

**Transnet Freight Rail**an Operating Division of **TRANSNET SOC LTD**

(Registration No. 1990/000900/30)

REQUEST FOR PROPOSAL [RFP]**PROVISION OF RE-DESIGN OF THE BLUE TRAIN
WEBSITE AND DEVELOPMENT OF A NEW
RESERVATION SYSTEM****RFP NUMBER: CRAC-JHB-9686****ISSUE DATE: 20th NOVEMBER 2012****BRIEFING SESSION: 27th NOVEMBER 2012****VENUE: BOMBELA BOARDROOM****TIME: 10H00****CLOSING DATE: 4th December 2012****CLOSING TIME: 10:00****OPTION DATE: 30 March 2013**

SCHEDULE OF BID DOCUMENTS

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LIST OF ACRONYMS

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

DESCRIPTION: PROVISION OF RE-DESIGN OF THE BLUE TRAIN WEBSITE AND DEVELOPMENT OF A NEW RESERVATION SYSTEM.

Section 1: NOTICE TO BIDDERS

1 PROPOSAL REQUEST

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

On or after 20th November 2012, the RFP documents may be inspected at, and are obtainable from The Tender Advice Centre, Ground Floor, Inyanda House 2, 21 Wellington Street, Parktown. On payment of an amount of R500.00(inclusive of VAT) per set. Payment is to be made as follows:

Account Name	Transnet Freight Rail
Bank	: Standard Bank
Account Number	: 203158598
Branch Code	: 004805

NOTES –

- a) This amount is not refundable.
- b) A receipt for such payment made must be presented when collecting the RFP documents and submitted with your Proposal.
- c) Proof of payment can also be forwarded electronically to: Anthonie.Erasmus@transnet.net in order to have an electronic copy of the RFP in PDF format forwarded to such a supplier.

RFP documents will only be available until 15H00, Monday 26th November 2012.

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

2 FORMAL NON COMPULSORY BRIEFING

A compulsory pre-proposal RFP briefing will be conducted at 15 Girton Road, Bombela Boardroom, Ground Floor, Inyanda House 2, on the 27th of November 2012, at 10H00 for a period of ± one and half hour. [Respondent to provide own transportation and accommodation].

- 2.1 A Certificate of Attendance in the form must be completed and submitted with your Proposal.
- 2.2 Respondents failing to attend the compulsory RFP briefing will be disqualified.
- 2.3 Respondents without a valid RFP document in their possession will not be allowed to attend the RFP briefing. The briefing session will start punctually at 10H00 and information will not be repeated for

the benefit of Respondents arriving late. Once the session has officially closed no further entrants will be allowed.

3 PROPOSAL SUBMISSION

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

RFP No: CRAC-JHB-9686
DESCRIPTION: PROVISION OF RE-DESIGN OF THE BLUE TRAIN WEBSITE AND DEVELOPMENT OF A NEW RESERVATION.

Closing date and time: Tuesday 4 December 2012 at 10:00

Closing address:
THE SECRETARIAT
TRANSNET FREIGHT RAIL
ACQUISITION COUNCIL
INYANDA HOUSE 1
TENDER BOX
OFFICE BLOCK FOYER
21 WELLINGTON STREET
PARKTOWN
JOHANNESBURG

4 DELIVERY INSTRUCTIONS FOR RFP

4.1 Delivery by hand

If delivered by hand, the envelope is to be deposited in the Transnet tender box which is located at the main entrance of Inyanda House 1, 21 Wellington Street, Ground Floor, Parktown, Johannesburg, and should be addressed as follows:

THE CHAIRPERSON

THE SECRETARIAT
TRANSNET FREIGHT RAIL
ACQUISITION COUNCIL
INYANDA HOUSE 1
TENDER BOX
OFFICE BLOCK FOYER
21 WELLINGTON STREET
PARKTOWN
JOHANNESBURG

- a) The measurements of the "tender slot" are 400mm wide x 100mm high, and Respondents must please ensure that response documents or files are not larger than the above

dimensions. Responses which are too bulky [i.e. more than 100mm thick] must be split into two or more files, and placed in separate envelopes, each such envelope to be addressed as required in paragraph 3 above.

4.2 **Despatch by courier**

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

THE SECRETARIAT
TRANSNET FREIGHT RAIL
ACQUISITION COUNCIL
INYANDA HOUSE 1
TENDER BOX
OFFICE BLOCK FOYER
21 WELLINGTON STREET
PARKTOWN
JOHANNESBURG

- 4.3 Please note that this RFP closes punctually at 10:00 on Tuesday 4th December 2012.
- 4.4 If responses are not delivered as stipulated herein, such responses will not be considered and will be treated as "UNRESPONSIVE."
- 4.5 No email or facsimile responses will be considered, unless otherwise stated herein.
- 4.6 The responses to this RFP will be opened as soon as practicable after the expiry of the time advertised for receiving them.
- 4.7 Transnet shall not, at the opening of responses, disclose to any other company any confidential details pertaining to the Proposals / information received, i.e. pricing, delivery, etc. The names and locations of the Respondents will be divulged to other Respondents upon request.
- 4.8 Envelopes must not contain documents relating to any RFP other than that shown on the envelope. All envelopes must reflect the return address of the Respondent on the reverse side.
- 4.9 No slips are to be attached to the response documents. Any additional conditions must be embodied in an accompanying letter. Subject only to clause 18 [*Alterations made by the Respondent to Tendered Prices*] of the General Bid Conditions, alterations, additions or deletions must not be made by the Respondent to the actual RFP documents.

5 **BROAD-BASED BLACK ECONOMIC EMPOWERMENT & SOCIO-ECONOMIC OBLIGATIONS**

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

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

Consequently, when Transnet invites prospective Service Providers to submit Proposals for its various expenditure programmes, it urges Respondents [*Large Enterprises and QSE's - see below*] to have

themselves accredited in compliance with the Government Gazette No 34612, Notice No. 754 dated 23 September 2011. As from 1 October 2011 valid B-BBEE Accreditation Certificates must be issued by

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

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

5.1 B-BBEE Rating

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

- a) **Large Enterprises** [i.e. annual turnover greater than R35 million]:
 - Rating level based on all seven elements of the B-BBEE scorecard
- b) **Qualifying Small Enterprises – QSE** [i.e. annual turnover between R5 million and R35 million]:
 - Rating based on any four of the elements of the B-BBEE scorecard
- c) **Exempted Micro Enterprises – EME** [i.e. annual turnover less than R5 million]:
 - EMEs are exempted from B-BBEE accreditation
 - Automatic rating of Level 4 B-BBEE irrespective of race or ownership Black ownership greater than 50% or Black Women ownership greater than 50% automatically qualify as Level 3 B-BBEE
 - EME's should provide documentary proof of annual turnover [i.e. annual financials signed off by an accounting officer] plus proof of Black ownership if Black ownership is greater than 50% and/or Black Women ownership is greater than 50%

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

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

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

R _____

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

5.2 Joint Ventures and Subcontractors

In addition to the above, Respondents who wish to enter into a Joint Venture with, or subcontract portions of the contract to, B-BBEE entities must state in their RFPs, the percentage of the total contract value that will be allocated to such B-BBEE entities, should they be successful in being awarded any business. A rating certificate in respect of such B-BBEE JV-partners and/or subcontractor(s), as well as a breakdown of the distribution of the aforementioned percentage must

also be furnished with the RFP response to enable Transnet to evaluate in accordance with the processes outlined in the B-BBEE Preference Points Claim Form.

