

## **Annexure B**

### **NON-DISCLOSURE AGREEMENT**

entered into by and between

#### **TRANSNET FREIGHT RAIL**

an Operating Division of **TRANSNET SOC LTD**

Registration Number 1990/000900/30

and

\_\_\_\_\_  
Registration Number \_\_\_\_\_

**RFP Number CRAC/JHB/9733**

“PREVIEW COPY ONLY”

## TABLE OF CONTENTS

1	INTERPRETATION .....	3
2	CONFIDENTIAL INFORMATION.....	4
3	RECORDS AND RETURN OF INFORMATION .....	5
4	ANNOUNCEMENTS .....	5
5	DURATION .....	5
6	PRINCIPAL.....	5
7	ADEQUACY OF DAMAGES.....	5
8	PRIVACY AND DATA PROTECTION.....	6
9	GENERAL.....	6

**THIS AGREEMENT is made between**

**Transnet Freight Rail [Transnet]** [Registration No. 1990/000900/30]

whose registered office is at Inyanda House 1, 21 Wellington Road. Park Town, Johannesburg 2001,

**and**

\_\_\_\_\_ **[the Company]** [Registration No. \_\_\_\_\_]

whose registered office is at \_\_\_\_\_

**WHEREAS**

Transnet and the Company wish to exchange Information [as defined below] and it is envisaged that each party may from time to time receive Information relating to the other in respect thereof. In consideration of each party making available to the other such Information, the parties jointly agree that any dealings between them shall be subject to the terms and conditions of this Agreement which themselves will be subject to the parameters of the Bid Document.

**IT IS HEREBY AGREED**

**1 INTERPRETATION**

In this Agreement:

- 1.1 **Agents** mean directors, officers, employees, agents, professional advisers, contractors or sub-contractors, or any Group member;
- 1.2 **Bid** or **Bid Document** means Transnet's Request for Information [**RFI**] Request for Proposal [**RFP**] or Request for Quotation [**RFQ**], as the case may be;
- 1.3 **Confidential Information** means any information or other data relating to one party (the **Disclosing Party**) and/or the business carried on or proposed or intended to be carried on by that party and which is made available for the purposes of the Bid to the other party (the **Receiving Party**) or its Agents by the Disclosing Party or its Agents or recorded in agreed minutes following oral disclosure and any other information otherwise made available by the Disclosing Party or its Agents to the Receiving Party or its Agents, whether before, on or after the date of this Agreement, and whether in writing or otherwise, including any information, analysis or specifications derived from, containing or reflecting such information but excluding information which:
  - a) is publicly available at the time of its disclosure or becomes publicly available (other than as a result of disclosure by the Receiving Party or any of its Agents contrary to the terms of this Agreement); or
  - b) was lawfully in the possession of the Receiving Party or its Agents (as can be demonstrated by its written records or other reasonable evidence) free of any restriction as to its use or disclosure prior to its being so disclosed; or

- c) following such disclosure, becomes available to the Receiving Party or its Agents (as can be demonstrated by its written records or other reasonable evidence) from a source other than the Disclosing Party or its Agents, which source is not bound by any duty of confidentiality owed, directly or indirectly, to the Disclosing Party in relation to such information;
- 1.4 **Group** means any subsidiary, any holding company and any subsidiary of any holding company of either party; and
- 1.5 **Information** means all information in whatever form including, without limitation, any information relating to systems, operations, plans, intentions, market opportunities, know-how, trade secrets and business affairs whether in writing, conveyed orally or by computer-readable medium.

## 2 CONFIDENTIAL INFORMATION

- 2.1 All Confidential Information given by one party to this Agreement (the **Disclosing Party**) to the other party (the **Receiving Party**) will be treated by the Receiving Party as secret and confidential and such Receiving Party will not, without the Disclosing Party's written consent, directly or indirectly communicate or disclose (whether in writing or orally or in any other manner) Confidential Information to any other person other than in accordance with the terms of this Agreement.
- 2.2 The Receiving Party will only use the Confidential Information for the sole purpose of technical and commercial discussions between the parties in relation to the Bid or for the subsequent performance of any contract between the parties in relation to the Bid.
- 2.3 Notwithstanding clause 2.1 above, the Receiving Party may disclose Confidential Information:
  - a) to those of its Agents who strictly need to know the Confidential Information for the sole purpose set out in clause 2.2 above, provided that the Receiving Party shall ensure that such Agents are made aware prior to the disclosure of any part of the Confidential Information that the same is confidential and that they owe a duty of confidence to the Disclosing Party. The Receiving Party shall at all times remain liable for any actions of such Agents that would constitute a breach of this Agreement; or
  - b) to the extent required by law or the rules of any applicable regulatory authority, subject to clause 2.4 below.
- 2.4 In the event that the Receiving Party is required to disclose any Confidential Information in accordance with clause 2.3b) above, it shall promptly notify the Disclosing Party and cooperate with the Disclosing Party regarding the form, nature, content and purpose of such disclosure or any action which the Disclosing Party may reasonably take to challenge the validity of such requirement.
- 2.5 In the event that any Confidential Information shall be copied, disclosed or used otherwise than as permitted under this Agreement then, upon becoming aware of the same, without prejudice to any rights or remedies of the Disclosing Party, the Receiving Party shall as soon as practicable notify the Disclosing Party of such event and if requested take such steps (including the institution

of legal proceedings) as shall be necessary to remedy (if capable of remedy) the default and/or to prevent further unauthorised copying, disclosure or use.

- 2.6 All Confidential Information shall remain the property of the Disclosing Party and its disclosure shall not confer on the Receiving Party any rights, including intellectual property rights over the Confidential Information whatsoever, beyond those contained in this Agreement.

### **3 RECORDS AND RETURN OF INFORMATION**

- 3.1 The Receiving Party agrees to ensure proper and secure storage of all Information and any copies thereof.
- 3.2 The Receiving Party shall keep a written record, to be supplied to the Disclosing Party upon request, of the Confidential Information provided and any copies made thereof and, so far as is reasonably practicable, of the location of such Confidential Information and any copies thereof.
- 3.3 The Company shall, within 7 (seven) days of receipt of a written demand from Transnet:
- a) return all written Confidential Information (including all copies); and
  - b) expunge or destroy any Confidential Information from any computer, word processor or other device whatsoever into which it was copied, read or programmed by the Company or on its behalf.
- 3.4 The Company shall on request supply a certificate signed by a director as to its full compliance with the requirements of clause 3.3b) above.

### **4 ANNOUNCEMENTS**

- 4.1 Neither party will make or permit to be made any announcement or disclosure of its prospective interest in the Bid without the prior written consent of the other party.
- 4.2 Neither party shall make use of the other party's name or any information acquired through its dealings with the other party for publicity or marketing purposes without the prior written consent of the other party.

### **5 DURATION**

The obligations of each party and its Agents under this Agreement shall survive the termination of any discussions or negotiations between the parties regarding the Bid and continue thereafter for a period of 5 (five) years.

### **6 PRINCIPAL**

Each party confirms that it is acting as principal and not as nominee, agent or broker for any other person and that it will be responsible for any costs incurred by it or its advisers in considering or pursuing the Bid and in complying with the terms of this Agreement.

### **7 ADEQUACY OF DAMAGES**

Nothing contained in this Agreement shall be construed as prohibiting the Disclosing Party from pursuing any other remedies available to it, either at law or in equity, for any such threatened or actual breach of this Agreement, including specific performance, recovery of damages or otherwise.

## **8 PRIVACY AND DATA PROTECTION**

- 8.1 The Receiving Party undertakes to comply with South Africa's general privacy protection in terms of the Bill of Rights (Section 14) in connection with this Bid 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.
- 8.2 The Receiving Party warrants that it and its Agents have the appropriate technical and organisational measures in place against unauthorised or unlawful processing of data relating to the Bid and against accidental loss or destruction of, or damage to such data held or processed by them.

## **9 GENERAL**

- 9.1 Neither party may assign the benefit of this Agreement, or any interest hereunder, except with the prior written consent of the other, save that Transnet may assign this Agreement at any time to any member of the Transnet Group.
- 9.2 No failure or delay in exercising any right, power or privilege under this Agreement will operate as a waiver of it, nor will any single or partial exercise of it preclude any further exercise or the exercise of any right, power or privilege under this Agreement or otherwise.
- 9.3 The provisions of this Agreement shall be severable in the event that any of its provisions are held by a court of competent jurisdiction or other applicable authority to be invalid, void or otherwise unenforceable, and the remaining provisions shall remain enforceable to the fullest extent permitted by law.
- 9.4 This Agreement may only be modified by a written agreement duly signed by persons authorised on behalf of each party.
- 9.5 Nothing in this Agreement shall constitute the creation of a partnership, joint venture or agency between the parties.
- 9.6 This Agreement will be governed by and construed in accordance with South African law and the parties irrevocably submit to the exclusive jurisdiction of the South African courts.

ooo000ooo



## ANNEXURE C1: FURTHER RECOGNITION CRITERIA (CURRENT)

Transnet encourages its suppliers to constantly strive to improve their B-BBEE rating. Whereas Respondents will be allocated points in terms of a preference point system based on its B-BBEE scorecard to be assessed as detailed in Section 1, paragraph 5.1, in addition to such scoring, a further **3% [3 per cent]** will be allocated to Respondents score based on the following Further Recognition Criteria [FRC] This will be calculated on an ascending scale. Will be allocated based on the extent to which the Respondent's current ownership, management control and employment equity meets or exceeds certain minimum targets.

*Respondents are to insert their current FRC score in the table below.*

*If a Respondents fails to complete the "Current Status Percentage % column, this will result in a "nil" score being allocated for its FRC Current Status.*

Ownership Indicator	Required Responses	Compliance Target	Current Status (%)
1. The percentage of the business owned by Black <sup>1</sup> persons	<i>Provide a commitment based on the extent to which ownership in the hands of Black persons as a percentage of total ownership of the organisation would be sustained or increased over the contract period.</i>	Points will be allocated for any score $\geq 51\%$ to 100%, on a sliding scale	
2. The percentage of the business owned by Black women	<i>Provide a commitment based on the extent to which ownership in the hands of Black women as a percentage of total ownership of the organisation would be sustained or increased over the contract period.</i>	Points will be allocated for any score $\geq 30\%$ to 100%, on a sliding scale	
3. The percentage of the business owned by Black youth <sup>2</sup>	<i>Provide a commitment based on the extent to which ownership in the hands of Black youth as a percentage of total ownership of the organisation would be sustained or increased over the contract period.</i>	Points will be allocated for any score $\geq 5\%$ to 100%, on a sliding scale	
4. The percentage of the business owned by Black persons living with disabilities	<i>Provide a commitment based on the extent to which ownership in the hands of Black disabled persons as a percentage of total ownership of the organisation would be sustained or increased over the contract period.</i>	Points will be allocated for any score $\geq 3\%$ to 100%, on a sliding scale	

<sup>1</sup> "Black" means South African Blacks, Coloureds and Indians, as defined in the B-BBEE Act, 53 of 2003

<sup>2</sup> "Black youth" means Black persons from the age of 16 to 35



Management Control Indicator	Required Responses	Compliance Target	Current Status (%)
5. The percentage of Black Board members in relation to the total number of Board members	<i>Provide a commitment based on the extent to which the number of Black Board members, as a percentage of the total Board, would be sustained or increased over the contract period.</i>	Points will be allocated for any score >50% to 100%, on a sliding scale	
6. The percentage of Black female Board members in relation to the total number of Board members	<i>Provide a commitment based on the extent to which the number of Black female Board members, as a percentage of the total Board, would be sustained or increased over the contract period.</i>	Points will be allocated for any score >30% to 100%, on a sliding scale	
7. The percentage of Black senior managers involved in day to day management of the organisation, in relation to the total senior management cadre	<i>Provide the percentage of Blacks that would be appointed or retained by the Board and would be operationally involved in the day to day <b>senior management</b> of the business, with individual responsibility for overall and/or financial management of the business and actively involved in the development and implementation of <b>overall strategy</b>, over the contract period.</i>	Points will be allocated for any score ≥40% to 100%, on a sliding scale	
8. The percentage of Black middle managers involved in day to day management of the organisation, in relation to the total middle management cadre.	<i>Provide the percentage of Blacks that would be retained or appointed by the organisation in the <b>middle management</b> cadre and would be operationally involved in the day to day management of the business, with individual responsibility for a particular area within the business and actively involved in the <b>day to day management</b> of the organisation, over the contract period.</i>	Points will be allocated for any score ≥63% to 100%, on a sliding scale	
9. The percentage of Black junior managers involved in day to day management of the organisation, in relation to the total junior management cadre.	<i>Provide the percentage of Blacks that would be retained or appointed by the organisation in the <b>junior management</b> cadre and would be operationally involved in the day to day running of the business, with individual responsibility for a particular area within the business and actively involved in a <b>supervisory role</b> with regards to the day to day management of the organisation, over the contract period.</i>	Points will be allocated for any score ≥68% to 100%, on a sliding scale	



Employment Equity Indicator	Required Responses	Compliance Target	Current Status (%)
10. The percentage of Black employees as a percentage of the total number of employees in the organisation.	<i>Provide a commitment based on the extent to which the number of Black employees would be sustained or increased as a percentage of the organisation's total workforce, over the contract period.</i>	Points will be allocated for any score $\geq 65\%$ to 100%, on a sliding scale	
11. The percentage of Black women employees as a percentage of the total workforce.	<i>Provide a commitment based on the increase in the number of Black women employees as a percentage of the organisation's total workforce, or sustained over the contract period.</i>	Points will be allocated for any score $\geq 40\%$ to 100%, on a sliding scale	
12. The percentage of Black youth employed in relation to the total number of employees in the organisation.	<i>Provide a commitment based on the extent to which the percentage of Black youth employed, in relation to the total of all employees in the organisation, would be sustained or increased over the contract period.</i>	Points will be allocated for any score $\geq 40\%$ to 100%, on a sliding scale	
13. The percentage of Black disabled employees in relation to the total number of employees in the organisation.	<i>Provide a commitment based on the extent to which the percentage of Black disabled employees, in relation to the total of all employees in the organisation, would be sustained or increased over the contract period.</i>	Points will be allocated for any score $\geq 2\%$ to 10%, on a sliding scale	

## ANNEXURE C2: FURTHER RECOGNITION CRITERIA [FUTURE TARGETS]

Transnet encourages its suppliers to constantly strive to improve their B-BBEE rating. Whereas Respondents will be allocated points in terms of a preference point system based on its B-BBEE scorecard to be assessed as detailed in Section 1, paragraph 5.1, in addition to such scoring, a further **2% [per cent]** will be allocated to Respondents score based on the following Further Recognition Criteria [**Future Targets**] on an ascending scale.

