  
Date and Company Stamp

Document C1

## Company/Close corporation or Trust Questionnaire

### TO BE COMPLETED BY THE SUPPLIER

#### **PURPOSE**

The purpose of this form is to register suppliers of services on the supplier database of Transnet Freight Rail. By completing this form, the Company can ensure compliance with the Income Tax Act ("the Act") and regulations of the South African Revenue Service ("SARS").

SARS requires service users to correctly classify service providers for employees' tax purposes. Classification as an "employee" for employees' tax purposes does not signify an acknowledgment that the service provider is regarded as an employee for labour law purposes.

It is therefore important to furnish the requested information as well as the responses to the questions raised.

Where applicable, suppliers will, from time to time, be requested to complete a new form, to ensure that up-to-date information is maintained by Transnet Freight Rail.

Please note that all supplier information will be treated as strictly confidential.

This form must be signed and dated on behalf of your organisation by a duly authorized signatory.

#### **DOCUMENTS**

#### **The following documents must accompany the completed form:**

1. Copies of any tax directives issued and stamped by SARS. You may be requested to provide the original tax directive for verification purposes;
2. An **original cancelled cheque or stamped letter from the bank**, verifying the banking details (Please note: any changes to bank details in the future should be furnished to us as payments are mostly done electronically);
3. Copy of the VAT Registration certificate (VAT 103 – where applicable);

Respondent's Signature

Date and Company Stamp



**SPECIAL NOTES**

4. Transnet Freight Rail reserves the right to verify and/or follow-up on any of the information furnished, claims made or references given in this application form. Additional information can be requested by Transnet Freight Rail during its evaluation process.
5. Incomplete information will be treated by Transnet Freight Rail as an acknowledgment that the full amount of tax as prescribed by "the Act" may be withheld.  
This includes the omission of supporting documentation.

**SERVICES TO BE PROVIDED**

Please provide a brief description of the nature of the services to be provided to Transnet Freight Rail.

Tender : \_\_\_\_\_

Description Work: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_



**DECLARATION**

I certify that the information furnished herein is correct at the time of completion. I also certify that I am duly authorised to furnish the above-mentioned information on behalf of my employer or principal.

Name:	Signature:
Designation:	Date:

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

\_\_\_\_\_  
Date and Company Stamp

**SECTION B – PERSONAL COMPANY/CLOSE CORPORATION OR TRUST**

In order for Transnet Freight Rail to evaluate whether the supplier is a “Personal Service Company/Trust” as defined in the Fourth Schedule to the Income Tax Act, the supplier must answer the following questions by marking the appropriate column with an X. The answers supplied will be used to determine whether Transnet Freight Rail is obliged to deduct employees’ tax from any payment due to the supplier.		YES	NO
1.	Will the company/close corporation or trust employ three or more full-time employees (other than shareholders, members or connected persons) who are on a full time basis engaged in the business of the company/close corporation or trust?		
	Please provide the number of full-time employees, other than shareholders, members or connected persons.		
	<b><i>If your answer to question 1 is “yes”, you do not have to continue with the questionnaire. If “no” please continue.</i></b>		
2.	Will more than 80% of the income of the company/close corporation or trust be derived from Transnet Freight Rail during your tax year?		
	<b><i>If your answer to question 2 is “no”, please provide Transnet Freight Rail with a written declaration to the fact that your income derived from Transnet Freight Rail will not exceed 80% and attached it to this document. You do not have to continue with the questionnaire if your answer is “no”. If “yes” else please continue.</i></b>		
3.	Will the shareholders of the company, members of the close corporation or trustees of the trust, be required to render services in their own capacity to Transnet Freight Rail?		
	If “yes” please provide details.		
4.	Will there be supervision and control of the manner in which the company/close corporation or trust perform their duties, especially with reference to the fact that that the company/close corporation or trust will be required to render the services primarily at the premises of Transnet Freight Rail?		

Respondent’s Signature \_\_\_\_\_

Date and Company Stamp \_\_\_\_\_



If "yes" please provide details.	
----------------------------------	--

**LIST OF SHAREHOLDERS/MEMBERS**

(Attach own list if the space provided is inadequate)

1.	Name			
	Position		%	Shareholding
	Identity Number		Nationality	
2.	Name			
	Position		%	Shareholding
	Identity Number		Nationality	
3.	Name			
	Position		%	Shareholding
	Identity Number		Nationality	
4.	Name			
	Position		%	Shareholding
	Identity Number		Nationality	

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

Date and Company Stamp



**Example Of An Affidavit Or Solem Declaration**  
**AFFIDAVIT OR SOLEM DECLARATION**

I, \_\_\_\_\_ **[INSERT FULL NAME]** solemnly swear/declare that less than 80% of income received by \_\_\_\_\_ **[INSERT COMPANY NAME]** will be received from Transnet Freight Rail. I further accept that based on my declaration, \_\_\_\_\_ **[INSERT COMPANY NAME]** would therefore not be regarded as a personal service company for employees' tax purposes and no employees' tax is required to be withheld from payments made for services rendered performed by \_\_\_\_\_ **[INSERT COMPANY NAME]** to Transnet Freight Rail.

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

**COMMISSIONER OF OATHS**

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

“PREVIEW COPY ONLY”

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

\_\_\_\_\_  
Date and Company Stamp



## **SECTION 7**

**RFQ NUMBER : PTH51846**

**MONTLY READING OF ELECTRICITY METERS ( +/- 40 ) IN THE EAST LONDON , CHISELHURST  
AND EAST LONDON AREA FOR A PERIOD OF A YEAR**

### **GENERAL TENDER CONDITIONS - SERVICES**

**Refer Form CSS5 attached hereto.**

**“PREVIEW COPY ONLY”**

## SECTION 8

RFQ NUMBER :PTH51846

**PROVISION : MONTHLY READING OF ELECTRICITY METERS ( +/- 40 ) IN THE EAST LONDON ,  
CHISELHURST AND EAST LONDON AREA FOR A PERIOD OF A YEAR**

### STANDARD TERMS AND CONDITIONS OF CONTRACT

### FOR THE PROVISION OF SERVICES TO TRANSNET

Refer Form US7 attached hereto.

**Respondents should note the obligations as set out in  
Clause 19 of the General Tender Conditions (Section 7) which reads as follows:**

*"The Supplier shall adhere to the Standard Terms and Conditions of Contract as set out in Form US7 - Services), a copy of which is attached hereto. Should the Respondent find any conditions unacceptable, it should indicate which conditions are unacceptable and offer an alternative. Please note that any alternative offered shall be compared with acceptance of the Form US7 conditions or alternatives offered by other Respondents."*

**“PREVIEW COPY ONLY”**

**SECTION 9**

**RFQ NUMBER PTH51846**

**PROVISION OF :MONTHLY READING OF ELECTRICITY METERS ( +/- 40 ) IN THE EAST LONDON ,  
CHISELHURST AND EAST LONDON AREA FOR A PERIOD OF A YEAR**

**CERTIFICATE OF ATTENDANCE OF SITE MEETING / BRIEFING SESSION**

It is hereby certified that -

- 1. ....
- 2. ....

Representative(s) of .....  
(name of company)

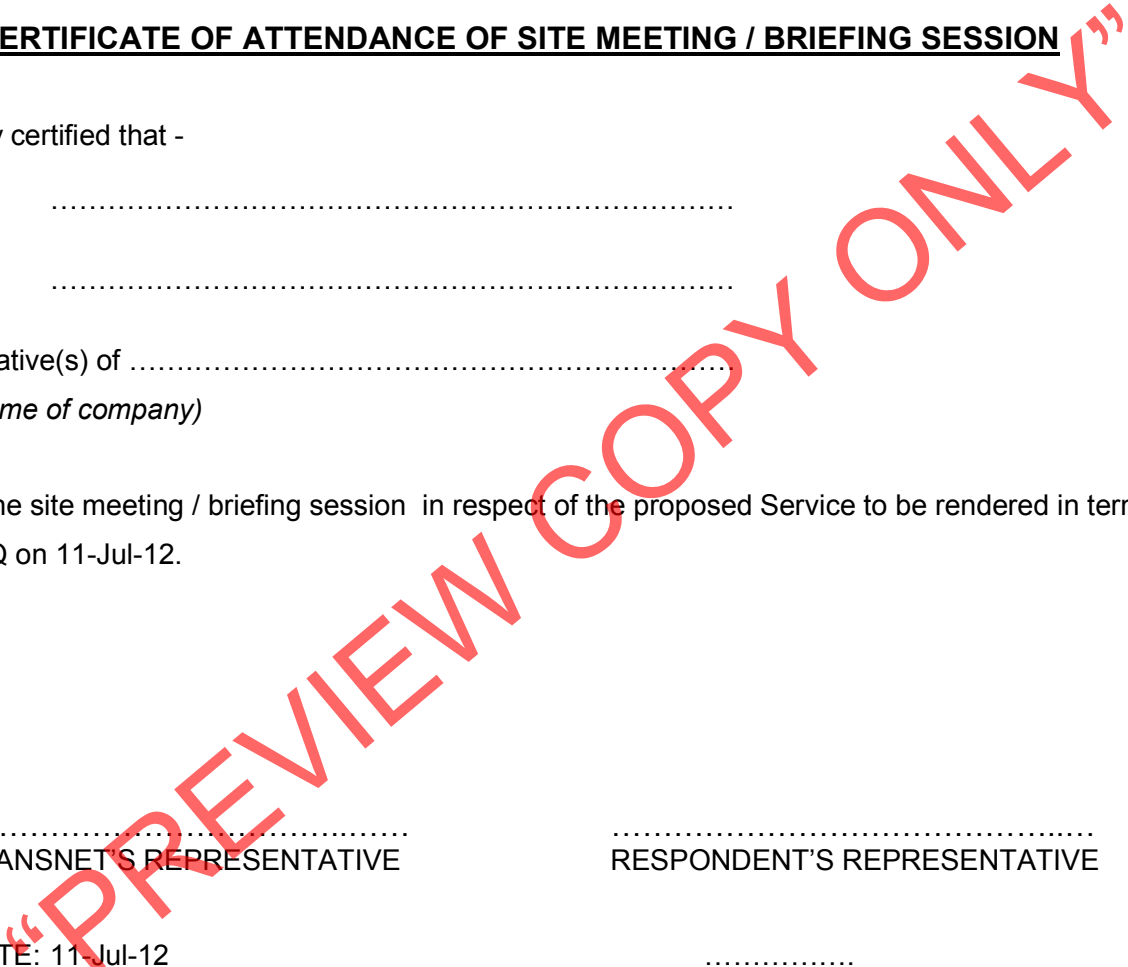
attended the site meeting / briefing session in respect of the proposed Service to be rendered in terms of this RFQ on 11-Jul-12.

.....  
TRANSNET'S REPRESENTATIVE

.....  
RESPONDENT'S REPRESENTATIVE

DATE: 11-Jul-12

.....



**SECTION 10**

**RFQ NUMBER :PTH51846PROVISION OF :MONTHLY READING OF ELECTRICITY METERS ( +/- 40 ) IN THE EAST LONDON , CHISELHURST AND EAST LONDON AREA FOR A PERIOD OF A YEAR**

**NON-DISCLOSURE AGREEMENT (“NDA”) Confidentiality Agreement**

I (*name*) ..... Identity No .....

(*address*).....

