



TRANSNET FREIGHT RAIL

an Operating Division of **TRANSNET SOC LTD**

[Registration No. 1990/000900/30]

## **REQUEST FOR PROPOSAL [RFP]**

**CHEMICAL CONTROL OF VEGETATION IN YARDS BY MEANS OF HERBICIDES FOR TWO YEARS – DURBAN**

**RFP NUMBER:** CRAC-DNR-9440  
**ISSUE DATE:** 25 SEPTEMBER 2012  
**TENDER BRIEFING:** 11 OCTOBER 2012 AT 10H00  
**CLOSING DATE:** 23 OCTOBER 2012  
**CLOSING TIME:** 10:00  
**BID VALIDITY PERIOD:** 90 days

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**LIST OF ACRONYMS**

B-BBEE	Broad-Based Black Economic Empowerment
CD	Compact/computer disc
DAC	Divisional Acquisition Council
DPE	Department of Public Enterprises
DTI	Department of Trade and Industry
EME	Exempted Micro Enterprise
FRC	Further Recognition Criteria
GBC	General Bid Conditions
ID	Identity Document
JV	Joint Venture
LOI	Letter of Intent
NDA	Non-Disclosure Agreement
NGP	New Growth Path
OD	Transnet Operating Division
PTN	Post-Tender Negotiations
QSE	Qualifying Small Enterprise
RFP	Request for Proposal
SD	Supplier Development
SME	Small Medium Enterprise
SOC	State Owned Company
ST&C	Standard Terms and Conditions
TFRAC	Transnet Freight Rail Acquisition Council
TCO	Total Cost of Ownership
VAT	Value-Added Tax
ZAR	South African Rand

## CHEMICAL CONTROL OF VEGETATION IN YARDS BY MEANS OF HERBICIDES FOR TWO YEARS – DURBAN

### Section 1: NOTICE TO BIDDERS

#### 1 PROPOSAL REQUEST

Responses to this RFP [hereinafter referred to as a **Proposal**] are requested from persons, companies, close corporations or enterprises [hereinafter referred to as an **Entity** or **Respondent**] to supply the aforementioned requirement(s) to Transnet.

On or after 25 September 2012, the RFP documents may be inspected at, and are obtainable from the office of the Secretariat, Inyanda No 1, Ground Floor, 21 Wellington Road, Parktown, Johannesburg, on payment of an amount of R250.00 (inclusive of VAT) per set. Payment is to be made as follows:

Bank:	Standard Bank
Account Number:	00 237 3963
Branch:	Braamfontein
Branch code:	004805
Account Name:	Transnet Limited Head Office
Reference:	CRAC-DNR-9440

#### NOTES –

- a) This amount is not refundable.
- b) A receipt for such payment made must be presented when collecting the RFP documents and submitted with your Proposal.

RFP documents will only be available until **15H00 on 10th October 2012**.

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

#### 2 FORMAL BRIEFING

A compulsory RFP briefing will be conducted at Infrastructure Maintenance, 120 Eel Road, Bayhead, Durban, on the **11<sup>th</sup> October 2012**, at **10H00** for a period of  $\pm$  2 hours. [Respondent to provide own transportation and accommodation].

- 2.1 A Certificate of Attendance in the form set out in Section 14 hereto must be completed and submitted with your Proposal.
- 2.2 Respondents without a valid RFP document in their possession will not be allowed to attend the RFP briefing.
- 2.3 The briefing session will start punctually at **10H00** and information will not be repeated for the benefit of Respondents arriving late.

#### 3 PROPOSAL SUBMISSION

Proposals **in duplicate** must reach the Secretary, Transnet Freight Rail, Acquisition Council before the closing hour on the date shown below, and must be enclosed in a sealed envelope which must have inscribed on the outside:

RFP No: CRAC-DNR-9440  
 Description: CHEMICAL CONTROL OF VEGETATION IN YARDS BY MEANS OF  
 HERBICIDES FOR TWO YEARS – DURBAN  
 Closing date and time: 24 JULY 2012

#### 4 DELIVERY INSTRUCTIONS FOR RFP

##### 4.1 Delivery by hand

4.2 If delivered by hand, the envelope is to be deposited in the Transnet tender box which is located at Inyanda No 1, Ground Floor, 21 Wellington Road, Parktown, and should be addressed as follows:

**THE CHAIRPERSON  
 TRANSNET FREIGHT RAIL  
 ACQUISITION COUNCIL  
 GROUND FLOOR  
 TENDER BOX  
 Inyanda House 1  
 21 Wellington Road  
 Parktown**

The measurements of the "tender slot" are 400mm wide x 100mm high, and Respondents must please ensure that response documents or files are not larger than the above dimensions. Responses which are too bulky [i.e. more than 100mm thick] must be split into two or more files, and placed in separate envelopes, each such envelope to be addressed as required in paragraph 3 above.

a) It should also be noted that the above tender box is located inside the main entrance in 21 Wellington Road to the public 24 hours a day, 7 days a week.

##### 4.3 Dispatch by courier

If dispatched by courier, the envelope must be addressed as follows and delivered to the Office of The Secretary, Transnet Freight Rail Acquisition Council and a signature obtained from that Office.

**THE CHAIRPERSON  
 TRANSNET FREIGHT RAIL  
 ACQUISITION COUNCIL  
 GROUND FLOOR  
 21 WELLINGTON ROAD  
 PARKTOWN**

4.4 Please note that this RFP closes punctually at **10:00 on Tuesday, 23 October 2012.**

4.5 If responses are not delivered as stipulated herein, such responses will not be considered and will be treated as "UNRESPONSIVE."

4.6 No email or facsimile responses will be considered, unless otherwise stated herein.

4.7 The responses to this RFP will be opened as soon as practicable after the expiry of the time advertised for receiving them.

- 4.8 Transnet shall not, at the opening of responses, disclose to any other company any confidential details pertaining to the Proposals / information received, i.e. pricing, delivery, etc. The names and locations of the Respondents will be divulged to other Respondents upon request.
- 4.9 Envelopes must not contain documents relating to any RFP other than that shown on the envelope. All envelopes must reflect the return address of the Respondent on the reverse side.
- 4.10 No slips are to be attached to the response documents. Any additional conditions must be embodied in an accompanying letter. Subject only to clause 23 [*Alterations made by the Respondent to Tendered Prices*] of the General Bid Conditions, alterations, additions or deletions must not be made by the Respondent to the actual RFP documents.

## 5 BROAD-BASED BLACK ECONOMIC EMPOWERMENT AND SOCIO-ECONOMIC OBLIGATIONS

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

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

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.

### 5.1 B-BBEE Rating

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

- a) **Large Enterprises** [i.e. annual turnover greater than R35 million]:
  - Rating level based on all seven elements of the B-BBEE scorecard
- b) **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
- c) **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.**

## 5.2 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.

## 5.3 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>*

## 5.4 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 **20% [twenty 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

#### 5.5 **Supplier Development Initiatives**

Historically in South Africa there has been a lack of investment in infrastructure, skills and capability development and an inequality in the income distribution and wealth of a significant portion of the population. There have been a number of Government initiatives developed to address these challenges. In particular, the New Growth Path [**NGP**] developed in 2010 aligns and builds on previous policies to ensure the achievement of Government's development objectives for South Africa.

Transnet fully endorses and supports Government's New Growth Path policy through its facilitation of Supplier Development [**SD**] initiatives. Hence Supplier Development Initiatives are a prerequisite for this RFP and are included in the Evaluation Criteria.

### 6 **COMMUNICATION**

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

6.1 After the closing date of the RFP, a Respondent may communicate with the Secretary of the Transnet Freight Rail, Acquisition Council, at telephone number at telephone number 011 584 9486 or facsimile number 011-774-9760 on any matter relating to its RFP Proposal

6.2 Respondents found to be in collusion with one another will be automatically disqualified and blacklisted from doing business with Transnet in the future.

### 7 **INSTRUCTIONS FOR COMPLETING THE RFP**

7.1 Sign one set of documents [sign, stamp and date the bottom of each page]. This set will serve as the legal and binding copy. A duplicate set of documents is required. This second set can be a copy of the original signed Proposal.

7.2 Both sets of documents to be submitted to the address specified in paragraph 4 above.

7.3 All returnable documents listed [✓] in the Proposal Form [Section 4] must be returned with your Proposal.

### 8 **COMPLIANCE**

The successful Respondent [hereinafter referred to as the **Supplier**] shall be in full and complete compliance with any and all applicable laws and regulations.

