



Transnet Freight Rail  
A division of  
TRANSNET LIMITED  
(Registration No. 1990/000900/06)

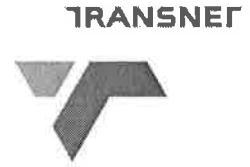
## REQUEST FOR PROPOSAL (“RFP”)

RFP NUMBER ERACBB402

PROVISION, MAINTENANCE AND OPERATION OF ONE CRAWLER MOUNTED HYDRAULIC EXCAVATOR, ONE CRAWLER TRACTOR WITH BLADE AND RIPPER, ONE SELF PROPELLED VIBRATING SMOOTH DRUM TYPE ROLLER, ONE WATERLORRY AND ONE TLB FOR THE PERIOD OF ONE YEAR

ISSUE DATE	:	23 October 2012
CLOSING DATE	:	13 November 2012
CLOSING TIME	:	10h00
OPTION DATE	:	13 February 2012

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



**RFP NUMBER ERACBB402**

**PROVISION, MAINTENANCE AND OPERATION OF ONE CRAWLER MOUNTED HYDRAULIC EXCAVATOR, ONE CRAWLER TRACTOR WITH BLADE AND RIPPER, ONE SELF PROPELLED VIBRATING SMOOTH DRUM TYPE ROLLER, ONE WATERLOTTY AND ONE TLB FOR THE PERIOD OF ONE YEAR**

**SCHEDULE OF DOCUMENTS**

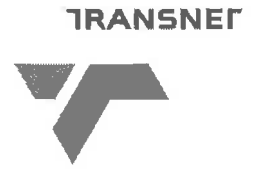
- Section**
1. Notice to Bidders
  2. Background, Overview and Scope of Requirements
  3. Proposal Form
  4. Resolution of Board of Directors (Respondent's Representative)
  5. Certificate of Acquaintance with RFP Documents
  6. Service Fees and Costs
  7. General Tender Conditions (CSS5 – Services)
  8. Standard Terms and Conditions of Contract (US7 - Services)
  9. Certificate of Attendance of RFP Briefing
  10. Minimum Communal Health Requirements (E4B)
  11. Safety Arrangements and Procedural Compliance (E4E)
  12. Specification For Works On, Over, Under Or Adjacent To Railway Lines And Near High Voltage Equipment. (E7)
  13. Schedule of Plant and Equipment
  14. Non-Disclosure Agreement ("NDA")
  15. Labour payment schedule
  16. Schedule of the Tenderers Experience
  17. Supplier Declaration Form Version 7.4
  18. Code of Conduct

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Respondent's Signature

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Date and Company Stamp



**19. PCI- AON Procedure Manual 2007 Insurance**

**“PREVIEW COPY ONLY”**

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Respondent's Signature

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Date and Company Stamp



## SECTION 1

### RFP NUMBER ERACBB402

**PROVISION, MAINTENANCE AND OPERATION OF ONE CRAWLER MOUNTED HYDRAULIC EXCAVATOR, ONE CRAWLER TRACTOR WITH BLADE AND RIPPER, ONE SELF PROPELLED VIBRATING SMOOTH DRUM TYPE ROLLER, ONE WATERLOTTY AND ONE TLB FOR THE PERIOD OF ONE YEAR**

### NOTICE TO BIDDERS

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

On or after 23 October 2012 the RFP documents may be inspected at, and are obtainable from the office of Transnet Freight Rail Advice Centre, Inyanda House 1, Ground Floor, 21 Wellington road, Parktown, Johannesburg. A non-refundable Proposal fee of R250.00 (VAT inclusive) is applicable Proposal. Payment is to be made to Transnet Freight Rail, Standard Bank, Account Number 203158598, Branch Code 004805, Ref No. ERACBB402. The official Bank receipt(s) franked with the official Bank stamp to be provided with on the collection of a tender document. The amount is not refundable.

NOTE: 1.1. This amount is not refundable. RFP Document will only be available until 15h00 on the 29 October 2012

2. A **compulsory** information briefing session will be conducted on the 30 October 2012, at 10h00. Meeting Place will be in the Transnet Freight Rail, 227 Mark Street, Boardroom, Vryheid, 3100.

Respondents without a valid RFP document in their possession will not be allowed to attend the briefing session.

**The briefing session will start punctually at 10h00 and Respondents arriving late will not be accommodated.**

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Respondent's Signature

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Date and Company Stamp



For specific queries before the closing of the RFP, the following Transnet employee(s) may be contacted by email only:

Name : Barbara Bhengu  
Division : Transnet Freight Rail  
Email : Barbara.Bhengu@transnet.net

1. Proposals in Duplicate must reach The chairperson, Transnet 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:

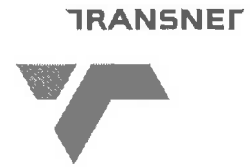
<b>RFP No</b>	<b>: ERACBB402</b>
<b>Description</b>	<b>: Provision, Maintenance and Operation of Various Plants</b>
<b>Closing date and time</b>	<b>: 13 November 2012, at 10h00</b>
<b>Closing address (refer options paragraph 4 below)</b>	

#### 4. DELIVERY INSTRUCTIONS FOR THIS RFP

- 4.1 **If posted**, the envelope must be addressed to The Chairperson, Transnet Freight Rail Acquisition Council, P.O. Box 4244, Johannesburg 2000 and must be dispatched in time for sorting by the Post Office to reach the Secretary before the closing time of the RFP. In the event of the late receipt of a Proposal, the Respondent's franking machine impression will not be accepted as proof that the response was posted in time.
- 4.2 **If delivered by hand**, the envelope is to be deposited in the TRANSNET Freight Rail Acquisition Council tender box which is located in the foyer on the ground floor, Inyanda House 1, 21 Wellington Road, Parktown, Johannesburg, and should be addressed as follows:

<b>THE SECRETARY TRANSNET FREIGHT RAIL ACQUISITION COUNCIL GROUND FLOOR RFP BOX INYANDA HOUSE 1 21 WELLINGTON ROAD PARKTOWN JOHANNESBURG 2001</b>
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The measurements of the "tender slot" are 500mm wide x 100mm high, and Respondents must please ensure that response documents or files are not larger than the above dimensions. Responses which are



too bulky (i.e. more than 100mm thick) must be split into two or more files, and placed in separate envelopes.

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

- 4.3 **If dispatched by courier**, the envelope must be addressed as follows and delivered to the Office of The Chairman, Transnet Freight Rail and a signature obtained from that Office.

THE SECRETARY  
TRANSNET FREIGHT RAIL ACQUISITION COUNCIL  
INYANDA HOUSE 1  
21 WELLINGTON ROAD  
PARKTOWN  
JOHANNESBURG  
2001

5. Please note that this RFP closes punctually at **10:00** on Tuesday **13 November 2012**.
6. If responses are not posted or delivered as stipulated herein, such responses will not be considered and will be treated as "UNRESPONSIVE."
7. **NO EMAIL OR FACSIMILE RESPONSES WILL BE CONSIDERED.**
8. The responses to this RFP will be opened as soon as practicable after the expiry of the time advertised for receiving them.
9. Transnet shall not, at the opening of responses, disclose to any other company any confidential details pertaining to the Proposals / information received, i.e. service fees, deliverables, etc. The names and location of the Respondents will, however, be divulged to other Respondents upon request.
10. Envelopes must not contain documents relating to any RFP other than that shown on the envelope. All envelopes must reflect the return address of the Respondent on the reverse side.
11. No slips are to be attached to the response documents. Any additional conditions must be embodied in an accompanying letter. Subject only to clause 22 (*Alterations made by the Respondent to Tendered Prices*) of the General Tender Conditions, alterations, additions or deletions must not be made by the Respondent to the actual RFP documents.
12. **BROAD-BASED BLACK ECONOMIC EMPOWERMENT ("BBBEE")**

TRANSNET fully endorses and supports the South African Government's Broad-Based Black Economic Empowerment Programme and it is strongly of the opinion that all business enterprises have an equal obligation to redress the imbalances of the past. TRANSNET would therefore prefer to do business with business enterprises who share these same values and who are prepared to contribute to meaningful BBBEE initiatives (including and not limited to enterprise development, subcontracting and Joint Ventures) as part of their tender response.



Transnet would accordingly allow a "preference" in accordance with the 10% preference system, as per the Preferential Procurement Policy Framework Act 5 of 2000 (as amended) to companies who provide a BBBEE accreditation Certificate. All procurement and disposal transactions in excess of R30000 will be evaluated accordingly. All transactions below R30000 will as far as possible be earmarked for EME's.

TRANSNET consequently urges Respondents (Large enterprises and QSE's – see below) to have themselves duly accredited by any one of the Accreditation Agencies approved by SANAS (South African National Accreditation System, under the auspices of the DTI).

In terms of Government Gazette No. 32094, Notice No. 354 dated 23 March 2009, as from 1 August 2009, only BBBEE accreditation Certificates issued by SANAS approved verification agencies will be valid.

However accreditation certificates issued before 23 March 2009 and which are still within their one (1) year validity period will still be acceptable, until their expiry date provided that the accreditation was done in accordance **with the latest codes (i.e. those promulgated on 9 February 2007)**.

BBBEE Accreditation Certificates issued after the published date i.e. 23 March 2009, by a Verification Agency not approved by SANAS, will **NOT** be acceptable as from 23 March 2009.

**12.1** Enterprises will be rated by such Accreditation Agencies based on the following:

(a) **Large Enterprises (i.e. annual turnover >R35 million):**

- Rating level based on all 7 (seven) elements of the BBBEE scorecard
- Enterprises to provide BBBEE certificate and detailed scorecard (to be renewed annually)

(b) **Qualifying Small Enterprises – QSE (i.e. annual turnover >R5 million but <R35 million):**

- Rating based on any 4 (four) of the elements of the BBBEE scorecard
- Enterprises to provide BBBEE certificate and detailed scorecard (to be renewed annually)

(c) **Exempted Micro Enterprises – EME (i.e. annual turnover <R5m are exempted from being rated or verified):**

- Automatic BBBEE Level 4 rating, irrespective of race ownership, i.e. 100% BBBEE recognition
- Black ownership >50% or Black Women ownership >30% automatically qualify as Level 3 BBBEE rating, i.e. 110% BBBEE recognition
- EME's should provide documentary proof of annual turnover (i.e. audited financials) plus proof of Black ownership if Black ownership >50% or Black Women ownership >30% (to be renewed annually) from their Auditors / Accounting Officers

**12.2** In addition to the above, Respondents who wish to enter into a Joint Venture (JV) or subcontract portions of the contract to BBBEE companies must state in their Tenders / Proposals the percentage of the total contract value which would be allocated to such BBBEE companies, should they be successful in being awarded any business. A rating certificate in respect of such BBBEE JV-partners and/or sub-contractors, as well as a breakdown of the distribution of the aforementioned percentage allocation must also be furnished with the tender response to enable Transnet to evaluate / adjudicate on all tenders received on a fair basis.