Undertake to Transnet Limited (“Transnet”) that:I shall keep confidential and not to disclose or make available to any third party, except with the express prior written consent of Transnet, any Confidential Information relating to Transnet business, assets, customers or staff which is disclosed to me or to which I may have access during the course of providing services to Transnet (“my assignment”); and

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

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

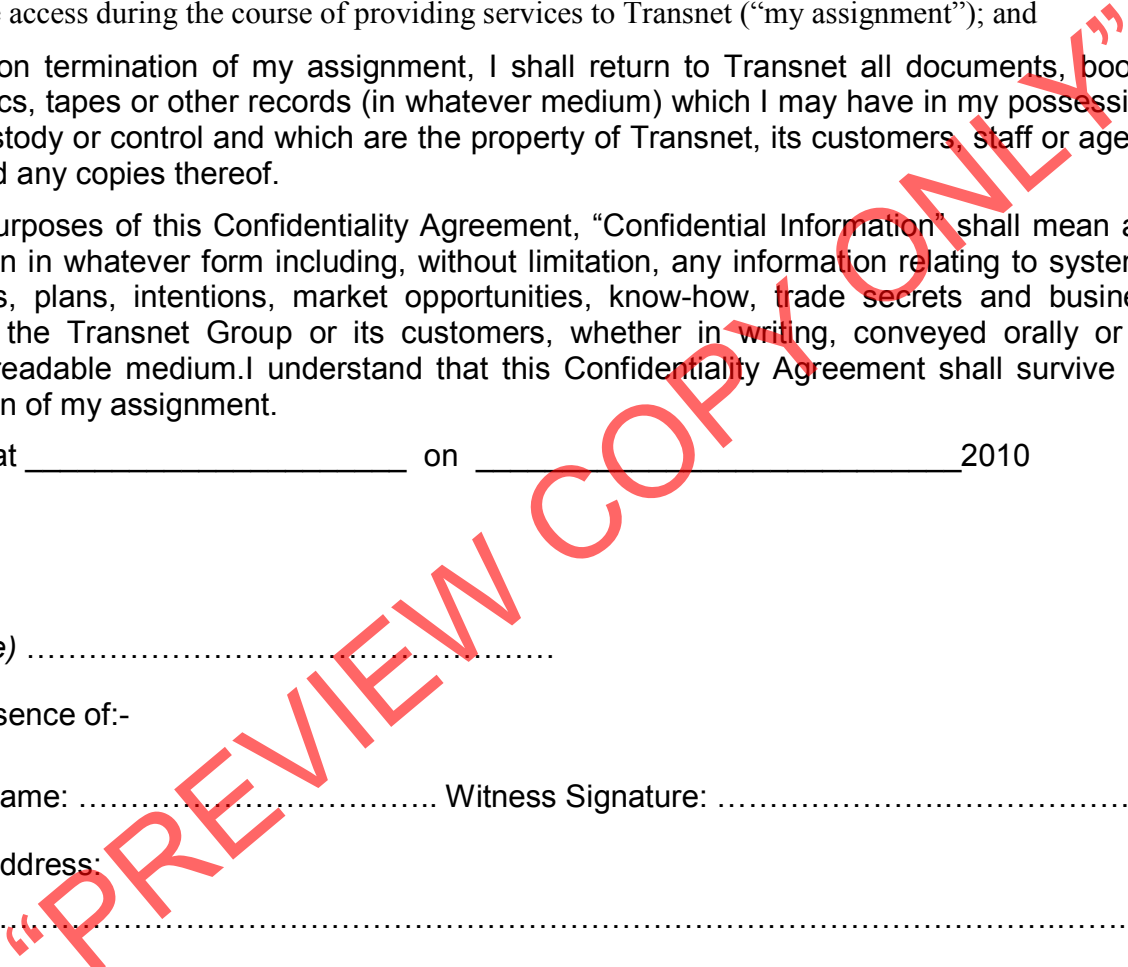
SIGNED at \_\_\_\_\_ on \_\_\_\_\_ 2010

(*Signature*) .....

in the presence of:-

Witness name: ..... Witness Signature: .....

Witness address: .....  
.....



## SECTION 11

Contract: PTH 51846

### TRANSNET LIMITED

(Registration no. 1990/00900//06)

## SAFETY ARRANGEMENTS AND PROCEDURAL COMPLIANCE WITH THE OCCUPATIONAL HEALTH AND SAFETY ACT (ACT 85 OF 1993) AND APPLICABLE REGULATIONS

### 1. General

- 1.1 The Contractor and Transnet Limited (hereinafter referred to as "Transnet") are individual employers, each in its own right, with their respective duties and obligations set out in the Occupational Health and Safety Act, Act 85 of 1993 (the Act) and applicable Regulations.
- 1.2 The Contractor accepts, in terms of the General Conditions of Contract and in terms of the Act, his obligations as an employer in respect of all persons in his employ, other persons on the premises or the Site or place of work or on the work to be executed by him, and under his control. He shall, before commencement with the execution of the contract work, comply with the provisions set out in the Act, and shall implement and maintain a Health and Safety Plan as described in the Construction Regulations, 2003 and as approved by Transnet, on the Site and place of work for the duration of the Contract.
- 1.3 The Contractor accepts his obligation to complying fully with the Act and applicable Regulations notwithstanding the omission of some of the provisions of the Act and the Regulations from this document.
- 1.4 Transnet accepts, in terms of the Act, its obligations as an employer of its own employees working on or associated with the site or place of work, and the Contractor and Technical Officer or his deputy shall at all times, co-operate in respect of the health and safety management of the site, and shall agree on the practical arrangements and procedures to be implemented and maintained during execution of the Works.
- 1.5 In the event of any discrepancies between any legislation and this specification, the applicable legislation will take precedence.

### 2. Definitions

- 2.1 In this Specification any word or expression to which a meaning has been assigned in the Construction Regulations, shall have the meaning so assigned to it, unless the context otherwise indicates: -
- 2.2 The work included in this Contract shall for the purposes of compliance with the Act be deemed to be "**Construction Work**", which, in terms of the Construction Regulations, 2003 means any work in connection with: -
  - (a) the erection, maintenance, alteration, renovation, repair, demolition or dismantling of or addition to a building or any similar structure;

- (b) the installation, erection, dismantling or maintenance of fixed plant where such work includes the risk of a person falling;
- (c) the construction, maintenance, demolition or dismantling of any bridge, dam, canal, road, railway, runway, sewer or water reticulation system or any similar civil engineering structure; or
- (d) the moving of earth, clearing of land, the making of an excavation, piling, or any similar type of work;

- 2.3 **“competent person”** in relation to construction work, means any person having the knowledge, training and experience specific to the work or task being performed: Provided that where appropriate qualifications and training are registered as per the South African Qualifications Authority Act, 1995 these qualifications and training shall be deemed to be the required qualifications and training;
- 2.4 **“contractor”** means principal contractor and “subcontractor” means contractor as defined by the Construction Regulations, 2003.
- 2.5 **“fall protection plan”** means a documented plan, of all risks relating to working from an elevated position, considering the nature of work undertaken, and setting out the procedures and methods applied to eliminate the risk;
- 2.6 **“health and safety file”** means a file, or other record in permanent form, containing the information required to be kept on site in accordance with the Act and applicable Regulations;
- 2.7 **“Health and Safety Plan ”** means a documented plan which addresses the hazards identified and include safe work procedures to mitigate, reduce or control the hazards identified;
- 2.8 **“Risk Assessment”** means a programme to determine any risk associated with any hazard at a construction site, in order to identify the steps needed to be taken to remove, reduce or control such hazard;
- 2.9 **“the Act”** means the Occupational Health and Safety Act No. 85 of 1993.

### 3. Procedural Compliance

- 3.1 The Contractor who intends to carry out any construction work shall, before carrying out such work, notify the Provincial Director in writing if the construction work:-
  - (a) includes the demolition of a structure exceeding a height of 3 metres; or
  - (b) includes the use of explosives to perform construction work; or
  - (c) includes the dismantling of fixed plant at a height greater than 3m,

and shall also notify the Provincial Director in writing when the construction work exceeds 30 days or will involve more than 300 person days of construction work and if the construction work:-

- (a) includes excavation work deeper than 1m; or

(b) includes working at a height greater than 3 metres above ground or a landing.

3.2 *The notification to the Provincial Director shall be on a form similar to Annexure A of the Construction Regulations, 2003, also shown in Annexure 1 of this Specification. The Contractor shall ensure that a copy of the completed notification form is kept on site for inspection by an inspector, Technical Officer or employee.*

3.3 The Contractor shall, in accordance with the Act and applicable Regulations, make all the necessary appointments of competent persons in writing on a form similar to Annexure 2 of this Specification and deliver copies thereof to the Technical Officer. Copies should also be retained on the health and safety file.

3.4 Subcontractors shall also make the above written appointments and the Contractor shall deliver copies thereof to the Technical Officer.

3.5 In the case of a self-employed Contractor or any subcontractor who has the appropriate competencies and supervises the work himself, the appointment of a construction supervisor in terms of regulation 6.1 of the Construction Regulations, 2003 will not be necessary. The Contractor shall in such a case execute and sign a declaration, as in Annexure 3, by which he personally undertakes the duties and obligations of the "Chief Executive Officer" in terms of section 16(1) of the Act.

3.6 The Contractor shall, before commencing any work, obtain from the Technical Officer an access certificate as in Annexure 4 executed and signed by him, permitting and limiting access to the designated site or place of work by the Contractor and any subcontractors under his control.

3.7 Procedural compliance with Act and Regulations, as above, shall also apply to any subcontractors as employers in their own right. The Contractor shall furnish the Technical Officer with full particulars of such subcontractors and shall ensure that they comply with the Act and Regulations and Protekon's safety requirements and procedures.

#### **4. Special Permits**

Where special permits are required before work may be carried out such as for hotwork, isolation permits, work permits and occupations, the Contractor shall apply to the Technical Officer or the relevant authority for such permits to be issued. The Contractor shall strictly comply with the conditions and requirements pertaining to the issue of such permits.

#### **5. Health and Safety Programme**

5.1 The Tenderer shall, with his tender, submit a Health and Safety Programme setting out the practical arrangements and procedures to be implemented by him to ensure compliance by him with the Act and Regulations and particularly in respect of: -

- (i) The provision, as far as is reasonably practical, of a working environment that is safe and without risk to the health of his employees and subcontractors in terms of section 8 of the Act;

- (ii) the execution of the contract work in such a manner as to ensure in terms of section 9 of the Act that persons other than those in the Contractor's employment, who may be directly affected by the contract work are not thereby exposed to hazards to their health and safety;
- (iii) ensuring, as far as is reasonably practical, in terms of section 37 of the Act that no employee or subcontractor of the Contractor does or omits to do any act which would be an offence for the Contractor to do or omit to do.

5.2 The Contractor's Health and Safety Programme shall be based on a risk assessment in respect of the hazards to health and safety of his employees and other persons under his control that are associated with or directly affected by the Contractor's activities in performing the contract work and shall establish precautionary measures as are reasonable and practical in protecting the safety and health of such employees and persons.

5.3 The Contractor shall cause a risk assessment contemplated in clause 5.2 above to be performed by a competent person, appointed in writing, before commencement of any Construction Work and reviewed during construction. The Risk Assessments shall form part of the Health and Safety programme to be applied on the site and shall include at least the following:

- (a) The identification of the risks and hazards that persons may be exposed to;
- (b) the analysis and evaluation of the hazards identified;
- (c) a documented Health and Safety Plan, including safe work procedures to mitigate, reduce or control the risks identified;
- (d) a monitoring and review plan.