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

5.3 B-BBEE Registration

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

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

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

5.4 Further Recognition Criteria

Transnet encourages its Service Providers to constantly strive to improve their B-BBEE rating. Whereas Respondents will be allocated points in terms of a preference point system based on its B-BBEE scorecard to be assessed as detailed in paragraph 5.1 above, in addition to such scoring, a further 20% (**twenty**) will be allocated to a Respondent's score based on the "Further Recognition Criteria" [FRC] on an ascending scale. This will be calculated based on the extent to which the Respondent commits to meet and/or exceed the minimum compliance targets with its proposed target score to be achieved during the contract period.

Respondents are required to submit their Further Recognition Criteria with their Proposals

Supplier Development Initiatives

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

Transnet fully endorses and supports Government's New Growth Path policy through its facilitation of Supplier Development [SD] initiatives.

6 COMMUNICATION

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

6.1 For specific queries relating to this RFP, a Bid Clarification Request Form should be submitted by 12:00 on 27 November 2012, substantially in the form set out in Section 12 hereto. In the interest of fairness and transparency Transnet's response to such a query will then be made available to the

other Respondents who have collected RFP documents. For this purpose all Respondents need to indicate by email their intention to respond to this RFP by informing Transnet of their contact details as soon as possible but before 04h December 2012 to ayanda.msomi@transnet.net.

- 6.2 After the closing date of the RFP, a Respondent may communicate with the Secretary of the Transnet Acquisition Council, at telephone number 011 544-9486, email Prudence.Nkabinde@transnet.net or facsimile number 011-774-9760 on any matter relating to its RFP Proposal.

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

7 INSTRUCTIONS FOR COMPLETING THE RFP

- 7.1 Sign one set of documents [sign, stamp and date the bottom of each page]. This set will serve as the legal and binding copy. A duplicate set of documents is required. This second set can be a copy of the original signed Proposal.
- 7.2 Both sets of documents to be submitted to the address specified in paragraph 4 above.
- 7.3 Please provide in MS Word / Excel format, not PDF versions, noting that the signed original set will be legally binding [paragraph 7.1 above].
- 7.4 All returnable documents listed in the Proposal Form [Section 4] must be returned with your Proposal.

8 COMPLIANCE

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

9 ADDITIONAL NOTES

- 9.1 All returnable documents as indicated in the Proposal Form [Section 4] must be returned with the response.
- 9.2 Changes by the Respondent to its submission will not be considered after the closing date.
- 9.3 The person or persons signing the Proposal must be legally authorised by the Respondent to do so [Refer Section 6 – Signing Power, Resolution of the Board of Directors]. A list of those person(s) authorised to negotiate on your behalf [if not the authorised signatories] must also be submitted along with the Proposal together with their contact details.
- 9.4 Transnet may wish to visit the Respondent's place of business during this RFP process.
- 9.5 Transnet reserves the right to undertake post-tender negotiations [PTN] with selected Respondents or any number of short-listed Respondents, such PTN to include, at Transnet's option, any evaluation criteria listed in this RFP document.
- 9.6 Unless otherwise expressly stated, all Proposals furnished pursuant to this RFP shall be deemed to be offers. Any exceptions to this statement must be clearly and specifically indicated. Transnet reserves the right to reject any or all offers.

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

10 DISCLAIMERS

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

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

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

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

11 LEGAL REVIEW

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

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

PROVISION OF RE-DESIGN OF THE BLUE TRAIN WEBSITE AND DEVELOPMENT OF A NEW RESERVATION SYSTEM.

SECTION 2: BACKGROUND, OVERVIEW AND SCOPE OF REQUIREMENTS

1 SUMMARY

The purpose of this Request for Proposal (RFP) and the resulting contract is to establish an agreement for the professional services for the development of the new website and the reservation system, maintenance and support of the new system. This document describes the products and services we require as well as the objectives of the solution.

2 BACKGROUND INFORMATION

The Blue Train is a South African icon which is world- renowned in the tourism and hospitality industry. It offers its guests and clients a unique way of experiencing some of Southern Africa's magnificent landscapes and landmarks.

The Blue Train's Mission:

To deliver the most phenomenally invigorating, unique African leisure experience to all our guests and customers through a combination of unsurpassed luxury travel, five-star accommodation, fine cuisine, personalised butler service and routes that offer breathtaking views of the countryside.

The Blue Train's Vision:

To be the world's most desired African leisure experience, encompassing the best in hospitality and tourism

As a world-renowned brand, The Blue Train needs a world-class website that will:

- Sell and advertise its services to new and existing clients
- Provide a service, like online reservations with full e-commerce functionality and handling of enquiries
- Inform and educate users in the most simple, friendliest yet professional way possible.

These objectives could only be achieved by having a reliable and user friendly website. Clients should be able to access the website with ease and be able to make their bookings online since most clients are overseas based.

The Blue Train website and reservation system need to be upgraded to match its image and to attract and interest new clients. This will only be possible if a professional web solution's company is identified to design and maintain the website as well as the reservation system used by the Blue Train.

The services required will cover the following:

- ✓ The development of a new website
- ✓ The development of a reliable and efficient reservation system or the provision of a reservation package or solution in the hospitality industry will be considered.
- ✓ Dedicated support (including up dates, uploads and amendments) of both the website and the reservation system and the maintenance thereof over a period of 3 years.
- ✓ Hosting of both the website and the reservations system
- ✓ Maintenance and support

The Blue Train is looking for a solution that will help improve their on line bookings. If the clients are faced with a reliable site and reservation system with a good response time, most of them will be able to do their own bookings, in turn increasing revenue.

“PREVIEW COPY ONLY”

3 SCOPE OF WORK

Website development and support

The overall website solution should:

1. Fit with The Blue Train's corporate identity and marketing strategy
2. Have high quality execution of graphics, navigation, etc.
3. Be easily maintained
4. Be able to create a community of dedicated visitors and provide information to existing ones
5. Advertise and sell The Blue Train services worldwide, using ecommerce

The website will also require the following features:

- Compatible to all web browser software – Explorer, Firefox, Google Chrome, etc
- Content Control
- Online forms
- Newsletter posting
- PDF posting
- Image gallery and downloading capabilities
- Video display capabilities
- Gallery of events page
- Customer Feedback section – for JIT feedback and responses
- Archives section
- Animation and graphics (fast to download) – including flash, 3D and zoom-in-zoom-out options of train and suite layouts
- Calendar/ Schedule
- Social Media Marketing (SMM)--Social interaction online: Facebook and Twitter embedded on website to encourage personal and business messages of different varieties, thus creating new relationships with customers, building and strengthening their loyalty to The Blue Train and vice versa.
- Latest newsfeed section
- Map of routes
- Website should be easy to read – to accommodate people with poor vision
- Others

Extensive support, maintenance and hosting of the site will be required over a 3 year period once the web site has been implemented. This support includes:

- Continuous updating of the site
- Uploading new documents, services and specials

Reservation System

The Blue Train requires a reservation system that will allow customers to make reservations online This system needs to be:

- A dedicated system that will always be available 24/7
- Efficient with quick response times
- User- friendly
- It should be available online and to reservations staff for direct bookings
- It should be able to produce tickets, reports and confirmations as required
- The total package can be an off the shelf solution in the hospitality industry but must be customised to accommodate routes, suites and other specials
- The system must be able to integrate with other systems e.g SAP Fi

The Blue Train staff must have admin rights to perform the following functions: Maintaining the Reservations System in-house