**12.3 Each Respondent is required to furnish proof of its BBEE status (Certificate and Detailed Scorecard) as stipulated above to TRANSNET.**

**Turnover:** Indicate your company's most recent annual turnover:  
R.....

- If annual turnover <R5m, please attach auditors / accounting officers letter confirming annual turnover and percentage black ownership as well as Black Women ownership
- If annual turnover >R5m please attach BBEE certificate and detailed scorecard from an accredited rating agency.

**12.4 The DTI has created an online B-BBEE Registry (<http://www.dti.gov.za>) in order to provide a central and standardized source of the B-BBEE status of all entities, and to facilitate the flow of this information amongst entities by providing a Unique Profile Number (UPN) per each listing. Existing and prospective suppliers are therefore urged to list their B-BBEE status on the DTI Registry. Hence, entities verified by DTI, will receive the following benefits:**

- Their BBEE status will be verified and confirmed by the DTI, before listing on the Registry
- Listing on the Registry will provide suppliers the option to market themselves on the DTI B-BBEE Opportunities Network. This is a search engine that is designed to help businesses find B-BBEE compliant entities who match specific requirements in terms of the nature of services/goods provided, region, B-BBEE status or other search criteria.

Transnet supports this DTI initiative and will use the DTI Registry to verify prospective and existing suppliers' BBEE credentials.

**12.5 The respondent will provide Transnet with its DTI B-BBEE UNIQUE PROFILE NUMBER with all tender submissions.**

**DTI BBEE UNIQUE PROFILE NUMBER:**  
.....

**12.6 Failure to submit your BBEE information in terms of 14.3 and/or 14.5 (above) will result in a score of zero being allocated for BBEE evaluation.**

**13 COMMUNICATION**

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





A respondent may, however, BEFORE THE CLOSING DATE AND TIME, direct any enquiries relating to the RFP to the Transnet employee as indicated in clause 2 above, and may also at any time after the closing date of the RFP, communicate with the Chairperson of the Transnet Freight Rail Acquisition Council, at telephone number 011 308 3868 or fax no. 011 308 3867 on any matter relating to its RFP response.

#### 14 RFP SCHEDULE

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

#### 15 INSTRUCTIONS FOR COMPLETING THE RFP

- (i) Sign one set of documents (sign 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.
- (ii) Both sets of documents to be submitted to the address specified above.
- (iii) The following returnable documents must accompany all Proposals:
  - Respondent's latest audited financial statements;
  - Respondent's valid Tax Clearance Certificate.

#### 16 COMPLIANCE

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

#### 17 ADDITIONAL NOTES:

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

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

**FAILURE TO OBSERVE ANY OF THE AFOREMENTIONED REQUIREMENTS**

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

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



**MAY RESULT IN A QOUTATION BEING REJECTED**

**18 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:

- modify the RFP's Services and request Respondents to re-bid on any changes
- reject any Proposal which does not conform to instructions and specifications which are detailed herein
- disqualify Proposals submitted after the stated submission deadline
- not necessarily accept the lowest priced Proposal
- reject all Proposals, if it so decides
- award a contract in connection with this Proposal at any time after the RFP's closing date
- award only a portion of the proposed Services which are reflected in the scope of this RFP
- split the award of the contract between more than one Supplier
- make no award of a contract

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

**19 LEGAL REVIEW**

Any Proposal submitted by a Respondent is subject to review and negotiation of the proposed contract by Transnet's Legal Counsel.

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

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



Respondents to complete this section:

NAME OF RESPONDENT .....

PHYSICAL ADDRESS .....

Respondent's contact person:

Name.....

Designation.....

Telephone.....

Cell Phone.....

Facsimile.....

Email.....

Website.....

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

“PREVIEW COPY ONLY”

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

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



## SECTION 2

### RFP NUMBER ERACBB402

**PROVISION, MAINTENANCE AND OPERATION OF ONE CRAWLER MOUNTED HYDRAULIC EXCAVATOR, ONE CRAWLER TRACTOR WITH BLADE AND RIPPER, ONE SELF PROPELLED VIBRATING SMOOTH DRUM TYPE ROLLER, ONE WATERLORRY AND ONE TLB FOR THE PERIOD OF ONE YEAR**

### BACKGROUND, OVERVIEW AND SCOPE OF REQUIREMENTS

#### 1. BACKGROUND

Provision of invader plants control along the coal line between Vryheid East and Ulundi for a period of two years.

#### EXECUTIVE OVERVIEW

Most Transnet Operating Divisions currently procure their services requirements through a number of service providers. Our objective is to source all activity through a Preferred Supplier(s) capable of servicing all Transnet Operating Divisions in locations around the country.

Transnet is seeking a partner(s) to provide solutions for its services nationally. It also seeks to improve its current processes for provision of these Services to its end user community throughout its locations.

The selected service provider(s) will share in the mission and business objectives of Transnet. These mutual goals will be met by meeting contract requirements and new challenges in an environment of teamwork, joint participation, flexibility, innovation and open communications. In this spirit of partnership, Transnet and its Supplier(s) will study the current ways they do business to enhance current practices and support processes and systems. Such a partnership will allow Transnet to reach higher levels of quality, service and profitability.

Specifically, Transnet seeks to benefit from this partnership in the following ways:

- Transnet must receive reduced cost of acquisition and improved service benefits resulting from the Supplier's economies of scale and streamlined service processes.
- Transnet must achieve appropriate availability that meets user needs while reducing costs for both Transnet and the chosen Supplier(s).



- Transnet must receive proactive improvements from the Supplier with respect to provision of Services and related processes.
- Transnet's overall competitive advantage must be strengthened by the chosen Supplier's leading edge technology and service delivery systems.
- Transnet end users must be able to rely on the chosen Supplier's personnel for service enquiries, recommendations and substitutions.
- Transnet must reduce costs by streamlining its acquisition of Services, including managed service processes on a Group basis.

## 2. SCOPE OF CONTRACT

The contract covers the provision, maintenance and operation by the Contractor of plant for use on WORKS under the control of TRANSNET for the contract period and within the area of operations specified, subject to the terms set out in the succeeding clauses and specifications, special conditions and schedules (a copy of which, duly signed by the parties, is annexed hereto).

## 3. DEFINITIONS AND INTERPRETATION

Chief Engineer means the employee appointed as Chief Engineer or any person lawfully acting in that capacity.

Chief Engineer's Deputy means the employee appointed as Infrastructure Manager (Heavy Haul Lines) appointed by the Executive Manager to function as his deputy.

Manager (Perway) means the person appointed as Manager (Perway) on the Coalline who take charge of the contract.

Manager's (Perway) Deputy means any person appointed by him to deputise for him in supervising the carrying out of the contract.

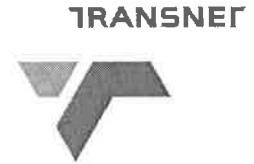
PLANT means any item listed in the schedule(s) of plant, which constitutes an Annexure to this contract used on the site for the carrying out of the WORKS.

SITE means the land and other place on, under, over, in or through which the WORKS are to be executed or carried out and any other land or place made available by Transnet in connection with the WORKS.

TOOL means any instrument, powered or otherwise, which is accepted as a hand tool by the industry concerned and which is normally used in a manual operation.

WORKS means the works to be executed by means of the construction plant provided by the Contractor.

Words implying the singular also include the plural and vice versa where the context requires.



#### **4. BASIS OF PROVISION, MEASUREMENT AND PAYMENT**

4.1 The plant will be provided by the Contractor on an "as and when required" basis and shall be supplied by the Contractor at the appointed place of work within 14 days of notification to supply. Transnet is under no obligation to provide continuity of work for any or all of the plant.

4.2 When the unit of measurement is the hour, payment will be pro rata to the nearest minute. When the unit of measurement is the kilometre, payment will be pro rata to the nearest hundred metres.

4.3 No payment will be made for the period of the Annual Holiday, unless work is performed during that time.

#### **5. PLACE OF WORK**

The Engineer will define for each item of plant the place of work within the area of operations. Transnet reserves the right to alter the place of work to suit its own requirements.

#### **6. SITE AND SUFFICIENCY OF TENDER**

6.1 The Contractor shall be held to have satisfied himself before tendering as to the correctness and sufficiency of his tender and of the rates stated in the schedules of prices. These rates shall be held to cover all his obligations under the contract. No claim by the Contractor will be considered on account of the materials, methods of construction and/or site conditions being different from those assumed by him in tendering for the contract.

6.2 The Contractor shall not trade on Transnet property without the prior approval of Transnet.

6.3 Where entry on Transnet property is restricted, permission to enter will be given only for the purpose of carrying out the WORKS and will be subject to the terms and conditions laid down by Transnet.

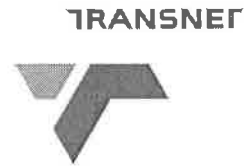


## **7. WORKMEN AND EMPLOYMENT OF LABOUR**

- 7.1 All persons employed by the Contractor for carrying out the contract shall be competent, responsible and of good character.
- 7.2 If, in the opinion of the Engineer, any person employed by the Contractor is inefficient, negligent, disrespectful or objectionable, the Contractor shall forthwith remove such person from the WORKS when so directed in writing by the Engineer and such person shall not be re-employed upon the WORKS without the written permission of the Engineer.
- 7.3 During the currency of the contract, the Contractor shall not approach any employee of Transnet with a view to offering him employment in any capacity whatsoever.
- 7.4 The Contractor shall, at his own cost, provide an operator and whatever labour is necessary for the operation, servicing, maintenance and repair of the items of plant provided by him, except where otherwise stipulated in the contract documents.
- 7.5 The Contractor shall in all cases provide one labourer with each low-bed trailer. This labourer shall assist in the loading and unloading of the vehicle, and shall accompany the vehicle when delivering material.

