

**ANNEXURE C1 - SUPPLIER DEVELOPMENT - BIDDERS RESPONSE**

**RFP: HOAC-KGG-8702**

**SUPPLY AND DELIVERY OF 3KV HIGH SPEED CIRCUIT BREAKERS**

**This section must be duly completed in terms of this procurement event/tender/RFP (over the contract and warranty period/s).**

3.1	SD CATEGORY	SD MEASUREMENT	SD VALUE INDICATORS			
			NUMBER	PERCENTAGE	RAND VALUE	BID REFERENCE
	3.1.1.	How many (Number) TRANSNET / SA Technical Engineers will be trained				
	3.1.2.	What is the Proposed Monetary value of TRANSNET / SA Technical Engineers trained (in terms of 3.4.1 above)				
	3.1.3.	How many (Number) of Graduate SA Technical Engineers will be trained				
		How many (Number & Percentage) of Graduate SA Technical Engineers to be trained will be to Historically Disadvantaged Individuals/Contractors				
		How many (Number & Percentage) of Graduate SA Technical Engineers to be trained will be to Black women				
		How many (Number & Percentage) of Graduate SA Technical Engineers to be trained will be to persons with disabilities				
	3.1.4.	What is the Proposed Monetary value of Graduate SA Technical Engineers to be trained				
	3.1.5.	How many (Number) BURSARIES/SCOLARSHIPS to be offered to Graduate SA Technical Engineers				
		How many (Number & Percentage) BURSARIES/SCOLARSHIPS to be offered to Graduate SA Technical Engineers will be to Historically Disadvantaged Individuals/Contractors				
		How many (Number & Percentage) BURSARIES/SCOLARSHIPS to be offered to Graduate SA Technical Engineers will be to Black women				
		How many (Number & Percentage) BURSARIES/SCOLARSHIPS to be offered to Graduate SA Technical Engineers will be to persons with disabilities				
	3.1.6.	What is the VALUE of BURSARIES/SCOLARSHIPS to be offered to Graduate SA Technical Engineers				
	3.1.7.	What is the bidders Contribution towards SA APPRENTICESHIPS programme - Number				
		How many (Number & Percentage) APPRENTICESHIPS to be offered to Historically Disadvantaged Individuals/Contractors				
		How many (Number & Percentage) APPRENTICESHIPS to be offered to Black women				
	3.1.8.	What is the bidders Contribution towards SA APPRENTICESHIPS programme - Value				
	3.1.9.	Are any of the training interventions recognised qualifications in terms of NQF, SETA or other? Please specify.				

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SD CATEGORY		SD VALUE INDICATORS				
3.2	Job Creation	SD MEASUREMENT	NUMBER	PERCENTAGE	RAND VALUE	BID REFERENCE
3.2.1.		How many (Number) of New Skilled jobs will be created				
		How many (Number) of New Skilled jobs will be created in the RURAL areas				
		How many (Number & Percentage) of NEW SKILLED JOBS will be to Historically Disadvantaged Individuals/Contractors				
		How many (Number & Percentage) of NEW SKILLED JOBS will be to Black women				
		How many (Number & Percentage) of NEW SKILLED JOBS will be to persons with disabilities				
		How many (Number & Percentage) of NEW SKILLED JOBS will be to the youth				
3.2.2.		How many (Number) of New Unskilled jobs will be created				
		How many (Number) of New Unskilled jobs will be created in the RURAL areas				
		How many (Number & Percentage) of NEW UNSKILLED JOBS will be to Historically Disadvantaged Individuals/Contractors				
		How many (Number & Percentage) of NEW UNSKILLED JOBS will be to Black women				
		How many (Number & Percentage) of NEW UNSKILLED JOBS will be to persons with disabilities				
		How many (Number & Percentage) of NEW UNSKILLED JOBS will be to the youth				
SD CATEGORY		SD VALUE INDICATORS				
3.3	Job Maintenance / Preservation	SD MEASUREMENT	NUMBER	PERCENTAGE	RAND VALUE	BID REFERENCE
3.3.1.		How many (Number) Jobs will be Maintained/Preserved				
		- By the Bidder/Tenderer				
		- By Sub-Contractors				
		- By the Suppliers				
		- By Other				
SD CATEGORY		SD VALUE INDICATORS				
3.4	Small Business Promotion	SD MEASUREMENT	NUMBER	PERCENTAGE	RAND VALUE	BID REFERENCE
3.4.1.		What is the Planned Percentage procurement from QSE's within the town/city of operation				
3.4.2.		What is the Planned Percentage procurement from EME's within the town/city of operation				
3.4.3.		What is the Planned Percentage procurement from Start-Up Enterprises within the town/city of operation				
3.4.4.		What and how do you Plan to provide Financial support to small businesses. (Shorter payment terms, interest free loans, etc) Please Specify				
3.4.5.		What and how do you Plan to provide Non-Financial support to small businesses (Professional support, employee time allocated to assisting small business, etc.). Please Specify.				
3.4.6.		What and how do you Plan to provide Implement Joint ED initiatives with Transnet (That are aligned to Transnet's objectives and that are not financial in nature). Please Specify				
SD CATEGORY		SD VALUE INDICATORS				
3.5	Further Recognition	SD MEASUREMENT	NUMBER	PERCENTAGE	RAND VALUE	BID REFERENCE
3.5.1.		In terms of Ownership of the entity, what percentage of exercisable voting rights is in the hands of Black Persons				
3.5.2.		In terms of Ownership of the entity, what percentage of exercisable voting rights is in the hands of Black Women				
3.5.3.		In terms of Ownership of the entity, what percentage of exercisable voting rights is in the hands of Black Youth				
3.5.4.		In terms of Ownership of the entity, what percentage of exercisable voting rights is in the hands of Employment Schemes/Co-Operatives				
3.5.5.		What is the VALUE OF Business with the local community/rural areas				
3.5.6.		What is the Number and Value of projects / initiatives in the Involvement of black people with disabilities through ED or Other Initiatives				
3.5.7.		What is the Number and Value of projects / initiatives in the Involvement of black youth through ED or Other Initiatives				
3.5.8.		What is the percentage of Black Middle Management is involved in day to day managemement of the organisation in relation to the total Middle Management cadre				
3.5.9.		What is the percentage of Black Junior Management is involved in day to day managemement of the organisation in relation to the total Junior Management cadre				
3.5.10.		What is the percentage of Black disabled employees in relation to the total number of employees in the organisation				
3.5.11.		What is the percentage of Black employees in relation to the total number of employees in the organisation				
3.5.12.		What is the percentage of Black Women employees in relation to the total number of employees in the organisation				

3.5.13	What is the Organisations annual spend on Enterprise Development as a percentage on Net Profit Tax (NPAT)				
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SD CATEGORY		SD VALUE INDICATORS				
3.6	Other SD Initiatives / Interventions	SD MEASUREMENT	NUMBER	PERCENTAGE	RAND VALUE	BID REFERENCE
	3.6.1	Detail / Specify numbers, percentages and rand values of other SD initiatives/interventions				

ESTIMATED RAND VALUE OF TOTAL SD COMMITMENT	0
SD COMMITMENT EXPRESSED AS A PERCENTAGE OF ESTIMATED CONTRACT VALUE	%

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# TECHNOLOGY MANAGEMENT

## SPECIFICATION

### 3 KILOVOLT DC HIGH SPEED CIRCUIT BREAKERS FOR TRACTION SUBSTATIONS

Author: Electrical Engineer  
Technology Management Shonell Harripershad

Approved: Senior Engineer  
Technology Management Ludwig Borchard

Authorised: Principal Engineer  
Technology Management Willie Coetzee

Date: 27 August 2010

Circulation restricted to:  
Transnet Freight Rail

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## 1.0 SCOPE

This specification covers Transnet Freight Rail's requirements for the supply of 3kV DC, 2000A (nominal) high speed circuit breakers for use on a DC electrified railway system.

## 2.0 REFERENCES

2.1 The following standard specifications (latest edition) are referred to in this document:

### 2.1.1 INTERNATIONAL ELECTROTECHNICAL COMMISSION

IEC 60947-2 : Switchgear and Controlgear

### 2.1.2 TRANSNET FREIGHT RAIL

CEE 0224 : Drawings, Catalogues, Instruction manuals and spares lists for electrical equipment supplied under contract.

CEE 0227 : The design and manufacture of a modular 3kV DC, 2000A circuit breaker cell and truck for use on a 3kV DC traction system

BBB 0041 : Preparation of drawings for Transnet Freight Rail Infrastructure.

2.2 A list of Transnet Freight Rail's drawings applicable to this specification is reflected in Appendix 1.

## 3.0 DEFINITIONS

All technical terms used in this specification shall have the definitions as per IEC 60947-2 section 2.

## 4.0 METHOD OF TENDERING

4.1 Tenderers shall indicate clause by clause compliance with the specification. This shall take the form of a separate document listing all the specifications clause numbers indicating the individual statement of compliance or non-compliance. This document can be used by tenderers to elaborate on their response to a clause.

4.2 A statement of non-compliance shall be motivated by the tenderer.

4.3 Tenderers shall submit descriptive literature consisting of detailed technical specifications, general constructional details and principal dimensions, together with clear illustrations of the equipment offered.

4.4 The Schedule of Requirements, Quantities and Prices, Appendix 1 to this specification shall be fully completed by Tenderers.

4.5 Failure to comply with clauses 4.1, 4.2, 4.3 and 4.4 could preclude a tender from consideration.

## 5.0 APPENDICES

The following appendices form an integral part of this specification:-

- 5.1 Appendix 1: List of drawings.
- 5.2 Appendix 2: Schedule of Specific Requirements.
- 5.3 Appendix 3: Technical Data Sheet (specific technical information to be furnished with tenders).
  - 5.3.1 Equipment offered in this appendix shall be supplied in terms of this specification and no changes or substitutes will be allowed without the written consent of Transnet Freight Rail.
  - 5.3.2 Acceptance by Transnet Freight Rail's Technology Management staff of the equipment offered in this appendix, in no way relieves the tenderer of his obligation to fulfil his statement of compliance with this specification.
  - 5.3.3 Transnet Freight Rail reserves the right to subject the material offered to tests and inspection to check compliance with the relevant clauses of this specification and/or the quality/performance claimed by the tenderer, prior to adjudication or at any stage during manufacture.

## 6.0 SERVICE CONDITIONS.

The circuit breakers shall be designed and rated for operation under the following service conditions:

### 6.1 Atmospheric service conditions.

Altitude:	0 to 1 800 m above sea level
Ambient temperature:	-5°C to +50°C.
Relative humidity:	10% to 90%
Lightning conditions:	12 Ground flashes per square kilometre per annum.
Pollution:	Industrial and heavily salt laden coastal pollution.

### 6.2 Mechanical service conditions.

The substations in which the breakers are to be installed are situated next to the railway lines and the breakers will therefore be subjected to vibration.

### 6.3 Electrical service conditions.

- 6.3.1 The circuit breakers are required for the switching and protection of overhead track circuits, the rail being the negative return.
- 6.3.2 The system voltage is nominally 3.15kV DC, but varies during normal operation between 2,4kV and 3,9kV.
- 6.3.3 For the purpose of surge and lightning protection to the substation equipment, a 4 micro Farad capacitor is connected between the positive cable termination and negative rail. A Zinc Oxide surge arrester, having a residual voltage of 13kV, is also connected between the positive cable termination and earth mat.
- 6.3.4 The breakers are fed from sub- or tie-station busbars and calibrated to protect sections of overhead equipment to which they are connected. Sub- and tie-stations are unattended but remote controlled.



- 6.3.5 Circuit conditions under which track breakers operate vary over a wide range. The following information is considered typical.
- 6.3.5.1 Sub-station spacing: On open lines it varies from 10 to 25 km, whilst in heavily loaded, multi track areas it varies from 3 to 10 km.
- 6.3.5.2 Sub-station capacity: The installed capacities vary from 3MW to 12MW, with individual rectifier capacities varying from 3MW to 6MW.
- 6.3.6 The substation has the following overload ratings:  
200 percent for 30 minutes  
Short circuit proof for 200 milliseconds.
- 6.3.7 Typical fault conditions.
- |                     | Fault near sub | Fault remote from sub. |
|---------------------|----------------|------------------------|
| Prospective current | 50kA           | 10kA                   |
| Time constant       | 10ms           | 45ms                   |
- 6.3.8 All substations on a section normally work in parallel.
- 6.3.9 The breakers will be fitted with single shot 20 second interval auto reclosing relays. The breakers will be remote controlled, permitting reclosures to be attempted from remote at approximately 2 minute intervals.