- a. adding in of train schedule,
 - b. updating of train sets,
 - c. loading of rates – different rates per agent/operator/country etc. (different levels of commission structure)
 - d. Special offers (different value-adds)
 - e. Blocking off of rooms etc.
- Change Ownership – search to be more integrative. That is, searching for the (Agent/Operator) consultant details must be possible to put in the company name and also consultant name unlike currently searching for one consultant name out of 100 names. If consultant is already loaded on the system, must be able to tell if you are duplicating names, more especially under the same company unless they have changed companies.
 - Need to update operator/Agent contact details (address or telephone numbers) on the system once and not per consultant
 - Needs to reflect which Blue Train consultant did the booking and worked on it last and what changes they made per booking as well as on the Agent/Operator contact
 - Frequent guest information (birthdays, preferences, contact details etc)
 - Reservations should have the following statuses for bookings going forward – in line with our Terms and conditions
 - PR – Provisional
 - CF – Confirmed
 - DI – Deposit Invoice and needs to reflect payment on the Reports
 - FI – Fully Invoiced
 - CX – cancelled and if there are cancellation fees involved
 - RF – Refund and reflect amount
 - Value adds booked for different hotels without going through each booking separately
 - Rebates & FOCs
 - Reservation System should update automatically when a provisional booking expires/payment is due – should be able to edit this though – in line with Terms & Conditions (should also send automatic reminders to agents / customers who's provisional bookings are about to expire)
 - Once a booking is confirmed and a deposit invoice has been raised, it should reflect that in the system and that a payment has been received

Confirmation –* generated from the system straight to the client without printing and scanning it to yourself (same as hotel confirmation to be precise) also to generate a T717 form – Debtors that are on account with The Blue Train

- Invoice History* must be able to give detailed information about what you have done exactly on the system e.g name change, special request, change due dates etc. (currently it says details captured which means we don't know what was done on the booking by the consultant and you have moved suites it will be able to give such information)
- Cancellation – value add bookings with the hotels must be able to prompt us to also cancel a hotel booking to avoid any hotel confirmations – Need to tell Blue Train consultants which hotel has been booked for the clients
- Waiting list- must be able to prompt us if there is space available or any cancellation for that particular departure.
- Payment reminder – system generated with all the necessary notes.
- Child rate - new child policy rate be loaded on the system as per policy
- When Guests Check in - immediately capture their country of residence & signature (electronically)
- Capacity to save documents as per Operator/Agent – which can be pulled as a Report
- Welcome letters – print from the system with an option to edit
- Guest Particular form – generated from the system with all completed guest details and guests can just add in their details on the Train that needs information
- Boarding pass- print this from the system – currently manually
- Train Plans (when a Train departs the Train Manager/Line Managers each receive a copy) - Reports should generate the following from the system:
 - Arrival/departure details of each guest
 - Emergency contact details
 - Dietary requirements
 - Special occasions
 - Twin or Double Bed preference
 - Personal notes for the Train Manager
- Electronic newsletter functionality with different databases – so we shouldn't have to type in names etc we need to select from different database (local, international operators and one for end users) options etc.
- Create own electronic newsletters (design etc)

The system should generate the following reports:

Key Accounts Management

- barter agreements,
- sales calls,
- birthdays,
- actual business per client and what is still available in the system,
- incentive agreements
- targets
- performance YTD against incentive targets
- performance YTD compared to previous year

From a STATS / MIS reports point of view, the TOP AGENTS report must distinguish between all the different packages / special rates etc. which are currently combined and has to be sorted manually

The headings must also reflect the relevant package / spec promo rate name e. g couples discount , value add etc.

The COUNTRY OF ORIGIN report must be a bit more elaborate to include extra data

It must also give a comparative file for requested periods for different financial years for both agents & country of origin

Short distance / dinner trips must also be on the system indicating the point of departure / arrival / turnaround point - E.g Pretoria – Sentrarand – Pretoria OR Cape Town – Tulbaghweg – Cape Town

All reports must also be sortable by whichever heading, in whatever order it is needed as in the case of excel file

All reports must also be available separately for individual trips

E-Commerce:

- Real time availability on the Website
- Be able to book your suite (up to 5 x suites) on-line Reservations – receive confirmation upon booking direct
- Guests will have to add in all their contact details before confirming the booking – to ensure that we have "real" bookings
- Also that once they have booked, they need to pay immediately to secure the booking as this will also ensure we have "real" bookings (Keeping in line with the new consumer act – they have a cool down period, however we can always add in our terms & conditions)
- Tour Operators/Agents to give them access to book on-line or to get our value add offers/newsletters etc.
- E-commerce: the system must be able to accept credit cards and electronic transfers as well as deposits, etc. (Mango website allows this)
- MIS on where most bookings originated from (countries?), most preferred time of when the booking was made

Currently some of the leading hotels are making use of a system called Opera, which generates all their databases and inventory. This system needs to be reliable hence extensive maintenance and support will be required over a 3 year period. This support will include:

- Continuous updating of the system
- Uploading of any documents that will be required on confirmation of bookings
- Support and maintenance as and when required

The new website should also include a content management tool and any necessary software tool that will allow the Blue Train staff to download new material and revise existing content.

Outcome and Performance Standards

The Blue Train is looking for proposals from web design firms who will be expected to analyze, plan, design, build, test, support and host the new website over a 3 year period.

The contractor is expected to:

1. Have substantial experience in website design, development, implementation and maintenance
2. Have a proven track record
3. Understand and have experience in the hospitality environment
4. Produce a web solution that will enhance The Blue Train's professional image
5. Produce a reservation system of world class quality

The success of the Website solution will be evident once the following 3 points are achieved:

1. Audience

The web solution should be able to attract new customers who will use the website's reservation system for online and direct bookings. This new audience should include B2B's as well as the Travel and Tourism industry.

2. Content

The content that will be placed on the site will be from The Blue Train as well as its strategic partners. This content will include new and repurposed content which will be updated on a regular basis. Some of the content will have to be updated by The Blue Train staff with administrative rights as well as the webmaster that will be dedicated to updating and maintaining the site.

The content contained on the site must be informative and should include text, graphics, images , etc. to make sure that it is properly conveyed.

3. Functionality and Targets

The solution should provide:

- 99% uptime of the website and availability of specials
- 99% availability of the reservation system
- A professional look and feel that will match The Blue Train's image

Deliverables

Provide a list of all products, reports, and plans that will be delivered to your project and propose a delivery schedule. What are the expected outcomes?

The following lists all the outcomes that should be delivered to The Blue Train:

1. Creative Brief

This is a project definition document that should include all the requirements and specifications of the project, including scope, audience, objective, call to action, and technical specification.

2. Content Outline

The content outline should define every piece of content that will appear on the website. If it isn't on the content outline, it isn't going to appear on the website. The content outline is part of the information architecture, and as such should be organized in a hierarchy that represents the structure of the website rather than a hierarchy based on arbitrary categorization of content.

3. Site Map

The site map should represent the structure and navigation of the website and should closely coincide with the content outline. There should be a common numbering system in place. Pages should be represented by boxes and links by arrows.

4. Wireframes

Wireframes are schematic versions of the pages on a website and should simulate the final navigation, although the page layout at this point in the process can still be rough. Wireframes can be made into



clickable web pages, making it possible to preview the navigation of the site in action. Each wireframe should include all pieces of content that the final web page will display.