## **8. CONDITIONS OF EMPLOYMENT**

- 8.1 When called upon to do so by the Engineer, the Contractor shall produce proof that all wages due to his employees have been paid.
- 8.2 Should the Contractor fail to pay the salary or wages to any person employed by him within 48 hours of the said salary or wages becoming due, the Engineer, in his discretion and without prejudice to any other



remedy available to Transnet, may pay such salary or wages to such person and recover the amount thereof as provided for in clause 34 hereof.

## **9. COMPLIANCE WITH STATUTES**

9.1 The Contractor shall comply with the provisions of -

- (i) the Workmen's Compensation Act, 1941, as amended,
- (ii) The Occupational Health and Safety Act, Act No. 85 of 1993 and Regulations.

9.2 Compliance with all applicable legislation shall be entirely at the Contractor's cost.

9.3 No insurance of the Works will be effected by Transnet.

9.4 TRANSNET FREIGHT RAIL will not be liable for any damages to his plant, workmen and tools.

## **10. REGISTRATION OF PLANT**

The Contractor shall be responsible for the licensing and registration of all plant and shall, on demand, produce documentary proof that he has complied with all such requirements.

## **11. HOURS OF DUTY**

The Contractor's employees shall conform to the hours of duty required by the Engineer. The normal weekday hours of duty are 45 hours in a five-day week, from 07:00 to 16:30 with a half-hour break between 12:00 and 12:30. When so ordered by the Engineer, the Contractor's employees shall work overtime and on Saturdays, Sundays and statutory paid public holidays.

## **12. HOUSING OF EMPLOYEES AND CAMPING SITES**

12.1 The Contractor shall make his own arrangements for the housing of his employees.

12.2 No accommodation of any description will be provided by Transnet for the Contractor's use.

12.3 Fouling of the area inside or outside Transnet's boundaries must be prevented. The Contractor may be called upon by the Engineer to dispose of any foul or waste matter by collecting and dispose of it.





**13. DANGER OF CONTACT WITH ELECTRICAL CONDUCTORS**

The Contractor shall, before commencing work, ascertain from the Engineer whether overhead or underground electrical conductors are affected by the WORKS, and he shall ensure that any precautionary measures required by the Engineer are strictly observed.

**14. PLANT, EQUIPMENT, TEMPORARY BUILDINGS, MATERIAL AND TRANSPORT.**

Transnet will not be responsible for any loss of or damage to any plant, tools, equipment, temporary buildings or material belonging to the Contractor, excepting loss or damage the proximate cause of which is the negligence of Transnet or its employees acting in the scope of their employment.

**15. WORK AND SUPERVISION AND KEEPING OF RECORDS**

- 15.1 The Engineer will provide overall supervision of the WORKS and may direct the Contractor and his employees in terms of the provisions of the contract or in regard to any measures which the Engineer may require for the operations of Transnet, the safety of trains, property and workmen of Transnet and for the safety of other property and persons. The Contractor and his employees shall carry out the directions of the Engineer.
- 15.2 The Contractor shall not communicate with the Chief Engineer or his deputy except through the Manager's (Perway) Deputy.
- 15.3 The Contractor shall supply and have available on the site at all times a printed triplicate carbon copy book with detachable numbered sheets. Each day shall be recorded which shall reflect the operational history of the item of plant for the hours it has been ordered to work on that particular day. Entries shall be made for every day the item of plant is ordered to work, whether it actually worked or not, and must cover all conditions and circumstances which may affect its working or productivity. Each page shall clearly indicate the contract number and the item of plant to which it refers and shall be signed by both the



Engineer or his deputy and the Contractor or his authorised representative. The original sheets will be removed and retained by the Engineer and carbon copies retained by the Contractor. Normal blank sheets is not acceptable.

15.4 The entries in the day book will be used for measurement and payment, and the Contractor shall ensure that all the records are complete in every respect. No payment will be made in respect of any returns, which are not properly completed and signed.

15.5 The Contractor's operator(s) shall be available on the site at all times while the WORKS are in progress to receive the directions of the Engineer.

#### **16. SURVEY BEACONS AND PEGS**

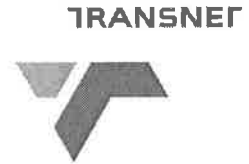
16.1 The Contractor shall on no account move or damage any beacon, bench mark, reference mark, signal, trigonometrically station or boundary fences in the execution of the WORKS, without the written approval of the Engineer. Should the Contractor be responsible for any such occurrence, he shall report the circumstances to the Engineer.

#### **17. PROTECTION OF PERSONS AND PROPERTY**

17.1 The Contractor shall take all the requisite measures and precautions during the course of the WORKS to -

- (i) protect the public and property of the public,
- (ii) protect the property and workmen of both Transnet and Contractor,
- (iii) avoid damage to and prevent trespass on adjoining properties, and
- (iv) ensure compliance with any instruction issued by the Engineer or by any person appointed by him, or any instruction embodied in the contract documents, which affects the safety of any person or thing.

17.2 Transnet will provide, at its own cost, protection for the safe working of trains. Protection by Transnet



for any purpose whatsoever, does not absolve the Contractor from his responsibilities in terms of the contract.

17.3 All operations necessary for the execution of the WORKS, including the provision of any temporary works and camping sites, shall be carried out so as not to cause veld fires, ground, water or atmospheric pollution, soil erosion, or restriction of or interference with streams, furrows, drains and water supplies.

**18. USE OF EXISTING ROADS.**

18.1 The Contractor shall use every reasonable means to prevent damage to any of the roads or bridges communicating with or on the direct route to the site and shall select routes, use vehicles, and restrict loads so that any extraordinary traffic as may arise from the moving of plant or material to or from the site shall be limited as far as is reasonably possible.

18.2 The Contractor shall not occupy or interfere in any way with the free use of any public or private road, right-of-way, path or street unless the Engineer has obtained the approval of the road authority concerned.

**19. INTERFERENCE WITH TRANSNET ASSETS AND WORK ON RAILWAY LINES**

19.1 The Contractor shall not interfere in any manner whatsoever with a railway line, nor shall he carry out any work or perform any act which affects the security, use or safety of a railway line or Transnet property except with the authority of the Engineer and in the presence of a duly authorised representative of Transnet.

19.2 The Contractor shall not carry out any work or operate any plant, or place any material whatsoever nearer



than 3 m from the centre line of any railway line, except with the written permission of the Engineer and subject to such conditions as he may impose.

19.3 Care must be taken not to interfere with or damage any services such as overhead wire routes, cables or pipes. The Contractor will be held responsible for any damage to or interruption of such services arising from any negligent or wilfully wrongful act or omission on his part or the part of any of his employees, or persons engaged by him on the WORKS. The cost of repairing, replacing or restoring the services, as well as all other costs arising from any damage to services, shall be borne by and will be recovered from the Contractor.

## **20. TEMPORARY STOPPAGE AND RECOMMENCEMENT OF WORK**

Transnet will give the Contractor a minimum of 24 hours' notice of a temporary stoppage of use by Transnet of any plant provided in terms of the contract. The Contractor shall thereafter be entitled to remove such plant, but shall return it to an appointed place of work within 7 days of notification by Transnet that the plant is again required.

## **21. CUSTODY AND DELIVERY OF MATERIAL**

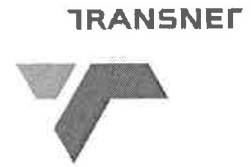
21.1 The Contractor's operator shall tip material from tip lorries in the manner directed by the Engineer.

## **22. USE OF PLANT**

Transnet reserves the use of the plant supplied in terms of clause 3 hereof while it is so supplied for its own purposes only, and the Contractor shall perform no work or service for himself or for any other party with such plant during the hours of duty defined, but shall perform only such work or services as directed by the Engineer.

## **23. FUELLING, SERVICING AND MAINTENANCE**

23.1 The Contractor shall for all plant, except where otherwise stipulated in the contract documents, provide all material, tools, equipment and temporary buildings and perform all servicing, fuelling, maintenance and carrying out of repairs at his own expense and in his own time.



23.2 When plant is paid for on a daily or hourly basis, the time spent on servicing, fuelling, maintenance and repairing by the Contractor shall not be included in the hours standing or hours worked, and will not be paid for. Plant shall not be withdrawn from work for servicing and refuelling during normal hours of duty except when agreed to by the Engineer.

#### **24. MECHANICAL CONDITION**

24.1 No plant will be permitted to commence work until it has been examined and the Contractor is in possession of a certificate signed by the Engineer that the item is in an acceptable condition.

24.2 All plant shall be in good mechanical condition initially and, except where otherwise stipulated in the contract documents, shall be maintained by the Contractor in good mechanical and roadworthy condition for the duration of the contract.

24.3 The Engineer may, in his discretion, order the removal, temporarily or permanently, of any plant listed in the schedule(s) of plant where, in his opinion, the plant is not in a satisfactory mechanical condition or is incapable of performing the work required of it.

#### **25. SUBSTITUTION**

25.1 Only the plant listed in the schedule(s) of plant will be permitted to operate.

25.2 In exceptional circumstances, the Engineer may, in his discretion, permit the Contractor to substitute, either temporarily or for the duration of the contract, another item of plant in place of that listed in the schedule(s) of plant and accepted. The substitute plant shall be subject to the same conditions of contract as the original and shall in no way be inferior to the original. The substitute plant shall replace the original plant and shall be paid for at the rates in the schedule of prices for the original.



**26. AVAILABILITY**

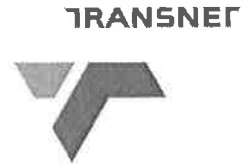
- 26.1 Plant in workable condition, together with operators and, where specified, labourers, shall be supplied at the place of work within 14 days of the time the Contractor has been notified of requirements.
- 26.2 After the plant has been accepted at the place of work, the Contractor shall ensure that it is available for work for such period as may be required.