### 9 **ADDITIONAL NOTES**

9.1 All returnable documents as indicated in the Proposal Form [Section 4] must be returned with the response.

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

9.3 The person or persons signing the Proposal must be legally authorised by the Respondent to do so [Refer Section 6 – Signing Power, Resolution of the Board of Directors]. A list of those person(s)



authorised to negotiate on your behalf [if not the authorised signatories] must also be submitted along with the Proposal together with their contact details.

- 9.4 Transnet would prefer not to do business with any agents [“middlemen”] who do not add significant value to the supply chain. In such instances Transnet will endeavour to contract directly with the overseas and / or local OEMs [Original Equipment Manufacturers].
- 9.5 Transnet may wish to visit the Respondent’s place of manufacture/workshop/premises during this RFP process.
- 9.6 Transnet reserves the right to undertake post-tender negotiations [PTN] with selected Respondents or any number of short-listed Respondents, such PTN to include, at Transnet’s option, any evaluation criteria listed in this RFP document.
- 9.7 Unless otherwise expressly stated, all Proposals furnished pursuant to this RFP 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 PROPOSAL BEING REJECTED**

## 10 DISCLAIMERS

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

- 10.1 modify the RFP’s Goods and request Respondents to re-bid on any changes;
- 10.2 reject any Proposal which does not conform to instructions and specifications which are detailed herein;
- 10.3 disqualify Proposals submitted after the stated submission deadline;
- 10.4 not necessarily accept the lowest priced Proposal;
- 10.5 reject all Proposals, if it so decides;
- 10.6 withdraw the RFP on good cause shown;
- 10.7 award a contract in connection with this Proposal at any time after the RFP’s closing date;
- 10.8 award a contract for only a portion of the proposed Goods which are reflected in the scope of this RFP;
- 10.9 split the award of the contract between more than one Supplier; or
- 10.10 make no award of a contract.

In addition, Transnet reserves the right to exclude any Respondent from the bidding process who has been convicted of a serious breach of law during the preceding 5 [five] years, including but not limited to breaches of the Competition Act 89 of 1998. Respondents are required to indicate in Section 11 [*Breach of Law*] whether or not they have been found guilty of a serious breach of law during the past 5 [five] years.

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

#### **11 LEGAL REVIEW**

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

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

Preview copy only.

## **CHEMICAL CONTROL OF VEGETATION IN YARDS BY MEANS OF HERBICIDES FOR TWO YEARS - DURBAN**

### **Section 2: BACKGROUND, OVERVIEW AND SCOPE OF REQUIREMENTS**

#### **1 BACKGROUND**

TRF's requirement is to control living vegetation and the management of dead remains of previously living vegetation to the extent that the area is free from any form of vegetation which may obstruct, hinder or interfere with operational activities

#### **2 EXECUTIVE OVERVIEW**

Vegetation control in yards is required on an annual basis to coincide with the vegetation growing season to ensure a safe and effective train operating environment

Currently there is a contract in place for yards chemical vegetation control for Durban and the contract is expiring in September 2012

#### **3 SCOPE OF REQUIREMENTS**

Chemical control of vegetation in yards by means of herbicides in Durban Depot for two year period

#### **4 GENERAL INFORMATION**

- 4.1 The Supplier(s) shall be fully responsible to Transnet for the acts and omissions of persons directly or indirectly employed by them.
- 4.2 The Supplier(s) must provide the information requested and comply with the requirements stated in this RFP.

#### **5 "AS AND WHEN REQUIRED" CONTRACTS**

- 5.1 Purchase orders will be placed on the Supplier(s) from time to time as and when Goods are required.
- 5.2 Transnet reserves the right to place purchase orders until the last day of the contract for deliveries to be effected within the delivery period / lead time specified beyond the expiry date of the contract under the same terms and conditions as agreed upon.
- 5.3 Delivery requirements may be stipulated in purchase orders and scheduled deliveries may be called for. However, delivery periods and maximum monthly rates of delivery offered by the Respondents will be used as guidelines in establishing lead times and monthly delivery requirements with the Supplier.
- 5.4 Where scheduled deliveries are required, the delivery period(s) specified must be strictly complied with, unless otherwise requested by Transnet. Material supplied earlier than specified may not be paid for or may be returned by Transnet, with the Supplier being held liable for all expenses so incurred, e.g. transport charges, handling charges, etc.

5.5 If the delivery period offered by the Respondents is subject to a maximum monthly production capacity, full particulars must be indicated in Section 3 *[Pricing and Delivery Schedule]*

5.6 The Respondent must state hereunder its annual holiday closedown period [if applicable] and whether this period has been included in the delivery lead time offered:

\_\_\_\_\_

\_\_\_\_\_

5.7 Indicate below the action that the Respondent proposes to take to ensure continuity of supply during non-working days or holidays and periods occupied in stocktaking or in effecting repairs to plant or in overhaul of plant which would ordinarily occur within the stated delivery lead time:

\_\_\_\_\_

\_\_\_\_\_

**6 EXCHANGE AND REMITTANCE**

The attention of the Respondents is directed to clause 8 *[Exchange and Remittance]* of the General Bid Conditions appended hereto. The Respondent is also to note that the particulars of the exchange rate on which the Respondent has based its tendered price(s), is/are to be stipulated hereunder, *only if Transnet is requested by the Respondent to effect payment overseas direct to the Respondent's principal or supplier, which is not a registered South African Company.*

6.1 ZAR 1.00 [South African currency] being equal to \_\_\_\_\_ *[foreign currency]*

6.2 \_\_\_\_\_ % in relation to tendered price(s) to be remitted overseas by Transnet

6.3 \_\_\_\_\_ *[Name of country to which payment is to be made]*

6.4 Beneficiary details:

Name *[Account holder]* \_\_\_\_\_

Bank *[Name and branch code]* \_\_\_\_\_

Swift code \_\_\_\_\_

Country \_\_\_\_\_

6.5 \_\_\_\_\_ *[Applicable base date of Exchange Rate used]*

Respondents are advised that should a contract be awarded for deliveries on an "as and when required" basis, any future remittance(s) to overseas principals/suppliers, as instructed above, will be based on the currency rate of exchange related to the contractual price of the Goods at that time.

**7 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 Goods 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 Section 15 *[Specifications and Drawings]* of this RFP, and shall thereby adhere to railway safety requirements and/or regulations [as applicable]. 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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**8 SERVICE LEVELS**

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

**Acceptance of Service Levels:**

<b>YES</b>	
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<b>NO</b>	
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**9 CONTINUOUS IMPROVEMENT INITIATIVES**

9.1 Respondents shall indicate whether they would be committed, for the duration of any contract which may be awarded through this RFP process, to participate with Transnet in its continuous improvement initiatives to reduce the overall cost of transportation services and related logistics provided by Transnet's operating divisions within South Africa, to the ultimate benefit of all end-users.

a) **Accepted:**

<b>YES</b>	
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<b>NO</b>	
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If "yes", please specify details in paragraph **Error! Reference source not found.** below.