5. **Graphic Design**

The graphical design mock-up should be a composite image of how the final web page will look. Colour, layout, typography, and images should be worked out at this stage for each significantly different page type on the website. It should be made clear that this is just a mock-up, therefore, no code is needed at this point.

6. **Development Site/Prototype**

During the integration/programming step of the web design process, the graphic design mock-ups should be converted into code (HTML, DHTML, CSS, scripting, database tables, etc). The site should be built and tested on a domain or sub domain of a development server that has the same technical specs as the live server will have. Once the site has been tested and fully functional on the development server, it will then be migrated to the live server. This will be the final deliverable of this web design project.

7. **Hosting**

The contractor needs to provide the following information regarding their hosting services:

- How often are backups done?
- How often does down time occur?
- How often is software/hardware upgraded?
- Please describe your technical support.
- Please describe your security.
- Do you have a high-speed, direct connection to the Internet?
- Please describe your methodology and service level agreements.
- Pricing, terms and conditions.

Contractual Terms and Conditions

- The contractor should have experience in the hospitality environment
- Should be able to produce a prototype
- Should be able to produce a list of references
- Should have a BBBEE certification

Requirements for Proposal Preparation

To be considered for evaluation, proposals must respond to all requirements listed below:

1. A Vendor profile and web strategy should be submitted
2. Demonstration of proven service and track record should be included
3. Details of specific features and platforms: The website should be compatible with all commonly used Internet browsers and designed to function effectively with common version of software and hardware
4. Financial terms: describe your fee schedules in detail including terms regarding any future maintenance services and support
5. A mock up of the final web site.
6. A sample of the reservation system

4 GENERAL INFORMATION

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

5 EXCHANGE AND REMITTANCE

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

- 5.1 ZAR 1.00 [South African currency] being equal to _____ *[foreign currency]*
- 5.2 _____ % in relation to tendered price(s) to be remitted overseas by Transnet
- 5.3 _____ *[Name of country to which payment is to be made]*
- 5.4 Beneficiary details:
 - Name *[Account holder]* _____
 - Bank *[Name and branch code]* _____
 - Swift code _____
 - Country _____
- 5.5 _____ *[Applicable base date of Exchange Rate used]*

EXPORT CREDIT AGENCY SUPPORTED FINANCE:

In order to finance its payment obligations under a future contract where foreign transactions are involved, Transnet would consider raising debt financing [an "ECA Facility"] from one or more banks and financial institutions, with the benefit of export credit agency [ECA] credit support to be provided by an Export Credit Agency.

Under such circumstances the successful Respondent will agree to undertake:

- a) to provide (and/or cause the Parent to provide, as applicable) to Transnet and the banks and financial institutions that may participate in the ECA Facility all such assistance as an importer of services, which are eligible for ECA credit supported finance by an Export Credit Agency, is generally required to provide for the purposes of obtaining ECA support;
- b) not to do or (as Service Provider of the relevant eligible Services) omit to do anything, which may adversely affect Transnet’s prospects of qualifying for or, once obtained, maintaining ECA credit support by an Export Credit Agency in respect of an ECA Facility.

All cost, expenses, charges and liabilities incurred by Transnet in establishing an ECA Facility with credit support from an Export Credit Agency, would be for the account of Transnet.

6 SERVICE LEVELS

- 6.1 An experienced national account representative(s) is required to work with Transnet’s sourcing/procurement department. [No sales representatives are needed for individual department/locations]. Additionally, there shall be a minimal number of people, fully informed and accountable for this agreement.
- 6.2 Transnet will have quarterly reviews with the Service Provider’s account representative on an on-going basis.
- 6.3 Transnet reserves the right to request that any member of the Service Provider’s team involved on the Transnet account be replaced if deemed not to be adding value for Transnet.
- 6.4 The Service Provider must provide a telephone number for customer service calls.
- 6.5 Failure of the Service Provider to comply with stated service level requirements will give Transnet the right to cancel the contract in whole, without penalty to Transnet, giving 30 [thirty] days’ notice to the Service Provider.

Acceptance of Service Levels:

YES	
------------	--

NO	
-----------	--

7 RISK

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

7.1 Quality of Services provided:

7.2 Continuity of Services *[refer clause 6.9 of Form ST&C]:*

7.3 Compliance with the Occupational Health and Safety Act, 85 of 1993 *[refer clause 8.1(f) of Form ST&C]:*

9 EVALUATION CRITERIA

Transnet will utilise the following criteria in selecting a preferred Service Provider,

CATEGORY: TECHNICAL/PRACTICAL (SCORING MATRIX)	60%		
<ul style="list-style-type: none"> A minimum of 3-5 years previous experience in website development and reservation systems, maintenance and support. 			
<ul style="list-style-type: none"> Understanding of The Blue Train’s value propositions, in-depth knowledge of hospitality industry (preferably 5- Star establishment offerings). 			
<ul style="list-style-type: none"> Knowledge and experience in the use of the latest web tools and technology and attach CV (Skills, qualifications and comprehensive references) 			
<ul style="list-style-type: none"> A look and feel (presentation) of the envisaged product. 			
CATEGORY: COMMERCIAL (SCORING MATRIX)	20%		
<ul style="list-style-type: none"> Competitive Pricing 			

CATEGORY: B-BBEE (SCORING MATRIX)	10%		
<ul style="list-style-type: none"> B-BBEE Certificate and Scorecard 			
CATEGORY: FURTHER RECOGNITION	10%		
<ul style="list-style-type: none"> Business with >50% Black Ownership 			
<ul style="list-style-type: none"> Business with >30% Black Woman Ownership 			
<ul style="list-style-type: none"> Black youth involvement in business 			

DESCRIPTION: PROVISION OF RE-DESIGN OF THE BLUE TRAIN WEBSITE AND DEVELOPMENT OF A NEW RESERVATION SYSTEM.

Section 3: PRICING AND DELIVERY SCHEDULE

Notes to Pricing:

- a) Prices quoted must be held valid up until 30 March 2013
- b) Currency rate of exchange utilised: RAND (ZAR)
- c) Respondents are to indicate whether prices quoted would be subject to adjustment after a period of 12 months, and if so which proposed adjustment factor(s) would be utilised
- d) Respondents must submit their 3-year audited financial statements with their Proposal

Price matrix

Prices in South African currency, including all costs.			
Direct to consignees			
ITEM NO:	DESCRIPTION	QTY	Price per each
1.	As per the specification attached		
Total price			
2.Prices must be V.A.T. exclusive			
3. Direct delivered to:			
4.Contact person:	Hazel Ngobeni (011) 583-0712 /071 866 1354 Ayanda Msomi 011 584-0803		

DESCRIPTION: PROVISION OF RE-DESIGN OF THE BLUE TRAIN WEBSITE AND DEVELOPMENT OF A NEW RESERVATION SYSTEM.

Section 4: PROPOSAL FORM

I/We _____

[name of entity, company, close corporation or partnership]

of *[full address]*

carrying on business under style or title of *[trading as]* _____

represented by _____

in my capacity as _____

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

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

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

I/We accept that unless Transnet should otherwise decide and so inform me/us in the letter of award, this Proposal [and, if any, its covering letter and any subsequent exchange of correspondence], together with Transnet's acceptance thereof shall constitute a binding contract between Transnet and me/us.

Should Transnet decide that a formal contract should be signed and so inform me/us in a letter of intent [the **Letter of Intent**], this Proposal [and, if any, its covering letter and any subsequent exchange of correspondence] together with Transnet's Letter of Intent, shall constitute a binding contract between Transnet and me/us until the formal contract is signed.