5.4 The Health and Safety Plan shall include full particulars in respect of: -

- (a) The safety management structure to be instituted on site or place of work and the names of the Contractor's health and safety representatives and members of safety committees where applicable;
- (b) the safe working methods and procedures to be implemented to ensure the work is performed in compliance with the Act and Regulations;
- (c) the safety equipment, devices and clothing to be made available by the Contractor to his employees;
- (d) the site access control measures pertaining to health and safety to be implemented;
- (e) the arrangements in respect of communication of health and safety related matters and incidents between the Contractor, his employees, subcontractors and the Technical Officer with particular reference to the reporting of incidents in compliance with Section 24 and General Administrative Regulation 8 of the Act and with the pertinent clause of the General Conditions of Contract forming part of the Contract and



- (f) the introduction of control measures for ensuring that the Safety Plan is maintained and monitored for the duration of the Contract.
- 5.4 The Health and Safety programme shall be subject to the Technical Officer's approval and he may, in consultation with the Contractor, order that additional and/or supplementary practical arrangements and procedures be implemented and maintained by the Contractor or that different working methods or safety equipment be used or safety clothes be issued which, in the Technical Officer's opinion, are necessary to ensure full compliance by the Contractor with his obligations as an employer in terms of the Act and Regulations. The Technical Officer or his deputy shall be allowed to attend meetings of the Contractor's safety committee as an observer.
- 5.5 The Contractor shall take reasonable steps to ensure that each subcontractor's Health and Safety Plan is implemented and maintained on the construction site: Provided that the steps taken, shall include periodic audits at intervals mutually agreed to between the them, but at least once every month.
- 5.6 The Contractor shall stop any subcontractor from executing any construction work, which is not in accordance with the Contractor's, and/or subcontractor's Health and Safety Plan for the site or which poses a threat to the health and safety of persons.
- 5.7 The Contractor shall ensure that a copy of the Health and Safety Plan is available on site for inspection by an inspector, Technical Officer, agent, subcontractor, employee, registered employee organisation, health and safety representative or any member of the health and safety committee.
- 5.8 The Contractor shall consult with the health and safety committee or, if no health and safety committee exists, with a representative group of employees, on the development, monitoring and review of the Risk Assessment.
- 5.9 The Contractor shall ensure that all employees under his control are informed, instructed and trained by a competent person regarding any hazard and the related work procedures before any work commences, and thereafter at such times as may be determined in the Risk Assessment.
- 5.10 The Contractor shall ensure that all subcontractors are informed regarding any hazard as stipulated in the Risk Assessment before any work commences, and thereafter at such times as may be determined in the Risk Assessment.
- 5.11 The Contractor shall ensure that all visitors to a construction site undergoes health and safety induction pertaining to the hazards prevalent on the site and shall be provided with the necessary personal protective equipment.

## **6. Fall Protection Plan**

6.1 In the event of the risk and hazard identification, as required in terms of clause 5.3 of this

Specification, revealing risks relating to working from an elevated position the contractor shall cause the designation of a competent person, responsible for the preparation of a fall protection plan;

6.2 The Contractor shall implement, maintain and monitor the fall protection plan for the duration of Contract. The Contractor shall also take such steps to ensure the continued adherence to the fall protection plan.

6.3 The fall protection plan shall include:-

- (a) A Risk Assessment of all work carried out from an elevated position;
- (b) the procedures and methods to address all the identified risks per location;
- (c) the evaluation of the employees physical and psychological fitness necessary to work at elevated positions;
- (d) the training of employees working from elevated positions; and
- (e) the procedure addressing the inspection, testing and maintenance of all fall protection equipment.

## **7. Hazards and Potential Hazardous Situations**

The Contractor and the Technical Officer shall immediately notify one another of any hazardous or potentially hazardous situations which may arise during performance of the Contract by the Contractor or any subcontractor and, in particular, of such hazards as may be caused by the design, execution and/or location and any other aspect pertaining to the contract work.

## **8. Health and Safety File**

8.1 *The Contractor shall ensure that a health and safety file is opened and kept on site and shall include all documentation required as per the Act and applicable regulations, and made available to an inspector, the Technical Officer, or subcontractor upon request.*

8.2 *The Contractor shall ensure that a copy of the both his Health and Safety Plan as well as any subcontractor's Health and Safety Plan is available on request to an employee, inspector, contractor or the Technical Officer.*

8.3 *The Contractor shall hand over a consolidated health and safety file to the Technical Officer upon completion of the Construction Work and shall in addition to documentation mentioned in the Act and applicable Regulations include a record of all drawings, designs, materials used and other similar information concerning the completed structure.*

**ANNEXURE 1**

OCCUPATIONAL HEALTH AND SAFETY ACT, 1993

**Regulation 3(1) of the Construction Regulations  
NOTIFICATION OF CONSTRUCTION WORK**

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---

- 1(a) Name and postal address of principal contractor:  
\_\_\_\_\_
- (b) Name and tel. no of principal contractor's contact person:  
\_\_\_\_\_
2. Principal contractor's compensation registration number: \_\_\_\_\_
- 3.(a) Name and postal address of client:  
\_\_\_\_\_
- (b) Name and tel no of client's contact person or agent:  
\_\_\_\_\_
- 4.(a) Name and postal address of designer(s) for the project:  
\_\_\_\_\_
- (b) Name and tel. no of designer(s) contact person:  
\_\_\_\_\_
5. Name and telephone number of principal contractor's construction supervisor on site appointed in terms of regulation 6(1).  
\_\_\_\_\_
6. Name/s of principal contractor's construction sub-ordinate supervisors on site appointed in terms of regulation 6(2). \_\_\_\_\_
7. Exact physical address of the construction site or site office:  
\_\_\_\_\_
- Nature of the work:  
\_\_\_\_\_
8. Expected commencement date:  
9. Expected completion date:

10. Estimated maximum number of persons on the construction site: \_\_\_\_\_

11. Planned number of contractors on the construction site accountable to the principle contractor:

\_\_\_\_\_

12. Name(s) of contractors already chosen.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
**Principal Contractor**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Client**

\_\_\_\_\_  
**Date**

\* **THIS DOCUMENT IS TO BE FORWARDED TO THE OFFICE OF THE DEPARTMENT OF LABOUR PRIOR TO COMMENCEMENT OF WORK ON SITE.**

\* **ALL PRINCIPAL CONTRACTORS THAT QUALIFY TO NOTIFY MUST DO SO EVEN IF ANOTHER PRINCIPAL CONTRACTOR ON THE SAME SITE HAD DONE SO PRIOR TO THE COMMENCEMENT OF WORK.**

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Contract ANNEXURE 2

(COMPANY LETTER HEAD)

**OCCUPATIONAL HEALTH AND SAFETY ACT, 1993 (ACT 85 OF 1993) :**

**REGULATION: Construction Regulation GN 1010 and General Mach REG GMR**

**REQUIRED COMPETENCY: Need at least 2 years experience with equipment**

In \_\_\_\_\_ terms of \_\_\_\_\_  
I, \_\_\_\_\_  
representing the Employer) do hereby appoint \_\_\_\_\_

As the Competent Person on the \_\_\_\_\_  
premises at \_\_\_\_\_

(physical address) to assist in compliance with the Act and the applicable Regulations.

Your designated area/s is/are as follows :-

\_\_\_\_\_  
\_\_\_\_\_

*Date :* \_\_\_\_\_

*Signature :-* \_\_\_\_\_

*Designation :-* \_\_\_\_\_

**Contract: PTH51846 ACCEPTANCE OF DESIGNATION**

*I, \_\_\_\_\_ do hereby accept this Designation and  
acknowledge that I  
understand the requirements of this appointment.*

*Date :* \_\_\_\_\_

*Signature :-* \_\_\_\_\_

*Designation :-* \_\_\_\_\_

Contract

**ANNEXURE 3**

**(COMPANY LETTER HEAD)**

**OCCUPATIONAL HEALTH AND SAFETY ACT, 1993 (ACT 85 OF 1993) :**

**DECLARATION**

In terms of the above \_\_\_\_\_ am personally assuming the  
Act I, \_\_\_\_\_ duties  
and obligations as Chief Executive Officer, defined in Section 1 of the Act and in terms of  
Section 16(1), I will, as far as is reasonably practicable, ensure that the duties and obligations  
of the Employer as contemplated in the above Act are properly discharged.

*Signature :-* \_\_\_\_\_

*Date :* \_\_\_\_\_

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**ANNEXURE 4**

**(LETTER HEAD OF BUSINESS DIVISION OR UNIT OF TRANSNET LIMITED)**

**SITE ACCESS CERTIFICATE**

Access to : \_\_\_\_\_  
Name of \_\_\_\_\_  
Contractor/Builder :- \_\_\_\_\_  
Contract/Order No.: \_\_\_\_\_  
The contract works site/area described above are made available to you for the carrying out of associated works

In terms of your contract/order with (company ) \_\_\_\_\_

Kindly note that you are at all times responsible for the control and safety of the Works Site, and for persons under your control having access to the site.

As from the date hereof you will be responsible for compliance with the requirements of the Occupational Health and Safety Act, 1993 (Act 85 of 1993) as amended, and all conditions of the Contract pertaining to the site of the works as defined and demarcated in the contract documents including the plans of the site or work areas forming part thereof

**Signed :** \_\_\_\_\_ **Date :** \_\_\_\_\_

**TECHNICAL OFFICER**

**ACKNOWLEDGEMENT OF RECEIPT**

**Name of \_\_\_\_\_ I,  
Contractor/Builder :- \_\_\_\_\_**

***do hereby acknowledge and accept the duties***

***and obligations in respect of the Safety of the site/area of Work in terms of the Occupational Health and Safety Act; Act 85 of 1993.***

**Name :** \_\_\_\_\_ **Designation :** \_\_\_\_\_

**Signature :** \_\_\_\_\_ **Date :** \_\_\_\_\_

**SECTION 12**  
**TRANSNET LIMITED**  
(REGISTRATION NO. 1990/000900/06)  
Trading as  
**Transnet freight rail**

**Suppliers Code of Conduct**

**Attached**

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delivering on our commitment *to you*

# Suppliers Code of Conduct

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# Suppliers Code of Conduct

Transnet aims to achieve the best value for money when buying or selling goods and obtaining services. This, however, must be done in an open and fair manner that supports and drives a competitive economy. Underpinning our process are several acts and policies that any supplier dealing with Transnet must understand and support.

These are:

- » Transnet Procurement Policy - A guide for tenderers;
- » Section 217 of the Constitution - the five pillars of Public PSCM (Procurement and Supply Chain Management): fair, equitable, transparent, competitive and cost effective;
- » The Public Finance Management Act (PFMA);
- » The Broad Based Black Economic Empowerment Act (BBBEE); and
- » The Anti-Corruption Act.

This code of conduct has been compiled to formally apprise Transnet Suppliers of Transnet's expectations regarding behaviour and conduct of its Suppliers.

## Prohibition of Bribes, Kickbacks, Unlawful Payments, and Other Corrupt Practices

Transnet is in the process of transforming itself into a self-sustaining State Owned Enterprise, actively competing in the logistics industry. Our aim is to become a world class, profitable logistics organisation. As such, our transformation is focused on adopting a performance culture and to adopt behaviours that will enable this transformation.

**Transnet will not participate in corrupt practices. Therefore, it expects its suppliers to act in a similar manner.**

- » Transnet and its employees will follow the laws of this country and keep accurate business records that reflect actual transactions with, and payments to, our suppliers.



- » Employees must not accept or request money or anything of value, directly or indirectly, from suppliers.

Employees may not receive anything that is calculated to:

- Illegally influence their judgement or conduct or to influence the outcome of a sourcing activity;
  - Win or retain business or to influence any act or decision of any person involved in sourcing decisions; gain an improper advantage.
- » There may be times when a supplier is confronted with fraudulent or corrupt behaviour of Transnet employees. We expect our suppliers to use our "Tip-offs Anonymous" Hotline to report these acts - 0800 003 056.