**10 RISK**

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

10.1 **Quality and specification of Goods delivered:**

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10.2 **Continuity of supply** [refer clause 10.3 of Form ST&C]:

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10.3 **Compliance with the Occupational Health and Safety Act, 85 of 1993** [refer clause 7.1(f) of Form ST&C]:

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10.4 **Compliance with the National Railway Safety Regulator Act, 16 of 2002** [refer paragraph 7 above]:

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**11 REFERENCES**

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

**Kindly provide at least a minimum of 3 contactable referees:**

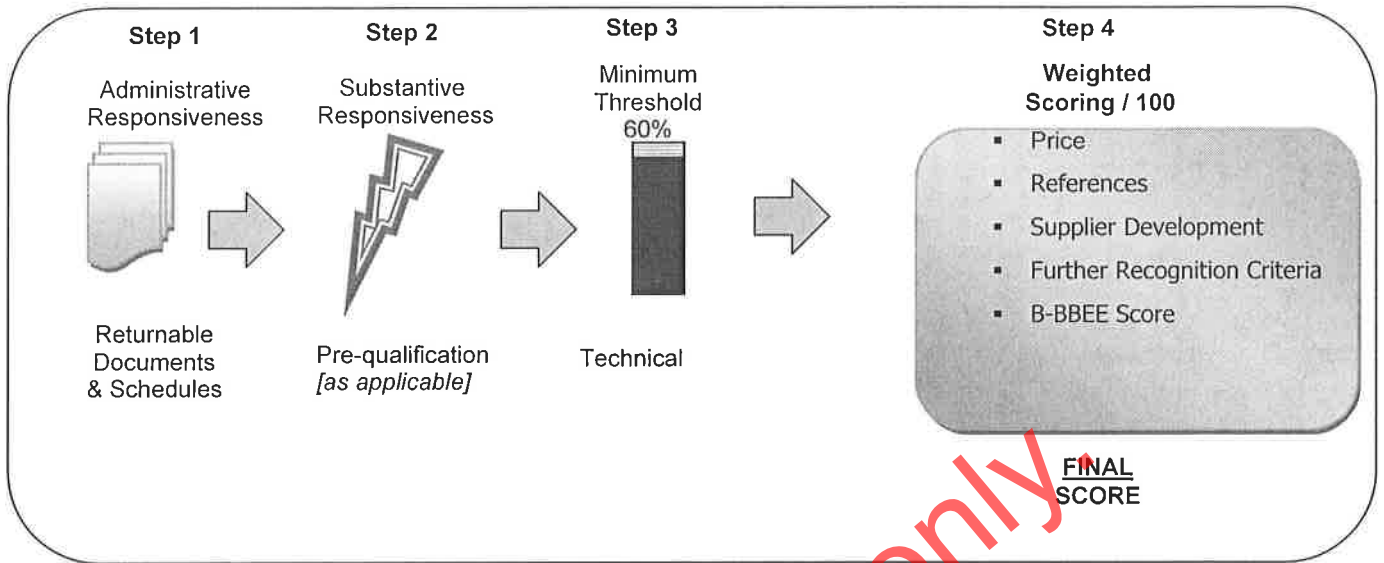
- **For similar service supplied previously**

NAME OF COMPANY	CONTACT PERSON	TELEPHONE

Preview copy only.

**12 EVALUATION METHODOLOGY AND CRITERIA**

Transnet will utilise the following methodology and criteria in selecting a preferred Supplier, if so required:



**12.1 STEP ONE: Test for Administrative Responsiveness**

The test for administrative responsiveness will include the following:

EVALUATION CRITERIA	RFP REFERENCE
<ul style="list-style-type: none"> <li>whether the bid has been lodged on time</li> </ul>	<i>Section 1 paragraph 3</i>
<ul style="list-style-type: none"> <li>whether all returnable documents and/or schedules [where applicable] were completed and returned by the closing date and time</li> </ul>	<i>Section 4</i>
<ul style="list-style-type: none"> <li>whether the bid documentation has been duly signed by the Respondent.</li> </ul>	<i>Section 1 paragraph 7.1</i>

***The test for administrative responsiveness [Step One] must be passed for a Respondent’s proposal to progress to Step Two for further evaluation.***

**12.2 STEP TWO: Test for Substantive Responsiveness to RFP**

The test for substantive responsiveness to this RFP will include the following:

EVALUATION CRITERIA	RFP REFERENCE
<ul style="list-style-type: none"> <li>whether any pre-qualification criteria set by Transnet, have been met</li> </ul>	<i>Section 1 paragraphs 2.2, 6.1, 10.3</i> <i>Section 4 – validity period</i> <i>Section 8, General Bid Conditions clause 25</i> <i>Section 10</i>
<ul style="list-style-type: none"> <li>whether the bid contains a priced offer</li> </ul>	<i>Section 3</i>
<ul style="list-style-type: none"> <li>whether the bid materially complies with the scope and/or specification given</li> </ul>	<i>Section 2</i>
<ul style="list-style-type: none"> <li>whether all material terms and conditions stated in the bid document have been met</li> </ul>	<i>All Sections</i>

***The test for substantive responsiveness [Step Two] must be passed for a Respondent's proposal to progress to Step Three for further evaluation.***

**12.3 STEP THREE: Test Minimum Threshold for Technical Criteria / Functional Requirements**

**Technical and Functional Criteria:**

EVALUATION CRITERIA
<ul style="list-style-type: none"> <li>Compliance to Specification</li> </ul>
<ul style="list-style-type: none"> <li>Fit for purpose</li> </ul>
<ul style="list-style-type: none"> <li>Health and Safety Compliance</li> </ul>
<ul style="list-style-type: none"> <li>Risk and environment</li> </ul>
<ul style="list-style-type: none"> <li>Technical Capacity/resources</li> </ul>
<ul style="list-style-type: none"> <li>Delivery / Schedule</li> </ul>

***The minimum threshold (60%) for Step Three evaluation criteria must be met or exceeded for a Respondent's proposal to progress to Step Four for final evaluation.***



**12.4 STEP FOUR: Final Weighted Scoring**

EVALUATION CRITERIA
<b>Commercial Criteria</b> <ul style="list-style-type: none"> <li>• <b>Competitive pricing</b></li> <li>• <b>References</b></li> </ul>
<b>B-BBEE - Scorecard</b>
<b>Supplier Development</b> <ul style="list-style-type: none"> <li>• <b>Job Creation</b></li> </ul>
<b>Further Recognition Criteria</b> <ul style="list-style-type: none"> <li>• <b>Black owned</b></li> <li>• <b>Black female owned</b></li> </ul>

Suppliers are required to submit Proof of Registration in terms of the farm feeds agricultural and stock remedies act, Act 36 of 1947 as amended. It should be noted that failure to submit Proof of Registration in terms of the farm feeds agricultural and stock remedies act, Act 36 of 1947 as amended will result in the submission being disqualified, thus this requirement is a disqualifying criteria

*Note: Transnet reserves the right to conduct post-tender negotiations with the preferred Respondent(s)*

Preview copy only

**CHEMICAL CONTROL OF VEGETATION IN YARDS BY MEANS OF HERBICIDES FOR TWO YEARS - DURBAN**

**Section 3: PRICING AND DELIVERY SCHEDULE**

**Notes to Pricing:**

- a) All Prices must be quoted in South African Rand, exclusive of VAT
- b) Prices quoted must be held valid for a period of 90 days

Preview copy only.

**Schedule of Quantities**

**i) DURBAN - TOTAL**

<b>Description</b>	<b>Annual Worklots 300m2</b>	<b>Total for Year 1</b>	<b>Total for Year 2</b>	<b>Total for 2 Years</b>
YARDS	14 830.501			
OTHER AREAS	194.802			
<b>TOTAL</b>	<b>15 025.303</b>			

Preview copy only.

## Schedule of Quantities

### ii) DURBAN YARDS

Description	Area m2	Annual Worklots 300m2	Rate Per Worklot Year 1	Total for Year 1	Rate Per Worklot Year 2	Total for Year 2	Total for 2 Years
<b>SOUTH COAST</b>							
SEZELA	13866	46.220					
UMTVALUME	3690	12.300					
HIBBERDENE	3564	11.880					
UMTENTWINI	1332	4.440					
PORT SHEPSTONE	60780	202.600					
SOUTH WHARF	18120	60.400					
KELSO	5865	19.550					
UMKOMAAS FEEDER LINE	6000	20.000					
<b>WESTS</b>							
JACOBS	18800.1	62.667					
WENTWORTH	27500.1	91.667					
WENTWORTH DIESEL	9900	33.000					
<b>O.M.L.</b>							
PINETOWN	1600	5.333					
KLOOF	3399	11.330					
HILLCREST	5435.1	18.117					
BOTHAS HILL	1809.9	6.033					
INCHANGA	4422	14.740					
HARRISONS	2688	8.960					
<b>N.M.L.</b>							
MT VERNON	11960.1	39.867					
SHALLCROSS	5780.1	19.267					
MARIANHILL	8900.1	29.667					
DASSENHOEK	7959.9	26.533					
SHONGWENI	6933	23.110					
CLIFFDALE	8300.1	27.667					
HAMMERSDALE	26655	88.850					
GEORGEDALE	7200	24.000					
CATO RIDGE	109449	364.830					
<b>CENTRAL</b>							
ROSSBURGH	3933	13.110					
BAYHEAD	1700000	5 666.667					
UMBILO	22550	75.167					
CONGELLA	41180.1	137.267					
DURBAN MNLIN	115500	385.000					
DURBAN STATION	25760.1	85.867					