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

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

Respondent's Signature

Date & Company Stamp

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

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

Name of Entity: _____

Facsimile: _____

Address: _____

NOTIFICATION OF AWARD OF RFP

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

VALIDITY PERIOD

Transnet requires a validity period of 90 [ninety] days [from closing date] against this RFP.

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

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

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

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

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

CONFIDENTIALITY

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

DISCLOSURE OF PRICES TENDERED

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

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

PRICE REVIEW

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

RETURNABLE DOCUMENTS AND SCHEDULES

Respondents are required to submit the following returnable documents and schedules with their responses [see √]. All Sections, as indicated in the footer of each page, must be signed, stamped and dated by the Respondent:

SECTION 1 : Notice to Bidders	√
- ANNEXURE A : B-BBEE Preference Points Claim Form	√
SECTION 2 : Background, Overview and Scope of Requirements	√
SECTION 3 : Pricing & Delivery Schedule	√
SECTION 4 : Proposal Form	√
SECTION 5 : Vendor Application Form	√
- Original cancelled cheque or bank verification of banking details	√
- Certified copies of IDs of shareholder/directors/members [as applicable]	√
- Certified copy of Certificate of Incorporation [CM29/CM9 name change]	√
- Certified copy of share certificates [CK1/CK2 if CC]	
- Entity's letterhead	
- Original Tax Clearance Certificate	√
- Certified copy of VAT Registration Certificate	√
- Certified copy of Company Registration Certificate	√
- Valid B-BBEE Accreditation Certificate [Large Enterprises and QSEs]	√
- Annual financials signed off by an accounting officer [EMEs]	√

- Audited Financials for previous 3 years	✓
SECTION 6 : Signing Power - Resolution of Board of Directors	✓
SECTION 7 : Certificate of Acquaintance with RFP Documents	✓
SECTION 8 : General Bid Conditions – Services	✓
SECTION 9 : Standard Terms and Conditions of Contract	✓
SECTION 10 : RFP Declaration Form	✓
SECTION 11 : Breach of Law	✓
SECTION 12 : Bid Clarification Request Form	✓
SECTION 13 : Supplier Code of Conduct	✓
SECTION : Certificate of attendance of RFP Briefing	
SECTION : Specifications	✓
SECTION : Non-Disclosure Agreement	✓
SECTION : Further Recognition Criteria	
SECTION : Supplier Development Initiatives	
- Supplier Development Bid Document	
- Annexure C : Supplier Development Value Summary	

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

CONTINUED VALIDITY OF RETURNABLE DOCUMENTS

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

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

SIGNED at _____ on this ____ day of _____ 2012

SIGNATURE OF WITNESSES

ADDRESS OF WITNESSES

1 _____
Name _____

2 _____
Name _____

SIGNATURE OF RESPONDENT'S AUTHORISED REPRESENTATIVE:

NAME: _____

DESIGNATION: _____



DESCRIPTION: PROVISION RE-DESIGN OF THE BLUE TRAIN WEBSITE AND DEVELOPMENT OF A NEW RESERVATION SYSTEM.

Section 5: VENDOR APPLICATION FORM

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

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

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

Vendor Application Form

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

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

Complete B-BBEE Ownership Details:

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

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

Transnet contact person	
Contact number	
Transnet Operating Division	

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

Name		Designation	
Signature		Date	

DESCRIPTION: PROVISION OF RE-DESIGN OF THE BLUE TRAIN WEBSITE AND DEVELOPMENT OF A NEW RESERVATION SYSTEM.

Section 6: SIGNING POWER – RESOLUTION OF BOARD OF DIRECTORS

NAME OF ENTITY: _____

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

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

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

FULL NAME _____

SIGNATURE CHAIRMAN

FULL NAME _____

SIGNATURE SECRETARY

DESCRIPTION: PROVISION OF RE-DESIGN OF THE BLUE TRAIN WEBSITE AND DEVELOPMENT OF A NEW RESERVATION SYSTEM.

Section 7: CERTIFICATE OF ACQUAINTANCE WITH RFP DOCUMENTS

NAME OF ENTITY:

I/We _____

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

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

SIGNED at _____ on this _____ day of _____ 2012

SIGNATURE OF WITNESS

SIGNATURE OF RESPONDENT

“PREVIEW COPY ONLY”

DESCRIPTION: PROVISION OF RE-DESIGN OF THE BLUE TRAIN WEBSITE AND DEVELOPMENT OF A NEW RESERVATION SYSTEM.

Section 8: GENERAL BID CONDITIONS - SERVICES

Refer General Bid Conditions appended hereto

“PREVIEW COPY ONLY”

DESCRIPTION: PROVISION OF RE-DESIGN OF THE BLUE TRAIN WEBSITE AND DEVELOPMENT OF A NEW RESERVATION SYSTEM.

**Section 9: STANDARD TERMS AND CONDITIONS OF CONTRACT
FOR THE PROVISION OF SERVICES TO TRANSNET**

Refer Form ST&C appended hereto.

**Respondents should note the obligations as set out in
clause 20 [Terms and Conditions of Bid]
of the General Bid Conditions [RFP Section 8] which reads as follows:**

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

DESCRIPTION: PROVISION OF RE-DESIGN OF THE BLUE TRAIN WEBSITE AND DEVELOPMENT OF A NEW RESERVATION SYSTEM.

Section 10: RFP DECLARATION FORM

NAME OF ENTITY: _____

We _____ do hereby certify that:

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

If such a relationship exists, Respondent is to complete the following section:

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

ADDRESS:

Indicate nature of relationship with Transnet:

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

“PREVIEW COPY ONLY”

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

SIGNED at _____ on this ____ day of _____ 2012

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

IMPORTANT NOTICE TO RESPONDENTS

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

DESCRIPTION: PROVISION OF RE-DESIGN OF THE BLUE TRAIN WEBSITE AND DEVELOPMENT OF A NEW RESERVATION SYSTEM.

Section 11: BREACH OF LAW

NAME OF ENTITY: _____

I/We _____

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

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

NATURE OF BREACH:

DATE OF BREACH: _____

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

SIGNED at _____ on this _____ day of _____ 20__

SIGNATURE OF WITNESS

SIGNATURE OF RESPONDENT



DESCRIPTION: PROVISION OF RE-DESIGN OF THE BLUE TRAIN WEBSITE AND DEVELOPMENT OF A NEW RESERVATION SYSTEM.