**Transnet is firmly committed to free and competitive enterprise.**

- » Suppliers are expected to comply with all applicable laws and regulations regarding fair competition and antitrust practices.
- » Transnet does not engage non-value adding agents or representatives solely for the purpose of increasing BBBEE spend (fronting).

**Transnet's relationship with suppliers requires us to clearly define requirements, to exchange information and share mutual benefits.**

- » Generally, suppliers have their own business standards and regulations. Although Transnet cannot control the actions of our suppliers, we will not tolerate any illegal activities.



These include, but are not limited to:

- Misrepresentation of their product (origin of manufacture, specifications, intellectual property rights, etc);
  - Collusion;
  - Failure to disclose accurate information required during the sourcing activity (ownership financial situation, BBBEE status, etc.);
  - Corrupt activities listed above; and harassment, intimidation or other aggressive actions towards Transnet employees.
- » Suppliers must be evaluated and approved before any materials, components, products or services are purchased from them. Rigorous due diligence must be conducted and the supplier is expected to participate in an honest and straight forward manner.
- » Suppliers must record and report facts accurately, honestly and objectively. Financial records must be accurate in all material respects.

## Conflict of Interest

A conflict of interest arises when personal interests or activities influence (or appear to influence) the ability to act in the best interests of Transnet. Examples are:

- » Doing business with family members.
- » Having a financial interest in another company in our industry.



Show that you support good business practice by logging onto [www.transnet-suppliers.net](http://www.transnet-suppliers.net) and completing the form.

This will allow us to confirm that you have received, and agree to, the terms and conditions set out in our Suppliers Code of Conduct.

TIP-OFFS ANONYMOUS HOTLINE  
0800 003 056

# SECTION 1

## DEFINITIONS AND GENERAL

### 100.0 DEFINITIONS

In these instructions, unless inconsistent with the context, the following definitions and meanings will apply:

#### 100.1 Personnel definitions

Definition of personnel designations used in these instructions. (Other designations used in these instructions and not included hereunder shall have the meaning assigned to them in the Transnet Industrial Council First Main Agreement).

*"authorised person"* - a person, whether an employee of Spoornet or not, who has been specially authorised to undertake specific duties in terms of these instructions and who holds a certificate or letter of authority to that effect.

*"Control"* - the person appointed and responsible for co-ordinating the operation of all electrical equipment placed under his jurisdiction.

*"electrical engineering officer"* - any officer who is an electrical engineer or at least a senior engineering technician (electrical).

*"electrical officer (contracts)"* - the person appointed in writing in terms of the E7/1 or E7/2 specification by the responsible electrical engineer, as the person who shall be consulted by the contractor in all electrical matters to ensure that adequate safety precautions are taken by the contractor.

*"electrical officer in charge"* - the electrical supervisor authorised in terms of these instructions and responsible for the equipment and the personnel concerned.

*"electrician"* - an employee who is, or was graded as an electrician and who has had sufficient training in electric light and power work, but not necessarily on high-voltage equipment, to appreciate the dangers of working to clearance from "live" high-voltage equipment.

*"electrical fitter (electric motive power)"* - an employee who is, or was graded as an electrical fitter (electric motive power) and who has had sufficient training in electrical work, but not necessarily on high-voltage equipment, to appreciate the dangers of working to clearance from "live" high-voltage equipment.

*"Emergency Control"* - the person authorised by the responsible electrical engineer to undertake the duties of "Control" for a specified section when all normal means of communications to and from "Control" have failed.

*"employee"* - any person exclusively employed by Spoornet or Metrorail and who is remunerated by salary or wages.

*"examining officer"* - the person appointed for the purpose of conducting such examination as is required in terms of these instructions.

*"operator"* - a railway operations controller who has been authorised to perform switching.

*"responsible person"* - a person whose duties fall within the scope of these instructions and who has been trained in and understands the instructions relevant to these duties.

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*"responsible person in charge"* - any responsible person (authorised or unauthorised) directly in charge of work and constantly present during operations.

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

*"technical employee"* - a person who is trained to perform technical work and is familiar with the scope of his authority.

## 100.2 General definitions

*"access way"* - that portion of the ground, any floor, passage, stairway or other recognised fixed foothold, affording approach to high-voltage electrical equipment, and on which it is intended that a person shall walk or stand while such electrical equipment is "live".

*"air break switch/isolator"* - a switch or isolator, the contacts of which make and break in air, and for the purpose of these instructions includes the pantographs of electric locomotives and motor coaches.

*"authorised entry"* - entry to buildings and enclosures housing electrical equipment as permitted by these instructions or as specially authorised by the senior responsible electrical engineer.

*"barrier"* - any device designed to restrict access to and prevent inadvertent contact with exposed "live" high-voltage electrical equipment.

*"bond"* - a short conductor installed to provide electrical continuity.

*"booster transformer"* - a device to induce into the return conductors provided, virtually the whole of the traction return current, in order to reduce to a minimum any interference with communication circuits due to leakage of traction return current from the traction return rail to earth.

*"cable"* - a length of single insulated conductor (solid or stranded), or two or more such conductors, each provided with its own insulation, which are laid up together. The insulated conductor or conductors may or may not be provided with an overall mechanical and/or insulating protective covering.

*"catenary wire"* - the wire from which the contact wire is suspended by means of droppers.

*"chamber"* - a walled enclosure with or without a roof, in which electrical equipment is installed.

*"clearance"* - the shortest distance in air between any two points as defined in the instructions.

*"closed"* - the state of a switching device to allow the conduction of electric current.

*"conductor"* - any body or substance specifically provided for the purpose of conducting an electric current.

*"contact wire"* - the wire with which the pantograph or current collector is designed to make contact.

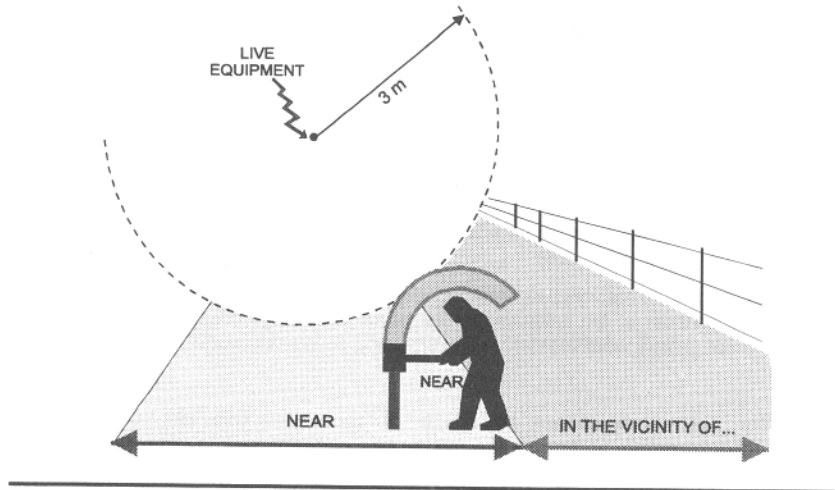
*"contact wire height"* - the height of the underside of the contact wire above rail level.

*"dead"* - isolated and earthed.

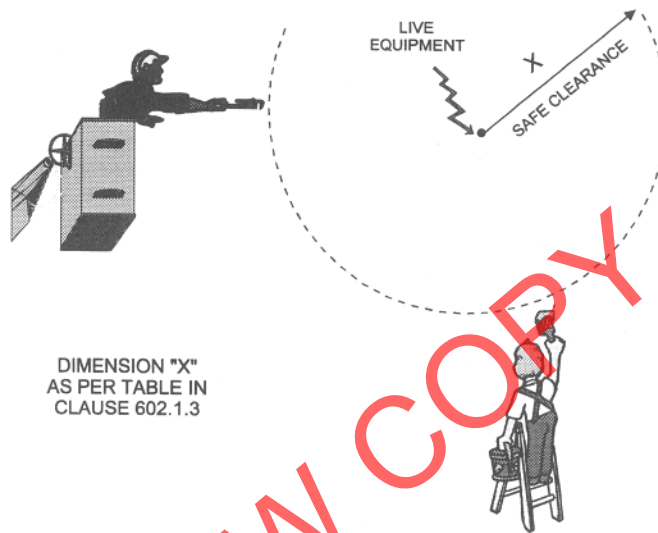
*"department"* - The Petronet, Portnet, South African Airways and Metrorail business concerns and the Transwerk business unit according to Transnet's organisational structure.

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GRAPHIC ILLUSTRATION OF WORKING NEAR EXPOSED "LIVE" HIGH-VOLTAGE EQUIPMENT



GRAPHIC ILLUSTRATION OF WORKING TO CLEARANCE FROM EXPOSED "LIVE" HIGH-VOLTAGE EQUIPMENT



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**GENERAL TENDER CONDITIONS - SERVICES**

**FORM CSS5**

<b>INDEX</b>		
<b>SUBJECT</b>	<b>CLAUSE NUMBER</b>	<b>PAGE NUMBER</b>
GENERAL.....	1	2
LODGING OF TENDERS.....	2	2
USE OF TENDER FORMS.....	3	2
THE RAISING OF A CHARGE FOR PLANS, SPECIFICATIONS, AND TENDER FORMS .....	4	2
DEFAULTS BY RESPONDENTS.....	5	2
CURRENCY.....	6	4
EXCHANGE AND REMITTANCE.....	7	4
ACCEPTANCE OF TENDER OR QUOTATION.....	8	4
LAW GOVERNING CONTRACT.....	9	5
IDENTIFICATION.....	10	5
FORMAL NOTIFICATION REGARDING NAME OF SUCCESSFUL RESPONDENT.....	11	5
UNAUTHORISED COMMUNICATION ABOUT TENDERS.....	12	5
CONTRACT DOCUMENTS.....	13	6
SECURITIES.....	14	6
PRICES SUBJECT TO CONFIRMATION.....	15	6
DELETION OF SERVICES EXCLUDED FROM OFFER/BID.....	16	6
ALTERATIONS MADE BY THE RESPONDENT TO TENDERED PRICES...	17	7
VALUE-ADDED TAX.....	18	7
TERMS AND CONDITIONS OF TENDER.....	19	7
IMPORTANT NOTICE TO RESPONDENTS REGARDING PAYMENT.....	20	7
PLANS, DRAWINGS, DIAGRAMS, SPECIFICATIONS AND DOCUMENTS..	21	8
VISITS TO FOREIGN COUNTRIES.....	22	8
TENDERS BY FOREIGN RESPONDENTS OR ON THEIR BEHALF.....	23	9



**1. GENERAL**

All tenders and subsequent contracts and orders shall be subject to the following procedures as laid down by Transnet Limited (hereinafter referred to as “Transnet”) and are to be strictly adhered to by any person or enterprise or company responding to this tender (hereinafter referred to as “Respondents” or the “Respondent”).

**2. LODGING OF TENDER**

2.1 Tenders shall be lodged with Transnet no later than the closing date and time specified for the receipt thereof, in accordance with the directions issued with tender documents.

2.2 Tenders shall be transmitted in a sealed envelope and placed in the Tender Box at a venue stipulated in the Request for Tender (RFT) or Request for Proposal (RFP) or Request for Quotation (RFQ) (collectively “Tender Documents”), with the tender number and subject endorsed on the left hand bottom corner of the envelope.

**3. USE OF TENDER FORMS**

Where special forms are issued by Transnet for the submission of tenders, Respondents are required to submit their tenders by completion of the appropriate sections on such official forms and not on office stationery bearing their own special conditions of tender; non-compliance with this conditions may result in the rejection of a tender.