## Schedule of Quantities

### ii) DURBAN YARDS

Description	Area m2	Annual Worklots 300m2	Rate Per Worklot Year 1	Total for Year 1	Rate Per Worklot Year 2	Total for Year 2	Total for 2 Years
UMGENI	6300	21.000					
RACE COURSE	15400	51.333					
MEREBANK	4900	16.333					
S/FIELD FLATS	6300	35.000					
S/FIELD COAL	4800	16.000					
ISIPINGO CAR BANK	29650	98.833					
MONTCLAIR	12000	40.000					
BOOTH-BYD	60000	200.000					
BYD-BYD	12000	40.000					
BYD-DALBRIDGE	60000	200.000					
UMGENI	19560	65.200					
BYD-DBN	49380	164.600					
ISIPINGO YARD	32150	107.167					
<b>RICHMOND</b>							
FOXHILL	711	2.370					
THORNVILLE	4885	16.283					
AMOLSHILL	1239.9	4.133					
BAYNESFIELD	2372.1	7.907					
DURBAN ROAD	762.9	2.543					
RICHMOND	17480.1	58.267					
<b>N.M.L. (PMB)</b>							
UMLAAS ROAD	17979.9	59.933					
ASHBURTON	14040	46.800					
PENTRICH	16230	54.100					
P/MARITZBURG	83510.1	278.367					
<b>BRANCH LINES</b>							
MKONDENI	10059.9	33.533					
MASONS MILL	289800	966.000					
MASONS MILL -STORAGE	27502	91.673					
<b>CAPE NATAL LINE</b>							
HENLEY	3380.1	11.267					
TAYLORS	2910	9.700					
HEMU HEMU	3600	12.000					
ELANDSKOP	4355.1	14.517					
UMHLONGONEK	2820	9.400					
NCWADI	3080.1	10.267					
DEEPDALE	5190	17.300					

## Schedule of Quantities

### ii) DURBAN YARDS

Description	Area m2	Annual Worklots 300m2	Rate Per Worklot Year 1	Total for Year 1	Rate Per Worklot Year 2	Total for Year 2	Total for 2 Years
SIZANEJA	2640	8.800					
INGLENOOK	5115	17.050					
COMRIE	999	3.330					
DONNYBROOK	74880	249.600					
D/BROOK JUNCTION	840	2.800					
NKONZO	656.1	2.187					
CREIGHTON	5240.1	17.467					
MONDI	895	2.983					
RIVERSIDE	5781.9	19.273					
MALENGE	4479.9	14.933					
SINGISI	11870.1	39.567					
<b>UNDERBERG</b>							
BULWER	5451.9	18.173					
EDGEHILL	1599.9	5.333					
ALFRISTON	1610.1	5.367					
PEVENSY	2520	8.400					
WOODFORD	860.1	2.867					
UNDERBERG	11274	37.580					
<b>GREYTOWN</b>							
VICTORIA	66849.9	222.833					
MOUNTAIN RISE	3350.1	11.167					
CITY VIEW	3920.1	13.067					
OTTO'S BLUFF	5100	17.000					
ALBERT FALLS	5630.1	18.767					
CRAMMOND	5400	18.000					
IMPOLWENI	5210.1	17.367					
NEW HANOVER	13320	44.400					
SCHROEDERS	35490	118.300					
DALTON	26049.9	86.833					
RAVENSWORTH	1260	4.200					
HARDEN HEIGHTS	6060	20.200					
SEVEN OAKS	14739.99	49.133					
CROWS PLACE	2360.1	7.867					
MIZPAH	2840.1	9.467					
CHANLEY	5430	18.100					
GREYTOWN	57140.1	190.467					
<b>KRANSKOP</b>							

## Schedule of Quantities

### ii) DURBAN YARDS

Description	Area m2	Annual Worklots 300m2	Rate Per Worklot Year 1	Total for Year 1	Rate Per Worklot Year 2	Total for Year 2	Total for 2 Years
MENNE	1179.9	3.933					
MVOZANE	1170	3.900					
MSHIKI	2499	8.330					
WELGEGUND	1740	5.800					
AHRENS	4539.9	15.133					
HERMANNBURG	5889.9	19.633					
POTSPRUIT	3522.9	11.743					
KRANSKOP	20829	69.430					
<b>BRUYNSHILL</b>							
KINGSHILL	750	2.500					
WARTBERG	3060	10.200					
BRUYNSHILL	6999	23.330					
JAAGBAAN	20430	68.100					
FAWNLEAS	4290	14.300					
NOODSBERG	720	2.400					
GLENSIDE	15252	50.840					
<b>MOUNT ALIDA</b>							
ANGIKATALI	560.1	1.867					
MOLLISSIMA	1820.1	6.067					
WOOLSTONE	635.1	2.117					
GAYWOOD	3039.9	10.133					
VOORKEUR	810	2.700					
KLEINVELD	723.9	2.413					
MOUNT ALIDA	12792	42.640					
85 Eel rd	9143	30.477					
120 Eel rd	2403	8.010					
Masons Mill Mat emergency	1230	4.100					
Rail Release	8100	27.000					
<b>CAPE NATAL LINE</b>							
LLEWELLYN	740.1	2.467					
FRANKLIN	45009.9	150.033					
NEWMARKET	792	2.640					
BAILDEN	1085.1	3.617					
ETTRICK	2259.9	7.533					
KARG'S POST	1391.1	4.637					
KOKSTAD	31944	106.480					
<b>MATATIELE</b>							

## Schedule of Quantities

### ii) DURBAN YARDS

Description	Area m2	Annual Worklots 300m2	Rate Per Worklot Year 1	Total for Year 1	Rate Per Worklot Year 2	Total for Year 2	Total for 2 Years
SWARTBERG	8100	27.000					
WANSTEAD	1410	4.700					
NEW AMALFI	4344.9	14.483					
MIDGLEY	878.1	2.927					
CEDARVILL	5979.9	19.933					
SAAMLOOP	2181.9	7.273					
WEMBLEY	665.1	2.217					
MATATIELE	29007	96.690					
<b>NORTH COAST</b>							
EFFINGHAM	13434	44.780					
DUFF'S ROAD	13869	46.230					
PHOENIX	4458	14.860					
MT EDGECOMBE	9891	32.970					
OTTAWA	16101	53.670					
VERULAM	29562	98.540					
CANELANDS	24971	83.237					
NYANINGA	2400	8.000					
TONGAAT CENTRAL	1200	4.000					
TONGAAT GOODS	45069	150.230					
FRASER	3028	10.093					
COMPENSATION	9609	32.030					
UMHLALI	1800	6.000					
SHAKASKRAAL	14425	48.083					
TINLEY MANOR	8618	28.727					
GROUTVILLE	6057	20.190					
GLEDHOW	9860	32.867					
STANGER	44169	147.230					
<b>SUBTOTAL</b>	<b>4040482.19</b>	<b>13482.273</b>					
<b>PROVISIONAL TOTAL</b>	<b>404048.219</b>	<b>1348.227</b>					
Miscellaneous	358814.199	1 196.047					
Booth	21000	70.000					
Jacobs	8820	29.400					
Island View	2100	7.000					
Booth	5250	17.500					
Bayhead	5250	17.500					
Dalbridge	3234	10.780					
<b>TOTAL</b>	<b>4444530.41</b>	<b>14830.501</b>					