Section 12: BID CLARIFICATION REQUEST FORM

RFP No: CRAC-JHB-9686

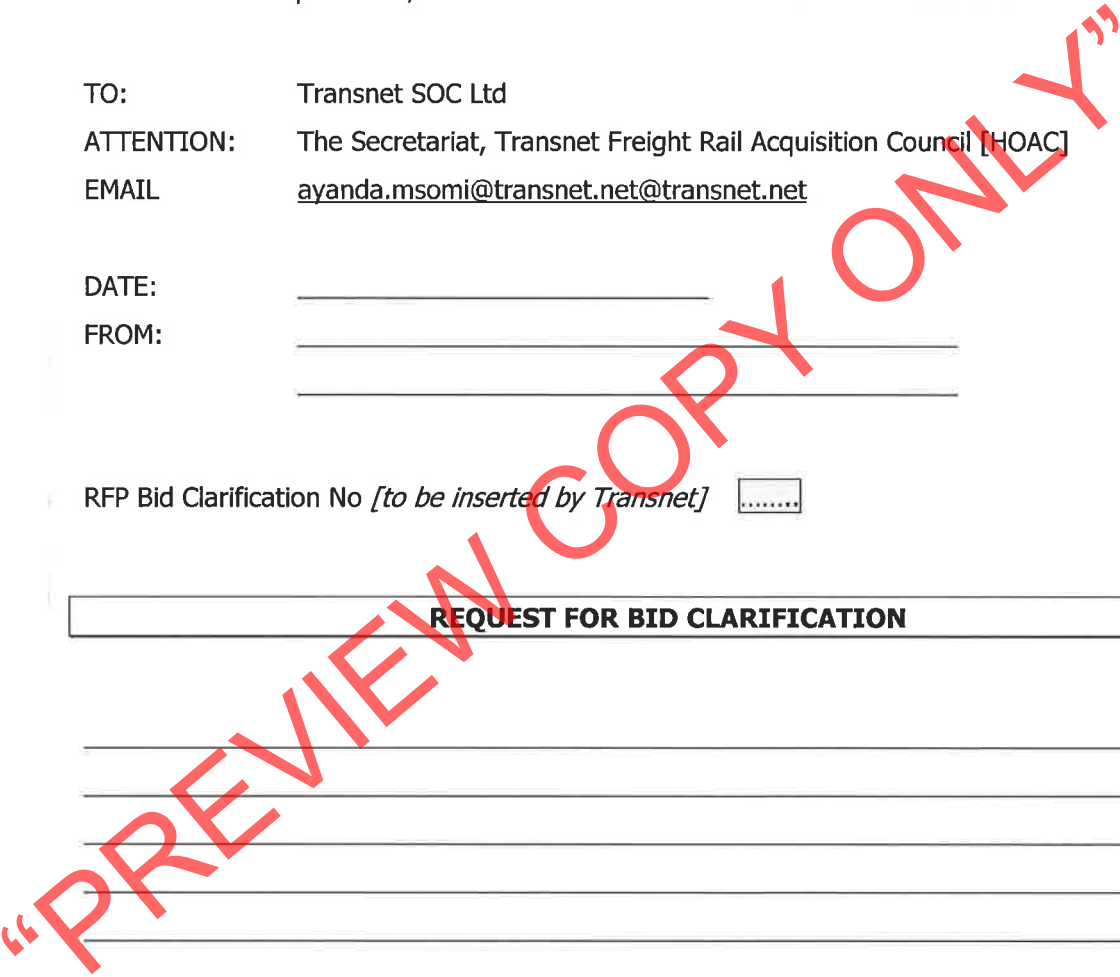
RFP deadline for questions / bid clarifications: **Before 12:00 on 27th November 2012**

TO: Transnet SOC Ltd
ATTENTION: The Secretariat, Transnet Freight Rail Acquisition Council [HOAC]
EMAIL: ayanda.msomi@transnet.net

DATE: _____
FROM: _____

RFP Bid Clarification No [to be inserted by Transnet]

REQUEST FOR BID CLARIFICATION



DESCRIPTION: PROVISION OF RE-DESIGN OF THE BLUE TRAIN WEBSITE AND DEVELOPMENT OF A NEW RESERVATION SYSTEM.

Section 15: NON-DISCLOSURE AGREEMENT [NDA]

Complete and sign the Non-Disclosure Agreement appended hereto

“PREVIEW COPY ONLY”



NON-DISCLOSURE AGREEMENT

entered into by and between

TRANSNET SOC LTD

Registration Number 1990/000900/30

and

Registration Number _____

RFP Number CRAC-JHB-9686

“PREVIEW COPY ONLY”

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THIS AGREEMENT is made between

Transnet SOC Ltd [Transnet] [Registration No. 1990/000900/30]

whose registered office is at 49th Floor, Carlton Centre, 150 Commissioner Street, Johannesburg 2001,

and

_____ **[the Company]** [Registration No _____]

whose registered office is at _____

WHEREAS

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

IT IS HEREBY AGREED

1 INTERPRETATION

In this Agreement:

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

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

2 CONFIDENTIAL INFORMATION

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

any rights or remedies of the Disclosing Party, the Receiving Party shall as soon as practicable notify the Disclosing Party of such event and if requested take such steps (including the institution of legal proceedings) as shall be necessary to remedy (if capable of remedy) the default and/or to prevent further unauthorised copying, disclosure or use.

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

3 RECORDS AND RETURN OF INFORMATION

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

4 ANNOUNCEMENTS

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

5 DURATION

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

6 PRINCIPAL

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

7 ADEQUACY OF DAMAGES

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

8 PRIVACY AND DATA PROTECTION

8.1 The Receiving Party undertakes to comply with South Africa's general privacy protection in terms of the Bill of Rights (Section 14) in connection with this Bid and shall procure that its personnel shall observe the provisions of such Act (as applicable) or any amendments and re-enactments thereof and any regulations made pursuant thereto.

8.2 The Receiving Party warrants that it and its Agents have the appropriate technical and organisational measures in place against unauthorised or unlawful processing of data relating to the Bid and against accidental loss or destruction of, or damage to such data held or processed by them.

9 GENERAL

9.1 Neither party may assign the benefit of this Agreement, or any interest hereunder, except with the prior written consent of the other, save that Transnet may assign this Agreement at any time to any member of the Transnet Group.

9.2 No failure or delay in exercising any right, power or privilege under this Agreement will operate as a waiver of it, nor will any single or partial exercise of it preclude any further exercise or the exercise of any right, power or privilege under this Agreement or otherwise.

9.3 The provisions of this Agreement shall be severable in the event that any of its provisions are held by a court of competent jurisdiction or other applicable authority to be invalid, void or otherwise unenforceable, and the remaining provisions shall remain enforceable to the fullest extent permitted by law.

9.4 This Agreement may only be modified by a written agreement duly signed by persons authorised on behalf of each party.

9.5 Nothing in this Agreement shall constitute the creation of a partnership, joint venture or agency between the parties.

9.6 This Agreement will be governed by and construed in accordance with South African law and the parties irrevocably submit to the exclusive jurisdiction of the South African courts.

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GENERAL BID CONDITIONS - SERVICES

[March 2012]

“PREVIEW COPY ONLY”

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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 **Respondent(s)** shall mean a respondent/bidder to a Transnet Bid;
- 1.3 **RFP** shall mean Request for Proposal;
- 1.4 **RFQ** shall mean Request for Quotation;
- 1.5 **RFX** shall mean RFP and/or RFQ, as the case may be;
- 1.6 **Services** shall mean the services required by Transnet as specified in its Bid Document;
- 1.7 **Service Provider** 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 are the official publications of recognised standardising bodies, 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 14 [*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 15 [*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 Service Provider**], 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 Service Provider's requirements which could not be recovered from the Service Provider;

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

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 shall, if requested to do so by the Service Provider, 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 and any variation in the amount to be so paid, which may arise as a result of fluctuations in the rate of exchange involved, will be for the account of the Service Provider.

8.1 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 service providers to whom payment is to be made.

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

Transnet will not recognise any claim for adjustment of the order and/or contract price under clause 8.2 above, if the increase in price arises after the date on which the Services were to be completed, 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.

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

FORM ST&C - SERVICES [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 Services to Transnet [**the Service Provider**], these Standard Terms and Conditions of Contract, the technical specifications for the Services, the General Bid Conditions, a Schedule of Requirements or Work Order including such special conditions as may be applicable, and any terms in the associated Bid Documents, exclusively govern the provision of Services by the Service Provider to Transnet.