**2 [two] points** for FRC will be allocated based on the extent to which the Respondent's current ownership, management control and employment equity meets or exceeds certain minimum targets. .

*Respondents are to insert their future targets (%) for the Further Recognition Criteria indicators [i.e. not the % change but the end-state quantum expressed as a percentage] in the table below. This will indicate how you would intend to sustain or improve your FRC compliance rating over the contract period, which will represent a binding commitment to the successful Respondent.*

Ownership Indicator	Required Responses	Compliance Target	Future Target (%)
1. The percentage of the business owned by Black <sup>1</sup> persons.	<i>Provide a commitment based on the extent to which ownership in the hands of Black persons as a percentage of total ownership of the organisation would be sustained or increased over the contract period.</i>	Points will be allocated for any score $\geq 51\%$ to 100%, on a sliding scale	
2. The percentage of your business owned by Black women.	<i>Provide a commitment based on the extent to which ownership in the hands of Black women as a percentage of total ownership of the organisation would be sustained or increased over the contract period.</i>	Points will be allocated for any score $\geq 30\%$ to 100%, on a sliding scale	
3. The percentage of the business owned by Black youth <sup>2</sup>	<i>Provide a commitment based on the extent to which ownership in the hands of Black youth as a percentage of total ownership of the organisation would be sustained or increased over the contract period.</i>	Points will be allocated for any score $\geq 5\%$ to 100%, on a sliding scale	
4. The percentage of the business owned by Black persons living with disabilities	<i>Provide a commitment based on the extent to which ownership in the hands of Black disabled persons as a percentage of total ownership of the organisation would be sustained or increased over the contract period.</i>	Points will be allocated for any score $\geq 3\%$ to 100%, on a sliding scale	

<sup>1</sup> "Black" means South African Blacks, Coloureds and Indians, as defined in the B-BBEE Act, 53 of 2003

<sup>2</sup> "Black youth" means Black persons from the age of 16 to 35

Management Control Indicator	Required Responses	Compliance Target	Future Targets (%)
5. The percentage of Black Board members in relation to the total number of Board members	<i>Provide a commitment based on the extent to which the number of Black Board members, as a percentage of the total Board, would be sustained or increased over the contract period.</i>	Points will be allocated for any score >50% to 100%, on a sliding scale	
6. The percentage of Black female Board members in relation to the total number of Board members	<i>Provide a commitment based on the extent to which the number of Black female Board members, as a percentage of the total Board, would be sustained or increased over the contract period.</i>	Points will be allocated for any score >30% to 100%, on a sliding scale	
7. The percentage of Black senior managers involved in day to day management of the organisation, in relation to the total senior management cadre	<i>Provide the percentage of Blacks that would be appointed or retained by the Board and would be operationally involved in the day to day <b>senior management</b> of the business, with individual responsibility for overall and/or financial management of the business and actively involved in the development and implementation of <b>overall strategy</b>, over the contract period.</i>	Points will be allocated for any score ≥40% to 100%, on a sliding scale	
8. The percentage of Black middle managers involved in day to day management of the organisation, in relation to the total middle management cadre.	<i>Provide the percentage of Blacks that would be retained or appointed by the organisation in the <b>middle management</b> cadre and would be operationally involved in the day to day management of the business, with individual responsibility for a particular area within the business and actively involved in the <b>day to day management</b> of the organisation, over the contract period.</i>	Points will be allocated for any score ≥63% to 100%, on a sliding scale	
9. The percentage of Black junior managers involved in day to day management of the organisation, in relation to the total junior management cadre.	<i>Provide the percentage of Blacks that would be retained or appointed by the organisation in the <b>junior management</b> cadre and would be operationally involved in the day to day running of the business, with individual responsibility for a particular area within the business and actively involved in a <b>supervisory role</b> with regards to the day to day management of the organisation, over the contract period.</i>	Points will be allocated for any score ≥68% to 100%, on a sliding scale	

Employment Equity Indicator	Required Responses	Compliance Target	Future Targets (%)
10. The percentage of Black employees as a percentage of the total number of employees in the organisation.	<i>Provide a commitment based on the extent to which the number of Black employees would be sustained or increased as a percentage of the organisation's total workforce, over the contract period.</i>	Points will be allocated for any score $\geq 65\%$ to 100%, on a sliding scale	
11. The percentage of Black women employees as a percentage of the total workforce.	<i>Provide a commitment based on the increase in the number of Black women employees as a percentage of the organisation's total workforce, or sustained over the contract period.</i>	Points will be allocated for any score $\geq 40\%$ to 100%, on a sliding scale	
12. The percentage of Black youth employed in relation to the total number of employees in the organisation.	<i>Provide a commitment based on the extent to which the percentage of Black youth employed, in relation to the total of all employees in the organisation, would be sustained or increased over the contract period.</i>	Points will be allocated for any score $\geq 40\%$ to 100%, on a sliding scale	
13. The percentage of Black disabled employees in relation to the total number of employees in the organisation.	<i>Provide a commitment based on the extent to which the percentage of Black disabled employees, in relation to the total of all employees in the organisation, would be sustained or increased over the contract period.</i>	Points will be allocated for any score $\geq 2\%$ to 10%, on a sliding scale	
Preferential Procurement Indicator	Required Responses	Compliance Target	Future Targets (%)
14. B-BBEE procurement spend from all suppliers based on the B-BBEE procurement recognition level as a percentage of total measured procurement spend	<i>Provide a commitment based on the extent to which B-BBEE spend would be sustained or increased over the contract period.</i>	Score will be allocated for any score $\geq 50\%$ to 100%, on a sliding scale	
15. B-BBEE procurement spend from QSEs based on the applicable B-BBEE procurement recognition levels as a percentage of total measured procurement spend	<i>Provide a commitment based on the extent to which B-BBEE spend from QSEs would be sustained or increased over the contract period</i>	Score will be allocated for any percentages $\geq 10\%$ to 100%, on a sliding scale	
16. B-BBEE procurement spend from EMEs based on the applicable B-BBEE procurement recognition levels as a percentage of total measured procurement spend	<i>Provide a commitment based on the extent to which B-BBEE spend from EMEs would be sustained or increased over the contract period</i>	Score will be allocated for any percentages $\geq 10\%$ to 100%, on a sliding scale	

Preferential Procurement Indicator [continued]	Required Response	Compliance Target	Future Targets (%)
<p>17. B-BBEE procurement spend from any of the following suppliers as a percentage of total measured procurement spend:</p> <ul style="list-style-type: none"> <li>Suppliers who are <math>\geq</math> 51% Black-owned</li> <li>Suppliers who are <math>\geq</math> 51% Black women-owned</li> </ul>	<p><i>Provide a commitment based on the extent to which spend from suppliers who are more than 51% Black-owned or 51% Black women-owned would be maintained or increased over the contract period.</i></p>	<p>Points will be allocated for any percentages <math>\geq</math> 15% to 100%, on a sliding scale</p>	
Enterprise Development Indicator	Required Response	Compliance Target	Future Target (%)
<p>18. The organisation's annual spend on Enterprise Development as a percentage of Net Profit after Tax [NPAT]</p>	<p><i>Provide a commitment based on the retention or increase in your organisation's annual spend on Enterprise Development initiatives, as a percentage of its Net Profit after Tax, over the contract period.</i></p>	<p>Points will be allocated for any percentages <math>\geq</math> 3% of NPAT,</p>	

**Annexure D**  
**SUPPLIER DEVELOPMENT VALUE SUMMARY**

*Respondents must complete this Annexure D which summarises your Supplier Development (SD) Bid Document and your related commitments.*

*For the purposes of completing the SD Value Indicators, where applicable Respondents must calculate their SD commitments as a percentage (%) of their estimated total value of the contract over the Contract Period<sup>1</sup>*

*Please insert the SD Value Indicators in the following table. Cross-reference, under the column heading "Respondent's SD Commitments," the Value Indicators quoted with the corresponding section in your SD Bid Document.*

“PREVIEW COPY ONLY”



Supplier Development (SD) Category		Respondent's SD Bid	Supplier Development Value Indicators			
			SD Value Measurement	Number	Percentage	Rand Value (ZAR) excluding VAT
<b>1. Skills development</b>			<i>Number of and Rand value of black employees to be trained over the contract period</i>			
			<i>Is the level of the training offered above in compliance with the National Qualification Framework guidelines (NQF)? - Yes/No (Please tick)</i>	<b>Yes</b>	<b>No</b>	
			<i>Number and Rand value of higher education bursaries and/or scholarships to be offered to black people by your company, if applicable (specify)</i>			
			<i>Rand value of other skills development initiatives (to be further detailed in your SD Bid Document)</i>			
<b>2. Job creation</b>	The potential for job preservation, directly due to the award of this business, allows for assessment of your Company's intentions in terms of the Government's objective to increase labour absorption focusing on unskilled workers and the youth	[insert cross-references to SD Bid Document in this column]	<i>Number and Rand value of new skilled jobs to be created for <b>Black persons</b> due to Award of Contract</i>			
			<i>(Where "skilled" refers to jobs for people in a specialised field of work requiring a defined training path and / or a requisite level of experience in order for them to perform that role. These people could be in possession of a certificate, diploma or degree from a Higher education institution)</i>			
			<i>Number and Rand value of new skilled jobs to be created for <b>Black women</b> due to Award of Contract</i>			
			<i>(Where "skilled" refers to jobs for people in a specialised field of work requiring a defined training path and / or a requisite level of experience in order for them to perform that role. These people could be in possession of a certificate, diploma or degree from a Higher education institution)</i>			
			<i>Number and Rand value of new unskilled jobs to be created for Black persons by Award of Contract</i>			
			<i>(Where "unskilled" refers to jobs for people where the field of</i>			



		<p><i>work does not require extensive formal training or from whom no minimum level of education is required))</i></p> <p><i>Number and Rand value of new unskilled jobs to be created for Black women by Award of Contract</i></p> <p><i>(Where "unskilled" refers to jobs for people where the field of work does not require extensive formal training or from whom no minimum level of education is required))</i></p> <p><i>Number of jobs to be created for Black youth (where "youth" means individuals between the ages of 16 - 35 years), through Award of Contract</i></p> <p><i>Number of jobs to be created for Black persons living with disabilities through Award of Contract</i></p> <p><i>Number of jobs to be preserved due to Award of contract</i></p>			
<p><b>3. Job preservation</b></p> <p>The potential for job preservation, directly due to the award of this business, allows for assessment of your Company's intentions in terms of the Government's objective to increase labour absorption focusing on unskilled workers and the youth</p>	<p><i>[insert cross-references to SD Bid Document in this column]</i></p>				
<p><b>4. Small business promotion</b></p> <p>These SD value measurements give an indication of your commitment to developing small businesses in line with the Government's New Growth Path (NGP) and B-BBEE requirements</p>	<p><i>[insert cross-references to SD Bid Document in this column]</i></p>	<p>% of your projected procurement spend from EMEs</p> <p>% of your projected procurement spend from QSEs</p> <p>% of your projected procurement spend from Start ups</p> <p>% of the estimated contract value which would be subcontracted to EMEs, QSEs or start-up companies</p>			

<b>5. Technology transfer</b>  Technology innovation and transfer are intangible and/or tangible assets with significant economic value. Respondents will be measured on their plans to transfer knowledge, and/or capital assets, and/or IPR to contribute to capability building of a regional supply base which would ultimately lead to improved capability, efficiency and regional capacity	<i>[Insert cross-references to SD Bid Document in this column]</i>  <i>Rand value of proposed IP, technology and technical know-how transfer against award of contract</i>  <i>Rand value of other technology and IP transfer initiatives [to be further detailed in your SD bid document]</i>		
<b>6. Rural integration</b>  The Service Provider's planned use of regional labour and businesses will contribute to the Government's NGP objectives and result in supply chain efficiencies. Commitment to rural development will result in poverty alleviation, thereby contributing to development objectives. This development must be sustainable in order to have a long-term and meaningful impact	<i>[Insert cross-references to SD Bid Document in this column]</i>  <i>Number of people employed from within the town/city of operation</i>  <i>Number and Rand value of rural businesses that the Service Provider plans to develop as a result of the contract</i>  <i>Number of local businesses that the service provide plans to use</i>		

**ESTIMATED RAND VALUE TOTAL OF SD COMMITMENT, EXCLUDING VAT : ZAR**

**SD COMMITMENT EXPRESSED AS PERCENTAGE OF ESTIMATED CONTRACT VALUE :**

	%



### Annexure E – Hub Information and Selection Template

TFR Sub-Depots	TRE Sub-Depots	Mini Scrap Yards	Main Regional Hub
<ul style="list-style-type: none"> <li>➤ Deal Party</li> <li>➤ East London</li> </ul>	<ul style="list-style-type: none"> <li>➤ Uitenhage Workshops</li> <li>➤ Zwartkops</li> <li>➤ East London</li> </ul>		<b>Uitenhage</b>
<ul style="list-style-type: none"> <li>➤ Bloemfontein</li> </ul>	<ul style="list-style-type: none"> <li>➤ Bloemfontein Workshops</li> <li>➤ Kroonstad</li> <li>➤ Postmastburg</li> </ul>		<b>Bloemfontein</b>
<ul style="list-style-type: none"> <li>➤ Beaconsfield</li> </ul>	<ul style="list-style-type: none"> <li>➤ Kimberley</li> </ul>	<ul style="list-style-type: none"> <li>➤ Kimberley</li> </ul>	
<ul style="list-style-type: none"> <li>➤ Uppington</li> <li>➤</li> </ul>	<ul style="list-style-type: none"> <li>➤ De Aar</li> </ul>	<ul style="list-style-type: none"> <li>➤ De Aar</li> </ul>	
<ul style="list-style-type: none"> <li>➤ Belville</li> </ul>	<ul style="list-style-type: none"> <li>➤ Salt River Workshops</li> <li>➤ Belville</li> </ul>		<b>Salt River</b>
	<ul style="list-style-type: none"> <li>➤ Saldanha</li> </ul>	<ul style="list-style-type: none"> <li>➤ Saldanha</li> </ul>	
<ul style="list-style-type: none"> <li>➤ Bayhead</li> </ul>	<ul style="list-style-type: none"> <li>➤ Durban Workshops</li> <li>➤ Umbilo</li> <li>➤ Wentworth</li> </ul>		<b>Durban</b>
<ul style="list-style-type: none"> <li>➤ Newcastle</li> </ul>	<ul style="list-style-type: none"> <li>➤ Ladysmith</li> </ul>	<ul style="list-style-type: none"> <li>➤ Ladysmith</li> </ul>	
	<ul style="list-style-type: none"> <li>➤ Germiston Workshops</li> <li>➤ Sentra Rand</li> </ul>		<b>Germiston</b>
<ul style="list-style-type: none"> <li>➤ Isando</li> <li>➤ Vereeniging</li> <li>➤ Standerton</li> </ul>		<ul style="list-style-type: none"> <li>➤ Heidelberg</li> </ul>	
<ul style="list-style-type: none"> <li>➤ Krugersdorp</li> <li>➤ Potchefstroom</li> <li>➤ Klerksdorp</li> <li>➤ Coligny</li> </ul>	<ul style="list-style-type: none"> <li>➤ Millsite</li> <li>➤ Coligny</li> </ul>	<ul style="list-style-type: none"> <li>➤ Millsite</li> </ul>	