## Schedule of Quantities

### iii) DURBAN (OTHER AREAS)

DESCRIPTION	SUB STATION	RELAY ROOM	H FRAME	CUB signals	Annual Worklots 300m <sup>2</sup>	Rate Per Worklot Year 1	Total for Year 1	Rate Per Worklot Year 2	Total for Year 2	Total for 2 Years
<b>CENTRAL</b>										
PMB	1942	226	500		8.893					
NAPIER		501	500		3.337					
PENTRICH	1942	92	500		8.447					
ASHBURTON	752	119	500		4.570					
UMLAAS ROAD	752	84	500		4.453					
CATO RIDGE	1490		500		6.633					
GEORGEDALE	932	130	500		5.207					
HAMMERSDALE	447	156	500		3.677					
CLIFFDALE	583	141	500		4.080					
NSHONGWENI		149	500		2.163					
DELLVILLEWOOD	790	132	500		4.740					
MANZINE		126			0.420					
DASSENHOEK	610	339	500		4.830					
MARIANHILL	550	218	500		4.227					
SHALLCROSS	855	162	500		5.057					
BURLINGTON		170			0.567					
CAVENDISH	957		500		4.857					
MT VERNON		246	500		2.487					
SIGNAL CUBICLES				1680	5.600					
<b>CENTRAL</b>										
UMBILO	845		200		3.483					
WENTWORTH	2416		200		8.720					
WESTS	260		200		0.966					
BAYHEAD			2000		5.800					
<b>SOUTHCOAST</b>										
KELSO	853		200		3.510					
TURTON	1411		200		5.370					
SOUTHPORT	1511		200		5.703					
UMTENTWENI	1511		200		5.703					
<b>SIMUMA</b>										
BOLTON	1411		100		5.037					
<b>EL&amp;P SUBS</b>										
SOUTH COAST RD	2500		200		9.000					
PX BAYHEAD	1800		200		6.667					
<b>SIGNALS</b>										
NEW MAIN LINE				1400	4.666					
<b>NORTHCOAST</b>										
EFFINGHAM		60	200		0.867					
DUFF'S ROAD	950				3.167					
PHOENIX		60	200		0.867					
MT EDGECOMBE		60	200		0.867					
OTTAWA	950	60	200		4.033					
VERULAM		60	200		0.867					
CANELANDS	950	60	200		4.033					
HAMBANATI	1400				4.667					
TONGAAT	75	60	200		1.117					
FRASER		60			0.200					
COMPENSTATION	1150	60	200		4.700					
SHAKASKRAAL		60			0.200					
TINLEY MANOR	1150	60	200		4.700					
GROUTVILLE		60			0.200					
GLEDHOW	1800	60	200		6.867					
STANGER	75	60	200		1.117					
SIGNAL CUBICLES				2240	7.467					
<b>TOTAL</b>	<b>35620</b>	<b>3831</b>	<b>14100</b>	<b>5320</b>	<b>194.802</b>					

## CHEMICAL CONTROL OF VEGETATION IN YARDS BY MEANS OF HERBICIDES FOR TWO YEARS - DURBAN

### Section 4: PROPOSAL FORM

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

*[name of entity, 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 Goods at the prices quoted in the schedule of prices 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 RFP documents.

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

- (i) Standard Terms and Conditions of Contract [Form ST&C – Goods];
- (ii) General Bid Conditions – Goods; and
- (iii) any other standard or special conditions mentioned and/or embodied in this Request for Proposal.

I/We accept that unless Transnet should otherwise decide and so inform me/us in the letter of award, this Proposal [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 a letter of intent [the **Letter of Intent**], this Proposal [and, if any, its covering letter and any subsequent exchange of correspondence] together with Transnet's Letter of 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 Proposal, I/we fail to enter into a formal contract if called upon to do so, or fail to commence the supply of Goods within 4 [four] weeks thereafter, 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 Proposals afresh and/or having to accept any less favourable Proposal.

I/We accept that any contract resulting from this offer will be for a period of 90 days 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 Goods be delayed due to non-performance by ourselves.

The law of the Republic of South Africa shall govern any contract created by the acceptance of this RFP. The *domicilium 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 authorised representative in the Republic of South Africa who has the power of attorney to sign any contract which may have to be entered into in the event of their Proposal being accepted and to act on their behalf in all matters relating to such contract.

Respondent to indicate the details of its *domicilium citandi et executandi* hereunder:

Name of Entity: \_\_\_\_\_  
 Facsimile: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**NOTIFICATION OF AWARD OF RFP**

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

**VALIDITY PERIOD**

Transnet requires a validity period of 90 [ninety] days [from 23 October 2012] against this RFP.

**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 RFP 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)

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

**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 Goods, which is either directly or indirectly related to Transnet's business, written approval to divulge such information must be obtained from Transnet.

**DISCLOSURE OF PRICES TENDERED**

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

<b>YES</b>		<b>NO</b>	
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**RETURNABLE DOCUMENTS AND SCHEDULES**

Respondents are required to submit the following returnable documents and schedules with their responses [see √].

All Sections, as indicated in the footer of each page, must be signed, stamped and dated by the Respondent:

SECTION 1 : Notice to Bidders	√
SECTION 2 : Background, Overview and Scope of Requirements	√
SECTION 3 : Pricing & Delivery Schedule	√
SECTION 4 : Proposal Form	√
SECTION 5 : Vendor Application Form	√
- Original cancelled cheque or bank verification of banking details	√
- Certified copies of IDs of shareholder/directors/members [as applicable]	√
- Certified copy of Certificate of Incorporation [CM29/CM9 name change]	√
- Certified copy of share certificates [CK1/CK2 if CC]	√
- Entity's letterhead	√
- Original Tax Clearance Certificate	√
- Certified copy of VAT Registration Certificate	√
- Certified copy of Company Registration Certificate	√
- Valid B-BBEE Accreditation Certificate [Large Enterprises and QSEs]	√
- Annual financials signed off by an accounting officer [EMEs]	√
- Audited Financials for previous 3 years	√
SECTION 6 : Signing Power - Resolution of Board of Directors	√
SECTION 7 : Certificate of Acquaintance with RFP Documents	√
SECTION 8 : General Bid Conditions – Goods	√
SECTION 9 : Standard Terms and Conditions of Contract	√

SECTION 10 : RFP Declaration Form	✓
SECTION 11 : Breach of Law	✓
SECTION 12 : Bid Clarification Request Form	✓
SECTION 13 : Supplier Code of Conduct	✓
SECTION 14 : Certificate of attendance of Site Meeting / RFP Briefing	✓
SECTION 15 : Specifications and Drawings	✓
SECTION 16 : Non-Disclosure Agreement	✓
SECTION 17 : Further Recognition Criteria	✓
SECTION 18 : Supplier Development Initiatives	✓
- Annexure A: BBBEE preference claims points form	✓
- Annexure B : Supplier Development Bid Document	✓
- Annexure C & C1 : Supplier Development Value Summary	✓
Proof of Registration in terms of the farm feeds agricultural and stock remedies act, Act 36 of 1947 as amended. It should be noted that this requirement is a disqualifying criteria	✓

**Failure to provide all the above-referenced returnable documents marked with a [✓] will result in a Respondent's disqualification. Bidders are therefore urged to ensure that all the applicable documents are returned with their Proposals.**

#### **CONTINUED VALIDITY OF RETURNABLE DOCUMENTS**

The successful Respondent will be required to ensure the validity of all returnable documents, including but not limited to its Tax Clearance Certificate and B-BBEE Accreditation Certificate, for the duration of any contract emanating from this RFP. Should the Respondent be awarded the contract [the **Agreement**] and fail to present Transnet with such renewals as and when they become due, Transnet shall be entitled, in addition to any other rights and remedies that it may have in terms of the eventual Agreement, to terminate the Agreement forthwith without any liability and without prejudice to any claims which Transnet may have for damages against the Respondent.

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

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

SIGNATURE OF WITNESSES

ADDRESS OF WITNESSES

1 \_\_\_\_\_

Name \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

2 \_\_\_\_\_

Name \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

SIGNATURE OF RESPONDENT'S AUTHORISED REPRESENTATIVE:

Preview copy only.

\_\_\_\_\_

NAME: \_\_\_\_\_

DESIGNATION: \_\_\_\_\_

**CHEMICAL CONTROL OF VEGETATION IN YARDS BY MEANS OF HERBICIDES FOR TWO YEARS – DURBAN**

**Section 5: VENDOR APPLICATION FORM**

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

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

**Note: No contract shall be awarded to any Respondent whose tax matters have not been declared by SARS to be in order.**

**Vendor Application Form**

Entity’s trading name			
Entity’s registered name			
Entity’s Registration Number or ID Number if a Sole Proprietor			
Form of entity [v]	<input type="checkbox"/> Trust	<input type="checkbox"/> Pty Ltd	<input type="checkbox"/> Limited
	<input type="checkbox"/> Partnership	<input type="checkbox"/> Sole Proprietor	
How many years has your entity been in business?			
VAT number [if registered]			
Entity’s telephone number			
Entity’s fax number			
Entity’s email address			
Entity’s website address			
Bank name		Branch & Branch code	
Account holder		Bank account number	
Postal address			Code

\_\_\_\_\_  
Respondent’s Signature

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

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

*Complete B-BBEE Ownership Details:*

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

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

Transnet contact person					
Contact number					
Transnet Operating Division					

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

Name		Designation	
Signature		Date	



**CHEMICAL CONTROL OF VEGETATION IN YARDS BY MEANS OF HERBICIDES FOR TWO YEARS – DURBAN**

**Section 6: SIGNING POWER – RESOLUTION OF BOARD OF DIRECTORS**

NAME OF ENTITY: \_\_\_\_\_

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 Proposals and/or Agreements for the supply of Goods.