## 7.0 LIFE CYCLE COST

- 7.1 The cost of the high speed circuit breaker is not the only deciding factor when purchasing high speed circuit breakers. Life cycle cost will be taken into account when evaluating the offers made.
- 7.2 The life cycle cost will be based on maintenance history in Transnet Freight Rail. The following information shall be submitted by the tenderer.
- 7.2.1 A separate quotation for the recommended spares Transnet Freight Rail should acquire for normal maintenance purposes to cover expected requirements for a five year operating period, per 20 breakers purchased, indicating the price per item.
- 7.2.2 A separate quotation for any special tools required, for the maintenance of breakers.
- 7.2.3 A separate quotation for any other items required, to adapt the breakers to fit into Transnet Freight Rail's system.
- 7.2.4 A prescribed average maintenance requirement in man-hours per year per high speed circuit breaker, over a 25 year period.
- 7.3 The recommended quantity of spares and prescribed man-hours per year shall be based on 30 overload and fault trips per month per breaker. It is estimated that an average of 10 percent of all trips are due to faults.

## **8.0 DRAWINGS, INSTRUCTIONS AND CATALOGUES**

- 8.1 Tenderers shall include in their tenders for the supply of operating and maintenance instruction manuals and drawings to enable the erection, maintenance, repair and adjustment of the breakers to be carried out.
- 8.1.1 All catalogues, instruction manuals and spares lists shall comply with the requirements of Transnet Freight Rail's specification CEE.0224 (Latest edition).
- 8.1.2 The preparation of the drawings shall be in accordance with Transnet Freight Rail's specification BBB 0041.
- 8.1 One copy of the instruction manual must be supplied for every 4 breakers supplied, plus a further 10 copies.
- 8.2 Tenderers shall also include in their tenders for the supply of spare parts catalogues. These catalogues must contain detailed illustrations and descriptions, and suitably indexed pages reflecting:
- 8.2.1.1 Illustration item numbers, complete description of items including coil winding data and material, manufacturer's item numbers and Transnet Freight Rail stores item number (left blank).
- 8.2.2 One copy of the catalogue must be supplied for every 10 breakers supplied, plus a further 10 copies.
- 8.3 Proof copies of the drawings, instruction manuals and spare parts catalogues shall be submitted by the successful tenderer for approval as soon as possible after the business has been placed to enable the final copies to be supplied at the commencement of delivery of the breakers.
- 8.4 The successful tenderer shall supply Transnet Freight Rail with one complete set of detailed manufacturing drawings and specifications of all consumable items, i.e. of all coils, main and arcing contacts, arc chutes - and components, etc.

## **9.0 TECHNICAL REQUIREMENTS**

### **9.1 GENERAL**

- 9.1.1 The breakers shall have a minimum continuous rating of 2 000A and shall be suitable for operation under the service conditions described in clause 6.
- 9.1.2 The breakers shall be capable of clearing a prospective short circuit current of 50kA with a time constant of 10ms, 4 times in succession with time intervals of 20s, 60s and 120s between applications. It shall then still be capable of normal service without attention.
- 9.1.3 Consideration will only be given to those types of breakers which have been proved to operate satisfactorily on a 3kV DC traction system, under conditions comparable with those encountered on Transnet Freight Rail. Tenderers shall furnish full details (Appendix 3) in regard to experience, viz. approximate number of breakers of tendered design manufactured to date, dates of supply and where installed.
- 9.1.4 The breakers shall be mounted horizontally on the standard rackout type truck provided by Transnet Freight Rail to drawings referred to in Appendix 1 of this specification or in a modular circuit breaker cell as per specification CEE 0227.
- 9.1.5 The overall dimensions of a breaker, complete with arc chute, when mounted on this truck shall be such as to afford clear passage of the truck into the standard breaker cell, leading dimensions of which are indicated on the drawings.

- 9.1.6 The breakers shall operate satisfactorily in buildings where the roof details are as follows:
- 9.1.6.1 Concrete roof: minimum height 2,6m.
- 9.1.6.2 Roof consisting of steel members supporting asbestos or metal sheeting: minimum height 3,25m.
- 9.1.7 All parts shall be interchangeable between breakers.
- 9.1.8 The breaker and arc chute shall be designed to require the minimum maintenance. The minimum maintenance interval shall be 250 trips at a trip setting of 4 000A at 3,2kV. Of these trips 10 percent may be fault trips.

## 9.2 INSULATION

- 9.2.1 The minimum clearance distance in air that shall apply from the 3kV DC circuit to the auxiliary circuits and to the steel base shall be 100mm. Alternatively, double insulation or barriers shall be provided.
- 9.2.2 The insulation between the 3kV DC circuit and (a) the auxiliary circuits and (b) the steel base shall be capable of withstanding a test voltage of 10,5kV(rms) 50Hz for one minute.
- 9.2.3 All low voltage auxiliary equipment shall be capable of withstanding a test voltage of 2kV(rms) 50Hz for one minute.
- 9.2.4 The circuit breaker shall be able to withstand the following 50Hz test voltages for 60 seconds between the open main contacts:
- 9.2.4.1 With the arc chute removed: 10,5kV(rms).
- 9.2.4.2 With the arc chute in its working position: 5,4kV(rms).
- 9.2.5 Full particulars of the insulation, including the class, shall be supplied.

## 9.3 CIRCUIT BREAKER

- 9.3.1 The circuit breaker shall be of the trip free type.
- 9.3.2 The method of closing, latching and the trip free feature shall be described in detail, with the use of drawings and sketches.
- 9.3.3 In the event of circuit breakers being offered that use mechanical latching (to be delatched), the tenderer shall ensure that the circuit breakers will not malfunction to open due to the mechanical latching mechanism not operating correctly. Such mechanisms shall be suitably protected from dust or fragments from the arc chutes or contacts which can affect their satisfactory operation.
- 9.3.4 Main contacts, which are not self-cleaning, shall be of material which will not oxidise when the breakers are open or closed for lengthy periods.
- 9.3.5 Main contacts (or arcing contacts, if fitted) shall be tipped with material with a high resistance to arc erosion, welding and sticking.
- 9.3.6 Arcing contacts (if fitted) and main contacts shall be accessible for inspection and maintenance and shall be designed to facilitate any necessary adjustments and renewal.
- 9.3.7 The temperature rise limit of main contacts (if made of copper) shall not exceed 45 degrees Celsius while passing the continuous rated current.
- 9.3.8 It shall **not** be possible to close the breaker manually.

- 9.3.9 The breakers shall be designed to prevent dust or fragments from the arc chutes or contacts from affecting their satisfactory operation.
- 9.3.10 All adjustments shall be such that they can be easily effected. The need for special tools should be avoided.
- 9.3.11 Tenderers shall furnish full details of all adjustments which can be made, particularly of the main contact alignment and pressure, and where applicable of pole face and toggle mechanism.

#### **9.4 CALIBRATION**

- 9.4.1 The breakers may be either uni- or bi-directional tripping. Tenderers shall state what type is offered; giving details of the calibration ranges for both the forward and reverse current tripping.
- 9.4.2 A scale plate, indicating the maximum and minimum trip settings and at least five intermediate graduations shall be provided on each breaker at the calibration adjustment position.
- 9.4.3 The calibration range for the forward direction shall be from 2 000A to 5 000A.
- 9.4.4 The calibration range for the reverse direction (if reverse tripping is possible) shall be at least the same as that of the forward direction.
- 9.4.5 Tenderers shall indicate clearly the means whereby the above calibration ranges are provided.
- 9.4.6 The stability at any particular setting shall be such that the current required to trip the breaker shall not vary by more than 2 percent below or above the set calibrated value when calibration is checked under similar conditions.
- 9.4.7 The breaker design shall incorporate features to ensure that the breakers can be closed satisfactorily on to a steady (residual) load of not less than 60 percent of any particular calibration setting.

#### **9.5 ARC CHUTES**

- 9.5.1 Arc chutes manufactured from asbestos cement shall not be accepted. Arc chutes made of low maintenance materials are preferred. Tenderers shall specify what materials are used.
- 9.5.2 Transnet Freight Rail would prefer an offer of an arc chute incorporating a removable metal splitter plate design.
- 9.5.3 Materials used in arc chutes must be of a type that is easily cleaned.
- 9.5.4 The arc chutes shall be constructed as to render the contacts easily accessible by removal of separate parts of the arc chutes as a unit.
- 9.5.5 Tenderers shall submit full details of the principles of operation of the arc chute, as well as sketches and drawings of the various components and assemblies. Details of the maintenance and repairs that can/should be done, and at what intervals, shall also be furnished.

#### **9.6 AUXILIARY CONTACTS**

- 9.6.1 Auxiliary contacts for operating in conjunction with the indication and control circuits shall be located well clear of the arc chutes and main contacts.
- 9.6.2 The auxiliary contacts shall be of robust construction and tipped with silver or other suitable material.

- 9.6.3 At least six auxiliary contacts which close ('a' contacts) and six auxiliary contacts which open ('b' contacts) when the breaker closes shall be provided and mounted on each breaker.
- 9.6.4 A robust, dust tight, non-metallic non-flammable cover for the auxiliary contacts shall be provided on each breaker to prevent ionised air from the 3kV DC circuit or dust causing flashovers or tracking. Hard plastic covers are not acceptable.

## 9.7 CONTROL CIRCUITRY

- 9.7.1 Drawings CEE-TBP-35, 39, 40, 41, 42 and 44 reflect the control schematic diagram of circuit breakers in use at present.
- 9.7.2 The closing and control circuits are supplied from a 110V DC battery under constant trickle charge. The equipment shall be capable of satisfactory continuous operation at any voltage between the limits of 90V and 140V.
- 9.7.3 In order to ensure constant calibration, the holding coil is normally supplied from a separate constant 110V DC source.
- 9.7.4 The circuit breakers shall be suitable for operation from the above stated supplies.
- 9.7.5 The remote control equipment, control relays, indication lights, control switches and reclosing relays shown on drawings CEE-TBP-35 and 39 will be provided by Transnet Freight Rail.
- 9.7.6 All other items of equipment required to enable the breakers to operate correctly, without any alterations to the standard wiring circuitry provided by Transnet Freight Rail, shall be included in the tenderer offers.
- 9.7.7 The design of the breakers and control circuitry shall be such that the breakers shall "fail to safety", particularly on loss of the low voltage control supplies.

## 9.8 TESTS AND OSCILLOGRAMS

- 9.8.1 Short circuit tests shall be carried out on breakers connected to a 3kV DC system with similar fault currents to that which is specified in clause 6.3.7 and oscillograms thereof shall be submitted with the tenderers offers. For the purpose of the test the breakers shall be calibrated at 4 500A.
- 9.8.2 The following shall be clearly indicated on the oscillogram traces:
- 9.8.2.1 Commencement of short circuit.
- 9.8.2.2 Opening time, i.e. time from the application of the short circuit to initial opening of the arc breaking contacts.
- 9.8.2.3 Arcing time.
- 9.8.2.4 Arc voltage (Transient recovery voltage).
- 9.8.2.5 Rate of rise of current.
- 9.8.2.6 Prospective peak current.

**10.0 TESTS BY TRANSNET FREIGHT RAIL AND TYPE TEST CERTIFICATES**

- 10.1 Transnet Freight Rail reserves the right to test a circuit breaker, selected at random, for compliance with any or all of the following clauses.
- 10.1.1 Fault clearing test, clause 9.1.2.
- 10.1.2 A maintenance interval test (an in service test), clause 9.1.8.
- 10.1.3 Insulation tests, clause 9.2.2 to 9.2.5.
- 10.1.4 Temperature rise of the main contacts, clause 9.3.7.
- 10.1.5 Stability of calibration, clause 9.4.6.
- 10.1.6 Closing on to a steady (residual) load, clause 9.4.7.
- 10.1.7 Breaker "fail to safety" feature, clause 9.7.7.
- 10.2 The tenderer shall provide type test certificates to confirm that the breakers comply to the requirements as specified in clauses 10.1.1 to 10.1.7.