**27. NON-AVAILABILITY**

- 27.1 The Contractor shall advise the Engineer as soon as possible when any plant listed in the schedule(s) of plant is not available for work at its appointed work place.
- 27.2 If the non-availability of the plant is due to a mechanical breakdown, the Contractor shall advise the estimated time to effect repairs and to return the plant to work.
- 27.3 Non-availability due to puncture repairs will also be regarded as breakdown.

**28. PENALTIES FOR NON-AVAILABILITY**

- 28.1 Except as specified herein, penalties in terms of the Conventional Penalties Act, 1962, shall be payable by the Contractor for the loss of working time due to non-availability of the plant. Working time includes the normal weekday hours of duty and such periods of overtime and time on Saturdays, Sundays and statutory paid public holidays as the Contractor has been ordered to work.
- 28.2 Payment of penalties will not be enforced in the following cases:-
  - i) When the total normal working time lost in a calendar month does not exceed 9 hours, provided the non-availability is due to mechanical breakdown. The nature of the breakdown shall be reported and an estimate given of the time required to effect repairs, for certification by the Engineer.
  - ii) When the total normal working time lost due to a delay in the approved substitution of plant listed in the schedule(s) of plant does not exceed 9 hours in a calendar month.



28.3 Sums in payment of penalties will be recovered for each working hour lost as follows, but in respect of cases mentioned in sub-clause 27.2 hereof, only for hours lost in excess of 9 hours in any one month:

- i) For tip-lorries, flat lorries, water lorries and light delivery vans - 60 per cent of the hourly rate for working time (Item 1 of Part D).
- ii) For compressors, wheeled tractors, excavators, crawler tractors with blades and rippers, front-end loaders, graders and vibrating rollers - 60 per cent of the hourly rate for working time. (Item 1 of Part D).

28.3 Sums in payment of penalties will be recovered from any money due to the Contractor by Transnet.

**29. STANDING TIME**

When the Contractor has been ordered to work, and if the plant is available for work but is not working due to a requirement, act or omission on the part of Transnet or other contractor working for Transnet the Contractor will be paid standing time -

- i) only for time falling within the hours of duty specified;
- ii) only when the plant is in full working order with an operator, where applicable, in attendance.

The time claimed as standing time must be certified by the Engineer.

**30. PAYMENT**

No payment whatsoever will be made for any plant except for periods -

- i) when working as directed by the Engineer, or
- ii) covered by items as per Part D.

**31. LOADING OF VEHICLES**

31.1 Vehicles shall be loaded to their full capacity except when otherwise instructed by the Engineer.

31.2 Vehicles may be loaded by hand or by mechanical plant to suit Transnet's requirements. Transnet will accept no claim for any damage, loss or expense caused to the Contractor and arising from the method of loading or the nature of the material loaded, or on account of the condition of the roads or terrain over which the vehicle is required to operate, except when such damage, loss or expense is due to negligence on the part of Transnet or its employees acting in the scope of their employment.



## 32. HAUL ROUTE

The haul route will be designated by the Engineer. Measurement of distance for payment purposes will be over such haul route even if the Contractor chooses, for reasons of his own, to transport material by a different route.

## 33. OPERATION OF PLANT

33.1 The Contractor's employees shall perform the work as directed by the Engineer and operate the plant in an efficient manner, to give as high an output of work as possible in the prevailing circumstances.

33.2 If, in the opinion of the Engineer, the output of any plant is unsatisfactory due either to the inability of the plant to meet the work requirements or to any defect in its operation, Transnet reserves the right to -

- i) cancel the contract,
- ii) move the plant to another place of work,
- iii) order the removal of the operator, or
- iv) order the removal, permanently or temporarily, of the particular item of plant, or its replacement.

## 34. TERMINATION OF CONTRACT

Transnet reserves the right to terminate the contract by giving the Contractor 7 days' written notice.

## 35. RECOVERY OF MONEY FROM CONTRACTOR

Any and all money that may become payable to Transnet by the Contractor in terms of this contract may be recovered from the Contractor by deduction or recovery -

- i) from money due or to become due to the Contractor under this or any other contract with Transnet, or
- ii) in any manner provided for in the contract or decided upon by Transnet.

provided that nothing herein contained shall affect the operation of set-off as between Transnet and the Contractor.

## 36. INCREASE OR DECREASE IN COSTS

36.1 A contract price adjustment factor to be determined in accordance with the formula described in 35.2 will be applied to allow for all increases or decreases in costs, from any cause whatsoever, which may occur after the closing date of the submission of tenders and before the date of completion. **The factor shall be rounded off to six decimal places.**





36.2 The contract price adjustment factor shall be -

$$(1 - x) \left( 0.3 \frac{Lt}{Lo} + 0.49 \frac{Pt}{Po} + 0.21 \frac{Dt}{Do} - 1 \right)$$

where  $x = 0,15$  and

$Lo$ ,  $Po$  and  $Do$  are respectively labour, machinery and diesel fuel indices ruling for the calendar month two (2) months prior to closing date of the tender;

$Lt$ ,  $Pt$  and  $Dt$  are respectively labour, machinery and diesel fuel indices ruling for the calendar month two (2) months prior to the date of measurement.

36.3 The indices to be used shall be those for the Consumer Price Index and Production Price Index as obtained from the monthly Statistical News Release published by STATS South Africa.

35.3.1  $Lo$  and  $Lt$  shall be the labour indices for KwaZulu Natal, (P0141.1 Table A).

35.3.2  $Po$  and  $Pt$  shall be the price indices of Civil engineering plant (P0142.1 Table 12)

35.3.3  $Do$  and  $Dt$  shall be the price indices of "Diesel Oil - Coast" (P0142.1 Table 12).

36.4 When the value of an index at the time of calculation is not known the latest available index shall be used and any correction necessary shall be made by addition or subtraction in subsequent monthly payment certificates.

36.5 The amounts to be added to or subtracted from the monthly payment certificates shall be calculated by multiplying the amount certified for payment for that month (but excluding amounts not subject to price adjustment) by the contract price adjustment factor for that month.

Adjustment to measurements of previous months' quantities will be included in calculation of the amount certified for payment and will therefore be subject to the price adjustment factor of the current measurement month.

36.6 Any additions to or deductions from the amount payable, brought about by the application of the contract price adjustment factor, shall be deemed to have made full allowance for all increases or decreases in cost from any cause whatsoever, including all overhead costs as well as any increases and decreases therein, and profit.

36.7 Value added tax shall be excluded from individual payment item rates and price adjustment indices as it will be added to the total of the month's measurement, after price adjustment have been made in terms hereof.



**37. VALUE-ADDED TAX**

**37.1 Tendering:-**

Value-added Tax shall be excluded from individual payment item rates and price adjustment indices as it will be added to the month's total measurement, after price adjustment have been made in terms of clause 35.

**37.2 Payment:-**

Value-added Tax shall be reflected on monthly contract payment certificates, and only paid on the presentation of a VAT-invoice by the Contractor.

**38. PAYMENT CERTIFICATES**

38.1 On or about the last day of each month, the Engineer shall make a progress measurement of the work done.

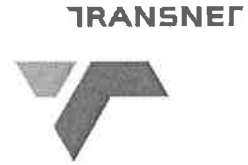
38.2 Thereafter the Engineer will issue a certificate authorising payment of such sum of money as he may consider represents the value of the work referred to in clause 37.1 hereof.

**39. BREACHES AND REMEDIES**

39.1 Should the Contractor commit any breach or default of any kind mentioned in clause 38.2 hereof, the Chief Engineer's deputy may exercise, subject to the provisions of clauses 39.1 to 39.7 hereof, for and on behalf of Transnet, immediately, the rights and powers set out in clause 38.3 hereof.

39.2 Breaches of defaults entitling the Chief Engineer's deputy to act in terms of clause 38.3 hereof shall be the following:

- (i) Failure of the Contractor to fulfil any term of condition of the contract.
- (ii) Failure of the Contractor to pay any employee his salary or wages within 7 days of the time of such salary or wages becoming due.
- (iii) Failure of the Contractor to comply with any statutory provision, agreement, determination or award affecting conditions of employment.
- (iv) Failure of the Contractor to satisfy any judgement or arbitrator's award entered against him within 72 hours after such judgement or award is so entered, or to satisfy any attachment order against property within 24 hours of its issue.
- (v) Any offer by the Contractor to compromise with his creditors.
- (vi) Inefficiency or gross negligence in the carrying out of the contract.
- (vii) Insolent or objectionable conduct, or the use of profane, insulting or offensive language by the Contractor towards any member of Transnet's staff.



(viii) Conviction of the Contractor or, any of his employees in a court of law for any offence which affects the interests of Transnet.

39.3 In the event of any breach or default mentioned in clause 38.2 hereof, the Chief Engineer's deputy may declare the contract cancelled and invoke any other legal remedy available to Transnet.

39.4 All wages, salaries, costs and expenses paid, incurred or sustained by Transnet, for which the Contractor is liable in terms of the contract, shall be paid by the Contractor on demand or shall be recovered as provided for in clause 34 hereof.

39.5 In any action taken or instituted by Transnet under clauses 38.1 to 38.4 hereof or under any clause of the contract read alone or in conjunction with these clauses, a certificate issued by the Engineer shall be deemed to be proof of any amount due by the Contractor to Transnet or by Transnet to the Contractor.

#### **40. DISPUTES AND ARBITRATION**

40.1 If any dispute or deference of any kind whatsoever arises between the Engineer or Chief Engineer's deputy and the Contractor in connection with the interpretation and/or application of the contract or the carrying out of the WORKS (whether during the progress of the work or after its completion and whether before or after the termination, abandonment or breach of the contract), the matter shall be referred in writing by the Contractor to the Chief Engineer not later than 3 months after receipt by the Contractor of the decision of the Engineer or the Chief Engineer deputy.

40.2 The Chief Engineer shall settle the dispute and shall advise his decision in writing both to the Engineer and the Contractor. Such decision in respect of every matter so referred shall forthwith be given effect to by the Engineer and the Contractor. The Contractor shall proceed with the work with all due diligence, unless the contract has been terminated by Transnet, whether or not notice of dissatisfaction is given by him as hereinafter provided.