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

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

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

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

Preview copy only.

**CHEMICAL CONTROL OF VEGETATION IN YARDS BY MEANS OF HERBICIDES FOR TWO YEARS – DURBAN**

**Section 7: CERTIFICATE OF ACQUAINTANCE WITH RFP DOCUMENTS**

NAME OF ENTITY:

\_\_\_\_\_

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

I/We furthermore agree that Transnet SOC Ltd shall recognise no claim from me/us for relief based on an allegation that I/we overlooked any RFP/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

\_\_\_\_\_

SIGNATURE OF WITNESS

\_\_\_\_\_

SIGNATURE OF RESPONDENT

Preview copy only.

**CHEMICAL CONTROL OF VEGETATION IN YARDS BY MEANS OF HERBICIDES FOR TWO YEARS –  
DURBAN**

**Section 8: GENERAL BID CONDITIONS - GOODS**

**Refer General Bid Conditions attached hereto**

**Preview copy only.**

**CHEMICAL CONTROL OF VEGETATION IN YARDS BY MEANS OF HERBICIDES FOR TWO YEARS –  
DURBAN**

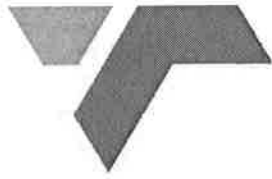
**Section 9: STANDARD TERMS AND CONDITIONS OF CONTRACT  
FOR THE SUPPLY OF GOODS TO TRANSNET**

Refer Form ST&C attached hereto.

**Respondents should note the obligations as set out in  
clause 25 [Terms and Conditions of Bid]  
of the General Bid Conditions [RFP Section 8] which reads as follows:**

*"The Supplier shall adhere to the Standard Terms and Conditions of Contract as set out in Form ST&C – Goods, a copy of which is attached hereto. Should the Respondent find any conditions unacceptable, it should indicate which conditions are unacceptable and offer alternatives. Any such submission shall be subject to review by Transnet's Legal Counsel who shall determine whether the proposed alternative(s) are acceptable or otherwise, as the case may be."*

**TRANSNET**



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

**Preview copy only.**

**FORM US7 – SERVICES  
Revised August 2008**

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Respondent's Signature

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## 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 this Agreement owned in whole or in part by or licensed to either Party or their affiliates prior to the Commencement Date or developed after the Commencement Date otherwise pursuant to 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 1 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 representative of the other Party to visit any of its premises), or which otherwise becomes

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known to a Party, and which is not in the public domain and includes, without limiting the generality of the term –

- 2.6.1. information relating to methods of operation, data and plans of the disclosing Party;
- 2.6.2. the contents of the Agreement;
- 2.6.3. 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;
- 2.6.4. any information disclosed by either Party and which is clearly marked as being confidential or secret;
- 2.6.5. information relating to the strategic objectives and planning of the disclosing Party relating to its existing and planned future business activities;
- 2.6.6. information relating to the past, present and future research and development of the disclosing Party;
- 2.6.7. 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;
- 2.6.8. information contained in the software and associated material and documentation belonging to the disclosing Party;
- 2.6.9. technical and scientific information, Know-How and trade secrets of a disclosing Party including inventions, applications and processes;
- 2.6.10. Copyright works;
- 2.6.11. commercial, financial and marketing information;
- 2.6.12. data concerning architecture, demonstrations, tools and techniques, processes, machinery and equipment of the disclosing Party;
- 2.6.13. plans, designs, concepts, drawings, functional and technical requirements and specifications of the disclosing Party;
- 2.6.14. information concerning faults or defects in goods, equipment, hardware or software or the incidence of such faults or defects; and
- 2.6.15. 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;

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

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- 2.17. **"Party"** means either one of these Parties;
- 2.18. **"Patents"** means 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 1 hereto, unless substituted by a Work Order or Work Orders, as defined;
- 2.23. **"Service(s)"** means 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. **"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;
- 2.27. **"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;

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- 2.28. **“Trade Marks”** means 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;
- 2.29. **“VAT”** means Value-Added Tax in terms of the Value-Added Tax Act, No 89 of 1991: and
- 2.30. **“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 any 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.

### 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

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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; 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 -
- 6.1.1. it has full capacity and authority to enter into and to perform the Agreement and that the Agreement is executed by duly authorised representatives of the Supplier;
- 6.1.2. it will discharge its obligations under the Agreement and any annexure or schedule hereto with all due skill, care and diligence;
- 6.1.3. it will be solely responsible for the payment of remuneration of its Personnel. The Supplier will be solely responsible for the payment of remuneration and associated benefits, if any, and for withholding and remitting income tax for its Personnel in conformance with any applicable laws and regulations;
- 6.1.4. 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

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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

- 6.1.5. 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.
- 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 -
- 6.7.1. 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

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6.7.2. 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.

## **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 relate 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 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 –

8.1.1. respond promptly to all complaints and enquiries from Transnet;

8.1.2. inform Transnet immediately of any dispute or complaint arising in relation to the provision of the Services.

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- 8.1.3. conduct its business in a professional manner that will reflect positively upon the Supplier and the Supplier's Services;
  - 8.1.4. 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;
  - 8.1.5. obtain, and at all times maintain in full force and effect, any and all licenses, 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; and
  - 8.1.6. 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 -
- 8.2.1. render the Services and perform all its duties with honesty and integrity;
  - 8.2.2. communicate openly and honestly with Transnet and demonstrate a commitment to performing the Services timeously, efficiently and to the required standards;
  - 8.2.3. endeavour to provide the highest possible standards of service and professionalism, with a reasonable degree of care and diligence;
  - 8.2.4. use its best endeavours and make every diligent effort to meet agreed deadlines;
  - 8.2.5. 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;
  - 8.2.6. practice and promote its own internal policies aimed at prohibiting and preventing unfair discrimination (as further referred to in clause 22 – EQUALITY AND DIVERSITY);
  - 8.2.7. 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 clause, the Supplier will advise Transnet of the delay and the reasons therefore and will keep Transnet informed of progress made regarding the enquiry;
  - 8.2.8. 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 Agreement has been entered into between the Parties;

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- 8.2.9. 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;
- 8.2.10. 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;
- 8.2.11. not mislead Transnet or its officers, employees and stakeholders, whether by act or omission;
- 8.2.12. 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
- 8.2.13. 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 -
  - 9.3.1. are agreed by Transnet in advance;
  - 9.3.2. are incurred in accordance with Transnet's standard travel and expenses policies;
  - 9.3.3. are passed on to Transnet at cost with no administration fee; and
  - 9.3.4. will only be reimbursed if supported by relevant receipts.
- 9.4. All 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 invoice will, where appropriate, include VAT as a separate item.

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## 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.
- 10.2. Transnet shall pay such amounts to the Supplier, upon receipt of a correct and undisputed invoice together with the supporting documentation as specified in the Schedule of Requirements or Work Order appended hereto, once the undisputed invoices, or such portion of 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, 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 invoices and supporting documentation.
- 10.5. Where the payment of any invoice, or any part of an invoice 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.

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## 12. INTELLECTUAL PROPERTY RIGHTS

### 12.1. Title to Confidential Information

- 12.1.1. 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 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.
- 12.1.2. Transnet shall grant to the Supplier an irrevocable royalty free non-exclusive license to use Transnet's Background Intellectual Property only for the Permitted Purpose. This license shall not permit the Supplier to sub-license to other parties.
- 12.1.3. 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-licence to other parties.
- 12.1.4. 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

- 12.2.1. 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 thing 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.
- 12.2.2. 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.
- 12.2.3. Where the Foreground Intellectual Property was created by the Supplier or its researchers, agents and employees and where Transnet elects not to exercise its

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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.

12.2.4. 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 this 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.

12.2.5. 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

12.3.1. 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

12.4.1. 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 supplier 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.

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

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Date & Company Stamp

### 12.5. Unauthorised Use of Intellectual Property

- 12.5.1. 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.
- 12.5.2. 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.
- 12.5.3. The Supplier shall cooperate to provide Transnet promptly with all relevant ascertainable facts.
- 12.5.4. 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

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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.