**11.0 PACKING**

- 11.1 Each circuit breaker shall be completely assembled and operationally checked before packing and dispatch.
- 11.2 The circuit breakers and arc chutes shall be packed separately.
- 11.3 The breakers shall be bolted down to substantial battens firmly secured to the packing cases to prevent movement of the breakers in the cases during transit. The packing cases shall be of substantial construction to prevent damage to the breaker by rough handling. The bases of the cases shall be suitable for handling with a fork lift truck.
- 11.4 The interiors of the cases shall be lined with waterproof paper or other suitable material.

**12. INSPECTION**

- 12.1 An Inspection Certificate will be issued by Technology Management – Electrical Technology to certify that material / equipment conforms to Transnet Freight Rail's requirement.

**END**

**SCHEDULE OF DRAWINGS****LIST OF DRAWINGS**

## DRAWINGS ISSUED WITH THIS SPECIFICATION

<u>DRAWING NUMBER</u>	<u>DESCRIPTION</u>
CEE-TBP-35	Wiring diagram: H.S.C.B, Electronic Control Relay
CEE-TBP-39	Circuit diagram; H.S.C.B, Electronic Control Relay
CEE-TBP-40	Truck circuit diagram
CEE-TBP-41	Truck wiring diagram
CEE-TBP-42	Connection diagram for HSCB
CEE-TBP-44	Connection diagram for Ansaldo IR6003 HSCB
CEE-TCQ-63	Assembly of lightweight concrete cell with H.S.C.B. truck in position.
CEE-TCQ-69 Sh 1	Truck frame assembly H.S.C.B.

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**SCHEDULE OF REQUIREMENTS**

Supply of the 110V closing contactor 154X as depicted on drawing CEE-TBP-35 if required.

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**TECHNICAL DATA SHEET**

(To be completed by tenderers and submitted as part of their tender)

1. Make of breaker: \_\_\_\_\_
2. Experience with tendered design of breaker: (Clause 9.1.3)

<u>NUMBER SUPPLIED</u>	<u>WHERE INSTALLED</u>	<u>DATE SUPPLIED</u>

3. Continuous current rating of breaker : \_\_\_\_\_
4. Rated voltage of breaker : \_\_\_\_\_
5. Mechanically latched    Yes/No.    \_\_\_\_\_
6. Magnetically latched    Yes/No.    \_\_\_\_\_
7. Main contact material    \_\_\_\_\_
8. Arcing contacts fitted    Yes/No.    \_\_\_\_\_
9. Contact material of main contact (or arcing contact, if fitted)
- \_\_\_\_\_

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## ANNEXURE A: B-BBEE PREFERENCE POINTS CLAIM FORM

This preference form contains general information and serves as a claim for preference points for Broad-Based Black Economic Empowerment [**B-BBEE**] Status Level of Contribution. The bidder's claim for preference points in respect of its compliance targets for Further Recognition Criteria [**FRC**] will be evaluated in accordance with the FRC table incorporated in the RFP documents.

### 1. INTRODUCTION

1.1 A total of 20 preference points shall be awarded as follows:

	<b>POINTS</b>
B-BBEE STATUS LEVEL OF CONTRIBUTION	10
FURTHER RECOGNITION CRITERIA [FRC]	35
Total points for B-BBEE and FRC shall not exceed	45

1.2 Failure on the part of a bidder to fill in and/or to sign this form and submit a B-BBEE Verification Certificate from a Verification Agency accredited by the South African Accreditation System [**SANAS**] or a Registered Auditor approved by the Independent Regulatory Board of Auditors [**IRBA**] or an Accounting Officer as contemplated in the Close Corporation Act [**CCA**] together with the bid will be interpreted to mean that preference points for B-BBEE status level of contribution are not claimed.

1.3 Transnet reserves the right to require of a bidder, either before a bid is adjudicated or at any time subsequently, to substantiate any claim in regard to preferences, in any manner required by Transnet.

### 2. GENERAL DEFINITIONS

2.1 **"all applicable taxes"** include value-added tax, pay as you earn, income tax, unemployment insurance fund contributions and skills development levies;

2.2 **"B-BBEE"** means broad-based black economic empowerment as defined in section 1 of the Broad-Based Black Economic Empowerment Act;

2.3 **"B-BBEE status of contributor"** means the B-BBEE status received by a measured entity based on its overall performance using the relevant scorecard contained in the Codes of Good Practice on Black Economic Empowerment, issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act;

2.4 **"bid"** means a written offer in a prescribed or stipulated form in response to an invitation by Transnet for the provision of goods, works or services;

2.5 **"Broad-Based Black Economic Empowerment Act"** means the Broad-Based Black Economic Empowerment Act, 2003 [Act No. 53 of 2003];

2.6 **"consortium or joint venture"** means an association of persons for the purpose of combining their expertise, property, capital, efforts, skills and knowledge in an activity for the execution of a contract;

2.7 **"contract"** means the agreement that results from the acceptance of a bid by Transnet;

- 2.8 **“control”** means the possession and exercise of legal authority and power to manage the assets, goodwill and daily operations of a business and the active and continuous exercise of appropriate managerial authority and power in determining the policies and directing the operations of the business;
- 2.9 **“EME”** means any enterprise with an annual total revenue of R5 [five] million or less;
- 2.10 **“firm price”** means the price that is only subject to adjustments in accordance with the actual increase or decrease resulting from the change, imposition, or abolition of customs and excise duty and any other duty, levy, or tax, which, in terms of the law or regulation, is binding on the contractor and demonstrably has an influence on the price of any supplies, or the rendering costs of any service, for the execution of the contract;
- 2.11 **“functionality”** means the measurement according to predetermined norms, as set out in the bid documents, of a service or commodity that is designed to be practical and useful, working or operating, taking into account, among other factors, the quality, reliability, viability and durability of a service and the technical capacity and ability of a bidder;
- 2.12 **“person”** includes reference to a juristic person;
- 2.13 **“subcontract”** means the primary contractor’s assigning or leasing or making out work to, or employing another person to support such primary contractor in the execution of part of a project in terms of the contract;
- 2.14 **“total revenue”** bears the same meaning assigned to this expression in the Codes of Good Practice on Black Economic Empowerment, issued in terms of section 9(1) of the Broad-Based Black Empowerment Act and promulgated in the Government Gazette on 9 February 2007;
- 2.15 **“trust”** means the arrangement through which the property of one person is made over or bequeathed to a trustee to administer such property for the benefit of another person; and
- 2.16 **“trustee”** means any person, including the founder of a trust, to whom property is bequeathed in order for such property to be administered for the benefit of another person.

### 3. **ADJUDICATION USING A POINT SYSTEM**

- 3.1 The bidder obtaining the highest number of total points for the evaluation criteria as enumerated in Section 2 of the RFP will be awarded the contract.
- 3.2 Points scored will be rounded off to 2 [two] decimal places.
- 3.3 In the event of equal points scored, the bid will be awarded to the bidder scoring the highest number of preference points for B-BBEE.
- 3.4 However, when functionality is part of the evaluation process and two or more bids have scored equal points including equal preference points for B-BBEE, the successful bid will be the one scoring the highest score for functionality.
- 3.5 Should two or more bids be equal in all respect, the award shall be decided by the drawing of lots.

#### 4. POINTS AWARDED FOR B-BBEE STATUS LEVEL OF CONTRIBUTION

- 4.1 Preference points shall be awarded to a bidder for attaining the B-BBEE status level of contribution in accordance with the table below:

B-BBEE Status Level of Contributor	Number of Points [Maximum 10]
1	10
2	9
3	8
4	5
5	4
6	3
7	2
8	1
Non-compliant contributor	0

*Note: Refer to Section 1 of the RFP document for further information in terms of B-BBEE ratings.*

- 4.2 Bidders other than EMEs must submit their original and valid B-BBEE status level verification certificate or a certified copy thereof, substantiating their B-BBEE rating issued by a Registered Auditor approved by IRBA or a Verification Agency accredited by SANAS.
- 4.3 A trust, consortium or joint venture will qualify for points for its B-BBEE status level as a legal entity, provided that the entity submits its B-BBEE status level certificate.
- 4.4 A trust, consortium or joint venture will qualify for points for their B-BBEE status level as an unincorporated entity, provided that the entity submits their consolidated B-BBEE scorecard as if they were a group structure and that such a consolidated B-BBEE scorecard is prepared for every separate bid.
- 4.5 Tertiary institutions and public entities will be required to submit their B-BBEE status level certificates in terms of the specialised scorecard contained in the B-BBEE Codes of Good Practice.
- 4.6 A person will not be awarded points for B-BBEE status level if it is indicated in the bid documents that such a bidder intends subcontracting more than 25% [twenty-five per cent] of the value of the contract to any other enterprise that does not qualify for at least the same number of points that such a bidder qualifies for, unless the intended subcontractor is an EME that has the capability and ability to execute the subcontract.
- 4.7 A person awarded a contract may not subcontract more than 25% [twenty-five per cent] of the value of the contract to any other enterprise that does not have an equal or higher B-BBEE status level than the person concerned, unless the contract is subcontracted to an EME that has the capability and ability to execute the subcontract.

**5. B-BBEE STATUS AND SUBCONTRACTING**

**5.1 Bidders who claim points in respect of B-BBEE Status Level of Contribution must complete the following:**

B-BBEE Status Level of Contributor \_\_\_\_\_ = \_\_\_\_\_ [maximum of 10, points]

Note: Points claimed in respect of this paragraph 5.1 must be in accordance with the table reflected in paragraph 4.1 above and must be substantiated by means of a B-BBEE certificate issued by a Verification Agency accredited by SANAS or a Registered Auditor approved by IRBA or an Accounting Officer as contemplated in the Close Corporation Act.

**5.2 Subcontracting:**

Will any portion of the contract be subcontracted? YES/NO [delete which is not applicable]

If YES, indicate:

- (i) What percentage of the contract will be subcontracted? .....%
- (ii) The name of the subcontractor .....
- (iii) The B-BBEE status level of the subcontractor .....
- (iv) Is the subcontractor an EME? YES/NO

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**BID DECLARATION**

I/we, the undersigned, who warrants that he/she is duly authorised to do so on behalf of the company/firm certify that points claimed, based on the B-BBEE status level of contribution indicated in paragraph 6 above, qualifies the company/firm for the preference(s) shown and I / we acknowledge that:

- (i) The information furnished is true and correct.
- (ii) In the event of a contract being awarded as a result of points claimed as shown in paragraph 6 above, the contractor may be required to furnish documentary proof to the satisfaction of Transnet that the claims are correct.
- (iii) If the B-BBEE status level of contribution has been claimed or obtained on a fraudulent basis or any of the conditions of contract have not been fulfilled, Transnet may, in addition to any other remedy it may have:
  - (a) disqualify the person from the bidding process;
  - (b) recover costs, losses or damages it has incurred or suffered as a result of that person's conduct;
  - (c) cancel the contract and claim any damages which it has suffered as a result of having to make less favourable arrangements due to such cancellation;
  - (d) restrict the bidder or contractor, its shareholders and directors, and/or associated entities, or only the shareholders and directors who acted in a fraudulent manner, from obtaining business from Transnet for a period not exceeding 10 years, after the *audi alteram partem* [hear the other side] rule has been applied; and/or
  - (e) forward the matter for criminal prosecution.

**WITNESSES:**

1. ....

2. ....

.....

SIGNATURE OF BIDDER

DATE: .....

COMPANY NAME: .....

ADDRESS:.....

.....

**BID REFERENCE NO: CRAC VAR 7222**



**Annexure B**

**REQUEST FOR PROPOSAL**

**GUIDELINES FOR COMPLETION OF THE  
SUPPLIER DEVELOPMENT BID DOCUMENT**

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### 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.