Respondent's Signature

Date & Company Stamp



TFR Sub-Depots	TRE Sub-Depots	Mini Scrap Yards	Main Regional Hub
<ul style="list-style-type: none"> <li>➤ Koedoespoort</li> <li>➤ Capital Park</li> <li>➤ Pyramid South</li> </ul>	<ul style="list-style-type: none"> <li>➤ Koedoespoort Workshops</li> <li>➤ Pyramid South</li> <li>➤ Capital Park</li> </ul>		<b>Koedoespoort</b>
<ul style="list-style-type: none"> <li>➤ Richards Bay</li> </ul>	<ul style="list-style-type: none"> <li>➤ South Dunes [RB]</li> </ul>	<ul style="list-style-type: none"> <li>➤ Empangeni</li> </ul>	
<ul style="list-style-type: none"> <li>➤ Volksrust</li> </ul>	<ul style="list-style-type: none"> <li>➤ Ermelo</li> </ul>	<ul style="list-style-type: none"> <li>➤ Ermelo</li> </ul>	
<ul style="list-style-type: none"> <li>➤ Komatipoort</li> <li>➤ Kaapmuiden</li> <li>➤ Belfast</li> <li>➤ Lydenburg</li> </ul>	<ul style="list-style-type: none"> <li>➤ Nelspruit</li> <li>➤ Komatipoort</li> </ul>	<ul style="list-style-type: none"> <li>➤ Nelspruit</li> </ul>	
<ul style="list-style-type: none"> <li>➤ Witbank</li> </ul>	<ul style="list-style-type: none"> <li>➤ Witbank</li> <li>➤ Belfast</li> <li>➤ Waterval Onder</li> </ul>	<ul style="list-style-type: none"> <li>➤ Witbank</li> </ul>	
<ul style="list-style-type: none"> <li>➤ Polokwane</li> </ul>	<ul style="list-style-type: none"> <li>➤ Polokwane</li> </ul>	<ul style="list-style-type: none"> <li>➤ Polokwane</li> </ul>	
<ul style="list-style-type: none"> <li>➤ Piet Retief</li> <li>➤ Newcastle</li> </ul>	<ul style="list-style-type: none"> <li>➤ Newcastle</li> </ul>	<ul style="list-style-type: none"> <li>➤ Vryheid</li> </ul>	

Name of Regional Hub	Selection ( ✓ )
Koedoespoort	
Germiston	
Bloemfontein	
Durban	
Uitenhage	
Salt River	

Respondent's Signature

Date & Company Stamp



**Appendix (ii)**

**STANDARD TERMS AND CONDITIONS OF CONTRACT  
FOR THE PURCHASE OF SCRAP METAL FROM TRANSNET  
[November 2012]**

“PREVIEW COPY ONLY”

**TABLE OF CONTENTS**

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

## 1 INTRODUCTION

When an Agreement is entered into between Transnet SOC Ltd and the Contractor [the purchaser of Scrap Metal from Transnet], these Standard Terms and Conditions, the Scope of Requirements for the Services to be rendered, the General Tenders Conditions and any terms and / or special conditions in the associated Request For Proposal [RFP] documents, exclusively govern the provision of Services by the Contractor 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 or Work Order(s), 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 Contractor [as agreed between the Parties], which collectively and exclusively govern the purchase of Scrap Metals by the Contractor from Transnet;
- 2.3 **Business Day(s)** means Mondays to Fridays between 07:30 and 16:00, excluding public holidays;
- 2.4 **Collection Advice** means the documentation to be processed by Transnet confirming the purchase, collection and removal by the Contractor of Scrap Metals from Transnet's premises, which will record a detailed description of the Scrap Metals collected, the agreed weigh bridge weight and date of collection;
- 2.5 **Commencement Date** means the date the Agreement is signed by all the Parties;
- 2.6 **Confidential Information** means any information or other data, whether in written, oral, graphic or in any other form, which a Party discloses or provides to the other Party, or which otherwise becomes known to a Party, and which is not in the public domain and includes, without limiting the generality of the term -
  - a) information relating to methods of operation, data and plans of the disclosing Party;
  - b) the contents of the Agreement;
  - c) private and personal details of employees or clients of the disclosing Party or any other person where an onus rests on the disclosing Party to maintain the confidentiality of such information;
  - d) any information disclosed by either Party and which is clearly marked as being confidential or secret;
  - e) information relating to the strategic objectives and planning of the disclosing Party relating to its existing and planned future business activities;
  - f) information relating to the past, present and future research and development of the disclosing Party;



- g) information relating to the business activities, business relationships, products, services, customers, clients and subcontractors of the disclosing Party where an onus rests on the disclosing Party to maintain the confidentiality of such information;
  - h) information contained in any software or associated material and documentation belonging to the disclosing Party;
  - i) technical, scientific, commercial, financial and market information, know-how and trade secrets of a disclosing Party;
  - j) data concerning architecture, demonstrations, tools and techniques, processes, machinery and equipment of the disclosing Party;
  - k) plans, designs, concepts, drawings, functional and technical requirements and specifications of the disclosing Party;
  - l) information concerning faults or defects in goods, equipment, hardware or software or the incidence of such faults or defects; and
  - m) information concerning the charges, fees and / or costs of the disclosing Party or its authorised subcontractors, or their methods, practices or service performance levels actually achieved;
- 2.7 **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;
- 2.8 **Expiry Date** means the expiration date as agreed between the Parties and stipulated in the Schedule of Requirements annexed hereto;
- 2.9 **Intellectual Property** means all rights to and ownership of any idea, discovery, design, concept, technique or improvement, know-how, or invention [whether or not patented], trademark, or copyright material;
- 2.10 **Intellectual Property Rights** include any patents or patent applications, trade and service marks whether registered or unregistered, registered design, design rights, copyright, rights in databases, domain names, trade or business names and any other similar protected rights in any country [together with the right to apply for any of the above, if applicable];
- 2.11 **Parties** means the Parties to the Agreement, together with their subsidiaries, divisions, business units, successors-in-title and their assigns;
- 2.12 **Party** means either one of these Parties;
- 2.13 **Personnel** means any partner, employee, agent, consultant, independent associate or contractor, subcontractor and the staff of such subcontractor, or other authorised representative of the Contractor;
- 2.14 **Price(s)** shall mean the agreed Price(s) for the Scrap Metals to be purchased from Transnet by the Contractor, as detailed in the Schedule of Requirements, issued in accordance with the Agreement, as amended by mutual agreement between the Parties and in accordance with the terms and conditions in the Agreement from time to time;
- 2.15 **Rate(s)** shall mean the agreed Rate(s) for the Scrap Metals to be procured by the Contractor from 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 terms and conditions in the Agreement from time to time;

- 2.16 **Schedule of Requirements** means Schedule 2 hereto, unless substituted by a Work Order or Work Orders, as defined;
- 2.17 **Scrap Metals** mean the material / products as specified in the Schedule of Requirements or Work Order(s) at Schedule 2 hereto;
- 2.18 **Service(s)** means the purchase and removal of Scrap Metals from Transnet premises by the Contractor, pursuant to the Schedule of Requirements or Work Order(s) in terms of the Agreement;
- 2.19 **Service Level Agreement** or **"SLA"** means the processes, key performance indicators and performance standards relating to the Services to be rendered by the Contractor;
- 2.20 **Subcontract** means any contract or agreement or proposed contract or agreement between the Contractor and any third party whereby that third party agrees to provide to the Contractor the Services or any part thereof;
- 2.21 **Tax Invoice** means the document as required by Section 20 of the Value-Added Tax Act, 89 of 1991, as may be amended from time to time;
- 2.22 **VAT** means Value-Added Tax chargeable in terms of the Value-Added Tax Act, No 89 of 1991, as may be amended from time to time; and
- 2.23 **Work Order(s)** means a detailed scope of work for a Service required by Transnet, related to the purchase by the Contractor of Scrap Metals, including timeframes, deliverables and costs, 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 gender.

### 4 NATURE AND SCOPE

- 4.1 The Agreement sets out the terms and conditions in terms of which the Contractor will arrange for the provision to Transnet of the Service which meets the requirements and specifications of Transnet, the execution of which is controlled by means of Collection Advices to be issued by Transnet from time to time and executed by the Contractor, in accordance with the Agreement.

- 4.2 Such Collection Advice(s) shall be endorsed by both Parties and shall be subject to the terms of the Schedule of Requirement(s) and / or relevant Work Order(s).
- 4.3 Each properly executed Collection Advice forms an inseparable part of the Agreement as if it were fully incorporated into the body of the Agreement.
- 4.4 The Scrap Metals are sold subject to all conditions mentioned or referred to in the Agreement and in the condition and to the extent such as they now lie "voetstoots" and absolutely as they stand. The Contractor acknowledges that it is fully acquainted with the Scrap Metals, their nature, condition and locality, and with the conditions recorded in the Agreement in respect of the Scrap Metals. For the avoidance of doubt, Transnet does not undertake to supply any quantity of Scrap Metals nor shall Transnet be under any obligation or liability in the event of none being available at any time. Transnet shall in its sole discretion determine the quantity of Scrap Metals to be sold to the Contractor. The Contractor shall accept such quantities of Scrap Metal that may become available from the areas controlled by various centres.
- 4.5 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 27 [*Amendment And Change Control*] below. A Party will advise the other Party within 14 [fourteen] Business Days, or such other period as mutually agreed, whether the amendment is acceptable.
- 4.6 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 Collection Advice, 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.
- 4.7 Time will be of the essence and the Contractor will perform its obligations under the Agreement in accordance with the timeframe(s) [if any] set out in the relevant schedule, save that the Contractor 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:
- a) enter into an agreement in the name of the other; or
  - b) give any warranty, representation or undertaking on the other's behalf; or
  - c) 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 Contractor warrants to Transnet that:
- a) it has full capacity and authority to enter into and to perform the Agreement and that the Agreement is executed by a duly authorised representative of the Contractor;
  - b) it will discharge its obligations under the Agreement and any schedule or Work Order with all due skill, care and diligence; and
  - c) it 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.
- 6.2 The Contractor warrants that it will perform its obligations under the Agreement in accordance with the Service Level Agreement 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 execution of the Services.
- 6.3 In compliance with the National Railway Safety Regulator Act, 16 of 2002, the Contractor shall ensure that the execution of the Services to be undertaken for Transnet under the terms and conditions of the Agreement, comply fully with the specifications and conditions as set forth in a Schedule of Requirements or Work Order appended hereto, and shall thereby adhere [as applicable] to railway safety requirements and/or regulations. Permission for the engagement of a subcontractor by the Contractor, as applicable, shall be subject to a review of the capability of the proposed subcontractor to comply with the specified railway safety requirements and/or regulations. The Contractor and/or its subcontractor shall grant Transnet access, during the term of the Agreement, to review any safety-related activities, including the coordination of such activities across all parts of its organisation.
- 6.4 The Contractor 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 Contractor to comply with its obligations under the Agreement will be reduced to the greatest extent possible, and that the Contractor 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 Contractor for information, including information concerning Transnet's operations and activities, that relates to the Services as may be necessary for the Contractor to execute 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 Contractor of its confidentiality obligations under the Agreement.
- 7.2 The Contractor shall give Transnet reasonable notice of any information it requires in accordance with clause 7.1 above.
- 7.3 Subject to clause 12 [*Contractor's Personnel*], Transnet agrees to provide the Contractor or its Personnel such access to and use of its facilities as is necessary to allow the Contractor to perform its obligations under the Agreement.

## 8 GENERAL OBLIGATIONS OF THE CONTRACTOR

### 8.1 The Contractor shall –

- a) respond promptly to all complaints and enquiries from Transnet;
- b) conduct its business in a professional manner that will reflect positively upon the Contractor and the Contractor's Services;
- c) keep full records clearly indicating all transactions concluded by the Contractor relating to the execution of the Services and keep such records for at least 5 [five] years from the date of each such transaction;
- d) obtain, and at all times maintain in full force and effect, any and all licences, permits and the like required under applicable laws for the execution of the Services and the conduct of the business and activities of the Contractor;
- e) demonstrate sound environmental performance and have an environmental management policy; and
- f) inform Transnet immediately of any dispute or complaint arising in relation to the execution of the Service.

### 8.2 The Contractor acknowledges and agrees that it shall at all times -

- a) render the Service(s) and perform all its duties with honesty and integrity;
- b) communicate openly and honestly with Transnet and demonstrate a commitment to performing the Services timeously, efficiently and to the required standards;
- c) endeavour to provide the highest possible standards of Service and professionalism, with a reasonable degree of care and diligence;
- d) use its best endeavours and make every diligent effort to meet agreed deadlines;
- e) treat its own Personnel, as well as all Transnet's officers, employees, agents and consultants, with fairness and courtesy and respect for their human rights;
- f) practice and promote its own internal policies aimed at prohibiting and preventing unfair discrimination [clause 21 refers – *Equality and Diversity*];
- g) treat all enquiries from Transnet in connection with the execution of the Services with courtesy and respond to all enquiries promptly and efficiently. Where the Contractor is unable to comply with the provisions of this clause, the Contractor will advise Transnet of the delay and the reasons therefore and will keep Transnet informed of progress made regarding the enquiry;
- h) when requested by Transnet, provide clear and accurate information regarding the Contractor's own policies and procedures, excluding trade secrets and other Confidential Information;
- i) not allow a conflict of interest to develop between its own interests [or the interests of any of its other customers] and the interests of Transnet;
- j) not accept or offer, nor allow, induce or promote the acceptance or offering of any gratuity, enticement, incentive or gift that could reasonably be regarded as bribery or an attempt to otherwise exert undue influence over the recipient;



- k) not mislead Transnet or its officers, employees and stakeholders, whether by act or omission;
- l) not otherwise act in an unethical manner or do anything which could reasonably be expected to damage or tarnish Transnet's reputation or business image; and
- m) immediately report to Transnet any unethical, fraudulent or otherwise unlawful conduct of which it becomes aware in connection with Transnet or the execution of the Services.