40.3 Should the Contractor be dissatisfied with any decision of the Chief Engineer in regard to a dispute, he may require, within 28 days of receiving such decision, that the matter be referred to an arbitrator to be agreed upon between the parties or, failing agreement, an arbitrator to be nominated, on the application of either party, by the President, for the time being, of the South African Institution of Civil Engineers. Should the President referred to herein be interested personally in the contract, the function of nominating an arbitrator shall be performed by the First Vice-President, of the aforesaid organisation.

40.4 An arbitrator shall have full power to open up, review and revise any decision, opinion, direction certificate or valuation of the Engineer, the Chief Engineer's deputy or the Chief Engineer in so far as it may be necessary to do so for the proper determination of the dispute or difference, and neither party shall be limited, in the proceedings before such arbitrator, to the evidence or arguments put before the Engineer, the Chief Engineer's deputy or the Chief Engineer for the purpose of obtaining the decision of the Chief Engineer referred to above. The award of the arbitrator shall be final and binding on the parties.

40.5 Arbitration proceedings (except in regard to any matter arising under clauses 37.1 to 37.2 and 38.1 to



38.5 hereof) may not be entered into until after the expiry of the contract period except with the written consent of Transnet and the Contractor, provided always that no decision given by the Engineer, the Chief Engineer's deputy or the Chief Engineer in accordance with the foregoing provisions shall disqualify him as a witness and from giving evidence before the arbitrator on any matter whatsoever relevant to the dispute of difference so referred to the arbitrator as aforesaid.

40.6 Any amount which may become payable by the Contractor to Transnet in consequence of any decision by the Chief Engineer or of an arbitrator's award as the case may be, in accordance with the foregoing provisions of this clause, may be recovered in any manner described in clause 34 hereof.

40.7 The arbitrator's fees shall be borne by the parties concerned in accordance with the terms of the arbitrator's award. Should one party pay the arbitrator's fees, this party will have the right to recover from the other party any amount of such fee for which that party is responsible.

#### 41. TRANSPORTATION OF MACHINE

41.1 The Contractor shall be required to transport the said machine from work site to work site as may be requested by the Technical Officer, as and when required, by means of a lowbed.

41.2 Lowbed:-

- 1) The lowbed shall be roadworthy and required to be in possession of the necessary transportation permit as required by the relevant roads authority.
- 2) The lowbed shall be required to be maintained and operated by the Contractor's personnel.
- 3) The written request for the moving of the said machine will be given 48 hours in advance.

41.3 Availability of lowbed

Should the Contractor's own lowbed not be available, for any reason what so ever, the Contractor shall be responsible to hire in from an alternative source. All the requirements shall be relevant to that of the alternatively sourced lowbed.

41.4 Penalties

Penalties for the non availability of a lowbed, resulting in the delay of any work, the Contractor shall be penalized as follows:-

- 1) All plant that are standing due to the non-conformance of the Contractor, an amount double to that of the value of "standing time" claimed, shall be deducted from the payment of the Contractor.
- 2) If, at the discession of the Technical Officer, it is found that the Contractor is on a regular basis, unable to meet his obligation wrt the required transport, steps will be taken to terminate the said contract.

41.5 Security



In the interest of safety, the Contractor shall allow for armed security to accompany the lowbed when travelling in the area South of Ulundi.

41.6 Payment of lowbed moves

Payment will only be made, for transportation of machines, as indicated in Part D, "Schedule of quantities and prices", of this contract. No other costs, whatsoever, will be entertained by Transnet.

**PART 2: SPECIFICATION AND SPECIAL CONDITIONS**

**1. NATURE OF WORK**

1.1 This specification covers the provision, maintenance and operation by the Contractor of one crawler-mounted hydraulic excavator inclusive of operator and fuel as follows:-

Minimum mass (kg)	Minimum power rating (kW)	Minimum bucket size (m <sup>3</sup> ) ----- Backhoe	Machine equal or similar to
20200	93	0,75	CAT215D LC

The size of the bucket, shall be that which is best suited to the power developed by the plant.

1.2 This specification covers the provision, maintenance and operation by the Contractor of crawler tractors equipped with a Power Angling and Tilt Blade capable of being fully hydraulic controlled to lift, dig, angle and tilt as well as a hydraulically operated multishank ripper with removable tines on the rear of the tractor, inclusive of operator and fuel as follows:-

NUMBER OF TRACTORS	MINIMUM MASS WITH BLADE AND RIPPER (kg)	MINIMUM POWER RATING (FLYWHEEL) (kW)	MACHINE EQUAL OR SIMILAR TO
ONE	10 510	78	CAT D4H XL OR KOMATSU D41E-6

This specification covers the provision, maintenance and operation by the Contractor of self-propelled vibrating smooth drum type roller inclusive of operator and fuel as follows:

NUMBER OF ROLLERS	MIN. OPERATING WEIGHT (kg)	MIN. POWER RATING (kW)	VIBRATION FREQUENCY (Hz)	MACHINE EQUAL OR SIMILAR TO
ONE	11 000	103	25 – 38	CAT CS563C

For proper traction on difficult soils and on steep grades it is a requirement that the single drum is a driven drum.



1.4 **The supply of one Backhoe Loader, inclusive of fuel and operator as follows:**

NUMBER OF BACKHOE LOADERS	MINIMUM OPERATING MASS (KG)	MINIMUM POWER RATING (kW) (Flywheel)	BREAKOUT FORCE (kN) LOADER BUCKET	DIG FORCE (kN) BACKHOE BUCKET	MACHINE EQUAL OR SIMILAR TO
ONE	7550	59	47,9	52,0	CAT428C

This specification covers the provision, maintenance and operation by the Contractor of one self-propelled water lorry of minimum capacity of 10 000 litres inclusive of fuel and operator.

1.5 **Attachments to TLB.**

When so ordered the contractor shall provide and fit a 300mm wide standard duty backhoe bucket, with a blade welded to the teeth to permit the cleaning of 500mm wide concrete drains. No additional payment will be made for the provision and fitting of the 300mm wide bucket. The machine is to be equipped with a side shift Backhoe with a total side travel of 1260mm. Bucket size

A 1,0m<sup>3</sup> General purpose Loader Bucket with adaptor and teeth and a 600mm standard duty backhoe is required as standard additions to the backhoe loader

2. **AREA OF OPERATIONS**

The area of operations will be within the limits of the area controlled by the Depot Engineer, Vryheid, which is the Coal Line between Piet Retief and Richards Bay Coal Terminal as well as between Sikame and Hobane.

4. **DURATION OF CONTRACT**

The contract period will be 12 months.

5. **CONDITIONS OF CONTRACT**

No tender will be considered unless the tenderer certifies that he is acquainted with the contract documents including, the Transnet 286 Agreement



## 6. MOVEMENT OF PLANT

- 6.1 The Contractor shall deliver the plant complete in all respects, in a fully operational condition, with operator, at the initial place of work as directed.
- 6.2 If the excavator or tractor is required to be moved from one place of work to another, and if the distance to be travelled is less than 5 km, the Contractor shall move the excavator under its own power. If the distance to be travelled is 5 km or more, the Contractor will, at Transnets cost, arrange for loading, transporting and unloading the plant. The Contractor shall move the water lorry under its own power.
- 6.3 The time taken to move plant from one workplace to another will be treated as working time when the plant is moved under its own power.
- 6.4 The time taken to move plant from one workplace to another, when such a move is arranged by the Contractor at the cost of Transnet, will be treated as standing time.

## 7. MEASUREMENT

- 7.1 The unit of measurement for both working-, standing time and inclement weather will be the hour.
- 7.2 The unit of measurement for establishing of machine on site will be paid per kilometre for the distance travelled by lowbed and will be paid only when Contractor delivers machine on site at his cost. Should Transnet arrange it's own lowbed to establish machine, no payment will be made to Contractor for establishment. No payment will be made for de-establishment.

## 8. PAYMENT

- 8.1 Payment will be made only -
- i) for actual hours worked, at the rates quoted in the schedule of quantities and prices for working time, and



- ii) for certified standing time, at the rates quoted in the schedule of quantities and prices for standing time, and
- iii) for certified standing time, due to inclement weather, at the rates quoted.

8.2 The rates quoted in the schedule of quantities and prices for working time shall be inclusive of all costs in the supply, in a fully operational condition, with operator, supply of diesel fuel, maintenance and operation of the excavator and attached equipment, and its removal from the site, therefor no payment will be made for de-establishment.

8.3 The rates quoted in the schedule of quantities and prices for standing time shall be inclusive of all costs in the supply and maintenance, in a fully operational condition, of the excavator and attached equipment, with operator.

## 9. SCHEDULE OF PLANT OFFERED

9.1 The tenderer shall complete the schedule of plant offered.

## 10. HOUSING OF EMPLOYEES

10.1 Further to clause 11 of part A, the Contractor is to supply mobile accommodation, in the form of a caravan, to his operators.

## 11. ESCALATION

11.1 Adjustment will be made in terms of clause 35 of Part A.

## 12. BASIS OF ADJUDICATION OF TENDERS

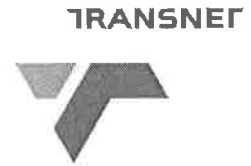
12.1 For the purpose of adjudication of tenders, the estimated percentages of working-, standing time and inclement weather are as follows:-

Working Time	-	85%
Standing Time	-	5%
Inclement Weather	-	10%
<b>TOTAL</b>	-	<b>100%</b>

12.2 The estimated average percentages of time are a guide to tenderers, but no claim whatsoever will be entertained for any differences between the estimated and actual percentages.

12.3 When adjudicating tenders, the decision will not solely be based on:-





- Compliance to minimum technical and commercial requirements or,
- Lowest price or,
- Transnet BEE policy.

**BUT ALSO**

- Age of the plant
- Mechanical condition of the plant

that will best serve the interests of Transnet.

12.4 Plant will be inspected and examined prior to award of contract.

12.5 Further to clause 9 of Part A, the tenderer must submit at tender stage full documentation regarding licensing, COF and proof of registration. Failure to do so, will result in the tender not being considered.

12.6 Plant manufactured prior to **2004** will not be considered.

**13. ROLLER CONVERSION**

Transnet reserves the right to request that the smooth drum roller be replaced or converted to a pad foot roller should the need arise. Contractor may then either exchange the roller or make use of standard conversion kits available.