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## 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:

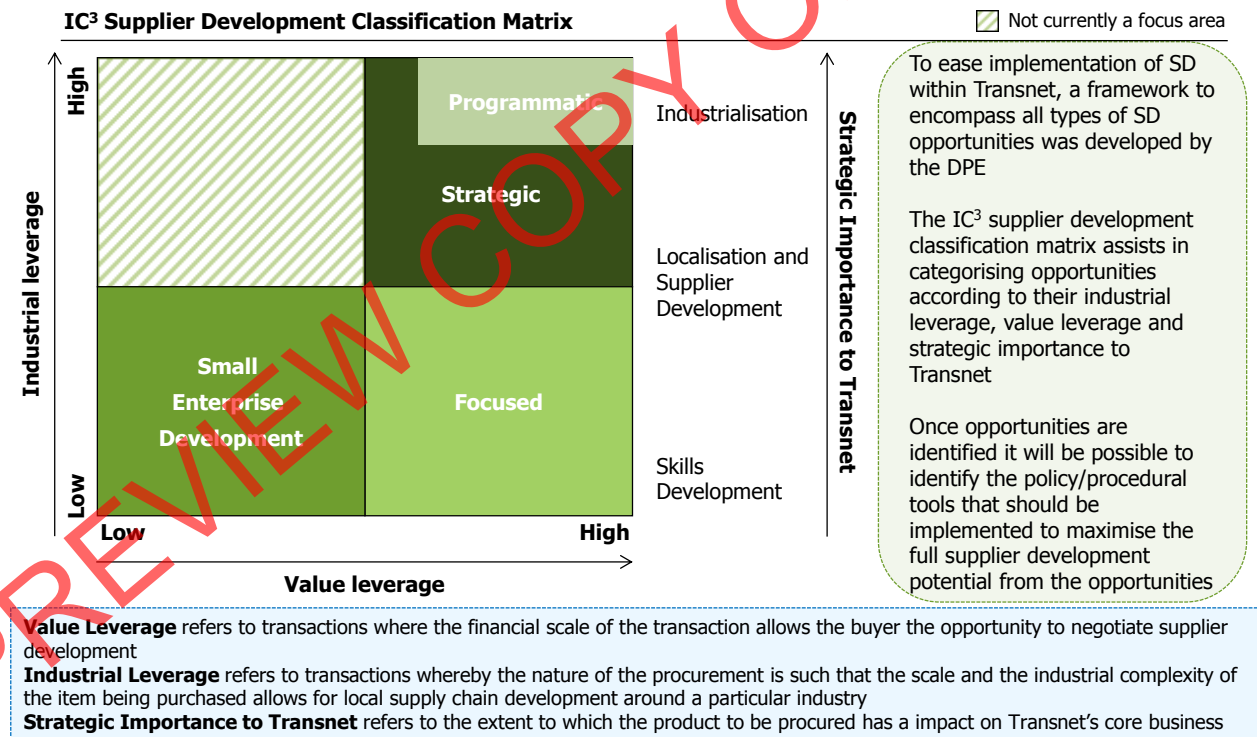
- aggressively implementing capital investment plans which will result in competitive local industries;
- improving operational efficiency;
- using procurement to influence the development of the local supplier industry; and
- ensuring it creates sufficient economic opportunities for the participation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

Based on the strategic objectives, emphasis on SD evaluation categories will differ by IC<sup>3</sup> quadrants

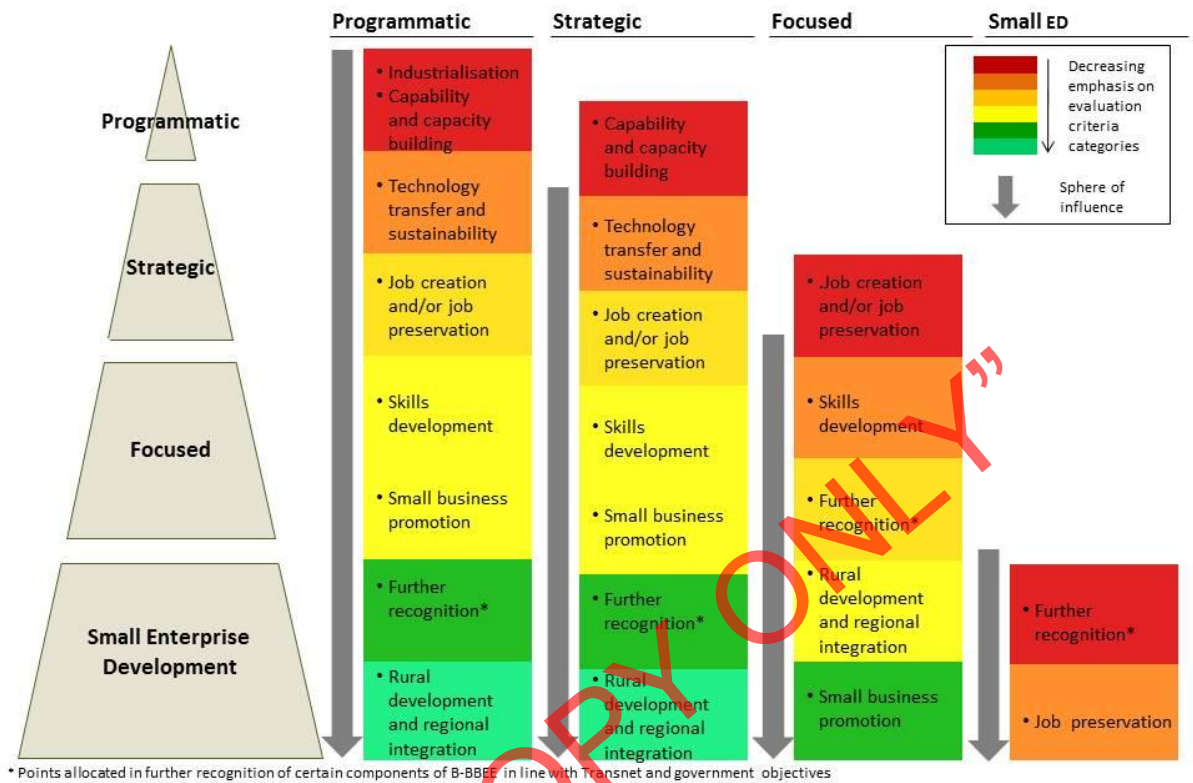


Figure 2: Transnet value capture through supplier influence

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 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: <ul style="list-style-type: none"> <li>➤ Methods of manufacturing</li> <li>➤ Introduction of new technologies</li> <li>➤ IP transfer (number and value)</li> </ul>	<ul style="list-style-type: none"> <li>➤ Introduction of a new/improved method of manufacturing</li> <li>➤ Provision of new technologies:                             <ul style="list-style-type: none"> <li>○ For processes</li> <li>○ ICT</li> </ul> </li> <li>➤ The provision of patents, trademarks and copyrights</li> </ul>
<ul style="list-style-type: none"> <li>➤ Number of local suppliers to be evaluated for integration into the OEM supply chain</li> </ul>	<ul style="list-style-type: none"> <li>➤ 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</li> </ul>

### 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
<ul style="list-style-type: none"> <li>➤ 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> </li> </ul>	<ul style="list-style-type: none"> <li>➤ 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</li> <li>➤</li> </ul>
<ul style="list-style-type: none"> <li>➤ Number of company employees to be trained</li> </ul>	<ul style="list-style-type: none"> <li>➤ 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</li> </ul>
<ul style="list-style-type: none"> <li>➤ Certified training (yes/ no)</li> </ul>	<ul style="list-style-type: none"> <li>➤ Compliance with local and/or international skills accreditation</li> </ul>

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 – 30 years
➤ Number of jobs created for Black youth	➤ Jobs created for Black individuals aged 16 – 30 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
<ul style="list-style-type: none"> <li>➤ Percentage procurement from:                             <ul style="list-style-type: none"> <li>• QSEs</li> <li>• EMEs</li> <li>• Start-ups</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>➤ Refers to the planned procurement from small business as a % of the total planned procurement spend</li> </ul>
<ul style="list-style-type: none"> <li>➤ Non-financial support provided to small business</li> </ul>	<ul style="list-style-type: none"> <li>➤ 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</li> </ul>
<ul style="list-style-type: none"> <li>➤ Financial support provided to small business</li> </ul>	<ul style="list-style-type: none"> <li>➤ 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</li> </ul>
<ul style="list-style-type: none"> <li>➤ Joint ED initiatives with Transnet</li> </ul>	<ul style="list-style-type: none"> <li>➤ 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> </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
<ul style="list-style-type: none"> <li>➤ Number of local employees</li> </ul>	<ul style="list-style-type: none"> <li>➤ Number of people employed from within the town/city of operation</li> </ul>
<ul style="list-style-type: none"> <li>➤ Value spent on local business</li> </ul>	<ul style="list-style-type: none"> <li>➤ Monetary value spent on businesses within the town/city of operation</li> </ul>
<ul style="list-style-type: none"> <li>➤ Proximity of business to operations</li> </ul>	<ul style="list-style-type: none"> <li>➤ The locality of the business in relation to operations, preference is given for regional (provincial) locality</li> </ul>
<ul style="list-style-type: none"> <li>➤ Number of rural businesses to be developed</li> </ul>	<ul style="list-style-type: none"> <li>➤ The number of rural businesses that the Service Provider plans to develop as a result of the contract</li> </ul>
<ul style="list-style-type: none"> <li>➤ Value of development to local community (sustainable)</li> </ul>	<ul style="list-style-type: none"> <li>➤ The monetary value spent on rural community development that will result in long-term social improvements</li> </ul>

## 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?reid=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

<b>Broad-Based Black Economic Empowerment (B-BBEE)</b>	A South African legal requirement that require all entities operating in the South African economy to contribute to empowerment and transformation
<b>Enterprise Development (ED)</b>	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.
<b>Industrial Policy Action Plan II (IPAPII)</b>	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.
<b>Integrated Supply Chain Management (iSCM)</b>	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.
<b>New Growth Path (NGP)</b>	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.

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**Annexure C**  
**SUPPLIER DEVELOPMENT VALUE SUMMARY**

*Respondents must complete this Annexure C 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.*

---

<sup>1</sup> "**Contract Period**" means a period of 2 years from the effective date of the contract

Supplier Development (SD) Category		Respondent's SD Bid	Supplier Development Value Indicators		
			SD Value Measurement	Quantity	Estimated Rand Value (ZAR) excluding VAT
<b>1. New skills development</b>	New skills development initiatives indicate your company's commitment to skills education, and how this would match with targeted groups. Consideration needs to be directed towards the adequate quality and value of proposed skills development to allow for better evaluation in line with Government objectives	<i>[insert cross-references to SD Bid Document in this column]</i>	<i>Number and Rand value of artisans/technicians to be trained over the Contract Period</i>		
			<i>Number and Rand value of apprentices to be trained over the Contract Period</i>		
			<i>Number and Rand value of Blacks to be trained over the Contract Period</i>		
			Is the level of the training offered above in compliance with the National Qualification Framework guidelines (NQF)? - <i>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 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>		

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

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

Supplier Development (SD) Category		Respondent's SD Bid	Supplier Development Value Indicators		
			SD Value Measurement	Quantity	Estimated Rand Value (ZAR) excluding VAT
<p><b>2. Job creation and/or job preservation</b></p>	<p>The potential for job creation and/or 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>Number and Rand value of new skilled jobs to be created due to Award of Contract <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></p>		
			<p>Number and Rand value of new unskilled jobs to be <b>created</b> by Award of Contract <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>Number of jobs which would be <b>preserved</b> through Award of Contract</p>		
			<p>Number of jobs to be created for Black youth (<i>where "youth" means individuals between the ages of 16 - 35 years</i>), Black women and Blacks with disabilities through Award of Contract</p>		

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Supplier Development (SD) Category		Respondent's SD Bid	Supplier Development Value Indicators		
			SD Value Measurement	Quantity	Estimated Rand Value (ZAR) excluding VAT
<b>3. Small business promotion</b>	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	<i>[insert cross-references to SD Bid Document in this column]</i>	% of your projected procurement spend from businesses with an annual turnover of less than R35 million (QSEs, EMEs and start-up companies)	%	
			% of the estimated contract value which would be subcontracted to EMEs, QSEs or start-up companies	%	

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

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

%

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Respondent's Signature

Date & Company Stamp





**GENERAL BID CONDITIONS - GOODS**

[March 2012]

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## 1 DEFINITIONS

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

- 1.1 **Bid or Bid Document(s)** shall mean a reference to a Request for Proposal or Request for Quotation;
- 1.2 **Goods** shall mean the goods required by Transnet as specified in its Bid Document;
- 1.3 **Respondent(s)** shall mean a respondent/bidder to a Transnet Bid;
- 1.4 **RFP** shall mean Request for Proposal;
- 1.5 **RFQ** shall mean Request for Quotation;
- 1.6 **RFX** shall mean RFP and/or RFQ, as the case may be;
- 1.7 **Supplier** shall mean the successful Respondent;
- 1.8 **Tax Invoice** shall mean the document as required by Section 20 of the Value-Added Tax Act, 89 of 1991, as may be amended from time to time;
- 1.9 **Transnet** shall mean Transnet SOC Ltd, a State Owned Company; and
- 1.10 **VAT** shall mean Value-Added Tax chargeable in terms of the Value-Added Tax Act, 89 of 1991, as may be amended from time to time.