## **9 RATES, INVOICING AND PAYMENT**

- 9.1 In consideration of the purchase of Scrap Metals from Transnet, the Contractor will pay Transnet for the Scrap Metals at the Rates as detailed in the relevant Schedule of Requirements or Work Order.
- 9.2 The Contractor shall pay such amounts to Transnet [upon receipt of a correct and undisputed Tax Invoice together with the supporting documentation as specified in the Schedule of Requirements or Work Orders appended hereto] once the undisputed Tax Invoices or such portion of the invoice which is undisputed becomes due and payable by the Contractor in terms of clause 9.4 below.
- 9.3 All amounts payable under the Agreement are exclusive of VAT, which will be payable at the applicable rate.
- 9.4 Unless otherwise provided for in the Schedule of Requirements or Work Orders appended hereto, payment of such Tax Invoices shall be made by the Contractor within 7 [seven] days after date of receipt by the Contractor of the Tax Invoice together with relevant supporting documentation.
- 9.5 Where the payment of any Tax Invoice or any part of an invoice is not made in accordance with this clause 9, Transnet shall be entitled to charge compound interest on the outstanding amount, at 1.5% [one and a half per cent] above the Standard Bank of South Africa's prime rate of interest in force for the time from the due date until the outstanding amount is paid.

## **10 ADJUSTMENT OF PRICES OR RATES**

- 10.1 Prices or Rates 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.
- 10.2 Should Transnet and the Contractor fail to reach an agreement on Rates 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.
- 10.3 Neither Party shall have any claim against the other of whatsoever nature by reason of such cancellation as envisaged in clause 10.2 above.

## **11 INTELLECTUAL PROPERTY RIGHTS**

- 11.1 All Intellectual Property owned by the Contractor, as at the Commencement Date, shall remain the sole and exclusive property of the Contractor, and all intellectual property owned by Transnet shall remain the sole and exclusive property of Transnet.
- 11.2 All rights in the Transnet name and logo remain the absolute property of Transnet.

## 12 CONTRACTOR'S PERSONNEL

- 12.1 The Personnel shall be regarded at all times as employees, agents or subcontractors of the Contractor and no relationship of employer and employee shall arise between Transnet and any Personnel under any circumstances regardless of the degree of supervision that may be exercised over the Personnel by Transnet.
- 12.2 The Contractor warrants that all Personnel will be entitled to work in South Africa or any other country in which the Services are performed.
- 12.3 The Contractor will ensure that its Personnel comply with all reasonable requirements made known to the Contractor 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 Contractor will ensure that such Personnel at all times act in a lawful and proper manner in accordance with these requirements.
- 12.4 Transnet reserves the right to refuse to admit or to remove from any premises occupied by or on behalf of it, any Personnel whose admission or presence would, in the reasonable opinion of Transnet, be undesirable or who represents a threat to confidentiality or security or whose presence would be in breach of any rules and regulations governing Transnet's own staff, provided that Transnet notifies the Contractor of any such refusal [with reasons therefor]. The reasonable exclusion of any such individual from such premises shall not relieve the Contractor from the performance of its obligations under the Agreement.

## 13 LIABILITY

- 13.1 The Contractor hereby indemnifies Transnet against any liability for loss of or damage to property whether belonging to it, its employees, agents or any third party, or for the death of or injury to any person, which may be caused either directly or indirectly in the provision of the Services set out herein, save where such loss, damages, death or injury is as a result of negligence on the part of Transnet or any of its employees. The Contractor's liability arising out of this clause 13.1 shall be limited to the maximum amount payable in respect of any one occurrence.
- 13.2 The liability of either the Contractor or Transnet under or in connection with the Agreement, whether for negligence, misrepresentation, breach of contract or otherwise, for direct loss or damage arising out of each Default or series of related Defaults shall not exceed 100% [one hundred per cent] of the Prices paid by the Contractor for the Scrap Metals and associated Collection Advice(s) to which the Default(s) relates.
- 13.3 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.
- 13.4 If for any reason the exclusion of liability in clause 13.3 above is void or unenforceable, either Party's total liability for all loss or damage under the Agreement shall be as provided in clause 13.2 above.
- 13.5 Nothing in this clause 13 shall be taken as limiting the liability of the Contractor in respect of clause 15 [Confidentiality].



## 14 INSURANCES

- 14.1 Without limiting the liability of the Contractor under the Agreement, the Contractor shall take out insurance in respect of all risks for which it is prudent for the Contractor 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 Contractor.
- 14.2 The Contractor 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 30 [thirty] days after date of policy renewals.
- 14.3 Subject to clause 14.4 below, if the Contractor fails to effect adequate insurance under this clause 14, 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 Contractor shall promptly reimburse Transnet for any premiums paid provided such insurance protects the Contractor's liability. Transnet assumes no responsibility for such insurance being adequate to protect all of the Contractor's liabilities.
- 14.4 In the event that the Contractor receives written notice from its insurers advising of the termination of its insurance cover referred to in clause 14.1 above or if the insurance ceases to be available upon commercially reasonable terms, the Contractor shall immediately notify Transnet in writing of such termination and / or unavailability, whereafter the Contractor or Transnet may terminate the Agreement on giving the other Party not less than 15 [fifteen] days prior written notice to that effect.

## 15 CONFIDENTIALITY

- 15.1 The Parties hereby undertake the following, with regard to Confidential Information -
  - a) not to divulge or disclose to any person whomsoever in any form or manner whatsoever, either directly or indirectly, any Confidential Information of the other, without the prior written consent of such other Party, other than when called upon to do so in accordance with a statute, or by a court having jurisdiction, or by any other duly authorised and empowered authority or official, in which event the Party concerned shall do what is reasonably possible to inform the other of such a demand and each shall assist the other in seeking appropriate relief or the instituting of a defensive action to protect the Confidential Information concerned;
  - b) not to use, exploit, permit the use of, directly or indirectly, or in any other manner whatsoever apply the Confidential Information, disclosed to it as a result of the Agreement, for any purpose whatsoever other than for the purpose for which it is disclosed or otherwise than in strict compliance with the provisions in the Agreement;
  - c) 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;

- d) 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; and
- e) each Party shall ensure that Confidential Information is disclosed to its Personnel or staff or to any other person, on a strictly need to know basis, and that, when such disclosure is made, the Personnel or staff or person to whom such disclosure is made is admonished and formally undertakes to comply with the terms and conditions of confidentiality stipulated herein.

15.2 The duties and obligations with regard to Confidential Information in this clause 15 shall not apply where -

- a) a Party can demonstrate that such information is already in the public domain or becomes available to the public through no breach of the Agreement by that Party, or its Personnel or staff; or
- b) was rightfully in a Party's possession prior to receipt from the other Party, as proven by the first mentioned Party's written records, without an infringement of an obligation or duty of confidentiality; or
- c) can be proved to have been rightfully received by a Party from a third party without a breach of a duty or obligation of confidentiality; or
- d) is independently developed by a Party as proven by its written records.

15.3 This clause 15 shall survive termination for any reason of the Agreement and shall remain in force and effect from the Commencement Date and for 5 [five] years after the termination of the Agreement.

## 16 TOTAL OR PARTIAL FAILURE TO PERFORM THE SCOPE OF SERVICES

Should the Contractor fail or neglect to execute the work or to execute any portion of the Service, as required by the terms of the Agreement, Schedule of Requirements or Work Order(s), Transnet may cancel the Agreement or Schedule of Requirements 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 by the Contractor of any remaining contractual obligations shall remain subject in all respects to the terms and conditions of the Agreement.

## 17 TERM AND TERMINATION

- 17.1 The Agreement shall commence on the Commencement Date and terminate on the Expiry Date, as specified in the schedules hereto, subject to termination in accordance with the provisions of the Agreement or otherwise in accordance with law or equity.
- 17.2 Transnet may terminate the Agreement without cause by giving the Contractor 30 [thirty] days' notice in writing.
- 17.3 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.

17.4 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 actions, application or proceeding are made in this regard for -

- a) a voluntary arrangement or composition or reconstructions of its debts;
- b) its winding-up or dissolution;
- c) the appointment of a liquidator, trustee, receiver, administrative receiver or similar officer; or
- d) any similar action, application or proceeding in any jurisdiction to which it is subject.

17.5 Transnet may terminate the Agreement at any time within 1 [one] month of becoming aware of a change of control of the Contractor, by notice in writing to the Contractor. For the purpose 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.

17.6 Transnet may cancel any schedule or Work Order hereto at any time on giving the Contractor 30 [thirty] days' notice to this effect.

## 18 CONSEQUENCE OF TERMINATION

18.1 Termination in accordance with clause 17 above 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.

18.2 On termination of the Agreement or a schedule or Work Order, the Contractor will immediately deliver up and procure that its Personnel will immediately deliver up to Transnet, all 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 Contractor, and certify to Transnet in writing that this has been done.

18.3 In the event that the Agreement is terminated by the Contractor under clause 17.3 [*Material Breach*], or in the event that a Work Order is terminated by Transnet under clause 17.6 [*Cancellation at any time*], the Contractor will pay to Transnet all outstanding invoices relating to the purchases of Scrap Metals by the Contractor up until the date of such termination.

18.4 The provisions of clauses 2 [*Definitions*], 6 [*Warranties*], 11 [*Intellectual Property Rights*], 13 [*Liability*], 15 [*Confidentiality*], 18 [*Consequence of Termination*], 24 [*Dispute Resolution*] and 28 [*Governing Law*] shall survive termination or expiry of the Agreement.

## 19 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 Contractor 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.

## **20 FORCE MAJEURE**

- 20.1 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, 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.
- 20.2 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 the Parties fail to agree within 30 [thirty] days of the act of force majeure first occurring, either Party may thereafter terminate the Agreement with immediate notice.

## **21 EQUALITY AND DIVERSITY**

- 21.1 The Contractor 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 including selection for training.
- 21.2 Both Parties to the Agreement undertake that they will not, and shall procure that their employees, agents and subcontractors will not breach any applicable discrimination legislation and any amendments and re-enactments thereof.

## **22 NON WAIVER**

- 22.1 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.
- 22.2 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.

## **23 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.

## **24 DISPUTE RESOLUTION**

- 24.1 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.

- 24.2 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.
- 24.3 If a dispute has been referred to AFSA as envisaged in clause 24.2, such dispute shall be finally resolved in accordance with the rules of AFSA by an arbitrator or arbitrators appointed by AFSA.
- 24.4 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 24.
- 24.5 This clause 24 is severable from the rest of the Agreement and shall remain in effect even if the Agreement is terminated for any reason.
- 24.6 This clause 24 shall not preclude either Party from seeking urgent relief in a court of appropriate jurisdiction, where grounds for urgency exist.

## **25 ADDRESSES FOR NOTICES**

- 25.1 The Parties to the Agreement select the physical addresses and facsimile [~~fax~~] numbers, detailed in Schedule 1 hereto, as their respective addresses for giving or sending any notice provided for or required in terms of the Agreement, provided that either Party shall be entitled to substitute such other address or fax number, as may be, by written notice to the other.
- 25.2 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.
- 25.3 Any notice shall be deemed to have been given -
- if posted by prepaid registered post, 10 [ten] days after the date of posting thereof;
  - if hand delivered, on the day of delivery; or
  - if sent by fax, 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.

## **26 WHOLE AND ONLY AGREEMENT**

- 26.1 The Parties hereby confirm that the Agreement constitutes the whole and only agreement between them with regard to the subject matter of the Agreement.
- 26.2 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, any annexures appended hereto, and the Schedule of Requirements.

## **27 AMENDMENT AND CHANGE CONTROL**

Any amendment or change of any nature made to the Agreement, and / or the Schedule of Requirements and / or Work Order(s) appended hereto, shall only be valid if it is in writing, signed by both Parties and added to the Agreement as an addendum hereto.

## **28 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.

28.1 **Change of Law:** In the Agreement, unless the context otherwise requires, references to a statutory provision include references to that statutory provision as from time to time amended, extended or re-enacted and any regulations made under it, provided that in the event that the amendment, extension or re-enactment of any statutory provision or introduction of any new statutory provision has a material impact on the obligations of either Party, the Parties will negotiate in good faith to agree such amendments to the Agreement as may be appropriate in the circumstances. If, within a reasonable period of time, the Contractor and Transnet cannot reach agreement on the nature of the changes required or on modification of Prices, collection schedules, warranties, or other terms and conditions, either Party may seek to have the matter determined in accordance with clause 24 [*Dispute Resolution*] above.

## 29 COUNTERPARTS

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

ooooOOoooo

“PREVIEW COPY ONLY”



**Appendix (ii)**

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

**“PREVIEW COPY ONLY”**



## TABLE OF CONTENTS

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

## 1 INTRODUCTION

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

## 2 DEFINITIONS

Where the following words or phrases are used in the Agreement, such words or phrases shall have the meaning assigned thereto in this clause, except where the context clearly requires otherwise.