Contractor shall be given **7 days written notice** to execute exchange, penalties for non conformance to request will be as per clause 27 of Part A of the document.

**13.1 Measurement and Payment**

The unit of measurement will be the number of conversions or exchanges of roller from a smooth drum to a pad foot drum or vice versa.



Payment will be a lump sum per number of conversions or exchanges and will be paid against item 13 of the schedule.

**14. GENERAL INFORMATION**

It is required that all Transnet operating divisions will be included in the scope of this Proposal.  
The service provider(s) shall be fully responsible to Transnet for the acts and omissions of persons directly or indirectly employed by them.  
The service provider(s) must provide the identified information requested and comply with the requirements stated in the RFP.

**15. EXCHANGE AND REMITTANCE**

The attention of the Respondents is specially directed to clause 7 (*Exchange and Remittance*) of the General Tender Conditions Form CSS5. 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/supplier.

(a) ZAR1.00 (South African currency) being equal to..... (foreign currency).  
.....% in relation to tendered price(s) (.....) to be remitted overseas by Transnet.

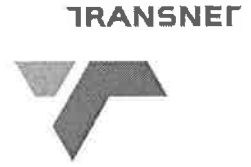
(b) ..... (Name of country to which payment is to be made)

(c) Beneficiary details :  
Name (Account holder) .....  
Bank (Name and branch code).....  
Swift code .....  
Country .....

(d) ..... (Applicable date of Exchange Rate used)

**16. NATIONAL RAILWAY SAFETY REGULATOR ACT**

In compliance with the **National Railway Safety Regulator Act, 16 of 2002**, the successful Respondent (the "Supplier") shall ensure that the Services to be supplied to Transnet, under the terms and conditions of a contract between the parties, comply fully with the specifications as set forth in this RFP, and shall



thereby adhere to railway safety requirements and/or regulations. Permission for the engagement of a subcontractor by the Supplier, as applicable, both initially and during the course of a contract, shall be subject to a review of the capability of the proposed subcontractor to comply with the specified railway safety requirements and/or regulations. The Supplier and/or its subcontractor shall grant Transnet access, during the term of the contract, to review any safety-related activities, including the coordination of such activities across all parts of the organization.

**Accepted:**

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

- Experienced national account representative/s to work with Transnet's sourcing/procurement department (no sales representatives are needed for individual department/locations). Additionally, there shall be a minimal number of people, fully informed and accountable for this agreement.
- Transnet will have quarterly reviews with the Supplier's account representative on an ongoing basis.
- Transnet reserves the right to request that any member of the Supplier's team involved on the Transnet account be replaced if deemed not to be adding value for Transnet.
- Supplier guarantees that it will achieve a 95% service level on the following measures. If the Supplier does not achieve this level as an average over each quarter, Transnet will receive a 1.5% rebate on quarterly fees payable in the next quarter:
  - .....
  - .....
  - .....
  - On-time deliverables
- Supplier must provide a toll-free number or alternative number for customer service calls.
- Failure of the Supplier to comply with stated service level requirements will give Transnet the right to cancel the contract in whole, without penalty, giving 30 (thirty) days' notice to the Supplier.

**Accepted:**

<b>YES</b>	
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<b>NO</b>	
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**18. CONTINUOUS IMPROVEMENT INITIATIVES AND VALUE ADD**



Respondents shall indicate whether they are committed to participate in the continuous improvement initiatives of Transnet to reduce the overall cost of transportation within South Africa during the duration of the contract.

**Accepted:**

YES	
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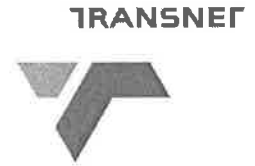
NO	
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If "yes", please specify.

Respondents must briefly describe their commitment to the continuous improvement initiatives and give examples of specific areas and strategies where cost reduction initiatives can be introduced. Specific areas and proposed potential savings percentages should be included. Additional information can be appended to the Respondent's Proposal if there is insufficient space available.

“PREVIEW COPY ONLY”

[A large rectangular area containing horizontal dotted lines for text entry, overlaid with a red watermark reading "PREVIEW COPY ONLY".]



**19. RISK**

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

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

Four horizontal dotted lines for text entry.

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

Four horizontal dotted lines for text entry.

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

Four horizontal dotted lines for text entry.

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

Four horizontal dotted lines for text entry.

**20. REFERENCES**

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



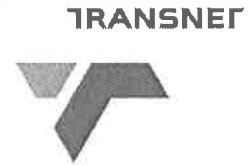
Name of Company	Contact Person	Telephone number

**21. EVALUATION CRITERIA**

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

- Pricing (fees) –
- Compliance to specification
- Fit for purpose/ Experience
- Risk / Safety capacity/ resources
- Delivery / Schedule
- BBBEE status of company

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### SECTION 3

#### RFP NUMBER ERACBB402

**PROVISION, MAINTENANCE AND OPERATION OF ONE CRAWLER MOUNTED HYDRAULIC EXCAVATOR, ONE CRAWLER TRACTOR WITH BLADE AND RIPPER, ONE SELF PROPELLED VIBRATING SMOOTH DRUM TYPE ROLLER, ONE WATERLOTTY AND ONE TLB FOR THE PERIOD OF ONE YEAR**

#### PROPOSAL FORM

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

*(name of company, close corporation or partnership)*

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

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

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

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

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

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

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



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

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

I/We accept that any contract resulting from this offer will be for a period of **1 YEARS** only; and agree to a penalty clause to be negotiated with Transnet, which will allow Transnet to invoke a penalty (details to be negotiated) against us should the delivery of the Services be delayed due to non-performance by us.

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

Respondent to indicate *domicillium citandi et executandi* hereunder:

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

**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, BBBEE status or for any other reason.

**VALIDITY PERIOD**

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

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





**TAX (VAT) REGISTRATION NUMBER**

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

\_\_\_\_\_

**TAX CLEARANCE CERTIFICATE**

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

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

**BANKING DETAILS**

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

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

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

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

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

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

	Address/Addresses	ID Number/s
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....

**REGISTRATION CERTIFICATE**

Respondents must submit a certified copy of their company's Registration Certificate with their Proposal.



**NAME AND ADDRESS OF ACCREDITED AGENT**

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

Name	
Address	

**CONFIDENTIALITY**

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

**DISCLOSURE OF PRICES TENDERED**

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

YES		NO	
-----	--	----	--

**DECLARATION**

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

YES		NO	
-----	--	----	--

If YES, please indicate below:

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

ADDRESS

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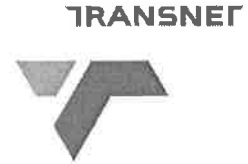
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Indicate nature of relationship (if any):

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---



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

**PRICE REVIEW**

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

**RETURNABLE DOCUMENTS**

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

Notice to Bidders – Section 1	√
Background, Overview and Scope of Requirements – Section 2	√
Proposal Form – Section 3	√
Resolution of Board of Directors (Respondent's Representative) – Section 4	√
Certificate of Acquaintance with RFQ Documents – Section 5	√
Service Fees and Costs – Section 6	√
General Tender Conditions (CSS5 – Services) – Section 7	√
Standard Terms and Conditions of Contract (US7 - Services) – Section 8	√
Certificate of Attendance of RFQ Briefing – Section 9	√
Minimum Communal Health Requirements (E4B) – Section 10	√
Safety Arrangements and Procedural Compliance (E4E) – Section 11	√
Specification For Works On, Over, Under Or Adjacent To Railway Lines And Near High Voltage Equipment. (E7) – Section 12	√
Schedule of Plant and Equipment – Section 13	√
Non-Disclosure Agreement (“NDA”) – Section 14	√
Labour payment schedule – Section 15	√
Schedule of the Tenderers Experience – Section 16	√
Supplier Declaration Form Version 7.4 – Section 17	√
Code of Conduct – Section 18	√
PCI- AON Procedure Manual 2007 Insurance – Section 19	√
BBBEE Accreditation Certificate	√
Certified Copy of Financial Statements (for the past 3 years) including Balance sheets	√
Certified Copy of Share Certificates CK1 & CK2	√



Certified copy of certificate of incorporation and CM29 and CM9	√
Certified Copy of Identity Documents of Shareholders/Directors/members (where applicable)	√
Copy of Cancelled Cheque or letter from the bank verifying banking details (with bank stamp)	√
Original current Tax clearance certificate	√
A letter with the company's letterhead confirming physical and postal addresses	√
Audited Financial statement for previous year	√
Letter of Good Standing with the Compensation Commissioner	√
Original Vat registration certificate	√
Copy of BEE Policy/BEE Plan/Employment Policy/Procurement Policy	√

NOTE: Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13,14, 15, 16, 17, 18 and 19 as indicated in the footer of each page, must be signed and dated by 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 Limited 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:

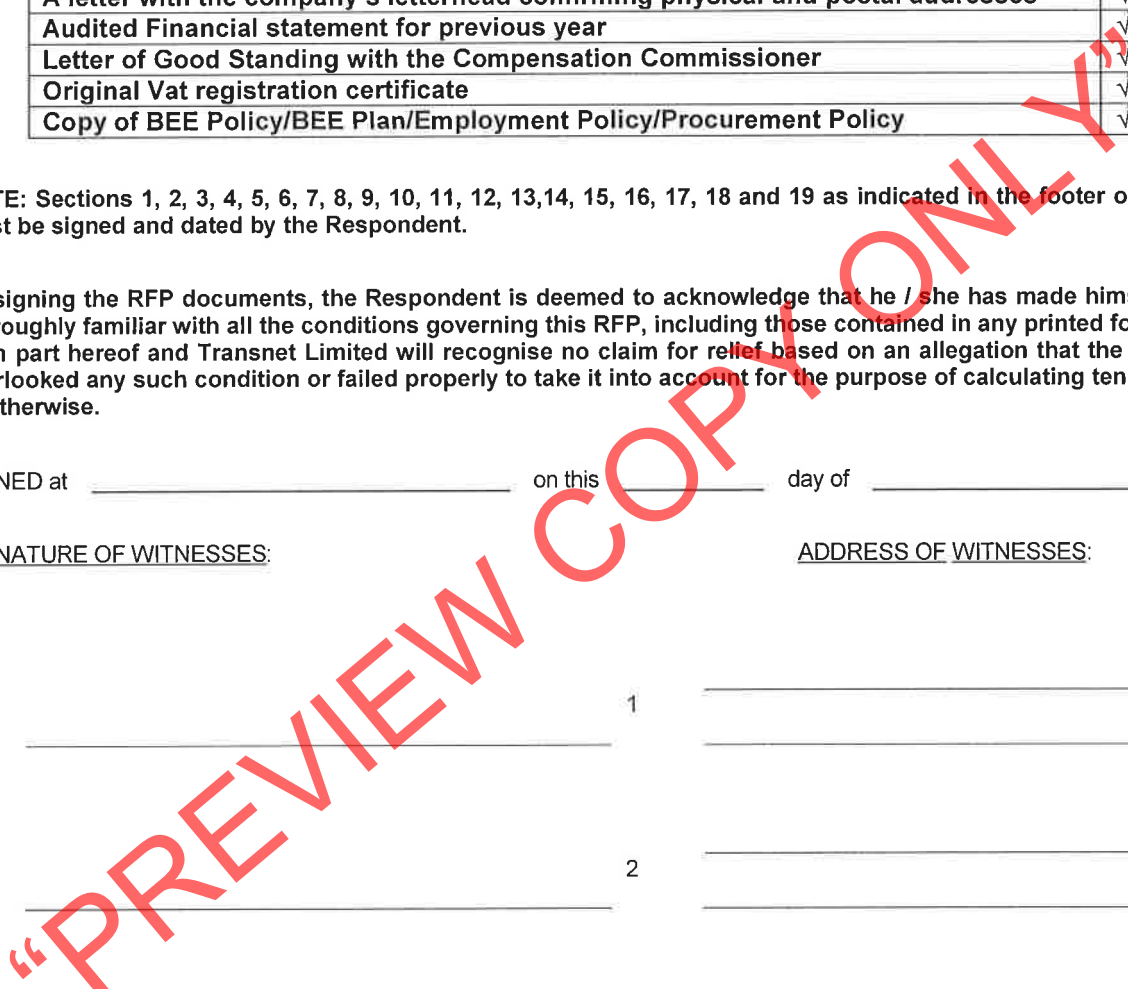
ADDRESS OF WITNESSES:

1 \_\_\_\_\_

1 \_\_\_\_\_  
 \_\_\_\_\_

2 \_\_\_\_\_

2 \_\_\_\_\_  
 \_\_\_\_\_



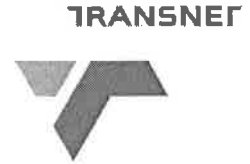


SIGNATURE OF RESPONDENT'S AUTHORISED REPRESENTATIVE:

NAME

DESIGNATION

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## SECTION 4

RFP NUMBER ERACBB402

**PROVISION, MAINTENANCE AND OPERATION OF ONE CRAWLER MOUNTED HYDRAULIC EXCAVATOR, ONE CRAWLER TRACTOR WITH BLADE AND RIPPER, ONE SELF PROPELLED VIBRATING SMOOTH DRUM TYPE ROLLER, ONE WATERLORRY AND ONE TLB FOR THE PERIOD OF ONE YEAR**

### SIGNING POWER: RESOLUTION OF BOARD OF DIRECTORS

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

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

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

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

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

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

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

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



## SECTION 5

### RFP NUMBER ERACBB402

**PROVISION, MAINTENANCE AND OPERATION OF ONE CRAWLER MOUNTED HYDRAULIC EXCAVATOR, ONE CRAWLER TRACTOR WITH BLADE AND RIPPER, ONE SELF PROPELLED VIBRATING SMOOTH DRUM TYPE ROLLER, ONE WATERLORRY AND ONE TLB FOR THE PERIOD OF ONE YEAR**

#### CERTIFICATE OF ACQUAINTANCE WITH RFP DOCUMENTS

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

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 Limited for the carrying out of the proposed supply/service/works for which I/we submitted my/our response.

I/We furthermore agree that Transnet Limited shall recognise no claim from me/us for relief based on an allegation that I/we overlooked any 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 \_\_\_\_\_ 2010

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

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



**SECTION 6**

**RFP NUMBER ERACBB402**

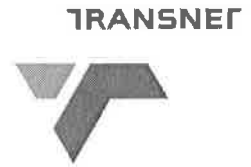
**PROVISION, MAINTENANCE AND OPERATION OF ONE CRAWLER MOUNTED HYDRAULIC EXCAVATOR, ONE CRAWLER TRACTOR WITH BLADE AND RIPPER, ONE SELF PROPELLED VIBRATING SMOOTH DRUM TYPE ROLLER, ONE WATERLOTTY AND ONE TLB FOR THE PERIOD OF ONE YEAR**

**SERVICE FEES AND COSTS**

**SCHEDULE OF QUANTITIES AND PRICES**

ITEM NO	DESCRIPTION	UNIT	QUANTITY	RATE	AMOUNT
<b>EXCAVATOR</b>					
1	Rate for working time	hour	2160		
2	Rate for standing time	hour	120		
3	Rate for inclement weather	hour	240		
4	Establish on site - Excavator	Sum	Rate only		
<b>DOZER</b>					
5	Rate for working time	hour	2160		
6	Rate for standing time	hour	120		
7	Rate for inclement weather	hour	240		
8	Establish on site - Dozer	Sum	Rate only		
<b>ROLLER</b>					
9	Rate for working time	hour	2160		
10	Rate for standing time	hour	120		





11	Rate for inclement weather	hour	240		
12	Establish on site - Roller	Sum	Rate only		
13	Roller conversions	No	Rate only		
<b>WATERLORRY</b>					
14	Rate for working time	hour	2160		
15	Rate for standing time	hour	120		
16	Rate for inclement weather	hour	240		
17	Establish on site – Water lorry	Sum	Rate only		
<b>TLB</b>					
18					
19	Rate for working time	hour	2160		
20	Rate for standing time	hour	120		
21	Rate for inclement weather	hour	240		
	Establish on site – TLB	Sum	Rate only		
<b>GENERAL</b>					
22	Establish low bed to Vryheid	sum	2		
23	Travel low bed unloaded	km	2000		
24	Travel low bed loaded	km	4000		
25	Provision of armed security guards	month	12		
				<b>SUB</b>	
				<b>TOTAL</b>	
				<b>14% VAT</b>	
				<b>TOTAL</b>	

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WITNESSES:

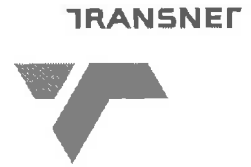
1. \_\_\_\_\_

\_\_\_\_\_  
 CONTRACTOR

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

DATE : \_\_\_\_\_

\_\_\_\_\_  
 NAME IN BLOCK LETTERS



## SECTION 7

RFP NUMBER ERACBB402

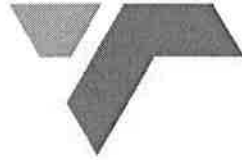
PROVISION, MAINTENANCE AND OPERATION OF ONE CRAWLER MOUNTED HYDRAULIC EXCAVATOR, ONE CRAWLER TRACTOR WITH BLADE AND RIPPER, ONE SELF PROPELLED VIBRATING SMOOTH DRUM TYPE ROLLER, ONE WATERLORRY AND ONE TLB FOR THE PERIOD OF ONE YEAR

GENERAL TENDER CONDITIONS - SERVICES

Refer Form CSS5 attached hereto.

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# TRANSNET



## GENERAL TENDER CONDITIONS - SERVICES FORM CSS5 (Revised August 2008)

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**1. GENERAL**

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

**2. LODGING OF TENDER**

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

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

**3. USE OF TENDER FORMS**

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

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

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

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

**5. DEFAULTS BY RESPONDENTS**

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

5.1.1 enter into a formal contract when called upon to do so in terms of clause 13 (CONTRACT DOCUMENTS), within such period as Transnet may specify; or

5.1.2 accept an order in terms of the tender or quotation; or

5.1.3 when called upon to do so, furnish satisfactory security of the fulfilment of the contract in terms of clause 14 (SECURITIES);

Transnet may, in any such case, without prejudice to any other legal remedy which it may have, proceed to accept any other tender or quotation or, if it is necessary to do so, call for tenders or quotations afresh, and may recover from the defaulting Respondent any additional expense incurred by it in calling for new offers or in accepting a higher offer.

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

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

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

- 5.2.1 has withdrawn such tender/quotation after the advertised date and hour for the receipt of tenders; or
- 5.2.2 has, after having been notified of the acceptance of its tender or quotation, failed or refused to sign a contract when called upon to do so in terms of any condition forming part of the tender documents; or
- 5.2.3 has carried out any contract resulting from such tender or quotation in an unsatisfactory manner or has breached any condition of such contract; or
- 5.2.4 has offered, promised or given a bribe in relation to the obtaining or the execution of such contract, or
- 5.2.5 has acted in a fraudulent or improper manner or in bad faith towards Transnet or any government department or towards any public body, company or person; or
- 5.2.6 has made any incorrect statement in the affidavit or certificate referred to in clause 11 (FORMAL NOTIFICATION REGARDING NAME OF SUCCESSFUL RESPONDENT) and is unable to prove to the satisfaction of Transnet that
- (i) it made the statement in good faith honestly believing it to be correct; and
  - (ii) before making such statement, it took all reasonable steps to satisfy itself of its correctness; or
- 5.2.7 caused Transnet damage, or to incur costs in order to meet the Supplier's requirements which could not be recovered from the Supplier;

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

- 5.3 Any person or enterprise or company against whom a decision has been given under the provisions of sub-clauses 5.2.2, 5.2.4 or 5.2.5 above, may make representations to the Chief Operating Officer of Transnet Group, whose decision shall be final.
- 5.4 Any disqualification imposed upon any person or enterprise or company, unless Transnet determines otherwise, shall apply to any other enterprise under the same or different names of disqualified persons or enterprise or company (or associates thereof) and shall for avoidance of doubt also be applied to any agent or employee of the person or enterprise or company concerned.