## 2 GENERAL

All Bid Documents and subsequent contracts and orders shall be subject to the following procedures as laid down by Transnet and are to be strictly adhered to by any person or enterprise or company responding to this RFX.

## 3 LODGING OF BID DOCUMENTS

- 3.1 A Bid, which shall hereinafter include reference to an RFP or RFQ, shall be lodged with Transnet no later than the closing date and time specified for the receipt thereof, in accordance with the directions issued with Bid Documents.
- 3.2 Bids shall be transmitted in a sealed envelope and placed in the tender box at a venue stipulated in the Bid Documents with the Bid number and subject endorsed on the left hand bottom corner of the envelope.
- 3.3 The Respondent's return address must be stated on the reverse side of the sealed envelope.

## 4 USE OF BID FORMS

- 4.1 Where special forms are issued by Transnet for the submission of Bids, Respondents are required to submit their Bids by completion of the appropriate sections on such official forms and not on office stationery bearing their own terms and conditions of contract; non-compliance with this conditions may result in the rejection of a Bid.
- 4.2 Respondents must note that the original bid forms must be completed for submission and not a reprocessed facsimile thereof. Only if insufficient space has been allocated to a particular response

may a Respondent submit additional information under separate cover using the Company's letterhead and duly cross-referenced in the RFX.

## 5 RAISING OF A CHARGE FOR PLANS, SPECIFICATIONS AND BID FORMS

- 5.1 A non-refundable charge may be raised for Bid Documents, depending on the administrative cost of preparing and issuing the Bid Document.
- 5.2 If any of the drawings or specifications referred to in Bid Documents is the official publication of a recognised standardising body, copies of such drawings and specifications shall be acquired by Respondents at their own expense.

## 6 DEFAULTS BY RESPONDENTS

- 6.1 If the Respondent, after it has been notified of the acceptance of its Bid fails to:
- a) enter into a formal contract when called upon to do so in terms of clause 15 [*Contract Documents*], within such period as Transnet may specify; or
  - b) accept an order in terms of the Bid; or
  - c) when called upon to do so, furnish satisfactory security of the fulfilment of the contract in terms of clause 16 [*Securities*],

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

- 6.2 If any Respondent, who has submitted a Bid and/or concluded a contract with Transnet [hereinafter referred to as **the Supplier**], or in the capacity of agent or subcontractor who has been associated with such Bid or contract:
- a) has withdrawn such Bid after the advertised date and hour for the receipt of Bids; or
  - b) has, after having been notified of the acceptance of its Bid, failed or refused to sign a contract when called upon to do so in terms of any condition forming part of the Bid Documents; or
  - c) has carried out any contract resulting from such Bid in an unsatisfactory manner or has breached any condition of such contract; or
  - d) has offered, promised or given a bribe in relation to the obtaining or the execution of such contract; or
  - e) has acted in a fraudulent or improper manner or in bad faith towards Transnet or any government department or towards any public body, company or person; or
  - f) has made any incorrect statement in the affidavit or certificate referred to in clause 12 [*Formal Notification Regarding Name of Successful Respondent*] and is unable to prove to the satisfaction of Transnet that
    - (i) it made the statement in good faith honestly believing it to be correct; and

(ii) before making such statement, it took all reasonable steps to satisfy itself of its correctness; or

g) caused Transnet damage, or to incur costs in order to meet the Supplier's requirements which could not be recovered from the Supplier;

then a Bid from any such Respondent shall be disqualified and the person, enterprise or company [including any directors] shall, subject to clause 6.3 below, be disqualified from bidding for any Transnet business through its "blacklisting" process.

6.3 Any person or enterprise or company against whom a decision has been given under the provisions of clauses 6.2b), 6.2d) or 6.2e) above, may make representations to the Chief Operating Officer of Transnet Group, whose decision shall be final.

6.4 Any disqualification [**Blacklisting**] imposed upon any person or enterprise or company, may also apply to any other enterprise under the same or different names of disqualified persons or enterprise or company [or associates thereof] and shall for avoidance of doubt also be applied to any agent or employee of the person or enterprise or company concerned.

## 7 CURRENCY

Prices must be quoted in the currency of the Republic of South Africa [**ZAR**] in respect of local Goods. Prices in any other currency may be rejected by Transnet save where such price is quoted by a foreign Respondent.

## 8 EXCHANGE AND REMITTANCE

The Respondent should note that where the whole or a portion of the contract or order value is to be remitted overseas, Transnet SOC Ltd shall, if requested to do so by the Supplier, effect payment overseas directly to the foreign principal or manufacturer of such percentage of the contract or order value as may be stipulated by the Respondent in its Bid Documents. In instances where an overall Rand agreement cannot be concluded Transnet's preference is to enter into Rand based agreements and would therefore request the Respondent to give favourable consideration to:

8.1 Obtaining forward exchange cover on the foreign currency portion of the Agreement at a cost that is acceptable to Transnet SOC Ltd to protect itself against any currency rate fluctuation risks for the duration of any resulting contract or order. Transnet will NOT accept any fluctuations in the rate of exchange at the time when payments are made if a Rand agreement is concluded.

8.2 The Respondent who desires to avail itself of the aforementioned facility must at the time of bidding furnish the information called for in the clause "*Exchange and Remittance*" of the Bid Documents and also furnish full details of the principals or manufacturer to whom payment is to be made.

8.3 The South African Reserve Bank's approval is required before any foreign currency payments can be made to or on behalf of Respondents.

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

## **9 ACCEPTANCE OF BID**

- 9.1 Transnet does not bind itself to accept the lowest or any Bid.
- 9.2 Transnet reserves the right to accept any Bid in whole or in part.
- 9.3 Upon the acceptance of a Bid by Transnet, the parties shall be bound by these General Bid Conditions and the Standard Terms and Conditions of Contract [Form ST&C – Goods] and any schedule of “Special Conditions” or otherwise which form part of the Bid Documents.
- 9.4 Where the Respondent has been informed by Transnet per facsimile message or email of the acceptance of its Bid, the acknowledgement of the receipt transmitted shall be regarded as proof of delivery to the Respondent.

## **10 LAW GOVERNING CONTRACT**

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

## **11 IDENTIFICATION**

If the Respondent is a company, the full names of the directors shall be stated in the Bid. If the Respondent is a close corporation, the full names of the members shall be stated in the Bid. If the Respondent is a partnership or an individual trading under a trade name, the full names of the partners or of such individual, as the case may be, shall be furnished.

## **12 FORMAL NOTIFICATION REGARDING NAME OF SUCCESSFUL RESPONDENT**

In the case of Bids submitted to the Secretary of an Acquisition Council, unsuccessful Respondents will be formally notified of the names of successful Respondent(s) as soon as possible after the closing date for receipt of the Bid in question.

## **13 UNAUTHORISED COMMUNICATION ABOUT BIDS**

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

#### 14 RESPONDENT'S SAMPLES

- 14.1 If samples are required from Respondents, such samples shall be suitably marked with the Respondent's name and address, the Bid number and the Bid item number and must be despatched in time to reach the addressee as stipulated in the Bid Documents on or before the closing date of the Bid. Failure to submit samples by the due date may result in the rejection of a Bid.
- 14.2 Transnet reserves the right to retain samples furnished by Respondents in compliance with Bid conditions.
- 14.3 Payment will not be made for a successful Respondent's samples that may be retained by Transnet for the purpose of checking the quality and workmanship of Goods delivered in execution of a contract.
- 14.4 If unsuccessful Respondent's samples are retained and Respondents require payment therefor, Transnet will make payment at the tendered price of the Goods. If it is not desired to retain such samples and Respondents require their return, Transnet will accept responsibility for their return to the Respondent's nearest station or siding in South Africa.
- 14.5 Transnet will not accept liability for samples furnished by Respondents on their own initiative. If Respondents desire such samples returned it will be at their own risk and cost.
- 14.6 Should it be necessary to submit a pre-production sample for approval by Transnet prior to the commencement of delivery of the Goods against any resulting contract, Respondents are to note that for the purpose of calculating penalties for late delivery [if applicable] in terms of a contractual provision, the actual contractual delivery date will be considered to be -
- a) the period offered by the successful Respondent to submit the pre-production sample calculated as from the 7<sup>th</sup> [seventh] day after the date of the letter of acceptance;  
PLUS
  - b) the period required by Transnet to approve the pre-production sample calculated as from the date of receipt thereof;  
PLUS
  - c) the period offered to effect delivery of the Goods calculated as from the date of approval of the pre-production sample by Transnet.
- Suppliers will not be held responsible for late delivery of the Goods resulting from delays on the part of Transnet to approve the pre-production sample.

#### 15 CONTRACT DOCUMENTS

- 15.1 The contract documents will comprise these General Bid Conditions, the Standard Terms and Conditions of Contract [Form ST&C – Goods] and any schedule of "Special Conditions" or otherwise which form part of the Bid Documents.
- 15.2 These contract documents will constitute the contract between the parties upon receipt by the Respondent of Transnet's letter of acceptance / intent, subject to all additional amendments and/or special conditions thereto as agreed to by the parties.

## 16 SECURITIES

- 16.1 The successful Respondent, when called upon to do so, shall provide security to the satisfaction of Transnet for the due fulfilment of a contract or order. Such security shall be in the form of a deed of suretyship [**Deed of Suretyship**] furnished by an approved bank, building society, insurance or guarantee corporation carrying on business in South Africa.
- 16.2 The security may be applied in whole or part at the discretion of Transnet to make good any loss or damage which Transnet may incur in consequence of a breach of the contract or any part thereof.
- 16.3 Such security, if required, shall be an amount which will be stipulated in the Bid Documents.
- 16.4 For the purpose of clause 16.1 above, Transnet will supply a Deed of Suretyship form to the successful Respondent for completion and no guarantee in any other form will be accepted. A copy of such form will be supplied to Respondents on request. For this purpose a Deed of Suretyship form will be provided which shall be completed and returned to Transnet or a designated official by the successful Respondent within 30 [thirty] days from the date of the letter of acceptance. No payment will be made until the form, duly completed, is delivered to Transnet. Failure to return the Deed of Suretyship within the prescribed time shall, save where prior extension has been granted, entitle Transnet without notice to the Supplier to cancel the contract with immediate effect.
- 16.5 Additional costs incurred by Transnet necessitated by reason of default on the part of the Supplier in relation to the conditions of this clause 16 will be for the account of the Supplier.