2 DEFINITIONS

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

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

- f) information relating to the past, present and future research and development of the disclosing Party;
 - g) information relating to the business activities, business relationships, products, services, customers, clients and Subcontractors of the disclosing Party where an onus rests on the disclosing Party to maintain the confidentiality of such information;
 - h) information contained in the software and associated material and documentation belonging to the disclosing Party;
 - i) technical and scientific information, Know-How and trade secrets of a disclosing Party including inventions, applications and processes;
 - j) Copyright works;
 - k) commercial, financial and marketing information;
 - l) data concerning architecture, demonstrations, tools and techniques, processes, machinery and equipment of the disclosing Party;
 - m) plans, designs, concepts, drawings, functional and technical requirements and specifications of the disclosing Party;
 - n) information concerning faults or defects in goods, equipment, hardware or software or the incidence of such faults or defects; and
 - o) information concerning the charges, Fees and / or costs of the disclosing Party or its authorised Subcontractors, or their methods, practices or service performance levels actually achieved;
- 2.7 **Copyright** means the right in expressions, procedures, methods of operations or mathematical concepts, computer program codes, compilations of data or other material, literary works, musical works, artistic works, sound recordings, broadcasts, program carrying signals, published editions, photographic works, or cinematographic works of the copyright owner to do or to authorise the doing of certain acts specified in respect of the different categories of works;
- 2.8 **Default** means any breach of the obligations of either Party [including but not limited to fundamental breach or breach of a fundamental term] or any Default, act, omission, negligence or statement of either Party, its employees, agents or Subcontractors in connection with or in relation to the subject of the Agreement and in respect of which such Party is liable to the other;
- 2.9 **Deliverable(s)** means any and all works of authorship, products and materials developed, written, prepared, assembled, integrated, modified or provided by the Service Provider in relation to the Services;
- 2.10 **Designs** mean registered Designs and/or Design applications and will include the monopoly right granted for the protection of an independently created industrial design including designs dictated essentially by technical or functional considerations as well as topographies of integrated circuits and integrated circuits;
- 2.11 **Fee(s)** shall mean the agreed Fees for the Services to be purchased from the Service Provider by Transnet, as detailed in the Work Order(s), issued in accordance with the Agreement, as amended by mutual agreement between the Parties and in accordance with the provisions of the Agreement from time to time;

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

- 2.27 **Tax Invoice** means the document as required by Section 20 of the Value-Added Tax Act, 89 of 1991, as may be amended from time to time;
- 2.28 **Third Party Material** means software, software development tools, methodologies, ideas, methods, processes, concepts and techniques owned by, or licensed to a third party and used by the Service Provider in the performance of the Services;
- 2.29 **Trade Marks** mean registered Trade Marks and trade mark applications and includes any sign or logo, or combination of signs and/or logos capable of distinguishing the goods or services of one undertaking from those of another undertaking;
- 2.30 **VAT** means Value-Added Tax chargeable in terms of the Value-Added Tax Act, 89 of 1991, as may be amended from time to time; and
- 2.31 **Work Order(s)** means a detailed scope of work for a Service required by Transnet, including timeframes, Deliverable, Fees and costs for the supply of the Service to Transnet, which may be appended to the Agreement from time to time.

3 INTERPRETATION

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

4 NATURE AND SCOPE

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

silent on the matter, the term, provision or condition in this Master Agreement shall prevail, unless such term or provision or condition in this Master Agreement has been specifically revoked or amended by mutual written agreement between the Parties.

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

5 AUTHORITY OF PARTIES

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

6 WARRANTIES

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

- 6.3 The Service Provider warrants that for a period of 90 [ninety] days from Acceptance of the Deliverables they will, if properly used, conform in all material respects with the requirements set out in the relevant schedule. The Service Provider will at its expense remedy any such non-conformance as soon as possible but in any event within 30 [thirty] days of notification by Transnet. In the event that the Service Provider fails or is unable to remedy such non-conformance within such time-scale, Transnet will be entitled to employ a third party to do so in place of the Service Provider and any excess charges or costs incurred by Transnet as a result shall be paid by the Service Provider.
- 6.4 The Service Provider will remedy any defect within 30 [thirty] days of being notified of that defect by Transnet in writing.
- 6.5 The Service Provider will not be liable to remedy any problem arising from or caused by any modification made by Transnet to the Deliverables, or any part thereof, without the prior approval of the Service Provider.
- 6.6 The Service Provider shall advise Transnet of the effects of any steps proposed by Transnet pursuant to clause 6.5 above, including but not limited to any cost implications or any disruption or delay in the performance of the Services. The Parties agree that any changes to the Services, including the charges for the Services or any timetables for delivery of the Services, will be agreed in accordance with the change control procedure, as set out in clause 28 [Amendment and Change Control].
- 6.7 The Service Provider warrants that:
- a) it has, using the most up-to-date software available, tested for [and deleted] all commonly known viruses in the Materials and for all viruses known by the Service Provider at the date of the relevant Work Order; and
 - b) at the time of delivery to Transnet, the Materials do not contain any trojan horse, worm, logic bomb, time bomb, back door, trap door, keys or other harmful components.
- The Service Provider agrees that, in the event that a virus is found, it will at its own expense use its best endeavours to assist Transnet in reducing the effect of the virus and, particularly in the event that a virus causes loss of operational efficiency or loss of data, to assist Transnet to the same extent to mitigate such losses and to restore Transnet to its original operating efficiency.
- 6.8 The Service Provider undertakes to comply with South Africa's general privacy protection in terms of the Bill of Rights [Section 14] in connection with the Agreement and shall procure that its Personnel shall observe the provisions of Section 14 [as applicable] or any amendments and re-enactments thereof and any regulations made pursuant thereto.
- 6.9 The Service Provider warrants that it has taken all reasonable precautions to ensure that, in the event of a disaster, the impact of such disaster on the ability of the Service Provider to comply with its obligations under the Agreement will be reduced to the greatest extent possible, and that the Service Provider shall ensure that it has appropriate, tested and documented recovery arrangements in place.
- 6.10 In compliance with the National Railway Safety Regulator Act, 16 of 2002, the Service Provider shall ensure that the Services, to be supplied to Transnet under the terms and conditions of the Agreement, comply fully with the specifications as set forth in Schedule 1 hereto, and shall thereby adhere [as applicable] to railway safety requirements and/or regulations. Permission for

the engagement of a Subcontractor by the Service Provider [as applicable] shall be subject to a review of the capability of the proposed Subcontractor to comply with the specified railway safety requirements and/or regulations. The Service Provider and/or its Subcontractor shall grant Transnet access, during the term of the Agreement, to review any safety-related activities, including the coordination of such activities across all parts of its organisation.

7 TRANSNET'S OBLIGATIONS

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

8 GENERAL OBLIGATIONS OF THE SERVICE PROVIDER

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

liability and without prejudice to any claims which Transnet may have for damages against the Service Provider.

8.2 The Service Provider acknowledges and agrees that it shall at all times:

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

9 FEES AND EXPENSES

9.1 In consideration of the provision of the Services, Transnet will pay to the Service Provider the Fees detailed in the relevant schedule or Work Order.

9.2 Transnet will not be invoiced for materials used in the provision of the Services save for those materials [if any] set out in the Work Order and accepted by Transnet or in any relevant Work Order [which will be invoiced to Transnet at cost].