**4. THE RAISING OF A CHARGE FOR PLANS, SPECIFICATIONS AND TENDER FORMS**

4.1 A non-refundable charge may be raised for Tender Documents, depending on the nature, magnitude and value of technical information supplied.

4.2 If any of the drawings and specifications referred to in Tender Documents are the official publications of recognised standardising bodies, copies of such drawings and specifications shall be acquired by Respondents at their own expense.

**5. DEFAULTS BY RESPONDENTS**

5.1 If the Respondent, after it has been notified of the acceptance of its tender/quotation fails to:

- (a) enter into a formal contract when called upon to do so in terms of clause 13 (*Contract Documents*), within such period as Transnet may specify; or
- (b) accept an order in terms of the tender or quotation; or
- (c) when called upon to do so, furnish satisfactory security of the fulfilment of the contract in terms of clause 14 (*Securities*);

Transnet may, in any such case, without prejudice to any other legal remedy which it may have, proceed to accept any other tender or quotation or, if it is necessary to do so, call for

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tenders or quotations afresh, and may recover from the defaulting Respondent any additional expense incurred by it in calling for new offers or in accepting a higher offer.

5.2 If any Respondent, who has submitted a tender or quotation, concluded a contract with Transnet (hereinafter referred to as "the Supplier"), or in the capacity of agent or subcontractor has been associated with such tender or contract -

- (a) has withdrawn such tender/quotation after the advertised date and hour for the receipt of tenders; or
- (b) has, after having been notified of the acceptance of its tender or quotation, failed or refused to sign a contract when called upon to do so in terms of any condition forming part of the tender documents; or
- (c) has carried out any contract resulting from such tender or quotation 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 incorrect statement in the affidavit or certificate referred to in clause 11 (*Formal Notification Regarding Name of Successful Respondent*) and is unable to prove to the satisfaction of Transnet that
  - (i) it made the statement in good faith honestly believing it to be correct; and
  - (ii) 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 Supplier's requirements which could not be recovered from the Supplier;

then a tender from any such Respondent shall be disqualified and the person, enterprise or company (including any directors) shall, subject to clause 5.3 below, be disqualified from tendering for any Transnet business.

5.3 Any person or enterprise or company against whom a decision has been given under the provisions of sub-clauses 5.2(b), 5.2(d) or 5.2(e) above, may make representations to the Chief Operating Officer of Transnet Group, whose decision shall be final.

5.4 Any disqualification imposed upon any person or enterprise or company, unless Transnet determines otherwise, shall apply to any other enterprise under the same or different names of disqualified persons or enterprise or company (or associates thereof) and shall for avoidance of doubt also be applied to any agent or employee of the person or enterprise or company concerned.

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**6. CURRENCY**

Prices or fees must be quoted in the currency of the Republic of South Africa in respect of local Services. Prices or fees in any other currency may be rejected by Transnet save where such price is quoted by a foreign Respondent.

**7. EXCHANGE AND REMITTANCE**

The Respondent should note that where the whole or a portion of the contract or order value is to be remitted overseas, Transnet shall, if requested to do so by the Supplier, effect payment overseas directly to the foreign principal or service provider of such percentage of the contract or order value as may be stipulated by the Respondent in its Tender Documents and any variation in the amount to be so paid, which may arise as a result of fluctuations in the rate of exchange involved, will be for the account of the Supplier.

7.1 The Respondent who desires to avail itself of the aforementioned facility must at the time of tendering furnish the information called for in the clause "Exchange and Remittance" of the Tender Documents and also furnish full details of the principals or service providers to whom payment is to be made.

7.2 The Supplier shall at its own cost obtain forward exchange cover on foreign currency to protect itself against any currency rate fluctuation risks for the duration of any resulting contract or order. Transnet will NOT accept any fluctuations in the rate of exchange at the time when payments are made.

Transnet will not recognise any claim for adjustment of the order and/or contract price under clause 7.2 above, if the increase in price arises after the date on which the Services were to be delivered, as set out in the order and/or contract, or any subsequent agreement between the parties.

**8. ACCEPTANCE OF TENDER OR QUOTATION**

8.1 Transnet does not bind itself to accept the lowest or any tender or quotation nor will it give any reasons for the rejection of a tender or quotation. Transnet reserves the right to accept any tender in whole or in part.

8.2 Upon the acceptance of a tender or quotation by Transnet, the parties shall be bound by these General Tender Conditions and the Standard Terms and Conditions of Contract (Form US7 - Services).

8.3 Where the acceptance by Transnet of the Respondent's offer/bid is delivered by letter, the South African Post Office shall be regarded as the agent of Transnet and delivery of such notice of acceptance to the South African Post Office shall be considered as delivery to the Respondent.

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8.4 Where the Respondent has been informed by Transnet per facsimile message of the acceptance of its tender or quotation, the acknowledgement of receipt transmitted by its facsimile machine shall be regarded as proof of delivery to the Respondent.

**9. LAW GOVERNING CONTRACT**

The law of the Republic of South Africa shall govern the contract created by the acceptance of a tender/quotation. The *domicilium citandi et executandi* shall be a place in the Republic of South Africa to be specified by the Respondent in its tender/quotation 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 tender/quotation the name of its accredited agent in the Republic of South Africa who is empowered to sign any contract which may be entered into in the event of its tender/quotation being accepted and to act on its behalf in all matters relating to the contract.

**10. IDENTIFICATION**

If the Respondent is a company, the full names of the directors shall be stated in the tender/quotation. If the Respondent is a close corporation, the full names of the members shall be stated in the tender/quotation. 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.

**11. FORMAL NOTIFICATION REGARDING NAME OF SUCCESSFUL RESPONDENT**

In the case of tenders submitted to the Secretary of a Divisional Acquisition Council, unsuccessful Respondents will be formally notified of the names of successful Respondent(s) as soon as possible after the closing date for receipt of the tender in question. In the case of tenders or quotations submitted to Transnet Acquisition Council, unsuccessful Respondents shall, upon application, be furnished with similar information.

**12. UNAUTHORISED COMMUNICATION ABOUT TENDERS**

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

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**13. CONTRACT DOCUMENTS**

The contract documents will comprise these General Tender Conditions and the Standard Terms and Conditions of Contract (Form US7 - Services) which will constitute the contract between the parties upon receipt by the Respondent of Transnet's letter of acceptance / intent, subject to all additional amendments and/or special conditions thereto as agreed to by the parties.

**14. SECURITIES**

- 14.1 The successful Respondent, when called upon to do so, shall provide security to the satisfaction of Transnet for the due fulfilment of a contract or order. Such security shall be in the form of a deed of suretyship furnished by an approved bank, building society, insurance or guarantee corporation carrying on business in South Africa.
- 14.2 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.
- 14.3 Such security, if required, shall be an amount which will be stipulated in the Tender Documents.
- 14.4 For the purpose of clause 14.1 above, Transnet will supply "Deed of Suretyship" forms to the successful Respondent for completion and no guarantee in any other form will be accepted. Copies of such forms will be supplied to Respondents on request. For this purpose "Deed of Suretyship" forms will be provided which shall be completed and returned to Transnet or a designated official by the successful Respondent within 30 (thirty) days from the date of the letter of acceptance. No payment will be made until the forms, duly completed, are delivered to Transnet. Failure to return the Deed of Suretyship within the prescribed time shall, save where prior extension has been granted, entitle Transnet without notice to the Supplier to cancel the contract with immediate effect.
- 14.5 Additional costs incurred by Transnet necessitated by reason of default on the part of the Supplier in relation to the conditions of this clause 14 will be for the account of the Supplier.

**15. PRICES SUBJECT TO CONFIRMATION**

- 15.1 A tender or quotation with prices which are subject to confirmation will not be considered.
- 15.2 Tenders where firm prices are quoted for the duration of any resulting order and/or contract will receive precedence over prices which are subject to adjustment.

**16. DELETION OF SERVICES EXCLUDED FROM OFFER/BID**

The Respondent must delete Services for which it has not tendered or for which the price or fee has been included elsewhere in the tender.

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**17. ALTERATIONS MADE BY THE RESPONDENT TO TENDERED PRICES**

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

**18. VALUE-ADDED TAX**

18.1 In respect of local Services, i.e. Services to be provided by a South African company, the prices or fees quoted by the Respondent are to be exclusive of Value-Added Tax (VAT) which must be shown separately at the standard rate on the Supplier's Tax Invoice.

18.2 In respect of Services to be provided by a foreign principal -

- (a) The invoicing by a local Supplier on behalf of its foreign principal represents a Service rendered by the principal, which is not subject to VAT;
- (b) The Supplier's Tax Invoice(s) for the local portion only (i.e. the "commission" for the Services rendered locally) must show the Value-Added Tax (VAT) separately at zero percent if the Services are in compliance with Section 11(2) of the VAT Act, 89 of 1991.

**19. TERMS AND CONDITIONS OF TENDER**

The Supplier shall adhere to the Standard Terms and Conditions of Contract as set out in Form US7 - Services), a copy of which is attached hereto. Should the Respondent find any conditions unacceptable, it should indicate which conditions are unacceptable and offer an alternative. Please note that any alternative offered shall be compared with acceptance of the Form US7 conditions or alternatives offered by other Respondents.

**20. IMPORTANT NOTICE TO RESPONDENTS REGARDING PAYMENT**

**20.1 Method of Payment**

- (a) The attention of the Respondent is directed to clause 10 (*Invoicing and Payment*) of Form US7 – Services, which sets out the conditions of payment on which tender 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 tender is adjudicated.

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- (d) The Respondent must, therefore, in the first instance, tender strictly in accordance with sub-clause 20.1(a) above. Failure to comply with sub-clause 20.1(a) above may preclude a tender from further consideration.

**NOTE: The successful Respondent (the Supplier) shall, where applicable, be required to furnish a guarantee covering any advance payments.**

## 20.2 Conditional Discount

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

## 21. PLANS, DRAWINGS, DIAGRAMS, SPECIFICATIONS AND DOCUMENTS

Copyright in plans, drawings, diagrams, specifications and documents compiled by the Supplier for the purpose of contract work shall be governed by the terms and conditions detailed in clause 12 of Form US7 - Services (*Intellectual Property Rights*).

## 22. VISITS TO FOREIGN COUNTRIES

22.1 Respondents must furnish details in a covering letter if it is considered necessary that employees of Transnet should carry out inspection and/or review any operational Services at the premises of the successful Respondent (the Supplier) or its subcontractors overseas for the purpose of a product demonstration and/or final acceptance or for any other reason.

22.2 If the Respondent considers overseas visits to be necessary it must provide the following information in a covering letter in respect of each visit -

- (a) countries and places to be visited;
- (b) number of employees and disciplines involved;
- (c) number of man-days involved; and
- (d) motivation for the visit.

22.3 Transnet will make all arrangements with regard to booking of air journeys, hotel reservations, transport to and from airports, places of inspection or demonstration, etc. and all expenses will be for the account of Transnet.

22.4 Before a visit is undertaken, such as envisaged in this clause 22, Transnet and the Supplier will agree in writing on the number of employees of Transnet that should undertake the visit and the number of man-days involved in the visit.