## 17 PRICE AND DELIVERY BASIS FOR GOODS

- 17.1 Unless otherwise specified in the Bid Documents, the prices quoted for Goods must be on a delivered price basis in accordance with the terms and at the delivery point or points specified in Transnet's Bid Documents. Bids for supply on any other basis of delivery are liable to disqualification. The lead time for delivery stated by the Respondent must be inclusive of all non-working days or holidays, and of periods occupied in stocktaking or in effecting repairs to or overhauling plant, which would ordinarily occur within the delivery period given by the Respondent.
- 17.2 Respondents must furnish their Bid prices in the Price Schedule of the Bid Documents on the following basis:
- a) Local Supplies - Prices for Goods to be manufactured, produced or assembled in the Republic of South Africa, or imported supplies held in South Africa, to be quoted on a Delivered RSA named destination basis.
  - b) Imported Supplies - Prices for Goods to be imported from all sources to be quoted on a DDP, delivered end destination RSA basis [Delivered, Duty Paid to named destination, ICC Incoterms 2010], unless otherwise specified in the Bid Price Schedule.
- 17.3 The Respondent must indicate that the quoted prices for imported supplies include costs for, *inter alia*, the following:
- handling and transport to port of export
  - forwarding charges
  - ocean freight



- marine insurance
- landing charges
- dock dues
- surcharges
- customs clearance including duties, agency and finance charges
- railage, where possible, otherwise road transportation from RSA port of discharge to final destination

Such rates are to be based on weights and dimensions calculated by the Respondent. In the event of such rates being exceeded by an increase in the actual weights and dimensions, Transnet shall not be liable to pay the Supplier the associated increase in costs.

- 17.4 The attention of Respondents is drawn to the fact that should Transnet's departmental railage account numbers be used in respect of "Delivered Prices", Transnet reserves the right to cancel such contract/order with immediate effect and enforce the conditions of clause 15 [*Rights on Cancellation*] of Form ST&C - Goods.

## **18 SHIPMENT OF IMPORTED GOODS BY TRANSNET**

- 18.1 Where the Bid's stipulated purchase terms indicate that shipping is to be arranged by the forwarding agent appointed by Transnet, shipping arrangements by Transnet's nominated forwarding agent shall be made direct with a shipping company to allow the Ocean Bill of Lading to be drawn in favour of Transnet, as consignee, or its designated official at a port of entry -

- a) it will be a condition that all Goods collected by or delivered to Transnet's nominated forwarding agent against any resulting contract/order must be accompanied by the foreign manufacturer's / supplier's commercial invoices [which must clearly reflect Transnet's contract / order number] and packing lists/specifications which are to be handed to Transnet's forwarding agent not later than 3 [three] days prior to the vessel's scheduled date of departure.

It is imperative that the above be strictly adhered to as Goods cannot be cleared by Transnet at a port of entry in South Africa without the required documentation. Any demurrage charges applicable to the Goods which may become payable due to late or non-submission of the aforementioned documentation will be for the Supplier's account.

## **19 EXPORT LICENCE**

The award of a Bid for Goods to be imported may be subject to the issue of an export licence in the country of origin or supply. If required, the Supplier's manufacturer or forwarding agent shall be required to apply for such licence.

## **20 QUALITY OF MATERIAL**

Unless otherwise stipulated, the Goods offered shall be NEW i.e. in the unused condition, neither second-hand nor reconditioned.

## **21 PRICES SUBJECT TO CONFIRMATION**

- 21.1 A Bid with prices which are subject to confirmation will not be considered.
- 21.2 Bids where firm prices are quoted for the duration of any resulting order and or contract will receive precedence over prices which are subject to adjustment.

## **22 DELETION OF ITEMS EXCLUDED FROM BID**

The Respondent must delete items for which it has not tendered or for which the price has been included elsewhere in its Bid.

## **23 ALTERATIONS MADE BY THE RESPONDENT TO BID PRICES**

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

## **24 VALUE-ADDED TAX**

- 24.1 In respect of local supplies, i.e. Goods to be manufactured, produced or assembled in the Republic of South Africa, or imported supplies held or already in transit to South Africa, the prices quoted by the Respondent are to be exclusive of VAT which must be shown separately at the standard rate on the Tax Invoice.
- 24.2 In respect of imported supplies, i.e. Goods to be imported from all sources where Transnet is responsible for the clearance of the supplies at the port of entry, VAT will be paid by Transnet upon arrival of the Goods in the Republic of South Africa.
- a) The invoicing by the Supplier on behalf of its foreign principal represents a supply made by the principal.
  - b) The Supplier's Tax Invoice(s) for the local portion only [i.e. the "commission" for the services rendered locally] must show the VAT separately.

## **25 TERMS AND CONDITIONS OF BID**

- 25.1 The Supplier shall adhere to the Standard Terms and Conditions of Contract as set out in Form ST&C - Goods, a copy of which is issued with the Bid Documents, together with any schedule of "Special Conditions" or otherwise which form part of the Bid Documents.
- 25.2 Should the Respondent find any conditions unacceptable, it should indicate which conditions are unacceptable and offer alternatives by written submission on a company letterhead. Any such submission shall be subject to review by Transnet's Legal Counsel who shall determine whether the proposed alternative(s) are acceptable or otherwise, as the case may be.

## 26 IMPORTANT NOTICE TO RESPONDENTS REGARDING PAYMENT

### 26.1 Method of Payment

- a) The attention of the Respondent is directed to clause 8 [*Invoices and Payment*] of Form ST&C – Goods, which sets out the conditions of payment on which Bid price(s) shall be based.
- b) However, in addition to the foregoing the Respondent is invited to submit offers based on alternative methods of payment and/or financing proposals.
- c) The Respondent is required to give full particulars of the terms that will be applicable to its alternative offer(s) and the financial merits thereof will be evaluated and taken into consideration when the Bid is adjudicated.
- d) The Respondent must, therefore, in the first instance, tender strictly in accordance with clause 26.1a) above. Failure to comply with clause 26.1a) above may preclude a Bid from further consideration.

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

### 26.2 Conditional Discount

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

## 27 CONTRACT QUANTITIES AND DELIVERY REQUIREMENTS

### 27.1 Contract Quantities

- a) It must be clearly understood that although Transnet does not bind itself to purchase a definitive quantity under any contract which may be entered into pursuant to this Bid, the successful Respondent nevertheless undertakes to supply against the contract such quantities as may be ordered against the contract, which orders are posted or delivered by hand or transmitted electronically on or before the expiry date of such contract.
- b) It is furthermore a condition that Transnet will not accept liability for any material/stocks specially ordered or carried by the Respondent with a view to meeting the requirements under any such contract.
- c) The estimated planned quantities likely to be ordered by Transnet per annum are furnished in relevant section of the Bid Documents. For avoidance of doubt the estimated quantities are estimates and Transnet reserves the right to order only those quantities sufficient for its operational requirements.

## 27.2 Delivery Period

### a) Period Contracts and Fixed Quantity Requirements

It will be a condition of any resulting contract/order that the delivery period embodied therein will be governed by the provisions of clause 13 [*Defective Goods*], 14 [*Total or Partial Failure to Perform the Scope of Supply*] and 15 [*Rights on Cancellation*] of Form ST&C – Goods.

### b) Progress Reports

The Supplier may be required to submit periodical progress reports in regard to the delivery of the Goods.

### c) Emergency Demands as and when required

If, due to breakdowns, derailments, storm damage or similar unforeseen circumstances, supplies of the material covered by the Bid are required at short notice for immediate delivery, the Supplier will be given first right of refusal of such business. If it is unable to meet the desired critical delivery period, Transnet reserves the right to purchase such supplies as may be required to meet the emergency outside the contract if immediate delivery can be offered from any other source. Clause 14 of Form ST&C – Goods [*Total or Partial Failure to Perform the Scope of Supply*] will not be applicable in these circumstances.

## 28 PACKING AND MARKING

### 28.1 Timber used for crating, packing and dunnage

Attention is directed to the Forest Act, 1968 [Act 72 of 1968], or any amendments thereto, or regulations promulgated in terms thereof.

### 28.2 Printing on container and packaging

Printing ["marks"] appearing on all containers and packaging of Goods shall be in English.

## 29 PLANS, DRAWINGS, DIAGRAMS, SPECIFICATIONS AND DOCUMENTS

### 29.1 Copyright

Copyright in plans, drawings, diagrams, specifications and documents compiled by the Supplier for the purpose of contract work shall be governed by the terms and conditions detailed in clause 22 of Form ST&T - Goods [*Intellectual Property Rights*].

### 29.2 Drawings and specifications

In addition to what may be stated in any Bid Document in this connection, the Respondent should note that, unless notified to the contrary by Transnet or a designated official by means of an official amendment to the Bid Documents, it is required to tender for Goods strictly in accordance with the drawings and specifications supplied by Transnet, notwithstanding that it may be aware that alterations or amendments to such drawings or specifications are contemplated by Transnet.

### 29.3 Respondent's drawings

Drawings required to be submitted by the Respondent must be furnished before the closing time and date of the Bid. The non-receipt of such drawings by the appointed time may disqualify the Bid.

#### 29.4 Foreign specifications

The Respondent quoting for Goods in accordance with foreign specifications, other than British and American standards, is to submit translated copies of such specifications with the Bid. In the event of any departures or variations between the foreign specification(s) quoted in the Bid Documents, full details regarding such departures or variations must be furnished by the Respondent in a covering letter attached to the Bid. If this condition is not complied with by the Respondent, the Bid may be disqualified.

### 30 VISITS TO FOREIGN COUNTRIES

- 30.1 Respondents must furnish details in a covering letter if it is considered necessary that employees of Transnet should carry out inspection and/or witness any tests on Goods at the premises of the preferred Respondent or its subcontractors overseas for the purpose of a product demonstration and/or final acceptance or for any other reason.
- 30.2 If the Respondent considers overseas visits to be necessary it must provide the following information in a covering letter in respect of each proposed visit:
- a) countries and places to be visited;
  - b) number of employees and disciplines involved;
  - c) number of man-days involved; and
  - d) motivation for the visit.
- 30.3 Transnet will make all arrangements with regard to booking of air journeys, hotel reservations, transport to and from airports, places of inspection or demonstration, etc. and all expenses will be for the account of Transnet.
- 30.4 Before a visit is undertaken, such as envisaged in this clause 30, Transnet and the Respondent will agree in writing on the number of employees of Transnet that should undertake the visit and the number of man-days involved in the visit.

### 31 BIDS BY OR ON BEHALF OF FOREIGN RESPONDENTS

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

Transnet by the South African representative or agents authorising them to enter into and sign such contract.

- a) Such Power of Attorney must comply with Government Notice No. 1160 of 27 June 1930 [and any amendments thereto] - "Rules of the Supreme Court of South Africa for the authentication of documents executed outside the Republic for use within the Republic."
- b) The Power of Attorney must be signed by the principal under the same title as used in the Bid Documents.
- c) On arrival within the Republic of South Africa this Power of Attorney is to be completed in terms of Section 8(2) of the Stamp Duties Act No. 77 of 1968, or any amendment thereof.
- d) If a Power of Attorney held by the South African representative or agent includes matters of a general nature besides provision for the entering into and signing of a contract with Transnet, a certified copy thereof should be furnished.
- e) The Power of Attorney must authorise the South African representative or agent to choose the *domicilium citandi et executandi* as provided for in clause 26 [Addresses for Notices] of the Standard Conditions of Contract, Form ST&C - Goods.

31.4 If payment is to be made in South Africa, the foreign Supplier [i.e. the principal, or its South African agent or representative], must notify Transnet in writing whether, for payment by electronic funds transfer [EFT]:

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

31.5 The attention of the Respondent is directed to clause 16 above [Securities] regarding the provision of security for the fulfilment of contracts and orders and the manner and form in which such security is to be furnished.