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

- f) information relating to the past, present and future research and development of the disclosing Party;
- g) information relating to the business activities, business relationships, products, services, customers, clients and Subcontractors of the disclosing Party where an onus rests on the disclosing Party to maintain the confidentiality of such information;
- h) information contained in the software and associated material and documentation belonging to the disclosing Party;
- i) technical and scientific information, Know-How and trade secrets of a disclosing Party including inventions, applications and processes;
- j) Copyright works;
- k) commercial, financial and marketing information;
- l) data concerning architecture, demonstrations, tools and techniques, processes, machinery and equipment of the disclosing Party;
- m) plans, designs, concepts, drawings, functional and technical requirements and specifications of the disclosing Party;
- n) information concerning faults or defects in goods, equipment, hardware or software or the incidence of such faults or defects; and
- o) information concerning the charges, Fees and / or costs of the disclosing Party or its authorised Subcontractors, or their methods, practices or service performance levels actually achieved;

2.7 **Copyright** means the right in expressions, procedures, methods of operations or mathematical concepts, computer program codes, compilations of data or other material, literary works, musical works, artistic works, sound recordings, broadcasts, program carrying signals, published editions, photographic works, or cinematographic works of the copyright owner to do or to authorise the doing of certain acts specified in respect of the different categories of works;

2.8 **Default** means any breach of the obligations of either Party [including but not limited to fundamental breach or breach of a fundamental term] or any Default, act, omission, negligence or statement of either Party, its employees, agents or Subcontractors in connection with or in relation to the subject of the Agreement and in respect of which such Party is liable to the other;

2.9 **Deliverable(s)** means any and all works of authorship, products and materials developed, written, prepared, assembled, integrated, modified or provided by the Service Provider in relation to the Services;

2.10 **Designs** mean registered Designs and/or Design applications and will include the monopoly right granted for the protection of an independently created industrial design including designs dictated essentially by technical or functional considerations as well as topographies of integrated circuits and integrated circuits;

2.11 **Fee(s)** shall mean the agreed Fees for the Services to be purchased from the Service Provider by Transnet, as detailed in the Work Order(s), issued in accordance with the Agreement, as amended by mutual agreement between the Parties and in accordance with the provisions of the Agreement from time to time;

2.12 **Foreground Intellectual Property** means all Intellectual Property developed by either Party pursuant to the Agreement;

- 2.13 **Intellectual Property** means Patents, Designs, Know-How, Copyright and Trade Marks and all rights having equivalent or similar effect which may exist anywhere in the world and includes all future additions and improvements to the Intellectual Property;
- 2.14 **Know-How** means all Confidential Information of whatever nature relating to the Intellectual Property and its exploitation as well as all other Confidential Information generally relating to Transnet's field of technology, including technical information, processing or manufacturing techniques, Designs, specifications, formulae, systems, processes, information concerning materials and marketing and business information in general;
- 2.15 **Materials** means the Deliverables, the Service Provider Materials and the Third Party Materials;
- 2.16 **Parties** mean the Parties to the Agreement together with their subsidiaries, divisions, business units, successors-in-title and their assigns;
- 2.17 **Party** means either one of these Parties;
- 2.18 **Patents** mean registered Patents and Patent applications, once the latter have proceeded to grant, and includes a right granted for any inventions, products or processes in all fields of technology;
- 2.19 **Permitted Purpose** means any activity or process to be undertaken or supervised by Personnel or employees of one Party during the term of the Agreement, for which purpose authorised disclosure of the other Party's Confidential Information or Intellectual Property is a prerequisite in order to enable such activity or process to be accomplished;
- 2.20 **Personnel** means any partner, employee, agent, consultant, independent associate or supplier, Subcontractor and the staff of such Subcontractor, or other authorised representative of either Party;
- 2.21 **Purchase Order(s)** means official orders issued by an operating division of Transnet to the Service Provider for the provision of Services;
- 2.22 **Service(s)** means [●], the Service(s) provided to Transnet by the Service Provider, pursuant to the Work Order(s) in terms of the Agreement;
- 2.23 **Service Level Agreement** or **SLA** means the processes, deliverables, key performance indicators and performance standards relating to the Services to be provided by the Service Provider;
- 2.24 **Subcontract** means any contract or agreement or proposed contract or agreement between the Service Provider and any third party whereby that third party agrees to provide to the Service Provider the Services or any part thereof;
- 2.25 **Subcontractor** means the third party with whom the Service Provider enters into a Subcontract;
- 2.26 **Service Provider Materials** means all works of authorship, products and materials [including, but not limited to, data, diagrams, charts, reports, specifications, studies, inventions, software, software development tools, methodologies, ideas, methods, processes, concepts and techniques] owned by, or licensed to, the Service Provider prior to the Commencement Date or independently developed by the Service Provider outside the scope of the Agreement at no expense to Transnet, and used by the Service Provider in the performance of the Services;
- 2.27 **Tax Invoice** means the document as required by Section 20 of the Value-Added Tax Act, 89 of 1991, as may be amended from time to time;

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

### 3 INTERPRETATION

- 3.1 Clause headings in the Agreement are included for ease of reference only and do not form part of the Agreement for the purposes of interpretation or for any other purpose. No provision shall be construed against or interpreted to the disadvantage of either Party hereto by reason of such Party having or being deemed to have structured or drafted such provision.
- 3.2 Any term, word, acronym or phrase used in the Agreement, other than those defined under the clause heading "Definitions" shall be given its plain English meaning, and those terms, words, acronyms, and phrases used in the Agreement will be interpreted in accordance with the generally accepted meanings accorded thereto.
- 3.3 A reference to the singular incorporates a reference to the plural and *vice versa*.
- 3.4 A reference to natural persons incorporates a reference to legal persons and *vice versa*.
- 3.5 A reference to a particular gender incorporates a reference to the other gender.

### 4 NATURE AND SCOPE

- 4.1 The Agreement is an agreement under the terms and conditions of which the Service Provider will arrange for the provision to Transnet of the Services which meet the requirements of Transnet, the delivery of which Services is controlled by means of Purchase Orders to be issued by Transnet and executed by the Service Provider, in accordance with the Agreement.
- 4.2 Such Purchase Orders shall be agreed between the Parties from time to time, subject to the terms of the relevant Work Order(s).
- 4.3 Each properly executed Purchase Order forms an inseparable part of the Agreement as if it were fully incorporated into the body of the Agreement.
- 4.4 During the period of the Agreement, both Parties can make written suggestions for amendments to the Work Order(s), in accordance with procedures set out in clause 28 [*Amendment and Change Control*] below. A Party will advise the other Party within 14 [fourteen] Business Days, or such other period as mutually agreed, whether the amendment is acceptable.
- 4.5 Insofar as any term, provision or condition in the Work Order(s) conflicts with a like term, provision or condition in the Agreement and/or a Purchase Order, or where the Agreement is silent on the matter, the term, provision or condition in this Master Agreement shall prevail, unless such term or provision or condition in this Master Agreement has been specifically revoked or amended by mutual written agreement between the Parties.



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

## **5 AUTHORITY OF PARTIES**

- 5.1 Nothing in the Agreement will constitute or be deemed to constitute a partnership between the Parties, or constitute or be deemed to constitute the Parties as agents or employees of one another for any purpose or in any form whatsoever.
- 5.2 Neither Party shall be entitled to, or have the power or authority to enter into an agreement in the name of the other; or give any warranty, representation or undertaking on the other's behalf; or create any liability against the other or bind the other's credit in any way or for any purpose whatsoever.

## **6 WARRANTIES**

- 6.1 The Service Provider warrants to Transnet that:
- a) it has full capacity and authority to enter into and to perform the Agreement and that the Agreement is executed by a duly authorised representatives of the Service Provider;
  - b) it will discharge its obligations under the Agreement and any annexure, appendix or schedule hereto with all due skill, care and diligence;
  - c) it will be solely responsible for the payment of remuneration and associated benefits, if any, of its Personnel and for withholding and remitting income tax for its Personnel in conformance with any applicable laws and regulations;
  - d) it will procure licences for Transnet in respect of all Third Party Material detailed in the Work Order(s), and will procure the right for Transnet to take such copies [in whole or in part] of such Third Party Materials as it may reasonably require for the purposes of back-up for archiving and disaster recovery; and
  - e) the use or possession by Transnet of any Materials will not subject Transnet to any claim for infringement of any Intellectual Property Rights of any third party.
- 6.2 The Service Provider warrants that it will perform its obligations under the Agreement in accordance with the Service Levels as defined in the relevant schedule. Transnet may at its discretion audit compliance with the Service Levels, provided that any such audit is carried out with reasonable prior notice and in a reasonable way so as not to have an adverse effect on the performance of the Services. Without prejudice to clause 6.3 below, in the event that the Service Provider fails to meet the Service Levels, Transnet may claim appropriate service credits or invoke a retention of Fees as detailed in the relevant schedule and/or Work Order.
- 6.3 The Service Provider warrants that for a period of 90 [ninety] days from Acceptance of the Deliverables they will, if properly used, conform in all material respects with the requirements set out in the relevant schedule. The Service Provider will at its expense remedy any such non-conformance as soon as possible but in any event within 30 [thirty] days of notification by



Transnet. In the event that the Service Provider fails or is unable to remedy such non-conformance within such time-scale, Transnet will be entitled to employ a third party to do so in place of the Service Provider and any excess charges or costs incurred by Transnet as a result shall be paid by the Service Provider.

- 6.4 The Service Provider will remedy any defect within 30 [thirty] days of being notified of that defect by Transnet in writing.
- 6.5 The Service Provider will not be liable to remedy any problem arising from or caused by any modification made by Transnet to the Deliverables, or any part thereof, without the prior approval of the Service Provider.
- 6.6 The Service Provider shall advise Transnet of the effects of any steps proposed by Transnet pursuant to clause 6.5 above, including but not limited to any cost implications or any disruption or delay in the performance of the Services. The Parties agree that any changes to the Services, including the charges for the Services or any timetables for delivery of the Services, will be agreed in accordance with the change control procedure, as set out in clause 28 *[Amendment and Change Control]*.

- 6.7 The Service Provider warrants that:

- a) it has, using the most up-to-date software available, tested for [and deleted] all commonly known viruses in the Materials and for all viruses known by the Service Provider at the date of the relevant Work Order; and
- b) at the time of delivery to Transnet, the Materials do not contain any trojan horse, worm, logic bomb, time bomb, back door, trap door, keys or other harmful components.

The Service Provider agrees that, in the event that a virus is found, it will at its own expense use its best endeavours to assist Transnet in reducing the effect of the virus and, particularly in the event that a virus causes loss of operational efficiency or loss of data, to assist Transnet to the same extent to mitigate such losses and to restore Transnet to its original operating efficiency.

- 6.8 The Service Provider undertakes to comply with South Africa's general privacy protection in terms of Section 14 of the Bill of Rights in connection with the Agreement and shall procure that its Personnel shall observe the provisions of Section 14 [as applicable] or any amendments and re-enactments thereof and any regulations made pursuant thereto.

- 6.9 The Service Provider warrants that it has taken all reasonable precautions to ensure that, in the event of a disaster, the impact of such disaster on the ability of the Service Provider to comply with its obligations under the Agreement will be reduced to the greatest extent possible, and that the Service Provider shall ensure that it has appropriate, tested and documented recovery arrangements in place.

- 6.10 In compliance with the National Railway Safety Regulator Act, 16 of 2002, the Service Provider shall ensure that the Services, to be supplied to Transnet under the terms and conditions of the Agreement, comply fully with the specifications as set forth in Schedule 1 hereto, and shall thereby adhere [as applicable] to railway safety requirements and/or regulations. Permission for the engagement of a Subcontractor by the Service Provider [as applicable] shall be subject to a review of the capability of the proposed Subcontractor to comply with the specified railway safety requirements and/or regulations. The Service Provider and/or its Subcontractor shall grant Transnet access, during the term of the Agreement, to review any safety-related activities, including the coordination of such activities across all parts of its organisation.

## **7 TRANSNET'S OBLIGATIONS**

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

## **8 GENERAL OBLIGATIONS OF THE SERVICE PROVIDER**

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

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

## **9 FEES AND EXPENSES**

- 9.1 In consideration of the provision of the Services, Transnet will pay to the Service Provider the Fees detailed in the relevant schedule or Work Order.
- 9.2 Transnet will not be invoiced for materials used in the provision of the Services save for those materials [if any] set out in the Work Order and accepted by Transnet or in any relevant Work Order [which will be invoiced to Transnet at cost].
- 9.3 Unless otherwise agreed in a schedule or Work Order, Transnet will reimburse to the Service Provider all reasonable and proper expenses incurred directly and solely in connection with the provision of the Services, provided that all such expenses:
  - a) are agreed by Transnet in advance;
  - b) are incurred in accordance with Transnet's standard travel and expenses policies;
  - c) are passed on to Transnet at cost with no administration fee; and
  - d) will only be reimbursed if supported by relevant receipts.

- 9.4 All Tax Invoices relating to Fees, out of pocket expenses and, if applicable, travel and accommodation costs, will provide the detail for each of the Personnel carrying out the Services and incurring the expenses, and the Tax Invoice will, where appropriate, include VAT as a separate item.

## **10 INVOICING AND PAYMENT**

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

## **11 FEE ADJUSTMENTS**

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

## **12 INTELLECTUAL PROPERTY RIGHTS**

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

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

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

#### 12.2 Title to Intellectual Property

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

#### 12.3 Title to Improvements

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



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

**12.4 Unauthorised Use of Confidential Information**

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

**12.5 Unauthorised Use of Intellectual Property**

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

**13 SERVICE PROVIDER'S PERSONNEL**

- 13.1 The Service Provider's Personnel shall be regarded at all times as employees, agents or Subcontractors of the Service Provider and no relationship of employer and employee shall arise between Transnet and any Service Provider Personnel under any circumstances regardless of the degree of supervision that may be exercised over the Personnel by Transnet.
- 13.2 The Service Provider warrants that all its Personnel will be entitled to work in South Africa or any other country in which the Services are to be performed.
- 13.3 The Service Provider will ensure that its Personnel comply with all reasonable requirements made known to the Service Provider by Transnet concerning conduct at any Transnet premises or any other premises upon which the Services are to be performed [including but not limited to security regulations, policy standards and codes of practice and health and safety requirements]. The Service Provider will ensure that such Personnel at all times act in a lawful and proper manner in accordance with these requirements.



- 13.4 Transnet reserves the right to refuse to admit or to remove from any premises occupied by or on behalf of it, any Service Provider Personnel whose admission or presence would, in the reasonable opinion of Transnet, be undesirable or who represents a threat to confidentiality or security or whose presence would be in breach of any rules and regulations governing Transnet's Personnel, provided that Transnet notifies the Service Provider of any such refusal [with reasons why]. The reasonable exclusion of any such individual from such premises shall not relieve the Service Provider from the performance of its obligations under the Agreement.
- 13.5 The Service Provider agrees to use all reasonable endeavours to ensure the continuity of its Personnel assigned to perform the Services. If any re-assignment by the Service Provider of those Personnel is necessary, or if Transnet advises that any such Personnel assigned are in any respect unsatisfactory, including where any such Personnel are, or are expected to be or have been absent for any period, then the Service Provider will promptly supply a replacement of equivalent calibre and experience, and any such replacement shall be approved by Transnet prior to commencing provision of the Services, such approval not to be unreasonably withheld or delayed.