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## 23. TENDERS BY FOREIGN RESPONDENTS OR ON THEIR BEHALF

- 23.1 Tenders submitted by foreign principals may be forwarded direct by the principals to the Secretary of the Acquisition Council or to a designated official of Transnet according to whichever officer is specified in the Tender Documents, or may be so forwarded on the principal's behalf by its South African representative and/or agent provided that written proof is submitted that such representative / agent has been duly authorised to act in that capacity by the principal. Failure to submit such authorisation by the representative / agent shall disqualify the tender.
- 23.2 When legally authorised to prepare and submit tenders on behalf of their principals not domiciled in the Republic of South Africa, representatives and/or agents must compile the tenders in the names of such principals and sign them on behalf of the latter.
- 23.3 South African representatives and/or agents of successful foreign Respondents must when so required enter into a formal contract in the name of their principals and must sign such contracts 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 and/or agents authorising them to enter into and sign such contracts.
- (a) Such Powers of Attorney must comply with Government Notice No. 1160 of 27 June 1930 (and any amendments thereto) - "Rules of the Supreme Court of South Africa for the authentication of documents executed outside the Republic for use within the Republic."
  - (b) The Powers of Attorney must be signed by principals under the same title as used in the Tender Documents.
  - (c) On arrival within the Republic of South Africa these Powers of Attorney are to be completed in terms of Section 8(2) of the Stamp Duties Act No. 77 of 1968, or any amendment thereof.
  - (d) 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 contracts with Transnet, a notarially certified copy thereof should be furnished.
  - (e) The Power of Attorney must authorise the South African representative or agent to choose the *domicilium citandi et executandi* as provided for in clause 26 (*Addresses for Notices*) of the Standard Conditions of Contract, Form US7 - Services.
- 23.4 If payment is to be made in South Africa, the foreign Supplier (i.e. the principal, or its South African agents or representatives), must notify Transnet in writing whether -
- (a) For payment by cheque –

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- (i) cheques are to be drawn for payment to the credit of the foreign Supplier's account at a bank in South Africa, in which case the name and branch of such bank shall be furnished; or
  - (ii) cheques are to be made out in favour of the foreign Supplier and forwarded to its South African agent or representative, in which case such agent or representative must be duly authorised to sign the receipt of the cheque and discharge it on behalf of its principal.
- (b) For payment by electronic funds transfer (EFT) –
- (i) funds are to be transferred to the credit of the foreign Supplier's account at a bank in South Africa, in which case the name and branch of such bank shall be furnished; or
  - (ii) 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

23.5 The attention of the Respondent is directed to clause 14 above (*Securities*) regarding the provision of security for the fulfilment of contracts and orders and the manner and form in which such security is to be furnished.

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“PREVIEW COPY ONLY”

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**TRANSNET**



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

**FORM US7 – SERVICES**

**“PREVIEW COPY ONLY”**

## TABLE OF CONTENTS

1.....	INTRODUCTION .....	3
2.....	DEFINITIONS .....	3
3.....	INTERPRETATION .....	7
4.....	NATURE AND SCOPE .....	8
5.....	AUTHORITY OF PARTIES .....	8
6.....	WARRANTIES.....	9
7.....	TRANSNET'S OBLIGATIONS.....	11
8.....	GENERAL OBLIGATIONS OF THE SUPPLIER.....	11
9.....	FEES AND EXPENSES.....	13
10.....	INVOICING AND PAYMENT.....	13
11.....	FEE ADJUSTMENTS.....	14
12.....	INTELLECTUAL PROPERTY RIGHTS.....	14
13.....	SUPPLIER'S PERSONNEL.....	17
14.....	LIMITATION OF LIABILITY .....	18
15.....	INSURANCES .....	19
16.....	CONFIDENTIALITY.....	19
17.....	TOTAL OR PARTIAL FAILURE TO PERFORM THE SCOPE OF SERVICES.....	22
18.....	TERM AND TERMINATION.....	22
19.....	CONSEQUENCE OF TERMINATION.....	23
20.....	ASSIGNMENT .....	24
21.....	FORCE MAJEURE.....	24
22.....	EQUALITY AND DIVERSITY .....	25
23.....	NON-WAIVER .....	25
24.....	PARTIAL INVALIDITY .....	25
25.....	DISPUTE RESOLUTION .....	25
26.....	ADDRESSES FOR NOTICES .....	26
27.....	WHOLE AND ONLY AGREEMENT .....	26
28.....	AMENDMENT AND CHANGE CONTROL .....	27
29.....	GOVERNING LAW.....	27
30.....	COUNTERPARTS.....	27

SCHEDULE 1 - ADDRESSES FOR NOTICES

SCHEDULE 2 - SCHEDULE OF REQUIREMENTS and / or WORK ORDER/S

SCHEDULE 3 - NON-DISCLOSURE AGREEMENT

## 1. INTRODUCTION

When an Agreement is entered into between Transnet and the Supplier of Services to Transnet, these Standard Terms and Conditions of Contract, the General Tender Conditions, a Schedule of Requirements and/or Work Order(s) including such special conditions as applicable, and any terms in the associated tender documents, exclusively govern the provision of Services by the Supplier 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 Schedule of Requirements and/or 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 Supplier (as agreed between the Parties), which collectively and exclusively govern the provision of Services by the Supplier 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;
- 2.5. **"Commencement Date"** means the effective date at which time the Supplier's provision of Services to Transnet in terms of the Agreement shall commence, as detailed in Schedule 2 hereto (SCHEDULE OF REQUIREMENTS / WORK ORDER);
- 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

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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

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Date & Company Stamp

- (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 Supplier 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 Supplier by Transnet, as detailed in the Schedule of Requirements or 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

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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 Supplier 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 Supplier for the provision of Services;
- 2.22. **"Schedule of Requirements"** means Schedule 2 hereto, unless substituted by a Work Order or Work Orders, as defined;
- 2.23. **"Service(s)"** means the Service(s) provided to Transnet by the Supplier, pursuant to the Schedule of Requirements or Work Order(s) in terms of the Agreement;
- 2.24. **"Service Level Agreement"** or **"SLA"** means the processes, deliverables, key performance indicators and performance standards relating to the Services to be provided by the Supplier;
- 2.25. **"Subcontract"** means any contract or agreement or proposed contract or agreement between the Supplier and any third party whereby that third party agrees to provide to the Supplier the Services or any part thereof;
- 2.26. **"Subcontractor"** means the third party with whom the Supplier enters into a Subcontract;

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- 2.27. **“Supplier 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 Supplier prior to the Commencement Date or independently developed by the Supplier outside the scope of the Agreement at no expense to Transnet, and used by the Supplier in the performance of the Services;
- 2.28. **“Tax Invoice”** means the document as required by Section 20 of the Value-Added Tax Act, 89 of 1991;
- 2.29. **“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 Supplier in the performance of the Services;
- 2.30. **“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;
- 2.31. **“VAT”** means Value-Added Tax in terms of the Value-Added Tax Act, 89 of 1991; and
- 2.32. **“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 genders.

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#### 4. NATURE AND SCOPE

- 4.1. The Agreement is an agreement under the terms and conditions of which the Supplier 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 Supplier, 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 Schedule of Requirements and / or 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 Schedule of Requirements or Work Orders, 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 Schedule of Requirements and/or 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 the Schedule of Requirements and/or Work Order(s) shall prevail.
- 4.6. Time will be of the essence and the Supplier will perform its obligations under the Agreement in accordance with the timeframe(s) (if any) set out in the relevant schedule, save that the Supplier 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;

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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 Supplier 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 Supplier;
  - (b) it will discharge its obligations under the Agreement and any annexure 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 Supplier 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 sub-clause 6.3 below, in the event that the Supplier 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 Supplier warrants that for a period of 90 (ninety) days from Acceptance of the Deliverables they will, if properly used, conform in all materials respects with the requirements set out in the relevant schedule. The Supplier 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 Supplier 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 Supplier and any excess charges or costs incurred by Transnet as a result shall be paid by the Supplier.

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- 6.4. The Supplier will remedy any defect within 14 (fourteen) days of being notified of that defect by Transnet in writing.
- 6.5. The Supplier 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 Supplier.
- 6.6. The Supplier shall advise Transnet of the effects of any steps proposed by Transnet pursuant to sub-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 Supplier 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 Supplier 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 Supplier 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 Supplier undertakes to comply with South Africa's general privacy protection in terms of the Bill of Rights (Section 14) in connection with the Agreement and shall procure that its Personnel shall observe the provisions of such Act (as applicable) or any amendments and re-enactments thereof and any regulations made pursuant thereto.
- 6.9. The Supplier 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 Supplier to comply with its obligations under the Agreement will be reduced to the greatest extent possible, and that the Supplier shall ensure that it has appropriate, tested and documented recovery arrangements in place.
- 6.10. In compliance with the National Railway Safety Regulator Act, 16 of 2002, the Supplier shall ensure that the Services, to be supplied to Transnet under the terms and conditions of the

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Agreement, comply fully with the Specifications as set forth in Schedule 2 hereto, and shall thereby adhere to railway safety requirements and/or regulations. Permission for the engagement of a Subcontractor by the Supplier, as applicable, shall be subject to a review of the capability of the proposed Subcontractor to comply with the specified railway safety requirements and/or regulations. The Supplier and/or its Subcontractor shall grant Transnet access, during the term of the Agreement, to review any safety-related activities, including the coordination of such activities across all parts of its organisation.

## 7. TRANSNET'S OBLIGATIONS

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

## 8. GENERAL OBLIGATIONS OF THE SUPPLIER

- 8.1. The Supplier shall –
  - (a) respond promptly to all complaints and enquiries from Transnet;
  - (b) inform Transnet immediately of any dispute or complaint arising in relation to the provision of the Services;
  - (c) conduct its business in a professional manner that will reflect positively upon the Supplier and the Supplier's Services;
  - (d) keep full records clearly indicating all transactions concluded by the Supplier relating to the performance of the Services and keep such records for at least 5 (five) years from the date of each such transaction;

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- (e) obtain, and at all times maintain in full force and effect, any and all licences, permits and the like required under applicable laws for the provision of the Services and the conduct of the business and activities of the Supplier;
- (f) observe and ensure compliance with all requirements and obligations as set out in the labour and related legislation of South Africa, including the Occupational Health and Safety Act, 85 of 1993; and
- (g) comply with all applicable environmental legislation and regulations, and demonstrate sound environmental policies, management and performance.

8.2. The Supplier acknowledges and agrees that it shall at all times -

- (a) render the Services and perform all its duties with honesty and integrity;
- (b) communicate openly and honestly with Transnet and demonstrate a commitment to performing the Services timeously, efficiently and to the required standards;
- (c) endeavour to provide the highest possible standards of service and professionalism, with a reasonable degree of care and diligence;
- (d) use its best endeavours and make every diligent effort to meet agreed deadlines;
- (e) treat its own Personnel, as well as all Transnet's officers, employees, agents and consultants, with fairness and courtesy and respect for their human rights;
- (f) practice and promote its own internal policies aimed at prohibiting and preventing unfair discrimination (as further referred to in clause 22 – EQUALITY AND DIVERSITY);
- (g) treat all enquiries from Transnet in connection with the Services with courtesy and respond to all enquiries promptly and efficiently. Where the Supplier is unable to comply with the provisions of this sub-clause, the Supplier will advise Transnet of the delay and the reasons therefor and will keep Transnet informed of progress made regarding the enquiry;
- (h) when requested by Transnet, provide clear and accurate information regarding the Supplier's own policies and procedures, excluding Know-How and other Confidential Information, except where a non-disclosure undertaking has been entered into between the Parties;
- (i) not allow a conflict of interest to develop between its own interests (or the interests of any of its other customers) and the interests of Transnet;

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- (j) not accept or offer, nor allow, induce or promote the acceptance or offering of any gratuity, enticement, incentive or gift that could reasonably be regarded as bribery or an attempt to otherwise exert undue influence over the recipient;
- (k) not mislead Transnet or its officers, employees and stakeholders, whether by act or omission;
- (l) not otherwise act in an unethical manner or do anything which could reasonably be expected to damage or tarnish Transnet's reputation or business image; and
- (m) immediately report to Transnet any unethical, fraudulent or otherwise unlawful conduct of which it becomes aware in connection with Transnet or the provision of Services.