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

**FORM ST&C - GOODS [March 2012]**

“PREVIEW COPY ONLY”

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## 1 INTRODUCTION

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

## 2 DEFINITIONS

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

- 2.1 **AFSA** means the Arbitration Foundation of South Africa;
- 2.2 **Agreement** means the Agreement and its associated schedules and/or annexures and/or appendices, and/or schedules, including the Schedule of Requirements, the technical specifications for the Goods and such special conditions as shall apply to the Agreement, together with the General Bid Conditions and any additional provisions in the associated bid documents tendered by the Supplier [as agreed, in writing, between the Parties], which collectively and exclusively govern the supply of Goods and provision of ancillary Services by the Supplier to Transnet;
- 2.3 **Background Intellectual Property** means all Intellectual Property introduced and required by either Party to give effect to their obligations under the Agreement owned in whole or in part by or licensed to either Party or their affiliates prior to the Commencement Date or developed after the Commencement Date otherwise pursuant to the Agreement;
- 2.4 **Business Day(s)** means Mondays to Fridays between 07:30 and 16:00, excluding public holidays 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 **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;
- 2.9 **Foreground Intellectual Property** means all Intellectual Property developed by either Party pursuant to the Agreement;
- 2.10 **Goods** means [●], the material / products specified in the Schedule of Requirements appended as Schedule 1 hereto;
- 2.11 **ICC Incoterms 2010** means the set of commercial trade terms as published by the International Chamber of Commerce, Paris [ICC], which are otherwise referred to as purchase terms and which define precisely the responsibilities, costs and risks of the buyer [**Transnet**] and the seller [**the Supplier**]. Incoterms are only applicable to contracts involving the import or export of Goods from one country to another and for the purpose of the Agreement, if applicable, shall mean the designated Incoterm as stipulated in Schedule 1 hereto. Further details of the Incoterm [purchase

terms] for the Agreement, if applicable, can be viewed at the International Business Training website - <http://www.i-b-t.net/incoterms.html>;

- 2.12 **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;
- 2.13 **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;
- 2.14 **Parties** mean the Parties to the Agreement together with their subsidiaries, divisions, business units, successors-in-title and assigns;
- 2.15 **Party** means either one of these Parties;
- 2.16 **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;
- 2.17 **Permitted Purpose** means any activity or process to be undertaken or supervised by a Staff member 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;
- 2.18 **Price(s)** means the agreed Price(s) for the Goods to be purchased from the Supplier by Transnet, 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;
- 2.19 **Purchase Order(s)** means official orders issued by an operating division of Transnet to the Supplier for the supply of Goods or ancillary Services;
- 2.20 **Services** means Services provided to Transnet including activities such as consultation, advisory services, implementation services and day-to-day assistance provided by the Supplier, pursuant to the Schedule of Requirements in terms of the Agreement;
- 2.21 **Staff** means any partner, employee, agent, consultant, independent associate or contractor, Subcontractor and the staff of such Subcontractor, or other authorised representative of either Party;
- 2.22 **Schedule of Requirements** means Schedule 1 hereto;
- 2.23 **Subcontract** means any contract or agreement or proposed contract or agreement between the Supplier and any third party whereby that third party agrees to provide to the Supplier the Goods or related Services or any part thereof or material used in the manufacture of the Goods or any part thereof;
- 2.24 **Subcontractor** means the third party with whom the Supplier enters into a Subcontract;
- 2.25 **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;

- 2.26 **Trade Marks** mean registered Trade Marks and Trade Mark applications and include 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; and
- 2.27 **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.

### 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 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 Supplier will arrange for the supply to Transnet of the Goods which meet the requirements and specifications of Transnet, the delivery of which is controlled by means of Purchase Orders to be issued by Transnet and executed by the Supplier in accordance with the Agreement.
- 4.2 Such Purchase Orders and deliveries to Transnet shall be agreed between the Parties from time to time, subject to the terms of the Schedule of Requirements.
- 4.3 Each properly executed Purchase Order forms an inseparable part of the Agreement as if it were fully incorporated into the body of the Agreement.
- 4.4 During the period of the Agreement, both Parties can make written suggestions for amendments to the Schedule of Requirements in accordance with procedures set out in clause 28 [*Amendment and Change Control*]. A Party will advise the other Party within 14 [fourteen] Business Days, or such other period as mutually agreed, whether the amendment is acceptable.
- 4.5 Insofar as any term, provision or condition in the Schedule of Requirements conflicts with a like term, provision or condition in the Agreement and/or a Purchase Order, the term or 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.

## 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 DURATION AND CANCELLATION

- 6.1 Notwithstanding the date of signature hereof, the Commencement Date if 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.
- 6.2 Notwithstanding clause 16 [*Breach and Termination*], either Party may cancel the Agreement without cause by giving 30 [thirty] days prior written notice thereof to the other Party, provided that in such instance, the Agreement will nevertheless be applicable in respect of all Purchase Orders which have been placed prior to the date of such cancellation.

## 7 GENERAL OBLIGATIONS OF THE SUPPLIER

- 7.1 The Supplier shall:
- a) respond promptly to all complaints and enquiries from Transnet;
  - b) inform Transnet immediately of any dispute or complaint arising in relation to the storage or delivery of the Goods;
  - c) conduct its business in a professional manner which will reflect positively upon the Supplier and the Supplier's products;
  - d) keep full records clearly indicating all transactions concluded by the Supplier relating to the delivery of the Goods 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 Goods and ancillary Services and the conduct of the business and activities of the Supplier;
  - f) observe and ensure compliance with all requirements and obligations as set out in the labour and related legislation of South Africa, including the Occupational Health and Safety Act, 85 of 1993, as may be amended from time to time;

- g) comply with all applicable environmental legislation and regulations, demonstrate sound environmental performance and have an environmental management policy which ensures that its products, including the Goods or ancillary Services are procured, produced, packaged, delivered and are capable of being used and ultimately disposed of in a way that is environmentally appropriate; and
- h) ensure the validity of all renewable certifications, including but not limited to its Tax Clearance Certificate and B-BBEE Accreditation Certificate, throughout the entire term of the Agreement. Should the Supplier 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 Supplier.

7.2 The Supplier acknowledges and agrees that it shall at all times:

- a) render the supply of the Goods and ancillary Services and perform all its duties with honesty and integrity;
- b) communicate openly and honestly with Transnet regarding the supply and performance of the Goods and demonstrate a commitment to effecting the supply and performing ancillary Services timeously, efficiently and at least to the required standards;
- c) endeavour to provide the highest possible standards of service and workmanship, 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 Staff, as well as all Transnet's Staff, 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;
- g) treat all enquiries from Transnet in connection with the supply of the Goods and/or ancillary Services with courtesy and respond to all enquiries promptly and efficiently. Where the Supplier is unable to comply with the provisions of this clause, the Supplier will advise Transnet of the delay and the reasons therefor and will keep Transnet informed of progress made regarding the enquiry;
- h) when requested by Transnet, provide clear and accurate information regarding the Supplier's own policies and procedures, excluding Know-How and other Confidential Information, except where a non-disclosure undertaking has been entered into between the Parties;
- i) not allow a conflict of interest to develop between its own interests [or the interests of any of its other customers] and the interests of Transnet;
- 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 supply of Goods or ancillary Services to Transnet.

7.3 In compliance with the National Railway Safety Regulator Act, 16 of 2002, as may be amended from time to time, the Supplier shall ensure that the Goods and ancillary 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 Supplier, as applicable, shall be subject to a review of the capability of the proposed Subcontractor to comply with the specified railway safety requirements and/or regulations. The Supplier and/or its Subcontractor shall grant Transnet access, during the term of the Agreement, to review any safety-related activities, including the coordination of such activities across all parts of its organisation.

## 8 INVOICES AND PAYMENT

- 8.1 Transnet shall pay the Supplier the amounts stipulated in each Purchase Order, subject to the terms and conditions of the Agreement.
- 8.2 Transnet shall pay such amounts to the Supplier upon receipt of a valid and undisputed Tax Invoice together with the supporting documentation, as specified in the Schedule of Requirements appended hereto, once the undisputed Tax Invoices or such portions of the Tax Invoices which are undisputed become due and payable to the Supplier for the delivery of the Goods ordered, in terms of clause 8.4 below.
- 8.3 All Prices set out in the Agreement and the Schedule of Requirements hereto are exclusive of VAT.
- 8.4 Unless otherwise provided for in the Schedule of Requirements 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 Supplier's statement together with the relevant undisputed Tax Invoice(s) and supporting documentation.
- 8.5 Where the payment of any Tax Invoice, or any part of a Tax Invoice which is not in dispute, is not made in accordance with this clause 8, the Supplier shall be entitled to charge interest on the outstanding amount, at The Standard Bank of South Africa's prime rate of interest in force, for the period from the due date of payment until the outstanding amount is paid.
- 8.6 The Supplier shall remain the owner of all plant, material, machinery, equipment and the like [collectively, **the Supplier's Goods**] provided to Transnet until Transnet has paid in full for the Supplier's Goods, it being specifically agreed that Transnet shall acquire no rights [including liens and rights of use] of whatsoever nature in such Supplier's Goods until date of final payment by

Transnet. Subject to the foregoing, all risk and benefit to the Supplier's Goods shall pass from the Supplier to Transnet on delivery of the Supplier's Goods by the Supplier to Transnet.

## 9 PRICE ADJUSTMENTS

- 9.1 Prices for Goods supplied in terms of the Agreement shall be subject to review as indicated in the Schedule of Requirements annexed hereto.
- 9.2 No less than 2 [two] months prior to any proposed Price adjustment, the Parties shall commence negotiations for Prices for the next period or as otherwise indicated in Schedule 1 hereto. The Parties shall have regard for market-related pricing of equivalent goods, continuous improvement initiatives, costs [including labour, raw materials and transport/delivery], order size and frequency and changes to the specification of the Goods.
- 9.3 Pursuant to clause 9.2 above, the Supplier shall keep full and accurate records of all costs associated with the supply of the Goods to Transnet, in a form to be approved in writing by Transnet. The Supplier shall produce such records to Transnet for inspection at all reasonable times on request and such records may, at Transnet's option, be audited by Transnet or its designated representatives.
- 9.4 Should Transnet and the Supplier fail to reach an agreement on Price for the successive period, either Party shall be entitled to submit this matter to dispute resolution in accordance with clause 25 of the Master Agreement [*Dispute Resolution*].
- 9.5 If during the period of the Agreement Transnet can purchase similar Goods of a like quality from another supplier at a total delivered cost to a Transnet facility that is lower than the total delivered cost of the Goods purchased hereunder from the Supplier, Transnet may notify the Supplier of such total delivered cost and the Supplier shall have an opportunity to adjust the Price of the Goods purchased hereunder, on such a basis as to result in the same total delivered cost to Transnet, within 30 [thirty] calendar days of such notice. If the Supplier fails to do so or cannot legally do so, Transnet may (i) purchase the Goods from such other supplier in which case the obligations, including, but not limited to, any purchase and sale requirements and/or commitments, if any, of Transnet and the Supplier hereunder shall be reduced accordingly; (ii) terminate the Agreement without any penalty, liability or further obligation; or (iii) continue purchases under the Agreement.
- 9.6 If during the period of the Agreement the Supplier sells any materials which are the same as, equivalent to, or substantially similar to the Goods herein, at a total delivered cost to a third party lower than the total delivered cost to a Transnet facility, then the Supplier has an opportunity to adjust its Price for the Goods purchased hereunder within 30 [thirty] calendar days so that the Price is the same or lower than the total delivered cost of such third party. If the Supplier fails to do so or cannot legally do so, Transnet may (i) purchase the Goods from any other such supplier, in which case the obligations, including, but not limited to, any purchase and sale requirements and/or commitments, if any, of Transnet and the Supplier hereunder shall be reduced accordingly; or (ii) terminate the Agreement without any penalty, liability or further obligation. Within 30 [thirty] calendar days of the Commencement Date of the Agreement or at any time Transnet so requests, the Supplier shall certify in writing to Transnet that it is in compliance with this clause



and shall provide all information that Transnet reasonably requests in order to verify such compliance.

## 10 WARRANTIES

The Supplier warrants that:

- 10.1 pursuant to clause 7.3 [*General Obligations of the Supplier*], the Goods will be manufactured in accordance with the specifications appended hereto at Schedule 1, or the manufacturer's specifications, as agreed in writing by both Parties;
- 10.2 the execution and performance of the Agreement by the Supplier does not infringe any rights of a third party or breach any obligation of the Supplier to any third party; and
- 10.3 it has taken all reasonable precautions to ensure that, in the event of a disaster, the impact of such disaster on the ability of the Supplier to comply with its obligations under the Agreement will be reduced to the greatest extent possible, and that the Supplier shall ensure that it has appropriate, tested and documented recovery arrangements in place.

## 11 THIRD PARTY INDEMNITY

The Supplier hereby indemnifies and shall hold Transnet harmless against any direct damages suffered by or claims arising against Transnet in respect of clause 10.2 above.