- 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 -
- 14.1.1. death or personal injury due to negligence; or
  - 14.1.2. 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, 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.

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- 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.
- 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 and the receipts for payment of the current premiums, on an annual basis within thirty (30) 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 -
- 16.1.1. 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

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

- 16.1.2. 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;
- 16.1.3. not to make any notes, sketches, drawings, photographs or copies of any kind of any part of the disclosed Confidential Information, without the prior written consent of such other Party, except when reasonably necessary for the purpose of this Agreement, in which case such copies shall be regarded as Confidential Information;
- 16.1.4. not to de-compile, disassemble or reverse engineer any composition, compilation, concept application, item, component de-compilation, including software or hardware disclosed and shall not analyse any sample provided by Transnet, or otherwise determine the composition or structure or cause to permit these tasks to be carried out except in the performance of its obligations pursuant to this Agreement;
- 16.1.5. not to exercise less care to safeguard Transnet Confidential Information than the Party exercises in safeguarding its own competitive, sensitive or Confidential Information;
- 16.1.6. 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;
- 16.1.7. 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;

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- 16.1.8. each Party shall be entitled to disclose such aspects of Confidential Information as may be relevant to one or more technically qualified employees or consultants of the Party who are required in the course of their duties to receive the Confidential Information for the Permitted Purpose provided that the employee or consultant concerned has a legitimate interest therein, and then only to the extent necessary for the Permitted Purpose, and is informed by the Party of the confidential nature of the Confidential Information and the obligations of the confidentiality to which such disclosure is subject and the Party shall ensure such employees or consultants honour such obligations;
- 16.1.9. 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;
- 16.1.10. 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
- 16.1.11. 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 -
- 16.2.1. 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
- 16.2.2. 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
- 16.2.3. 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
- 16.2.4. 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,

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

## 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 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 -
- 18.4.1. a voluntary arrangement or composition or reconstruction of its debts;
  - 18.4.2. the presentation of an administrative petition;
  - 18.4.3. its winding-up or dissolution;
  - 18.4.4. the appointment of a liquidator, trustee, receiver, administrative receiver or similar officer; or
  - 18.4.5. 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 daily 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 (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 10 (ten) Business Days of written notice thereof, the other Party (hereinafter the "Aggrieved Party"), shall be entitled, in addition to any other rights and remedies that it may have in terms of the Agreement, to terminate the Agreement forthwith without any liability and without prejudice to any claims which the Aggrieved Party may have for damages against the Defaulting Party. For the avoidance of doubt, if -

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Respondent's Signature

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- 19.6.1. the Supplier effects or attempts to effect a compromise or composition with its creditors; or
- 19.6.2. either Party is provisionally or finally liquidated or is placed under judicial management, whether provisionally or finally; or
- 19.6.3. either Party ceases or threatens to cease to carry on its normal line of business or defaults or threatens to default in the payment of its liabilities generally, or commits 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 Party within 90 (ninety) days of the act of force majeure first occurring, either Party may thereafter terminate the Agreement with immediate notice.

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**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.
- 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.

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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 2 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 -

26.3.1. if posted by prepaid registered post, 10 (ten) days after the date of posting thereof;

26.3.2. if hand delivered, on the day of delivery; or

26.3.3. 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.

## **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).

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Respondent's Signature

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**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.

**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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Preview copy only.

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Respondent's Signature

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Date & Company Stamp

## CHEMICAL CONTROL OF VEGETATION IN YARDS BY MEANS OF HERBICIDES FOR TWO YEARS – DURBAN

### Section 10: RFP DECLARATION FORM

NAME OF ENTITY: \_\_\_\_\_

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 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
5. 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:

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

Indicate nature of relationship with Transnet:

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

*[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]*

6. 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.
7. 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].*
8. 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 _____ duly authorised hereto	AS WITNESS:
Name:	Name:
Position:	Position:
Signature:	Signature:
Date:	
Place:	

Preview copy only.



**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.**
- **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**
- **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.**

Preview copy only

**CHEMICAL CONTROL OF VEGETATION IN YARDS BY MEANS OF HERBICIDES FOR TWO YEARS – DURBAN**

**Section 11: BREACH OF LAW**

NAME OF ENTITY: \_\_\_\_\_

I/We: \_\_\_\_\_

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

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

NATURE OF BREACH: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

DATE OF BREACH: \_\_\_\_\_

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

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

\_\_\_\_\_  
SIGNATURE OF WITNESS

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

## CHEMICAL CONTROL OF VEGETATION IN YARDS BY MEANS OF HERBICIDES FOR TWO YEARS – DURBAN

### Section 13: SUPPLIER 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:

- The Transnet Procurement Procedures Manual [**PPM**];
- 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 [**B-BBEE**]; and
- The Prevention and Combating of Corrupt Activities Act.

This Code of Conduct has been included in this RFP to formally apprise prospective 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 Company [SOC], 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.

1. *Transnet will not participate in corrupt practices and therefore 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, to:
  - illegally influence their judgement or conduct or to ensure the desired outcome of a sourcing activity;
  - win or retain business or to influence any act or decision of any decision stakeholders involved in sourcing decisions; or
  - 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" Hot line to report these acts [0800 003 056].

2. *Transnet is firmly committed to the ideas of free and competitive enterprise.*

- Suppliers are expected to comply with all applicable laws and regulations regarding fair competition and antitrust.
- Transnet does not engage with non-value adding agents or representatives solely for the purpose of increasing B-BBEE spend [fronting].

3. *Transnet's relationship with Suppliers requires us to clearly define requirements, 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 [e.g. origin of manufacture, specifications, intellectual property rights];
  - collusion;
  - failure to disclose accurate information required during the sourcing activity [e.g. ownership, financial situation, B-BBEE status];
  - 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 is 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.

### **Conflicts 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.

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

**CHEMICAL CONTROL OF VEGETATION IN YARDS BY MEANS OF HERBICIDES FOR TWO YEARS – DURBAN**

**Section 14: CERTIFICATE OF ATTENDANCE OF RFP BRIEFING**

It is hereby certified that –

1. \_\_\_\_\_

2. \_\_\_\_\_

Representative(s) of \_\_\_\_\_ *[name of entity]*

attended the RFP briefing in respect of the proposed Goods to be supplied in terms of this RFP on **11<sup>TH</sup> OCTOBER 2012 AT 10H00**

\_\_\_\_\_  
TRANSNET'S REPRESENTATIVE

\_\_\_\_\_  
RESPONDENT'S REPRESENTATIVE

DATE \_\_\_\_\_

DATE \_\_\_\_\_

**Preview copy only.**

**CHEMICAL CONTROL OF VEGETATION IN YARDS BY MEANS OF HERBICIDES FOR TWO YEARS –  
DURBAN**

**Section 15: SPECIFICATIONS**

- 1. SCOPE OF WORK**
- 2. E4E**
- 3. E7/1**

Preview copy only.

## **PROJECT SPECIFICATION**

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Preview copy only.



## **1. DESCRIPTION OF THE WORKS**

### **1.1. EMPLOYERS OBJECTIVE**

- 1.1.1. The essence of the Agreement is that Transnet Freight Rail requires the control of living vegetation and the management of dead remains of previously living vegetation, to the extent that areas treated in terms of the Agreement are free from any form of vegetation (dead or otherwise) which may obstruct, hinder or interfere with operational activities, or have the potential to damage equipment or facilities, on tracks or other areas included in the Agreement.
- 1.1.2. The ways and means by which the above-mentioned results are obtained are the responsibility of the Supplier. Transnet Freight Rail, however, shall have the right to monitor the materials and activities of the Supplier to ascertain that all procedures and herbicidal applications are in accordance with his/her tender, the relevant legislation and are conducive to the achievement of long-term control of vegetation. Such right of monitoring shall be entirely without prejudice to Transnet Freight Rail and shall in no way relieve the Supplier of his/her responsibility for satisfactory control of vegetation.
- 1.1.3. Failure to comply with the minimum performance proposed by the Supplier in his/her tender may form the basis for non-payment for work done, pending the achievement of control as defined and/or termination or cancellation of the Agreement.
- 1.1.4. The Supplier must obtain his/her own information regarding the extent, occurrence and the species of the vegetation over the work area. He/she must also determine the best method to control the vegetation.
- 1.1.5. The Agreement will only be awarded to a tenderer who has the required experience in the application of herbicides in Southern Africa as stipulated in terms of the Fertilizers, Farm Feeds, Agricultural Remedies and Stock Remedies Act, Act 36 of 1947.