## 9. FEES AND EXPENSES

- 9.1. In consideration of the provision of the Services, Transnet will pay to the Supplier the Fees detailed in the relevant schedule or Work Order.
- 9.2. Transnet will not be invoiced for materials used in the provision of the Services save for those materials (if any) set out in the Work Order and accepted by Transnet or in any relevant Work Order (which will be invoiced to Transnet at cost).
- 9.3. Unless otherwise agreed in a schedule or Work Order, Transnet will reimburse to the Supplier all reasonable and proper expenses incurred directly and solely in connection with the provision of the Services, provided that all such expenses -
  - (a) are agreed by Transnet in advance;
  - (b) are incurred in accordance with Transnet's standard travel and expenses policies;
  - (c) are passed on to Transnet at cost with no administration fee; and
  - (d) will only be reimbursed if supported by relevant receipts.
- 9.4. All Tax Invoices relating to Fees, out of pocket expenses and, if applicable, travel and accommodation costs, will provide the detail for each of the Personnel carrying out the Services and incurring the expenses, and the Tax Invoice will, where appropriate, include VAT as a separate item.

## 10. INVOICING AND PAYMENT

- 10.1. Transnet shall pay the Supplier the amounts stipulated in the relevant schedule or Work Order, subject to the terms and conditions of the Agreement.

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- 10.2. Transnet shall pay such amounts to the Supplier, upon receipt of a correct and undisputed Tax Invoice together with the supporting documentation as specified in the Schedule of Requirements or Work Order appended hereto, once the undisputed Tax Invoices, or such portion of the Tax Invoices which are undisputed become due and payable to the Supplier for the provision of the Services, in terms of sub-clause 10.4 below.
- 10.3. All Fees and other sums payable under the Agreement are exclusive of VAT, which will be payable at the applicable rate.
- 10.4. Unless otherwise provided for in the Schedule of Requirements or Work Order(s) appended to the Agreement, Tax Invoices shall be submitted together with a month-end statement. Payment against such month-end statement shall be made by Transnet within 30 (thirty) days after date of receipt by Transnet of the statement together with all undisputed Tax Invoices and supporting documentation.
- 10.5. Where the payment of any Tax Invoice, or any part thereof which is not in dispute, is not made in accordance with this clause 10, the Supplier shall be entitled to charge interest on the outstanding amount, at The Standard Bank of South Africa's prime rate of interest in force, for the period from the due date of payment until the outstanding amount is paid.

## **11. FEE ADJUSTMENTS**

- 11.1. Fees for Services rendered in terms of the Agreement shall be subject to review as indicated in the Schedule of Requirements or Work Orders annexed hereto from time to time.
- 11.2. No less than 2 (two) months prior to any proposed Fee adjustment, the Parties shall commence negotiations for Fees for the next period or as otherwise indicated and appended hereto.
- 11.3. Should Transnet and the Supplier fail to reach an agreement on Fees for the successive period, either Party shall be entitled to terminate the Agreement and/or the relevant Work Order after giving 30 (thirty) days written notice to the other.
- 11.4. Neither Party shall have any claim against the other of whatsoever nature by reason of such cancellation as envisaged in sub-clause 11.3 above.

## **12. INTELLECTUAL PROPERTY RIGHTS**

### **12.1. Title to Confidential Information**

- (a) Transnet will retain all right, title and interest in and to its Confidential Information and Background Intellectual Property and the Supplier acknowledges that it has no claim of

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any nature in and to the Confidential Information and Background Intellectual Property that is proprietary to Transnet. For the avoidance of doubt, all the Supplier's Background Intellectual Property shall remain vested in the Supplier.

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

#### 12.2. Title to Intellectual Property

- (a) All right, title and interest in and to Foreground Intellectual Property prepared conceived or developed by the Supplier, its researchers, agents and employees shall vest in Transnet and the Supplier acknowledges that it has no claim of any nature in and to the Foreground Intellectual Property. The Supplier shall not at any time during or after the termination or cancellation of the Agreement dispute the validity or enforceability of such Foreground Intellectual Property, or cause to be done any act or anything contesting or in any way impairing or tending to impair any part of that right, title and interest to any of the Foreground Intellectual Property and shall not counsel or assist any person to do so.
- (b) Transnet shall be entitled to seek protection in respect of the Foreground Intellectual Property anywhere in the world as it shall decide in its own absolute discretion and the Supplier shall reasonably assist Transnet in attaining and maintaining protection of the Foreground Intellectual Property.
- (c) Where the Foreground Intellectual Property was created by the Supplier or its researchers, agents and employees and where Transnet elects not to exercise its option to seek protection or decides to discontinue the financial support of the prosecution or maintenance of any such protection, Transnet shall notify the Supplier who shall have the right of first refusal to file or continue prosecution or maintain any such applications and to maintain any protection issuing on the Foreground Intellectual Property.

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- (d) No consideration shall be paid by Transnet to the Supplier for the assignment of any Foreground Intellectual Property from the Supplier to Transnet, over and above the sums payable in terms of the Agreement. The Supplier undertakes to sign all documents and do all things as may be necessary to effect, record and perfect the assignment of the Foreground Intellectual Property to Transnet.
- (e) Subject to anything contrary contained in the Agreement and/or the prior written consent of Transnet (which consent shall not be unreasonably withheld), the Supplier shall under no circumstances be entitled as of right, or to claim the right, to use Transnet's Background Intellectual Property and/or Foreground intellectual Property.

### 12.3. Title to Improvements

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

### 12.4. Unauthorised Use of Confidential Information

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

### 12.5. Unauthorised Use of Intellectual Property

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

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- (b) It shall be within the discretion of Transnet to determine what steps shall be taken against the infringer and the Supplier shall co-operate fully with Transnet, at Transnet's cost, in whatever measure including legal action to bring any infringement of illegal use to an end.
- (c) The Supplier shall cooperate to provide Transnet promptly with all relevant ascertainable facts.
- (d) If proceedings are commenced by Transnet alone, Transnet shall be responsible for all expenses but shall be entitled to all damages or other award arising out of such proceedings. If proceedings are commenced by both Parties, both Parties will be responsible for the expenses and both Parties shall be entitled to damages or other award arising out of proceedings.

### **13. SUPPLIER'S PERSONNEL**

- 13.1. The Supplier's Personnel shall be regarded at all times as employees, agents or Subcontractors of the Supplier and no relationship of employer and employee shall arise between Transnet and any Supplier Personnel under any circumstances regardless of the degree of supervision that may be exercised over the Personnel by Transnet.
- 13.2. The Supplier warrants that all its Personnel will be entitled to work in South Africa or any other country in which the Services are to be performed.
- 13.3. The Supplier will ensure that its Personnel comply with all reasonable requirements made known to the Supplier by Transnet concerning conduct at any Transnet premises or any other premises upon which the Services are to be performed (including but not limited to security regulations, policy standards and codes of practice and health and safety requirements). The Supplier will ensure that such Personnel at all times act in a lawful and proper manner in accordance with these requirements.
- 13.4. Transnet reserves the right to refuse to admit or to remove from any premises occupied by or on behalf of it, any Supplier Personnel whose admission or presence would, in the reasonable opinion of Transnet, be undesirable or who represents a threat to confidentiality or security or whose presence would be in breach of any rules and regulations governing Transnet's Personnel, provided that Transnet notifies the Supplier of any such refusal (with reasons why). The reasonable exclusion of any such individual from such premises shall not relieve the Supplier from the performance of its obligations under the Agreement.

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

#### 14. LIMITATION OF LIABILITY

14.1. Neither Party excludes or limits liability to the other Party for -

- (a) death or personal injury due to negligence; or
- (b) fraud.

14.2. The Supplier shall indemnify and keep Transnet indemnified from and against liability for damage to any Transnet property (whether tangible or intangible) or any other loss, costs or damage suffered by Transnet to the extent that it results from any act of or omission by the Supplier or its Personnel in connection with the Agreement. The Supplier's liability arising out of this sub-clause 14.2 shall be limited to a maximum amount payable in respect of any one occurrence or a series of related occurrences in a single calendar year, such amount to be agreed in writing by the Parties.

14.3. Subject always to sub-clauses 14.1 and 14.2 above, the liability of either the Supplier or Transnet under or in connection with the Agreement, whether for negligence, misrepresentation, breach of contract or otherwise, for direct loss or damage arising out of each Default or series of related Defaults shall not exceed 100% (one hundred percent) of the Fees paid under the schedule or Work Order to which the Default(s) relates.

14.4. Subject to sub-clause 14.1 above, and except as provided in sub-clauses 14.2 and 14.3 above, in no event shall either Party be liable to the other for indirect or consequential loss or damage or including indirect or consequential loss of profits, business, revenue, goodwill or anticipated savings of an indirect nature or loss or damage incurred by the other Party as a result of third party claims.

14.5. If for any reason the exclusion of liability in sub-clause 14.4 above is void or unenforceable, either Party's total liability for all loss or damage under the Agreement shall be as provided in sub-clause 14.3 above.

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14.6. Nothing in this clause 14 shall be taken as limiting the liability of the Supplier in respect of clause 12 (INTELLECTUAL PROPERTY RIGHTS) or clause 16 (CONFIDENTIALITY).

## 15. INSURANCES

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

15.2. The Supplier shall arrange insurance with reputable insurers and will produce to Transnet evidence of the existence of the policies on an annual basis within 30 (thirty) days after date of policy renewals.

15.3. Subject to sub-clause 15.4 below, if the Supplier fails to effect adequate insurance under this clause 15, it shall notify Transnet in writing as soon as it becomes aware of the reduction or inadequate cover and Transnet may arrange or purchase such insurance. The Supplier shall promptly reimburse Transnet for any premiums paid provided such insurance protects the Supplier's liability. Transnet assumes no responsibility for such insurance being adequate to protect all of the Supplier's liability.

15.4. In the event that the Supplier receives written notice from its insurers advising of the termination of its insurance cover referred to in sub-clause 15.1 above or if the insurance ceases to be available upon commercially reasonable terms, the Supplier shall immediately notify Transnet in writing of such termination and/or unavailability, whereafter either the Supplier or Transnet may terminate the Agreement on giving the other Party not less than 30 (thirty) days prior written notice to that effect.