## 12 INSPECTION

- 12.1 Transnet reserves the right to arrange for the inspection of all Goods forming the subject of any Purchase Order, at any stage before final acceptance and by any means it may think fit, and when such inspection is to be carried out, the relevant Purchase Order(s) shall be endorsed accordingly.
- 12.2 When inspection at the Supplier's works or warehouse is specified, Transnet's authorised inspector shall have free access to the premises of the Supplier at all times during working hours on a Business Day; shall have liberty to inspect work which is the subject of the Purchase Order at any stage of manufacture, and may reject any Goods which are found to be incomplete, defective or in any way not in conformity with the terms and specifications of the Agreement; and the Supplier shall afford all reasonable facilities for such access and inspection.
- 12.3 The Supplier shall provide inspection gauges, measuring and test equipment to ensure that the requirements of the Agreement are satisfied. All gauges, templates, tools and other equipment required to check the accuracy of the work shall be calibrated at regular and reasonable intervals by a laboratory which has been approved in writing by Transnet. This certificate shall not be more than 12 [twelve] months old.
- 12.4 The Supplier shall prepare and supply, without charge to Transnet, all test pieces, samples and specimens; shall provide all labour and apparatus for carrying out tests and analyses in accordance with the terms of the Agreement or Purchase Order, and render all reasonable assistance in making such tests and analyses.
- 12.5 All special rules governing gauging, testing, analysis and other inspection procedures shall be adhered to strictly in accordance with the terms of the Agreement or Purchase Order and the conditions of any specifications and drawings quoted therein.
- 12.6 Inspection will be arranged by the Staff of Transnet, as indicated in the Purchase Order(s).

- 12.7 When Goods are ready for inspection, the Supplier shall apply promptly to the appropriate authority for instructions regarding such inspection. All applications for inspection shall quote Transnet's Agreement or Purchase Order number. 7 [seven] Business Days' notice of readiness from the Supplier shall be given to the authorised inspector appointed by Transnet to carry out such inspection.
- 12.8 Transnet shall have the right to recover from the Supplier the cost of inspection of any Goods that have been rejected by its authorised inspector in terms of this clause 12.

### **13 DEFECTIVE GOODS**

- 13.1 Notwithstanding any certificate and/or receipt that may have been issued by or on behalf of Transnet either in South Africa or overseas, Goods will be accepted at the place of delivery or at the port of shipment, as specified in the Agreement, only as regards outward condition of packages and Transnet retains the right to reject the Goods supplied, on or after arrival at the place to which they are consigned, or after they have been placed in use in South Africa, should they be found defective.
- 13.2 If Goods are rejected owing to latent defects becoming apparent during machining operations or other preparation necessary on the part of Transnet before they can be put into use, the Supplier shall bear all expenses incurred by Transnet in carrying out such necessary operations.
- 13.3 If such Goods are rejected, the Supplier will pay the following costs:
- a) for Goods purchased in South Africa on an ex works basis, the cost of transport from the Supplier's works in South Africa to the named destination where the Goods have been rejected by Transnet, plus handling charges and storage, if leviable; or
  - b) for Goods manufactured overseas, the Supplier shall pay all replacement costs including the overseas inland transport cost, freight and insurance charges incurred plus railage or other inland transport costs from the South African port to the place where the Goods have been rejected by Transnet, including handling charges, storage, landing charges, customs duty and surcharges, if leviable.
- 13.4 If Transnet requires rejected Goods to be replaced, the Supplier shall, when called upon to do so, arrange prompt replacement of the Goods within the prescribed manufacturing lead times for such Goods, as indicated in Schedule 1.
- 13.5 If Goods are found to be defective but the defects are, in the opinion of Transnet, not of so serious a nature as to warrant total rejection of the Goods, the Supplier shall, when called upon to do so, remedy or make good such defects at its own cost, or Transnet may remedy or make good such defects at the request of the Supplier and recover from the Supplier all costs or expenses reasonably incurred by it in doing so.
- 13.6 Should the Supplier fail, when called upon to remedy or make good such defects within a reasonable time or to request Transnet to do so, Transnet may proceed to remedy or make good such defects and thereafter recover from the Supplier all such costs and expenses as aforementioned.

- 13.7 Any amount recoverable from the Supplier in terms of this clause may, without prejudice to any other legal remedies available to Transnet, be deducted in whole or in part from any monies in the hands of Transnet which are due for payment to the Supplier.

#### **14 TOTAL OR PARTIAL FAILURE TO PERFORM THE SCOPE OF SUPPLY**

14.1 In the case of Goods to be specially manufactured for it, if Transnet at any time ascertains that:

- a) no manufacturing of the Goods specified in a Purchase Order has commenced and there is little or no prospect, in Transnet's opinion, that manufacturing will commence within a reasonable time; or
- b) delivery of any of the Goods is being or is likely to be delayed beyond the promised delivery date(s), and there is little or no prospect of the Purchase Order(s) being carried out within reasonable adherence to the promised delivery rate(s) or time(s).

then Transnet may, irrespective of the cause of the delay, by notice to the Supplier, cancel as from a future date specified in such notice the whole or any part of the Agreement or Purchase Order in respect of which the Goods to be supplied have not been completed by that date, without incurring any liability by reason of such cancellation except as provided in this clause.

14.2 The Supplier shall thereupon, as soon as possible after such date, deliver to Transnet the Goods [if any] already completed, and payment for the part performance shall be made on a *pro rata* basis, provided the uncompleted part is not an integral or essential part of the completed Goods. Where an integral or essential part of the work has not been completed, the amount to be paid to the Supplier will be calculated on the basis of Transnet's enrichment. The Supplier shall, wherever practicable, supply Transnet with the necessary drawings and/or specifications to enable it to complete the work.

14.3 Whenever, in any case not covered by clause 14.1 above, the Supplier fails or neglects to execute the work or to deliver any portion of the Goods as required by the terms of the Agreement or Purchase Order, or if any Goods are rejected on any of the grounds mentioned in clause 13 [*Defective Goods*], Transnet may cancel the Agreement or Purchase Order in so far as it relates to the unexecuted work or the undelivered or rejected portion of the Goods, and in such event, the supply of the remaining portion shall remain subject in all respects to these conditions.

#### **15 RIGHTS ON CANCELLATION**

15.1 If the Agreement or Purchase Order is cancelled in whole or in part in terms of clause 14 [*Total or Partial Failure to Perform the Scope of Supply*], Transnet may execute or complete the Agreement with any other entity and do so on such terms as it may deem proper, or may procure other comparable Goods in substitution for those neglected to be manufactured or supplied or rejected as aforesaid, and may recover from the Supplier the difference between the cost of such Goods and the Price [if the latter was lower] as well as any costs and expenses [including any additional transport costs] which Transnet may have had to incur in consequence of the Supplier's default.

15.2 Any amount which may be recoverable from the Supplier in terms of clause 15.1 above, without prejudice to any other legal remedies available to Transnet, may be deducted in whole or in part from any monies in the hands of Transnet and due for payment to the Supplier.

## 16 BREACH AND TERMINATION

- 16.1 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.
- 16.2 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 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.
- 16.3 Transnet may terminate the Agreement at any time within 2 [two] months of becoming aware of a change of control of the Supplier by notice in writing to the Supplier. For the purposes of this clause, **control** means the right to direct the affairs of a company whether by ownership of shares, membership of the board of directors, agreement or otherwise.
- 16.4 The provisions of clauses 0 [Definitions], 10 [Warranties], 15 [Rights on Cancellation], 19 [Confidentiality], 21 [Limitation of Liability], 22 [Intellectual Property Rights], 25 [Dispute Resolution] and 29.1 [Governing Law] shall survive termination or expiry of the Agreement.

## 17 CESSION

- 17.1 Upon written notice to the Supplier, Transnet shall be entitled:
- a) to appoint Transnet's financier of the Goods as first payer under the Agreement, without transferring the ultimate responsibility for payment which will remain with Transnet; and
  - b) to cede, assign and transfer its right, title and interest in the Goods to such financier as part of the funding consideration for the Goods.
- 17.2 The Supplier is not entitled to cede, delegate, assign, Subcontract or in any other manner dispose of any of its rights or obligations in terms of the Agreement without the prior written consent of Transnet, which consent shall not be withheld or delayed unreasonably.

## 18 FORCE MAJEURE

- 18.1 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.

- 18.2 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 with 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.

## 19 CONFIDENTIALITY

19.1 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 such 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.

19.2 The duties and obligations with regard to Confidential Information in this clause 19 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 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.

19.3 This clause 19 shall survive termination for any reason of the Agreement and shall remain in force and effect from the Commencement Date of the Agreement and 5 [five] years after the termination of the Agreement. Upon termination of the Agreement, all documentation furnished to the Supplier by Transnet pursuant to the Agreement shall be returned to Transnet including, without limitation, all corporate identity equipment including dies, blocks, labels, advertising matter, printing matter and the like.

## 20 INSURANCES

20.1 Without limiting the liability of the Supplier under the Agreement, the Supplier shall take out insurance in respect of all risks for which it is prudent for the Supplier to insure against including any liability it may have as a result of its activities under the Agreement for theft, destruction, loss of or damage to Goods, death or injury to any person and damage to property. The level of

insurance will be kept under review by Transnet, on an annual basis, to ensure its adequacy, provided that any variation to the level of such insurance shall be entirely at the discretion of the Supplier.

20.2 The Supplier shall arrange insurance with reputable insurers and will produce to Transnet evidence of the existence of the policies on request.

20.3 Notwithstanding clause 20.1 above, should Transnet require specific insurance cover(s) in respect of the Goods purchased, such further requirements shall be set out in the Schedule of Requirements, appended hereto as Schedule 1.

## 21 LIMITATION OF LIABILITY

21.1 The Supplier's liability under this clause 21 shall be in addition to any warranty or condition of any kind, express or implied by law or otherwise, relating to the Goods or ancillary Services, including the quality of the Goods or ancillary Services or any materials delivered pursuant to the Agreement.

21.2 Neither Party excludes or limits liability to the other Party for:

- a) death or personal injury caused by its negligence, [including its employees', agents' or Subcontractors' negligence]; or
- b) fraud.

21.3 Neither Party accepts liability for damages and claims of a special, indirect or consequential nature arising as a result of the performance or non-performance of the Agreement, provided that such loss, damages or claims are not the direct result of the wilful acts or omissions and/or negligence or of any event which could reasonably have been foreseen and avoided on the part of the other Party. The phrase, "special, indirect or consequential" is deemed to include economic loss, loss of opportunity, loss of profit or revenue, and loss or damage in connection with claims against the principal by third parties.

21.4 Nothing in this clause 21 shall be taken as limiting the liability of the Parties in respect of clauses 19 [*Confidentiality*] and 22 [*Intellectual Property Rights*].

## 22 INTELLECTUAL PROPERTY RIGHTS

### 22.1 Title to Confidential Information

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

- d) The Supplier shall grant Transnet access to the Supplier's Background Intellectual Property on terms which shall be *bona fide* negotiated between the Parties for the purpose of commercially exploiting the Foreground Intellectual Property, to the extent that such access is required.

#### 22.2 Title to Intellectual Property

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

#### 22.3 Title to Improvements

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



attaining, maintaining or documenting ownership and/or protection of the improved Foreground Intellectual Property.

#### 22.4 **Unauthorised Use of Confidential Information**

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

#### 22.5 **Unauthorised Use of Intellectual Property**

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

### 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 Department
- (ii) For commercial notices: [●]  
Fax No. [●]  
Attention: [●]

b) **The Supplier**

- (i) For legal notices: [●]  
Fax No. [●]  
Attention: [●]
- (ii) For commercial notices: [●]  
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 sent by facsimile, on the date and time of sending of such facsimile, as evidenced by a facsimile confirmation printout, provided that such notice shall be confirmed by prepaid

registered post on the date of dispatch of such facsimile, 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 whatsoever between them, with regard to the subject matter dealt with in the Agreement, any annexures appended hereto and the Schedule of Requirements.

**28 AMENDMENT AND CHANGE CONTROL**

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

**29 GENERAL**

**29.1 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.

**29.2 Change of Law**

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

**29.3 Counterparts**

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

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