### **1.2. OVERVIEW OF THE WORKS**

The Agreement covers the control of vegetation in mainly yards including declared weeds and declared invader plants, by means of chemical herbicides on Transnet property, to the extent that areas treated chemically or otherwise in terms of this Agreement are rendered and maintained free from obstructing vegetation as defined for the periods specified herein.

### **1.3. PERFORMANCE BOND:**

- 1.3.1. Transnet Freight Rail requires a Performance Bond of 10% of the total value of the Agreement as security for the due and faithful performance by the Supplier of all the duties and obligations resting upon and assumed by him in terms of the Agreement.
- 1.3.2. The Performance Bond is to be returned to the Supplier upon completion of the Agreement after certification from the Project Manager that all Agreement requirements have been met

### **1.4. EXTENT OF THE WORKS**

The service information briefly consists of the following:

- The control of vegetation, including declared weeds and declared invader plants by means of chemical herbicides of mainly yards as indicated in the Schedule of Requirements.
- The execution of the works shall include any work arising from or incidental to the service information or required of the Supplier for the proper completion of the

Agreement in accordance with the true meaning and detail of the Agreement documents.

- The Supplier shall obtain his/her own information regarding species occurrence and extent of vegetation to be controlled in order to comply with the required standards.

1.4.1. The extent of the work consists of mainly yards as indicated in the Schedule of Requirements.

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

1.4.3. The Supplier shall obtain his/her own information regarding species, occurrence and extent of vegetation to be controlled in order to comply with the required standards.

## 1.5. LOCATION OF THE WORKS

1.5.1. The location of the works is as indicated in the Prices List and is in the geographical area controlled by the Depot Engineer (As per schedule of quantities).

1.5.2. Transnet Freight Rail's representative will provide one-copy schematic diagrams to the successful tenderer, indicating the areas to be treated.

## 1.6. DURATION OF AGREEMENT

The work provides for the control of vegetation for commencing on the date of notification of acceptance of tender with Transnet Freight Rail for a period of **24 months**.

## 2. GENERAL MAINTENANCE ASPECTS

### 2.1. WORK SPECIFICATIONS

2.1.1. Standard Specifications.

The following standard Specifications will be applicable to this Agreement:

- SANS 1200A – General
- SABS Code of Practices no 0206-1983 "Safety procedures for the disposal of surplus pesticides and associated toxic waste."

2.1.2. Generic Specifications:

The following Generic Specifications will be applicable to this Agreement:

- Transnet generic specifications.
- E4E (August 2006): Safety arrangements and procedural compliance with the Occupational Health and Safety Act, Act 85 of 1993 and regulations.
- E7/1 (July 1998); Specifications for works on, over, under or adjacent to railway lines and near high voltage equipment.

### 2.2. PLANT AND MATERIAL

2.2.1. Any plant and/or equipment provided to the Supplier at the beginning of the Agreement shall be returned to Transnet Freight Rail in the same condition, normal wear and tear accepted. Any loss or damage shall be made good by the Supplier, or the value thereof will be deducted from moneys falling due to him/her.

2.2.2. The Supplier shall provide written certification of compliance with specification of any materials (chemical) or equipment supplied by him / her.

### **2.3. CONSTRUCTION EQUIPMENT**

All equipment necessary to execute the works shall be supplied by the Supplier.

### **2.4. EXISTING SERVICES**

2.4.1. Reinstatement of services and property damaged during execution of the work.

2.4.2. Any damages caused by the Supplier to Transnet property and services shall be rectified by the Supplier at his own cost and to the full satisfaction of the Transnet Freight Rail's representative.

### **2.5. SITE ESTABLISHMENT**

#### **2.5.1. SERVICES AND FACILITIES PROVIDED BY THE EMPLOYER:**

2.5.1.1. In the case of a Agreement for vegetation control the following will be provided free of charge:

2.5.1.2. Water as required from Transnet Freight Rail's existing points of supply; such water may be untreated, chemically treated or borehole water. The Supplier shall be responsible for all work and equipment needed to fill the water trucks or spray units from the water point provided and to ensure that the water is suitable for its intended use. These water points may be up to 200km apart.

2.5.1.3. Road vehicle accessibility via service roads to the work site is not always possible.

2.5.1.4. Inspections of the areas of work by motor trolley may be arranged with the Project Manager's Deputy, but will have to coincide with normal track inspections carried out by the inspection /technical staff of the Depot. The Project Manager's Deputy shall be given timeous notice (4 calendar weeks) of the Supplier's intention to inspect.

2.5.1.5. Any plant and/or equipment provided to the Supplier at the beginning of the Agreement shall be returned to Transnet Freight Rail in the same condition, normal wear and tear accepted. Any loss or damage shall be made good by the Supplier, or the value thereof will be deducted from moneys falling due to him/her.

#### **2.5.2. TO BE PROVIDED BY THE SUPPLIER**

2.5.2.1. In addition to all labour materials, plant, equipment and incidentals needed to complete the work, the Supplier shall provide all accommodation and toilet facilities for his/her employees.

2.5.2.2. The Supplier shall provide safe and secure storage facilities for all herbicides or chemicals brought onto and in use on the site. Such facilities shall be capable of ensuring that unauthorised persons or animals cannot gain access to such chemicals.

2.5.2.3. The Supplier shall provide at his/her own cost any security measures he/she may deem necessary for safe and effective execution of the work within the Agreement area.

2.5.2.4. The personnel of the Supplier shall at all times, while on Transnet Freight Rail property and during vegetation control operations, wear reflective safety jackets. These jackets must either be yellow or light blue and preferably bear the name of the Supplier's company.

Should the Supplier wish to use another colour this must first be cleared with the Project Manager's Deputy or his/her deputy.

- 2.5.2.5. An effective safety procedure to be followed by all personnel on any Transnet Freight Rail work site shall be compiled by the Supplier and implemented before any work commences. The procedure shall be updated whenever the need arises and any changes shall be communicated to all employees on a work site before work proceeds.

### **3. MANAGEMENT OF THE WORKS**

#### **3.1. SITE MEETINGS**

The Supplier shall attend site meetings when required. These meetings will be held under the chairmanship of Transnet's representative. These meetings will be conducted to monitor progress and discuss agreed issues when required. A register will be kept of attendance and a minute of the proceedings will be recorded and distributed afterwards. When sub-Suppliers are required to attend, the Supplier shall ensure their attendance.

#### **3.2. SITE BOOKS**

- 3.2.1. A Site Instruction Book, A4 size, with triplicate pages shall be provided by the Supplier. The format for written communication on site shall be the Site Instruction Book. The site instruction shall have numbered sheet for receiving and recording instructions by the Employer's representative and shall be clearly marked "Site Instruction Book".

- 3.2.2. A Daily Diary Book with triplicate pages shall be provided by the Supplier and be available on site at all times. The number of staff and plant on site for every day shall be recorded. The hours of actual work and the accurate amount of work measured per item as in the Schedule of Requirements completed for each day shall also be recorded and signed off by both Transnet Freight Rail (TFR) and the Supplier at the end of each day. This site diary shall also serve as a daily record of all relevant information concerning herbicide application and site conditions prevailing on site and as required in terms of section 16 of Act 36 of 1947.

- 3.2.3. Only persons authorised in writing by the Project Manager or Supplier may make entries in the site books.

#### **3.3. PROGRAMME OF WORK**

- 3.3.1. The Supplier shall undertake the planning and programming of the entire vegetation control operation and shall submit to the Project Manager's Deputy for approval full particulars thereof within 2 weeks from the date of notification by Transnet Freight Rail of the acceptance of his/her tender or the commencement of the annual rainy season as the case may be.

- 3.3.2. The particulars to be provided in respect of the Supplier's vegetation control programme shall include but not be limited to the following:

- 3.3.3. An assessment, based on a proper site investigation of the nature and types of vegetation to be controlled in the Agreement area,

- 3.3.4. The appropriate methods and procedures to be implemented by him/her to achieve the standards of vegetation control required in terms of the Agreement,

- 3.3.5. The chemicals to be applied, design mixes, rates of application and the timing and number of applications.