## 16. CONFIDENTIALITY

16.1. The Parties hereby undertake the following, with regard to Confidential Information -

- (a) not to divulge or disclose to any person whomsoever in any form or manner whatsoever, either directly or indirectly, any Confidential Information of the other, without the prior written consent of such other Party, other than when called upon to do so in accordance with a statute, or by a court having jurisdiction, or by any other duly authorised and empowered authority or official, in which event the Party concerned shall do what is

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Date & Company Stamp

reasonably possible to inform the other of such a demand and each shall assist the other in seeking appropriate relief or the instituting of a defensive action to protect the Confidential Information concerned;

- (b) not to use, exploit, permit the use of, directly or indirectly, or in any other manner whatsoever apply the Confidential Information, disclosed to it as a result of the Agreement, for any purpose whatsoever other than for the purpose for which it is disclosed or otherwise than in strict compliance with the provisions in the Agreement;
- (c) not to make any notes, sketches, drawings, photographs or copies of any kind of any part of the disclosed Confidential Information, without the prior written consent of such other Party, except when reasonably necessary for the purpose of the Agreement, in which case such copies shall be regarded as Confidential Information;
- (d) not to de-compile, disassemble or reverse engineer any composition, compilation, concept application, item, component de-compilation, including software or hardware disclosed and shall not analyse any sample provided by Transnet, or otherwise determine the composition or structure or cause to permit these tasks to be carried out except in the performance of its obligations pursuant to the Agreement;
- (e) not to exercise less care to safeguard Transnet Confidential Information than the Party exercises in safeguarding its own competitive, sensitive or Confidential Information;
- (f) Confidential Information disclosed by either Party to the other or by either Party to any other party used by such Party in the performance of the Agreement, shall be dealt with as "restricted" or shall be dealt with according to any other appropriate level of confidentiality relevant to the nature of the information concerned, agreed between the Parties concerned and stipulated in writing for such information in such cases;
- (g) the Parties shall not make or permit to be made by any other person subject to their control, any public statements or issue press releases or disclose Confidential Information with regard to any matter related to the Agreement, unless written authorisation to do so has first been obtained from the Party first disclosing such information;
- (h) each Party shall be entitled to disclose such aspects of Confidential Information as may be relevant to one or more technically qualified employees or consultants of the Party who are required in the course of their duties to receive the Confidential Information for the Permitted Purpose provided that the employee or consultant concerned has a legitimate interest therein, and then only to the extent necessary for the Permitted Purpose, and is

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Date & Company Stamp

informed by the Party of the confidential nature of the Confidential Information and the obligations of the confidentiality to which such disclosure is subject and the Party shall ensure such employees or consultants honour such obligations;

- (i) each Party shall notify the other Party of the name of each person or entity to whom any Confidential Information has been disclosed as soon as practicable after such disclosure;
  - (j) each Party shall ensure that any person or entity to which it discloses Confidential Information shall observe and perform all of the covenants the Party has accepted in the Agreement as if such person or entity has signed the Agreement. The Party disclosing the Confidential Information shall be responsible for any breach of the provisions of the Agreement by the person or entity; and
  - (k) each Party may by written notice to the other Party specify which of the Party's employees, officers or agents are required to sign a non-disclosure undertaking.
- 16.2. The duties and obligations with regard to Confidential Information in this clause 16 shall not apply where -
- (a) a Party can demonstrate that such information is already in the public domain or becomes available to the public through no breach of the Agreement by that Party, or its Personnel; or
  - (b) was rightfully in a Party's possession prior to receipt from the other Party, as proven by the first-mentioned Party's written records, without an infringement of an obligation or duty of confidentiality; or
  - (c) can be proved to have been rightfully received by a Party from a third party without a breach of a duty or obligation of confidentiality; or
  - (d) is independently developed by a Party as proven by its written records.
- 16.3. This clause 16 shall survive termination for any reason of the Agreement and shall remain in force and effect from the Commencement Date of the Agreement and 5 (five) years after the termination of the Agreement. Upon termination of the Agreement, all documentation furnished to the Supplier by Transnet pursuant to the Agreement shall be returned to Transnet including, without limitation all corporate identity equipment including dies, blocks, labels, advertising matter, printing matter and the like.

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## 17. TOTAL OR PARTIAL FAILURE TO PERFORM THE SCOPE OF SERVICES

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

## 18. TERM AND TERMINATION

- 18.1. The Agreement shall commence on the Commencement Date, as specified in the schedules or Work Orders hereto, and shall continue subject to termination in accordance with the provisions of the Agreement or otherwise in accordance with law or equity.
- 18.2. Transnet may terminate the Agreement without cause by giving the Supplier 30 (thirty) days' notice in writing.
- 18.3. Either Party may terminate the Agreement forthwith by notice in writing to the other Party where the other Party has committed a material Default and, where such Default is capable of remedy, has failed to remedy such Default within 30 (thirty) days of receiving notice specifying the Default and requiring its remedy.
- 18.4. Either Party may terminate the Agreement forthwith by notice in writing to the other Party when the other Party is unable to pay its debts as they fall due or commits any act or omission which would be an act of insolvency in terms of the Insolvency Act, 1936 (as amended), or if any action, application or proceeding is made with regard to it for -
- (a) a voluntary arrangement or composition or reconstruction of its debts;
  - (b) the presentation of an administrative petition;
  - (c) its winding-up or dissolution;
  - (d) the appointment of a liquidator, trustee, receiver, administrative receiver or similar officer;
  - or
  - (e) any similar action, application or proceeding in any jurisdiction to which it is subject.
- 18.5. Transnet may terminate the Agreement at any time within 2 (two) months of becoming aware of a change of control of the Supplier by notice in writing to the Supplier. For the purposes of this clause, "control" means the right to direct the affairs of a company whether by ownership of shares, membership of the board of directors, agreement or otherwise.

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18.6. Transnet may cancel any schedule hereto or Work Order at any time on giving the Supplier 30 (thirty) days' notice.

## 19. CONSEQUENCE OF TERMINATION

19.1. Termination in accordance with clause 18 (TERM AND TERMINATION) shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to either Party and all provisions which are to survive the Agreement or impliedly do so shall remain in force and in effect.

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

19.3. To the extent that any of the Deliverables and property referred to in sub-clause 19.2 above are in electronic form and contained on non-detachable storage devices, the Supplier will provide Transnet with unencrypted copies of the same on magnetic media and will irretrievably destroy and delete copies so held.

19.4. In the event that the Agreement is terminated by the Supplier under sub-clause 18.3 (TERM AND TERMINATION), or in the event that a Work Order is terminated by Transnet under sub-clause 18.6 (TERM AND TERMINATION), Transnet will pay to the Supplier all outstanding Fees (apportioned on a pro rata basis) relating to the work undertaken by the Supplier up until the date of such termination. Transnet will also pay the costs of any goods and materials ordered by the Supplier in relation to the such work for which the Supplier has paid or is legally obliged to pay, in which case, on delivery of such goods or materials, the Supplier will promptly deliver such goods and materials to Transnet or as it may direct.

19.5. The provisions of clauses 2 (DEFINITIONS), 6 (WARRANTIES), 12 (INTELLECTUAL PROPERTY RIGHTS), 14 (LIMITATION OF LIABILITY), 16 (CONFIDENTIALITY), 19 (CONSEQUENCE OF TERMINATION), 25 (DISPUTE RESOLUTION) and 29 (GOVERNING LAW) shall survive termination or expiry of the Agreement.

19.6. If either Party (the "Defaulting Party") commits a material breach of the Agreement and fails to remedy such breach within 30 (thirty) Business Days of written notice thereof, the other Party (hereinafter the "Aggrieved Party"), shall be entitled, in addition to any other rights and remedies that it may have in terms of the Agreement, to terminate the Agreement forthwith without any

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liability and without prejudice to any claims which the Aggrieved Party may have for damages against the Defaulting Party.

19.7. Should -

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

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

## 20. ASSIGNMENT

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

## 21. FORCE MAJEURE

21.1. Neither Party shall have any claim against the other Party arising from any failure or delay in the performance of any obligation of either Party under the Agreement caused by an act of force majeure such as acts of God, fire, flood, war, strike, lockout, industrial dispute, government action, laws or regulations, riots, terrorism or civil disturbance, defaults, delays or discontinuance on the part of independent contractors, suppliers, or other circumstances or factors beyond the reasonable control of either Party, and to the extent that the performance of obligations of either Party hereunder is delayed by virtue of the foregoing, any period stipulated for any such performance shall be reasonably extended.

21.2. Each Party will take all reasonable steps by whatever lawful means that are available, to resume full performance as soon as practicable and will seek agreement to modification of the relevant provisions of the Agreement in order to accommodate the new circumstances caused by the act of force majeure. If a Party fails to agree to such modifications proposed by the other

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Party within 90 (ninety) days of the act of force majeure first occurring, either Party may thereafter terminate the Agreement with immediate notice.

## **22. EQUALITY AND DIVERSITY**

- 22.1. The Supplier will not victimise, harass or discriminate against any employee of either Party to the Agreement or any applicant for employment with either Party to the Agreement due to their gender, race, disability, age, religious belief, sexual orientation or part-time status. This provision applies, but is not limited to employment, upgrading, work environment, demotion, transfer, recruitment, recruitment advertising, termination of employment, rates of pay or other forms of compensation and selection for training.
- 22.2. Both Parties to the Agreement undertake that they will not, and shall procure that its employees, agents and Subcontractors will not breach any applicable discrimination legislation and any amendments and re-enactments thereof.

## **23. NON-WAIVER**

- 23.1. Failure or neglect by either Party, at any time, to enforce any of the provisions of the Agreement, shall not, in any manner, be construed to be a waiver of any of that Party's rights in that regard and in terms of the Agreement.
- 23.2. Such failure or neglect shall not, in any manner, affect the continued, unaltered validity of the Agreement, or prejudice the right of that Party to institute subsequent action.

## **24. PARTIAL INVALIDITY**

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

## **25. DISPUTE RESOLUTION**

- 25.1. Should any dispute of whatsoever nature arise between the Parties concerning the Agreement, the Parties shall try to resolve the dispute by negotiation within 10 (ten) Business Days of such dispute arising.
- 25.2. If the dispute has not been resolved by such negotiation, either of the Parties may refer the dispute to AFSA and notify the other Party accordingly.
- 25.3. Such dispute shall be finally resolved in accordance with the rules of AFSA by an arbitrator or arbitrators appointed by AFSA.

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25.4. This clause constitutes an irrevocable consent by the Parties to any proceedings in terms hereof, and neither of the Parties shall be entitled to withdraw from the provisions of this clause or claim at any such proceedings that it is not bound by this clause 25.

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

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

## **26. ADDRESSES FOR NOTICES**

26.1. The Parties to the Agreement select the physical addresses and facsimile ("fax") numbers, detailed in Schedule 1 hereto, as their respective addresses for giving or sending any notice provided for or required in terms of the Agreement, provided that either Party shall be entitled to substitute such other address or fax number, as may be, by written notice to the other.

26.2. Any notice addressed to a Party at its physical or postal address shall be sent by prepaid registered post, or delivered by hand, or sent by fax.

26.3. Any notice shall be deemed to have been given -

- (a) if posted by prepaid registered post, 10 (ten) days after the date of posting thereof;
- (b) if hand delivered, on the day of delivery; or
- (c) if faxed, on the date and time of sending of such fax, as evidenced by a fax confirmation printout, provided that such notice shall be confirmed by prepaid registered post on the date of dispatch of such fax, or, should no postal facilities be available on that date, on the next Business Day.

## **27. WHOLE AND ONLY AGREEMENT**

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

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

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**28. AMENDMENT AND CHANGE CONTROL**

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

28.2. In the event the Parties cannot agree upon changes, the Parties shall in good faith seek to agree any proposed changes using the dispute resolution procedures in clause 25 (DISPUTE RESOLUTION).

**29. GOVERNING LAW**

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

29.1. **Change of Law:** In the Agreement, unless the context otherwise requires, references to a statutory provision include references to that statutory provision as from time to time amended, extended or re-enacted and any regulations made under it, provided that in the event that the amendment, extension or re-enactment of any statutory provision or introduction of any new statutory provision has a material impact on the obligations of either Party, the Parties will negotiate in good faith to agree such amendments to the Agreement as may be appropriate in the circumstances. If, within a reasonable period of time, the Supplier and Transnet cannot reach agreement on the nature of the changes required or on modification of Fees, Deliverables, warranties, or other terms and conditions, either Party may seek to have the matter determined in accordance with clause 25 (DISPUTE RESOLUTION) above.

**30. COUNTERPARTS**

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

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Respondent's Signature

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