## 6. CURRENCY

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

## 7. EXCHANGE AND REMITTANCE

The Respondent should note that where the whole or a portion of the contract or order value is to be remitted overseas, Transnet shall, if requested to do so by the Supplier, effect payment overseas directly to the foreign principal or service provider of such percentage of the contract

---

Respondent's Signature

---

Date & Company Stamp

or order value as may be stipulated by the Respondent in its Tender Documents and any variation in the amount to be so paid, which may arise as a result of fluctuations in the rate of exchange involved, will be for the account of the Supplier.

- 7.1 The Respondent who desires to avail itself of the aforementioned facility must at the time of tendering furnish the information called for in the clause "Exchange and Remittance" of the Tender Documents and also furnish full details of the principals or service providers to whom payment is to be made.
- 7.2 The Supplier shall at its own cost obtain forward exchange cover on foreign currency to protect itself against any currency rate fluctuation risks for the duration of any resulting contract or order. Transnet will NOT accept any fluctuations in the rate of exchange at the time when payments are made.

Transnet will not recognise any claim for adjustment of the order and/or contract price under clause 7.1 above, if the increase in price arises after the date on which the Services were to be delivered, as set out in the order and/or contract, or any subsequent agreement between the parties.

## 8. ACCEPTANCE OF TENDER OR QUOTATION

- 8.1 Transnet does not bind itself to accept the lowest or any tender or quotation nor will it give any reasons for the rejection of a tender or quotation. Transnet reserves the right to accept any tender in whole or in part.
- 8.2 Upon the acceptance of a tender or quotation by Transnet, the parties shall be bound by these General Tender Conditions and the Standard Terms and Conditions of Contract (Form US7 - Services, revised August 2008)
- 8.3 Where the acceptance by Transnet of the Respondent's offer/bid is delivered by letter, the South African Post Office shall be regarded as the agent of Transnet and delivery of such notice of acceptance to the South African Post Office shall be considered as delivery to the Respondent.
- 8.4 Where the Respondent has been informed by Transnet per facsimile message of the acceptance of its tender or quotation, the acknowledgement of receipt transmitted by its facsimile machine shall be regarded as proof of delivery to the Respondent.

## 9. LAW GOVERNING CONTRACT

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

## 10. IDENTIFICATION

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

---

Respondent's Signature

---

Date & Company Stamp

under a trade name, the full names of the partners or of such individual, as the case may be, shall be furnished.

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

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

**12. UNAUTHORISED COMMUNICATION ABOUT TENDERS**

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

**13. CONTRACT DOCUMENTS**

The contract documents will comprise these General Tender Conditions and the Standard Terms and Conditions of Contract (Form US7 - Services, revised August 2008,) which will constitute the contract between the parties upon receipt by the Respondent of Transnet's letter of acceptance, subject to all additional amendments and/or special conditions thereto as agreed to by the parties.

**14. SECURITIES**

14.1 The successful Respondent, when called upon to do so, shall provide security to the satisfaction of Transnet for the due fulfilment of a contract or order. Such security shall be in the form of a deed of suretyship furnished by an approved bank, building society, insurance or guarantee corporation carrying on business in South Africa.

14.2 The security may be applied in whole or part at the discretion of Transnet to make good any loss or damage which Transnet may incur in consequence of a breach of the contract or any part thereof.

14.3 Such security, if required, shall be an amount which will be stipulated in the Tender Documents.

14.4 For the purpose of clause 14.1 above, Transnet will supply "Deed of Suretyship" forms to the successful Respondent for completion and no guarantee in any other form will be accepted. Copies of such forms will be supplied to Respondents on request. For this purpose "Deed of Suretyship" forms will be provided which shall be completed and returned to Transnet or a designated official by the successful Respondent within 30 (thirty) days from the date of the letter of acceptance. No payment will be made until the forms, duly completed, are delivered to Transnet. Failure to return the Deed of Suretyship within the prescribed time shall, save where prior extension has been granted, entitle Transnet without notice to the Supplier to cancel the contract with immediate effect.

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14.5 Additional costs incurred by Transnet necessitated by reason of default on the part of the Supplier in relation to the conditions of this clause 14 will be for the account of the Supplier.

**15. PRICES SUBJECT TO CONFIRMATION**

15.1 A tender or quotation with prices which are subject to confirmation will not be considered.

15.2 Tenders where firm prices are quoted for the duration of any resulting order and/or contract will receive precedence over prices which are subject to adjustment.

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

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

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

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

**18. VALUE-ADDED TAX**

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

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

18.2.1 The invoicing by a local Supplier on behalf of its foreign principal represents a Service rendered by the principal, which is not subject to VAT;

18.2.2 The Supplier's invoice(s) for the local portion only (i.e. the "commission" for the Services rendered locally) must show the Value-Added Tax (VAT) separately at zero percent if the Services are in compliance with Section 11(2) of the VAT Act, 89 of 1991.

**19. TERMS AND CONDITIONS OF TENDER**

The Supplier shall adhere to the Standard Terms and Conditions of Contract as set out in Form US7 - Services (Revised August 2008), a copy of which is attached hereto.

Should the Respondent find any conditions unacceptable, it should indicate which conditions are unacceptable and offer an alternative. Please note that any alternative offered shall be compared with acceptance of the Form US7 conditions or alternatives offered by other Respondents.

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## 20. IMPORTANT NOTICE TO RESPONDENTS REGARDING PAYMENT

### 20.1 Method of Payment

20.1.1 The attention of the Respondent is directed to clause 10 (INVOICING AND PAYMENT) of Form US7 – Services (Revised August 2008) which sets out the conditions of payment on which tender price(s) shall be based.

20.1.2 However, in addition to the foregoing the Respondent is invited to submit offers based on alternative methods of payment and/or financing proposals.

20.1.3 The Respondent is required to give full particulars of the terms that will be applicable to its alternative offer(s) and the financial merits thereof will be evaluated and taken into consideration when the tender is adjudicated.

20.1.4 The Respondent must, therefore, in the first instance, tender strictly in accordance with clause 20.1.1 above. Failure to comply with sub-clause 20.1.1 above may preclude a tender from further consideration.

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

### 20.2 Conditional Discount

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

Incomplete and/or incorrect invoices shall be returned and the conditional period will be recalculated from the date of receipt of the correct documents.

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

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

## 22. VISITS TO FOREIGN COUNTRIES

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

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

22.2.1 countries and places to be visited;

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- 22.2.2 number of employees and disciplines involved;
  - 22.2.3 number of man-days involved; and
  - 22.2.4 motivation for the visit.
- 22.3 Transnet will make all arrangements with regard to booking of air journeys, hotel reservations, transport to and from airports, places of inspection or demonstration, etc. and all expenses will be for the account of Transnet.
- 22.4 Before a visit is undertaken, such as envisage in this clause 22, Transnet and the Supplier will agree in writing on the number of employees of Transnet that should undertake the visit and the number of man-days involved in the visit.

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

- 23.1 Tenders submitted by foreign principals may be forwarded direct by the principals to the Secretary of the Acquisition Council or to a designated official of Transnet according to whichever officer is specified in the Tender Documents, or may be so forwarded on the principal's behalf by its South African representative and/or agent provided that written proof is submitted that such representative/agent has been duly authorised to act in that capacity by the principal. Failure to submit such authorisation by the representative / agent shall disqualify the tender.
- 23.2 When legally authorised to prepare and submit tenders on behalf of their principals not domiciled in the Republic of South Africa, representatives and/or agents must compile the tenders in the names of such principals and sign them on behalf of the latter.
- 23.3 South African representatives and/or agents of successful foreign Respondents must when so required enter into a formal contract in the name of their principals and must sign such contracts on behalf of the latter. In every such case a legal Power of Attorney from their principals must be furnished to Transnet by the South African representative and/or agents authorising them to enter into and sign such contracts.

Such Powers of Attorney must comply with Government Notice No. 1160 of 27 June 1930 (and any amendments thereto) - "Rules of the Supreme Court of South Africa for the authentication of documents executed outside the Republic for use within the Republic."

The Powers of Attorney must be signed by principals under the same title as used in the Tender Documents.

On arrival within the Republic of South Africa these Powers of Attorney are to be completed in terms of Section 8(2) of the Stamp Duties Act No. 77 of 1968, or any amendment thereof.

If a Power of Attorney held by the South African representative or agent includes matters of a general nature besides provision for the entering into and signing of contracts with Transnet, a notarially certified copy thereof should be furnished.

The Power of Attorney must authorise the South African representative or agent to choose the *domicilium citandi et executandi* as provided for in clause 26 (ADDRESSES FOR NOTICES) of the Standard Conditions of Contract, Form US7 - Services (Revised August 2008).

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23.4 If payment is to be made in South Africa, the foreign Supplier (i.e. the principal, or its South African agents or representatives), must notify Transnet in writing whether -

23.4.1 For payment by cheque –

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

23.4.2 For payment by electronic funds transfer (EFT) –

- (i) funds are to be transferred to the credit of the foreign Supplier's account at a bank in South Africa, in which case the name and branch of such bank shall be furnished; or
- (ii) funds are to be transferred to the credit of its South African agent or representative, in which case the name and branch of such bank shall be furnished

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

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## SECTION 8

RFP NUMBER ERACBB402

**PROVISION, MAINTENANCE AND OPERATION OF ONE CRAWLER MOUNTED HYDRAULIC EXCAVATOR, ONE CRAWLER TRACTOR WITH BLADE AND RIPPER, ONE SELF PROPELLED VIBRATING SMOOTH DRUM TYPE ROLLER, ONE WATERLOTTY AND ONE TLB FOR THE PERIOD OF ONE YEAR**

**STANDARD TERMS AND CONDITIONS OF CONTRACT**

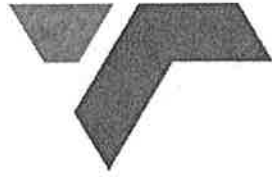
**FOR THE PROVISION OF SERVICES TO TRANSNET**

Refer Form US7 attached hereto.

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

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

**TRANSNET**



**STANDARD TERMS AND CONDITIONS OF CONTRACT**

**FOR THE PROVISION OF SERVICES TO TRANSNET**

**FORM US7 – SERVICES**

**Revised August 2008**

**“PREVIEW COPY ONLY”**

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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.

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### 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 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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- 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.

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

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

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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Date & Company Stamp

**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.

\*\*\*

“PREVIEW COPY ONLY”

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

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