#### **14 LIMITATION OF LIABILITY**

- 14.1 Neither Party excludes or limits liability to the other Party for:
- a) death or personal injury due to negligence; or
  - b) fraud.
- 14.2 The Service Provider shall indemnify and keep Transnet indemnified from and against liability for damage to any Transnet property [whether tangible or intangible] or any other loss, costs or damage suffered by Transnet to the extent that it results from any act of or omission by the Service Provider or its Personnel in connection with the Agreement. The Service Provider's liability arising out of this clause 14.2 shall be limited to a maximum amount payable in respect of any one occurrence or a series of related occurrences in a single calendar year, such amount to be agreed in writing by the Parties.
- 14.3 Subject always to clauses 14.1 and 14.2 above, the liability of either the Service Provider or Transnet under or in connection with the Agreement, whether for negligence, misrepresentation, breach of contract or otherwise, for direct loss or damage arising out of each Default or series of related Defaults shall not exceed 100% [one hundred per cent] of the Fees paid under the schedule or Work Order to which the Default(s) relates.
- 14.4 Subject to clause 14.1 above, and except as provided in clauses 14.2 and 14.3 above, in no event shall either Party be liable to the other for indirect or consequential loss or damage or including indirect or consequential loss of profits, business, revenue, goodwill or anticipated savings of an indirect nature or loss or damage incurred by the other Party as a result of third party claims.
- 14.5 If for any reason the exclusion of liability in clause 14.4 above is void or unenforceable, either Party's total liability for all loss or damage under the Agreement shall be as provided in clause 14.3 above.
- 14.6 Nothing in this clause 14 shall be taken as limiting the liability of the Service Provider in respect of clause 12 [*Intellectual Property Rights*] or clause 16 [*Confidentiality*].

## 15 INSURANCES

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

## 16 CONFIDENTIALITY

- 16.1 The Parties hereby undertake the following, with regard to Confidential Information:
- a) not to divulge or disclose to any person whomsoever in any form or manner whatsoever, either directly or indirectly, any Confidential Information of the other, without the prior written consent of such other Party, other than when called upon to do so in accordance with a statute, or by a court having jurisdiction, or by any other duly authorised and empowered authority or official, in which event the Party concerned shall do what is reasonably possible to inform the other of such a demand and each shall assist the other in seeking appropriate relief or the instituting of a defensive action to protect the Confidential Information concerned;
  - b) not to use, exploit, permit the use of, directly or indirectly, or in any other manner whatsoever apply the Confidential Information, disclosed to it as a result of the Agreement, for any purpose whatsoever other than for the purpose for which it is disclosed or otherwise than in strict compliance with the provisions in the Agreement;
  - c) not to make any notes, sketches, drawings, photographs or copies of any kind of any part of the disclosed Confidential Information, without the prior written consent of such other Party, except when reasonably necessary for the purpose of the Agreement, in which case such copies shall be regarded as Confidential Information;

- d) not to de-compile, disassemble or reverse engineer any composition, compilation, concept application, item, component de-compilation, including software or hardware disclosed and shall not analyse any sample provided by Transnet, or otherwise determine the composition or structure or cause to permit these tasks to be carried out except in the performance of its obligations pursuant to the Agreement;
- e) not to exercise less care to safeguard Transnet Confidential Information than the Party exercises in safeguarding its own competitive, sensitive or Confidential Information;
- f) Confidential Information disclosed by either Party to the other or by either Party to any other party used by such Party in the performance of the Agreement, shall be dealt with as "restricted" or shall be dealt with according to any other appropriate level of confidentiality relevant to the nature of the information concerned, agreed between the Parties concerned and stipulated in writing for such information in such cases;
- g) the Parties shall not make or permit to be made by any other person subject to their control, any public statements or issue press releases or disclose Confidential Information with regard to any matter related to the Agreement, unless written authorisation to do so has first been obtained from the Party first disclosing such information;
- h) each Party shall be entitled to disclose such aspects of Confidential Information as may be relevant to one or more technically qualified employees or consultants of the Party who are required in the course of their duties to receive the Confidential Information for the Permitted Purpose provided that the employee or consultant concerned has a legitimate interest therein, and then only to the extent necessary for the Permitted Purpose, and is informed by the Party of the confidential nature of the Confidential Information and the obligations of the confidentiality to which such disclosure is subject and the Party shall ensure such employees or consultants honour such obligations;
- i) each Party shall notify the other Party of the name of each person or entity to whom any Confidential Information has been disclosed as soon as practicable after such disclosure;
- j) each Party shall ensure that any person or entity to which it discloses Confidential Information shall observe and perform all of the covenants the Party has accepted in the Agreement as if such person or entity has signed the Agreement. The Party disclosing the Confidential Information shall be responsible for any breach of the provisions of the Agreement by the person or entity; and
- k) each Party may by written notice to the other Party specify which of the Party's employees, officers or agents are required to sign a non-disclosure undertaking.

16.2 The duties and obligations with regard to Confidential Information in this clause 16 shall not apply where:

- a) a Party can demonstrate that such information is already in the public domain or becomes available to the public through no breach of the Agreement by that Party, or its Personnel; or
- b) was rightfully in a Party's possession prior to receipt from the other Party, as proven by the first-mentioned Party's written records, without an infringement of an obligation or duty of confidentiality; or
- c) can be proved to have been rightfully received by a Party from a third party without a breach of a duty or obligation of confidentiality; or

d) is independently developed by a Party as proven by its written records.

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

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

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

## 18 TERM AND TERMINATION

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

- a) the Agreement is terminated by either Party in accordance with the provisions incorporated herein or in any schedules or annexures appended hereto, or otherwise in accordance with law or equity; or
- b) the Agreement is extended at Transnet's option for a further period to be agreed by the Parties.

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

18.3 Either Party may terminate the Agreement forthwith by notice in writing to the other Party when the other Party is unable to pay its debts as they fall due or commits any act or omission which would be an act of insolvency in terms of the Insolvency Act, 24 of 1936 [as may be amended from time to time], or if any action, application or proceeding is made with regard to it for:

- a) a voluntary arrangement or composition or reconstruction of its debts;
- b) its winding-up or dissolution;
- c) the appointment of a liquidator, trustee, receiver, administrative receiver or similar officer; or
- d) any similar action, application or proceeding in any jurisdiction to which it is subject.

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

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

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

## 19 CONSEQUENCE OF TERMINATION

- 19.1 Termination in accordance with clause 18 [*Term and Termination*] shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to either Party and all provisions which are to survive the Agreement or impliedly do so shall remain in force and in effect.
- 19.2 On termination of the Agreement or a Work Order, the Service Provider will immediately deliver up, and procure that its Personnel will immediately deliver up to Transnet, all Deliverables and property belonging to Transnet [or, in the event of termination of a Work Order, such as is relevant to that Work Order] which may be in the possession of, or under the control of the Service Provider, and certify to Transnet in writing that this has been done.
- 19.3 To the extent that any of the Deliverables and property referred to in clause 19.2 above are in electronic form and contained on non-detachable storage devices, the Service Provider will provide Transnet with unencrypted copies of the same on magnetic media and will irretrievably destroy and delete copies so held.
- 19.4 In the event that the Agreement is terminated by the Service Provider under clause 18.2 [*Term and Termination*], or in the event that a Work Order is terminated by Transnet under clause 18.5 [*Term and Termination*], Transnet will pay to the Service Provider all outstanding Fees [apportioned on a *pro rata* basis] relating to the work undertaken by the Service Provider up until the date of such termination. Transnet will also pay the costs of any goods and materials ordered by the Service Provider in relation to the such work for which the Service Provider has paid or is legally obliged to pay, in which case, on delivery of such goods or materials, the Service Provider will promptly deliver such goods and materials to Transnet or as it may direct.
- 19.5 The provisions of clauses 1 [*Definitions*], 6 [*Warranties*], 12 [*Intellectual Property Rights*], 14 [*Limitation of Liability*], 16 [*Confidentiality*], 19 [*Consequence of Termination*], 25 [*Dispute Resolution*] and 29 [*Governing Law*] shall survive termination or expiry of the Agreement.
- 19.6 If either Party [**the Defaulting Party**] commits a material breach of the Agreement and fails to remedy such breach within 30 [thirty] Business Days of written notice thereof, the other Party [hereinafter **the Aggrieved Party**], shall be entitled, in addition to any other rights and remedies that it may have in terms of the Agreement, to terminate the Agreement forthwith without any liability and without prejudice to any claims which the Aggrieved Party may have for damages against the Defaulting Party.
- 19.7 Should:
- a) the Service Provider effect or attempt to effect a compromise or composition with its creditors; or
  - b) either Party be provisionally or finally liquidated or placed under judicial management, whether provisionally or finally; or
  - c) either Party cease or threaten to cease to carry on its normal line of business or default or threaten to default in the payment of its liabilities generally, or commit any act or omission which would be an act of insolvency in terms of the Insolvency Act, 24 of 1936 [as may be amended from time to time];



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

## **20 ASSIGNMENT**

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

## **21 FORCE MAJEURE**

- 21.1 Neither Party shall have any claim against the other Party arising from any failure or delay in the performance of any obligation of either Party under the Agreement caused by an act of *force majeure* such as acts of God, fire, flood, war, strike, lockout, industrial dispute, government action, laws or regulations, riots, terrorism or civil disturbance, defaults, delays or discontinuance on the part of independent contractors, suppliers, or other circumstances or factors beyond the reasonable control of either Party, and to the extent that the performance of obligations of either Party hereunder is delayed by virtue of the foregoing, any period stipulated for any such performance shall be reasonably extended.
- 21.2 Each Party will take all reasonable steps by whatever lawful means that are available, to resume full performance as soon as practicable and will seek agreement to modification of the relevant provisions of the Agreement in order to accommodate the new circumstances caused by the act of *force majeure*. If a Party fails to agree to such modifications proposed by the other Party within 90 [ninety] days of the act of *force majeure* first occurring, either Party may thereafter terminate the Agreement with immediate notice.

## **22 EQUALITY AND DIVERSITY**

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

## **23 NON-WAIVER**

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



## 24 PARTIAL INVALIDITY

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

## 25 DISPUTE RESOLUTION

- 25.1 Should any dispute of whatsoever nature arise between the Parties concerning the Agreement, the Parties shall try to resolve the dispute by negotiation within 10 [ten] Business Days of such dispute arising.
- 25.2 If the dispute has not been resolved by such negotiation, either of the Parties may refer the dispute to AFSA and notify the other Party accordingly, which proceedings shall be held in Johannesburg.
- 25.3 Such dispute shall be finally resolved in accordance with the rules of AFSA by an arbitrator or arbitrators appointed by AFSA.
- 25.4 This clause constitutes an irrevocable consent by the Parties to any proceedings in terms hereof, and neither of the Parties shall be entitled to withdraw from the provisions of this clause or claim at any such proceedings that it is not bound by this clause 25.
- 25.5 This clause 25 is severable from the rest of the Agreement and shall remain in effect even if the Agreement is terminated for any reason.
- 25.6 This clause 25 shall not preclude either Party from seeking urgent relief in a court of appropriate jurisdiction, where grounds for urgency exist.

## 26 ADDRESSES FOR NOTICES

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

a) **Transnet**

- (i) For legal notices: [•]  
Fax No. [•]  
Attention: Legal Counsel
- (ii) For commercial matters: [•]  
Fax No. [•]  
Attention: [•]

b) **The Service Provider**

- (i) For legal notices: [•]  
Fax No. [•]  
Attention: [•]
- (ii) For commercial matters: [•]

Fax No. [●]

Attention: [●]

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

26.3 Any notice shall be deemed to have been given:

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

## **27 WHOLE AND ONLY AGREEMENT**

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

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

## **28 AMENDMENT AND CHANGE CONTROL**

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

28.2 In the event the Parties cannot agree upon changes, the Parties shall in good faith seek to agree any proposed changes using the dispute resolution procedures in clause 25 [*Dispute Resolution*].

## **29 GOVERNING LAW**

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

### **29.1 Change of Law**

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

### **30 COUNTERPARTS**

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

ooo000ooo

“PREVIEW COPY ONLY”



**Appendix (iii)**

**GUIDELINES FOR COMPLETION OF THE  
SUPPLIER DEVELOPMENT BID DOCUMENT  
[October 2012]**

“PREVIEW COPY ONLY”

## TABLE OF CONTENTS

1	WHAT IS SUPPLIER DEVELOPMENT?.....	3
2	BACKGROUND AND GUIDANCE ON THE SUPPLIER DEVELOPMENT OBJECTIVES FOR SOUTH AFRICA .....	3
3	TRANSNET'S SUPPLIER DEVELOPMENT OBJECTIVES AND FRAMEWORK .....	4
4	RESPONSE BASED ON THE IC <sup>3</sup> MATRIX QUADRANTS .....	5
5	SUPPLIER DEVELOPMENT CATEGORY DEFINITIONS AND HIGH LEVEL DESCRIPTIONS .....	8
6	MARKET INTELLIGENCE ASSISTANCE .....	11
7	GOVERNMENT POLICY DOCUMENTS.....	12
8	OTHER REFERENCE WEBSITES.....	12
	GLOSSARY OF WORDS .....	13

### Note

For the purposes of this document, any reference to a/the "**Service Provider**" shall be construed to mean a reference to a Respondent (in terms of this RFP) and/or to a successful Respondent (to whom the business is to be awarded), as so indicated by the context hereinafter.

## 1 What is Supplier Development?

The Supplier Development (**SD**) Programme is an initiative of the Department of Public Enterprises (**DPE**) supported by Transnet. The aim of SD is to increase the competitiveness, capability and capacity of the South African supply base where there are comparative advantages and potential for local or regional supply. This can be achieved through skills transfer, as well as building new capability and capacity in the South African supply base. In addition, SD has its roots grounded firmly around the transformation of South Africa and the empowerment of previously disadvantaged individuals and enterprises.

## 2 Background and Guidance on the Supplier Development Objectives for South Africa

As a developing economy with inherent structural and social imbalances, South Africa is facing the significant economic challenge of increasing growth in a manner that includes all South Africans. The historical lack of investment in infrastructure in South Africa has negatively impacted on local industry, resulting in a loss of key skills and a decrease in manufacturing industry capabilities. To respond to this, Government policies have been designed to address these imbalances and to act as a catalyst of change for the benefit of South Africa.

One of these Government policies, the New Growth Path (**NGP**) aims to enhance growth, employment creation and equity by reducing the dependencies of South African industries on imports, and promoting the development of skills and capabilities that are in short supply within the country. It identifies strategies that will enable South Africa to grow in a more equitable and inclusive manner and promotes the development of new industry to attain South Africa's developmental agenda.

Transnet's SD effort is closely aligned to the NGP objectives and as a result we are able to fulfil our commitment to sustainability within South Africa whilst at the same time addressing other corporate objectives including increasing productivity and efficiency, volume growth, capital investment, financial stability, funding, human capital, SHEQ regulatory compliance and improving customer service.

The combined objectives of Transnet and Government will be realised through:

- aggressively implementing capital investment plans which will result in competitive local industries;
- improving operational efficiency;
- using procurement to influence the development of the local supplier industry; and
- ensuring it creates sufficient economic opportunities for the participation of previously disadvantaged groups.

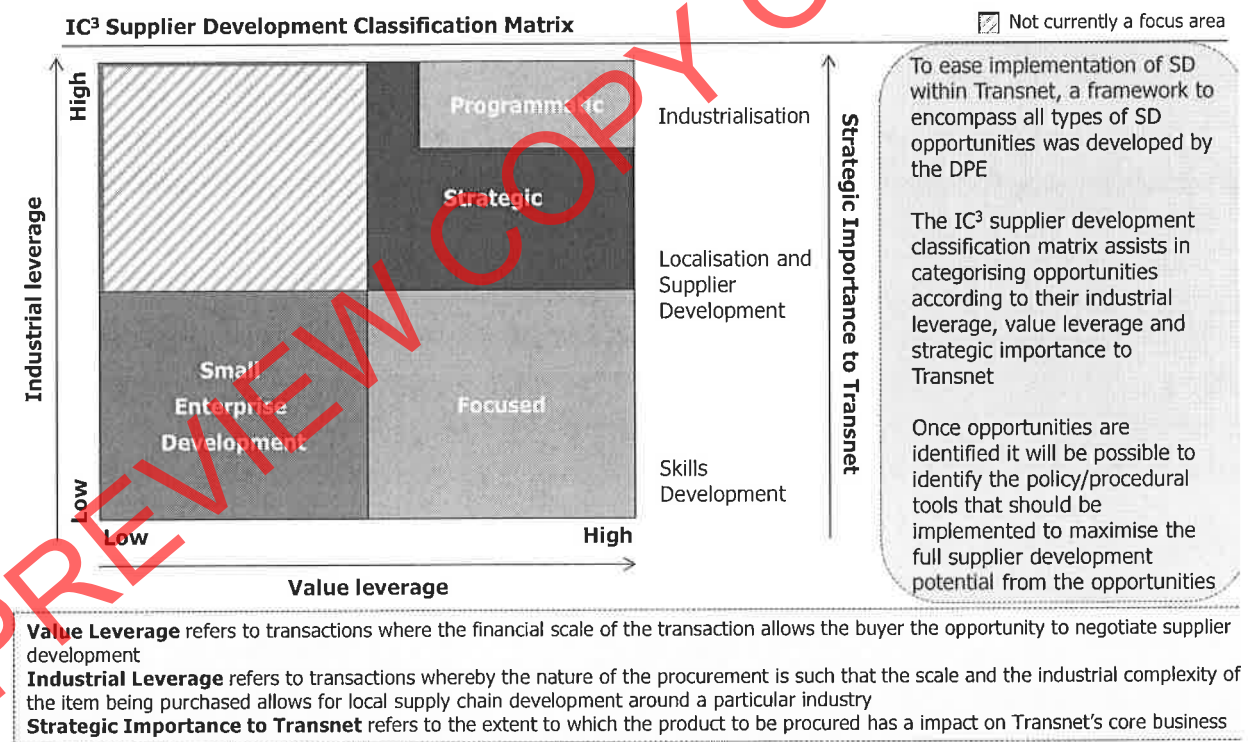
This will lead to Transnet achieving its long-term objective of increasing both shareholder and societal value using its procurement expenditure to ensure local development through the sustainable growth of capability and capacity in South Africa's supply chain and the inclusion of the previously disadvantaged individuals in the economy in a manner that is beneficial to Transnet, South African industry and the people of South Africa. As a result this State Owned Company (**SOC**) is able to fulfil its responsibility as the biggest link in the South African freight logistics chain whilst complementing the objectives of Government.



### 3 Transnet's Supplier Development Objectives and Framework

To aid its implementation of SD, Transnet has adapted an existing framework from the DPE. This framework allows for a basic set of principles to be applied to appropriately target SD initiatives. Supplier Development initiatives aim to assist local suppliers in developing their competitive advantage through increasing their capability and capacity potential. Hence the framework has been termed the Increased Competitiveness, Capability and Capacity (**IC<sup>3</sup>**) Supplier Development Classification Matrix.

This framework encapsulates the types of SD opportunities which Transnet currently considers effective and allows Transnet to move its SD structure away from a dynamic policy environment towards a framework that is designed around general Supplier Development objectives. This enables Transnet to adopt a standard structure but also allows the flexibility to reconsider emphasis on certain aspects as objectives change. The IC<sup>3</sup> Matrix (refer to Figure 1 below) categorises SD opportunities in a matrix based on their value, extent of industrial leverage and strategic importance to Transnet. Further categorisation of opportunities into the relevant quadrants is based on supplier-buyer power, industrial complexity, risk and the length of procurement period.



**Figure 1: The IC<sup>3</sup> Supplier Development Classification Matrix**

In order for Service Providers to successfully meet the needs of a particular initiative, a detailed understanding of each quadrant is required.

#### 3.1 Programmatic

Programmatic initiatives follow a longer than normal planning horizon and generally exceed the funding capacity of Transnet's balance sheet. Collaboration between the SOC and Government is achieved through focused task teams whereby infrastructure development and industrialisation is achieved through joint support and in some cases public spending. Investment is focused in plant,

technology and skills in both intermediate and advanced capabilities to develop competitive advantage.

### 3.2 **Strategic**

Strategic initiatives follow a three to five year planning horizon, involving investment in at least plant, technology and/or skills in intermediate capabilities. This enforces the need for multinational corporations and Original Equipment Manufacturers (**OEMs**) to develop a certain percentage of their products locally. Strategic initiatives can therefore be used to achieve Transnet's objectives by increasing the competitiveness, capability and efficiency of local suppliers. Strategic initiatives can sometimes focus on advanced capabilities but will in most cases require Government support to develop local capability.

### 3.3 **Focused**

Focused initiatives include all high value transactions with limited industrial leverage and medium to low strategic importance. These initiatives address short to medium-term contracts that can be leveraged to encourage Supplier Development, with a focus on investment in technology or skills to enhance existing local capability. Emphasis will largely be placed on benefiting previously disadvantaged individuals. The overall result improves the socio-economic environment by creating competitive local suppliers and furthers objectives of empowerment, transformation and regional development.

### 3.4 **Small Enterprise Development**

Small Enterprise Development initiatives are typically of low value and have no industrial leverage as they are characterised by typically low complexity goods and high competition. These initiatives concentrate on increasing the capability of small local suppliers and are targeted toward historically disadvantaged individuals and communities, providing basic skills development and improving local employment and quality job creation. It includes a wide range of non-financial services that help entrepreneurs start new business and grow existing ones.

## 4 **Response based on the IC<sup>3</sup> Matrix Quadrants**

Based on the supplier-buyer power, industrial complexity, risk and the length of procurement period, the Service Provider is expected to formulate a SD Bid Document to identify the opportunities that it will pursue. Ideally the SD Bid Document should address factors that are specific to the applicable quadrant of the IC<sup>3</sup> matrix.

Transnet has identified a number of opportunities which may aid a Service Provider in formulating its response based on each quadrant. Each of the opportunities identified by the Service Provider should have a direct or indirect effect on the value it creates for the country in order to maximise the socio-economic impact.

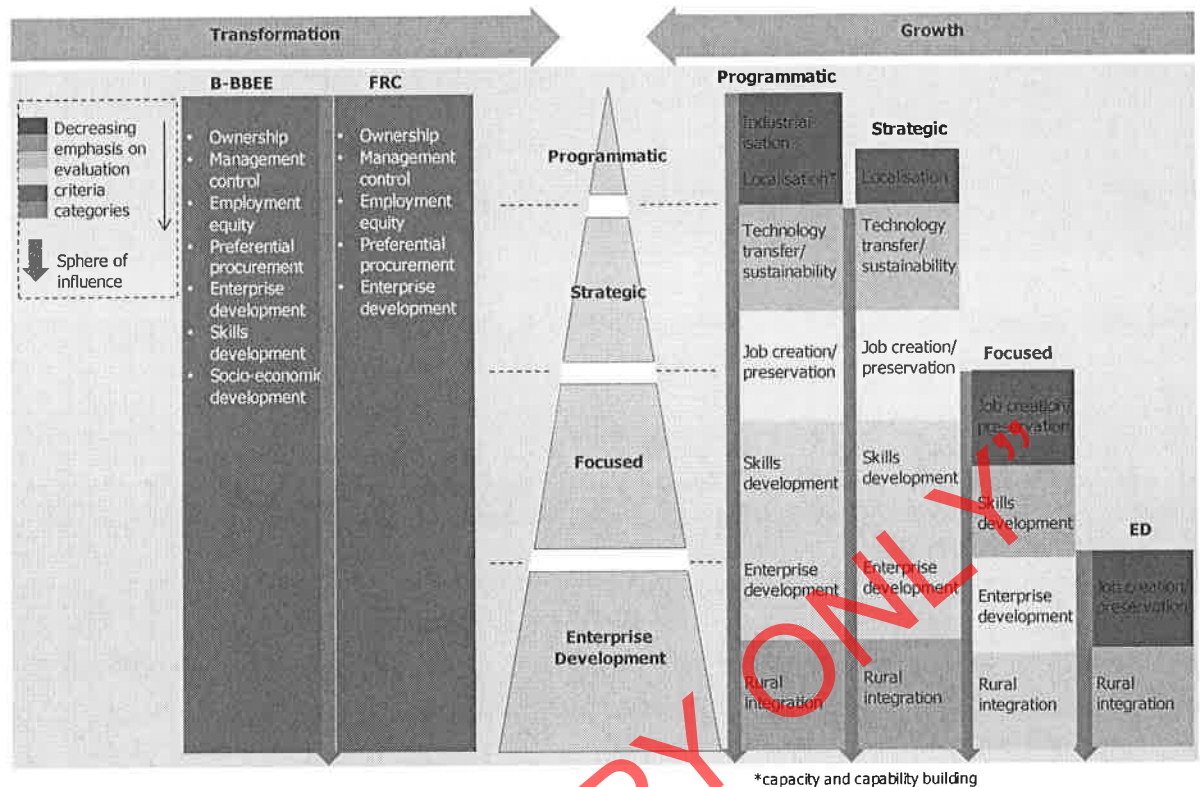


Figure 2: Transnet value capture through supplier influence

#### 4.1 Programmatic

The strategic objective of "Programmatic transactions" is to assist Government to achieve its industrialisation objectives through the development of the local supplier base, in order to increase the cost efficiency of SOC procurement, support and maintenance programmes. In order to satisfy this objective a number of focus areas and key outcomes have been identified:

##### a) Programmatic Focus Areas -

- Industrialisation
- Capability and capacity building in South Africa
- Technology transfer
- Skills development related to the manufacturing process and the industry
- Development of new technology and innovation
- Investment in plant
- Development of FRC local companies aligned to empowerment objectives

##### b) Key Outcomes -

- Industrialisation
- Manufacturing capability and capacity building
- Technology transfer
- Skills development

#### 4.2 Strategic

The main objective of Strategic transactions is to leverage local downstream suppliers through large-scale SOC procurement in order to develop a competitive local supplier base. In response to these objectives the following are the specific focus areas and key outcomes applicable:

- a) Strategic Focus Areas -
  - Capability and capacity building in South Africa
  - Transfer of technology and innovation to local suppliers from foreign OEM's
  - Skills development related to the industry
  - Development of local companies aligned to empowerment objectives
- b) Key Outcomes -
  - Increased S.A. manufacturing capability and capacity
  - Increased technology transfer
  - Skills development
  - Job creation/preservation

#### 4.3 Focused

Focused initiatives assist local suppliers to improve their performance, enhance their existing production and skills capabilities with emphasis being placed on benefiting previously disadvantaged individuals and rural development. In order to satisfy these objectives a number of focus areas and key outcomes have been identified:

- a) Focused Focus Areas -
  - Developing a local supplier base that supports preferential procurement outcomes
  - Developing skills within the specific industry
  - Creating opportunity for job preservation
  - Reducing income inequality in specific regions
- b) Key Outcomes -
  - Empowerment
  - Skills development
  - Rural development
  - Job creation/preservation

#### 4.4 Small Business Development

Enterprise Development (ED) objectives are centred around assisting local suppliers to improve their skills by placing increased emphasis on benefiting previously disadvantaged individuals and rural development in line with the Broad-Based Black Economic Empowerment (B-BBEE) strategy. The following focus areas and key outcomes have been identified:

- a) Small Business Development Focus Areas -
  - Providing small businesses with opportunities and preferential trading terms, increased focus on Black woman-owned enterprises, focus on the youth, people with disabilities and region-specific initiatives

- Empowering previously disadvantaged individuals to create their own businesses resulting in quality job creation
- b) Key Outcomes -
- Empowerment
  - Rural development
  - Skills development
  - Job creation/preservation

Based on these focus areas and key outcomes, a Service Provider would need to actively focus on the quadrant-specific requirements in order to maximise the potential commercial benefit for Transnet, South Africa and themselves. In doing so value can be created across all lines of reporting resulting in continued relations.

## 5 Supplier Development Category Definitions and High Level Descriptions

### 5.1 Industrialisation

Industrialisation refers specifically to industrial development that will result in globally leading capabilities within South Africa.

Criteria	Description
➤ Value of investment in plant	➤ Quantification of the monetary value invested in machinery, equipment and/or buildings as a result of this RFP
➤ Percentage of the investment of plant purchased in South Africa	➤ Percentage value invested in machinery, equipment and/or buildings that are sourced from local companies
➤ Reduction in import leakage	➤ A percentage indication of the increase in locally supplied products and therefore the resultant decrease in imports as a result of the award of a contract
➤ Potential increase in export content	➤ The percentage increase in exports that will result from increased industrial capability locally in relation to the award of a contract

### 5.2 South African Capability and Capacity Building

South African capability and capacity building refers specifically to industrial development that focuses on value-added activities for the local industry through manufacturing or service-related functions.

Criteria	Description
➤ Value-added manufacturing activity/activities to be undertaken in South Africa	➤ Description of value-added activities to be performed during the contract period in South Africa
➤ Service-related functions to be undertaken in South Africa	➤ Description of service-related functions to be performed during the contract period in South Africa
➤ Number of local suppliers in the supply chain	➤ Number of South African suppliers that are to be utilised in the fulfilment of a contract



### 5.3 Technology transfer/sustainability

Technology improvements are intangible assets with significant economic value. The Service Provider will be measured on its plan to transfer knowledge and IP to contribute towards capability building of the local supply base, which ultimately leads to improved efficiency and capability. Plans to assist in this by a Service Provider must be assessed to enable the local supply base to potentially export its newly-acquired technological know-how, thereby decreasing capital leakage.

Criteria	Description
Technology transfer including:	
➤ Methods of manufacturing	➤ Introduction of a new/improved method of manufacturing
➤ Introduction of new technologies	➤ Provision of new technologies: <ul style="list-style-type: none"> <li>○ For processes</li> <li>○ ICT</li> </ul>
➤ IP transfer (number and value)	➤ The provision of patents, trademarks and copyrights
➤ Number of local suppliers to be evaluated for integration into the OEM supply chain	➤ An indication of the number of South African suppliers that an OEM/Service Provider plans to evaluate for possible inclusion into its supply chain, should it meet the requirements

### 5.4 Skills development

Skills development indicates the company's commitment to education and whether that fits in with targeted groups (artisans, technicians, etc.). Consideration needs to be directed towards the adequate quality and value of skills so developed in order to allow for better evaluation in line with Government's objectives.

Criteria	Description
➤ Number of downstream supply chain individuals to be trained including: <ul style="list-style-type: none"> <li>• Number of artisans trained</li> <li>• Number of technicians trained</li> <li>• Number of black people trained</li> <li>• Total number of people trained</li> </ul>	➤ Number of individuals that the Service Provider plans to train in the local industry over the contract period; training undertaken in the previous year will be taken into account
➤ Number of company employees to be trained	➤ Number of individuals within the company (in South Africa) that the Service Provider plans to train over the contract period; training undertaken in the previous year will not be taken into account as past employee training appears in the skills development pillar of the B-BBEE scorecard; criteria broken down as for industry training above
➤ Certified training (yes/ no)	➤ Compliance with local and/or international skills accreditation



Criteria	Description
➤ Rand value spent on training	➤ Total planned monetary value spend (as a % of contract value) on skills development /training for the contract period within the industry; money spent in the previous year will be included in year 1 to make allowance for Service Providers who have just completed a training drive within the industry
➤ Number of bursaries/ scholarships (specify field of study)	➤ The number of higher education bursaries/scholarships provided in the previous year and planned for the length of the contract
➤ Number of apprentices (sector must be specified)	➤ The number of apprentices that the Service Provider plans to enlist during the course of the contract
➤ Investment in Schools in specific sectors e.g. engineering	➤ The monetary value that the Service Provider is prepared to invest in the development and running of schools to increase technical skills development

#### 5.5 Job creation/preservation

Job creation and/or preservation allows assessment of Government's objectives to increase labour absorption, focusing on unskilled workers and the youth.

Criteria	Description
➤ Number of jobs preserved	➤ Number of jobs which would be preserved through Award of Contract
➤ Number of jobs created including: <ul style="list-style-type: none"> <li>• New skilled jobs created</li> <li>• New unskilled jobs created</li> </ul>	➤ Number of jobs to be created during the period of the contract <ul style="list-style-type: none"> <li>• Jobs for people in a specialised field of work requiring a defined training path and / or requisite level of experience in order for them to perform that role. These people could be in possession of a certificate, diploma or degree from a higher education institution.</li> <li>• Jobs for people where the field of work does not require extensive formal training or from whom no minimum level of education is required</li> </ul>
➤ Number of jobs created for youth	➤ Jobs created for individuals aged 16 – 35 years
➤ Number of jobs created for Black youth	➤ Jobs created for Black individuals aged 16 – 35 years

## 5.6 Small business promotion

Small business promotion criteria give an indication of the Service Provider's commitment to developing small business in line with NGP and B-BBEE requirements.

Criteria	Description
➤ Percentage procurement from: <ul style="list-style-type: none"> <li>• QSEs</li> <li>• EMEs</li> <li>• Start-ups</li> </ul>	➤ Refers to the planned procurement from small business as a % of the total planned procurement spend
➤ Non-financial support provided to small business	➤ Service Providers will be credited for each non-financial ED support that they are planning to give to small business e.g. Professional support; employee time allocated to assisting small business
➤ Financial support provided to small business	➤ Service Providers will be credited for each financial ED support initiative that they are planning to undertake during the contract period e.g. Shorter payment terms; interest free loans
➤ Joint ED initiatives with Transnet	➤ The number of ED initiatives that the Service Provider will jointly run with Transnet: <ul style="list-style-type: none"> <li>• That are aligned to Transnet's objectives</li> <li>• That are non-financial in nature</li> </ul>

## 5.7 Rural development/integration

Rural development / integration indicates the Service Provider's planned use of local labour and business which will contribute to Governments NGP objectives and result in supply chain efficiencies. Commitment to rural development will result in the alleviation of poverty and thereby contribute to development objectives. The development must be sustainable in order to have a long-term and meaningful impact.

Criteria	Description
➤ Number of local employees	➤ Number of people employed from within the town/city of operation
➤ Value spent on local business	➤ Monetary value spent on businesses within the town/city of operation
➤ Proximity of business to operations	➤ The locality of the business in relation to operations, preference is given for regional (provincial) locality
➤ Number of rural businesses to be developed	➤ The number of rural businesses that the Service Provider plans to develop as a result of the contract
➤ Value of development to local community (sustainable)	➤ The monetary value spent on rural community development that will result in long-term social improvements

## 6 Market Intelligence Assistance

Service Providers with limited knowledge of the local market, supply base and its capabilities may require assistance in identifying local suppliers and the development needs in order to develop its SD Bid

Document. The United Nations Industrial Development Organisation (UNIDO) supplies a benchmarking service in South Africa which will be able to assist Service Providers in identifying potential local suppliers with which to work. In addition, this service will provide insight as to the type of support that these local suppliers require in order to become more competitive. UNIDO's benchmarking tool gives insight into the performance levels being seen in Service Providers' businesses and the practices used to deliver the products or services being offered. The benchmarking tool focuses on:

- 6.1 Performance data relating to -
  - a) Financial performance
  - b) Customer data
  - c) Processes
  - d) Learning & growth
- 6.2 Company's current business situation -
  - a) Plans for the business and capabilities to manage their fulfilment
  - b) Ability to generate business
  - c) Employee relationships
  - d) Developing new markets
  - e) Developing products and services
  - f) Managing money

The UNIDO benchmarking tool provides a basic framework through which an understanding of the South African market can be established. Whilst the list of criteria may not be exhaustive, Service Providers are free to meet with UNIDO to further understand how they can work together to develop a deeper understanding of the market and the SD opportunities available.

## 7 Government Policy Documents

- NIPP [http://www.thedti.gov.za/industrial\\_development/nipp.jsp](http://www.thedti.gov.za/industrial_development/nipp.jsp)  
 IPAP2 <http://www.thedti.gov.za/DownloadFileAction?id=561>  
 CSDP <http://www.dpe.gov.za/res/transnetCSDP1.pdf>  
 NGP <http://www.thepresidency.gov.za/pebble.asp?relid=2323>

## 8 Other Reference Websites

References	Website
Department of Public Enterprise (DPE)	<a href="http://www.dpe.gov.za">www.dpe.gov.za</a>
United Nations Industrial Development Organisation (UNIDO)	<a href="http://www.unido.org/spx">www.unido.org/spx</a>

## GLOSSARY OF WORDS

**Broad-Based Black Economic Empowerment  
(B-BBEE)**

A South African legal requirement that require all entities operating in the South African economy to contribute to empowerment and transformation

**Enterprise Development (ED)**

An element contained within the B-BBEE scorecard whereby a Measured Entity can receive recognition for any Qualifying Enterprise Development Contributions towards Exempted Micro-Enterprises or Qualifying Small Enterprises which are 50% black owned or 30% black woman owned. Enterprise Development Contributions consists of monetary and non-monetary, recoverable and non-recoverable contributions actually initiated in favour of a beneficiary entity by a measured entity with the specific objective of assisting or accelerating the development, sustainability and ultimate financial independence of the beneficiary. This is commonly accomplished through the expansion of a beneficiaries financial and/ or operation capacity.

**Industrial Policy Action Plan II (IPAPII)**

The implementation plan for the National Industrial Policy Framework (NIPF) which details key action plans (KAPs) and timeframes for the implementation of industrial policy actions in line with the NIPF.

**Integrated Supply Chain Management  
(iSCM)**

Refers to an integrated "one supply chain management" strategy within Transnet which has been developed with Centres of Excellence (COEs) with cross-functional teams comprising divisional and corporate task team members, to deliver value through improved efficiencies and compliance with the regulatory environment.

**New Growth Path (NGP)**

Developed by the Economic Development Department tabled in January 2010 frames a new approach to unlocking economic growth by knitting together the IPAP2 as well as policies and programmes in rural development, agriculture and, sciences & technology, education, skills development, labour, mining and beneficiation, tourism and social development with the aim to target limited capital and capacity at activities that maximise the creation of decent work opportunities. Key indicators include: Quality job creation, Youth employment, Labour intensive growth, and Equity.

**Original Equipment Manufacturer (OEM)**

Refers to a manufacturing company that owns the intellectual property rights and patents for the equipment it sells and services

**Socio-economic Development**

Refers to development which addresses social and economic aspects such as job creation, poverty reduction and increased national value add and which not only focuses on the business's financial bottom line.

**State Owned Company (SOC)**

Refers to Government-owned corporations. They are legal entities created, and owned, by Government to undertake commercial activities on behalf of an owner Government, and are usually considered to be an element or part of the state. They are established to operate on a commercial basis.

**Supplier Development (SD)**

Improving the socio-economic environment by creating competitive local suppliers via Enterprise Development, CSDP and other initiatives such as Preferential Procurement. This results in a supply base that can eventually be competitive to market its goods on the international market leading to increased exports.

**United Nations Industrial Development Organisation (UNIDO)**

A specialised agency of the United Nations. Its mandate is to promote and accelerate sustainable industrial development in developing countries and economies in transition, and work towards improving living conditions in the world's poorest countries by drawing on its combined global resources and expertise.

## Annexure (iv)

### LOADING AND SAFE CUSTODY POINTS PLUS SKIP REQUIREMENTS FOR FERROUS SCRAP COLLECTIONS

TFR Sub-Depots	Skip Numbers	TRE Sub-Depots	Skip Numbers	Mini Scrap Yards	Skip Numbers	TFR Main Scrap Yards
➤ Deal Party	1	➤ Uitenhage Workshops	15			Uitenhage
➤ East London	1	➤ Zwartkops	2			
		➤ East London	2			
➤ Bloemfontein	1	➤ Bloemfontein Workshops	15			Bloemfontein
		➤ Kroonstad	2			
		➤ Postmasburg	2			
➤ Beaconsfield	1	➤ Kimberley	2	➤ Kimberley	3	
➤ Uppington	1	➤ De Aar	2	➤ De Aar	3	
➤ Belville	1	➤ Salt River Workshops	10			Salt River
		➤ Belville	2			
		➤ Saldanha	2	➤ Saldanha	3	



TFR Sub-Depots	Skip Numbers	TRE Sub-Depots	Skip Numbers	Mini Scrap Yards	Skip Numbers	TFR Main Scrap Yards
➤ Bayhead		➤ Durban Workshops	10			Durban
		➤ Umbilo	2			
		➤ Wentworth	2			
➤ Newcastle	1	➤ Ladysmith	2	➤ Ladysmith	3	Germiston
		➤ Germiston Workshops	15			
		➤ Sentra Rand	2			
➤ Isando	1			➤ Heidelberg	3	
➤ Vereeniging	1					
➤ Standerton	1					
➤ Krugersdorp	1	➤ Millsite	2	➤ Millsite	3	
➤ Potchefstroom	1	➤ Coligny	2			
➤ Klerksdorp	1					
➤ Coligny	1					

TFR Sub-Depots	Skip Numbers	TRE Sub-Depots	Skip Numbers	Mini Scrap Yards	Skip Numbers	TFR Main Scrap Yards
➤ Koedoespoort		➤ Koedoespoort Workshops	50			Koedoespoort
➤ Capital Park	1	➤ Pyramid South	2			
➤ Pyramid South	1	➤ Capital Park	2			
➤ Richards Bay	2	➤ South Dunes [RB]	2	➤ Empangeni	3	
➤ Volksrust	1	➤ Ermelo	2	➤ Ermelo	3	
➤ Komatipoort	1	➤ Nelspruit	2	➤ Nelspruit	3	
➤ Kaapmuiden	1	➤ Komatipoort	2			
➤ Belfast	1					
➤ Lydenburg	1					
➤ Witbank	2	➤ Witbank	2	➤ Witbank	3	
		➤ Belfast	2			
		➤ Waterval Onder	2			
➤ Polokwane	2	➤ Polokwane	2	➤ Polokwane	3	
➤ Piet Retief	1	➤ Newcastle	2	➤ Vryheid	3	
➤ Newcastle	1					

**Transnet Port Terminal & Skip Requirements:**

Location	Number of skips required
<b>PORT OF DURBAN</b>	
Durban Container Terminal	4
Durban Point	1
Durban Maydon Wharf Terminal	2
Durban Pier 1	4
Car Terminal	1
<b>PORT OF RICHARDS BAY</b>	
Dry Bulk Terminal	8
Multi-Purpose Terminal	2
<b>PORT OF CAPE TOWN</b>	
Container Terminal	1
Multi Purpose Terminal	2
<b>PORT OF EAST LONDON</b>	
Multi Purpose Terminal	2
<b>PORT OF PORT ELIZABETH</b>	
Container Terminal	1

Location		Number of skips required
Multi Purpose Terminal		2
<b>PORT OF SALDANHA</b>		
Iron Ore Terminal		2
Multi Purpose Terminal		1
<b>PORT OF COEGA</b>		
Ngqura Container Terminal (Coega)		2
Total Skip Requirement :		35