- 9.3 Unless otherwise agreed in a schedule or Work Order, Transnet will reimburse to the Service Provider all reasonable and proper expenses incurred directly and solely in connection with the provision of the Services, provided that all such expenses:
- a) are agreed by Transnet in advance;
 - b) are incurred in accordance with Transnet's standard travel and expenses policies;
 - c) are passed on to Transnet at cost with no administration fee; and
 - d) will only be reimbursed if supported by relevant receipts.
- 9.4 All Tax Invoices relating to Fees, out of pocket expenses and, if applicable, travel and accommodation costs, will provide the detail for each of the Personnel carrying out the Services and incurring the expenses, and the Tax Invoice will, where appropriate, include VAT as a separate item.

10 INVOICING AND PAYMENT

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

11 FEE ADJUSTMENTS

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

12 INTELLECTUAL PROPERTY RIGHTS

12.1 Title to Confidential Information

- a) Transnet will retain all right, title and interest in and to its Confidential Information and Background Intellectual Property and the Service Provider acknowledges that it has no claim of any nature in and to the Confidential Information and Background Intellectual Property that is proprietary to Transnet. For the avoidance of doubt, all the Service Provider's Background Intellectual Property shall remain vested in the Service Provider.
- b) Transnet shall grant to the Service Provider an irrevocable, royalty free, non-exclusive licence to use Transnet's Background Intellectual Property only for the Permitted Purpose. This licence shall not permit the Service Provider to sub-license to other parties.
- c) The Service Provider shall grant to Transnet an irrevocable, royalty free, non-exclusive licence to use the Service Provider's Background Intellectual Property for the Permitted Purpose. This licence shall not permit Transnet to sub-license to other parties.
- d) The Service Provider shall grant Transnet access to the Service Provider's Background Intellectual Property on terms which shall be *bona fide* negotiated between the Parties for the purpose of commercially exploiting the Foreground Intellectual Property, to the extent that such access is required.

12.2 Title to Intellectual Property

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

sign all documents and do all things as may be necessary to effect, record and perfect the assignment of the Foreground Intellectual Property to Transnet.

- e) Subject to anything contrary contained in the Agreement and/or the prior written consent of Transnet [which consent shall not be unreasonably withheld or delayed], the Service Provider shall under no circumstances be entitled as of right, or to claim the right, to use Transnet's Background Intellectual Property and/or Foreground Intellectual Property.

12.3 Title to Improvements

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

12.4 Unauthorised Use of Confidential Information

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

12.5 Unauthorised Use of Intellectual Property

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

13 SERVICE PROVIDER'S PERSONNEL

- 13.1 The Service Provider's Personnel shall be regarded at all times as employees, agents or Subcontractors of the Service Provider and no relationship of employer and employee shall arise between Transnet and any Service Provider Personnel under any circumstances regardless of the degree of supervision that may be exercised over the Personnel by Transnet.
- 13.2 The Service Provider warrants that all its Personnel will be entitled to work in South Africa or any other country in which the Services are to be performed.
- 13.3 The Service Provider will ensure that its Personnel comply with all reasonable requirements made known to the Service Provider by Transnet concerning conduct at any Transnet premises or any other premises upon which the Services are to be performed [including but not limited to security regulations, policy standards and codes of practice and health and safety requirements]. The Service Provider will ensure that such Personnel at all times act in a lawful and proper manner in accordance with these requirements.
- 13.4 Transnet reserves the right to refuse to admit or to remove from any premises occupied by or on behalf of it, any Service Provider Personnel whose admission or presence would, in the reasonable opinion of Transnet, be undesirable or who represents a threat to confidentiality or security or whose presence would be in breach of any rules and regulations governing Transnet's Personnel, provided that Transnet notifies the Service Provider of any such refusal [with reasons why]. The reasonable exclusion of any such individual from such premises shall not relieve the Service Provider from the performance of its obligations under the Agreement.
- 13.5 The Service Provider agrees to use all reasonable endeavours to ensure the continuity of its Personnel assigned to perform the Services. If any re-assignment by the Service Provider of those Personnel is necessary, or if Transnet advises that any such Personnel assigned are in any respect unsatisfactory, including where any such Personnel are, or are expected to be or have been absent for any period, then the Service Provider will promptly supply a replacement of equivalent calibre and experience, and any such replacement shall be approved by Transnet prior to commencing provision of the Services, such approval not to be unreasonably withheld or delayed.

14 LIMITATION OF LIABILITY

- 14.1 Neither Party excludes or limits liability to the other Party for:
- a) death or personal injury due to negligence; or
 - b) fraud.
- 14.2 The Service Provider shall indemnify and keep Transnet indemnified from and against liability for damage to any Transnet property [whether tangible or intangible] or any other loss, costs or damage suffered by Transnet to the extent that it results from any act of or omission by the Service Provider or its Personnel in connection with the Agreement. The Service Provider's liability arising out of this clause 14.2 shall be limited to a maximum amount payable in respect of any one occurrence or a series of related occurrences in a single calendar year, such amount to be agreed in writing by the Parties.
- 14.3 Subject always to clauses 14.1 and 14.2 above, the liability of either the Service Provider or Transnet under or in connection with the Agreement, whether for negligence, misrepresentation, breach of contract or otherwise, for direct loss or damage arising out of each Default or series of

related Defaults shall not exceed 100% [one hundred per cent] of the Fees paid under the schedule or Work Order to which the Default(s) relates.

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

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

14.6 Nothing in this clause 14 shall be taken as limiting the liability of the Service Provider in respect of clause 12 [*Intellectual Property Rights*] or clause 16 [*Confidentiality*].

15 INSURANCES

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

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

16 CONFIDENTIALITY

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

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

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

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

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

- c) can be proved to have been rightfully received by a Party from a third party without a breach of a duty or obligation of confidentiality; or
- d) is independently developed by a Party as proven by its written records.

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

17 TOTAL OR PARTIAL FAILURE TO PERFORM THE SCOPE OF SERVICES

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

18 TERM AND TERMINATION

18.1 Notwithstanding the date of signature hereof, the Commencement Date if the Agreement is [●] and the duration shall be for a 12 [twelve] month period, expiring on [●], unless:

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

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

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

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

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

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

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

19 CONSEQUENCE OF TERMINATION

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

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

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

19.4 In the event that the Agreement is terminated by the Service Provider under clause 18.2 [*Term and Termination*], or in the event that a Work Order is terminated by Transnet under clause 18.5 [*Term and Termination*], Transnet will pay to the Service Provider all outstanding Fees [apportioned on a *pro rata* basis] relating to the work undertaken by the Service Provider up until the date of such termination. Transnet will also pay the costs of any goods and materials ordered by the Service Provider in relation to the such work for which the Service Provider has paid or is legally obliged to pay, in which case, on delivery of such goods or materials, the Service Provider will promptly deliver such goods and materials to Transnet or as it may direct.

19.5 The provisions of clauses 0 [*Definitions*], 6 [*Warranties*], 12 [*Intellectual Property Rights*], 14 [*Limitation of Liability*], 16 [*Confidentiality*], 19 [*Consequence of Termination*], 25 [*Dispute Resolution*] and 29 [*Governing Law*] shall survive termination or expiry of the Agreement.

19.6 If either Party [**the Defaulting Party**] commits a material breach of the Agreement and fails to remedy such breach within 30 [thirty] Business Days of written notice thereof, the other Party [hereinafter **the Aggrieved Party**], shall be entitled, in addition to any other rights and remedies that it may have in terms of the Agreement, to terminate the Agreement forthwith without any liability and without prejudice to any claims which the Aggrieved Party may have for damages against the Defaulting Party.

19.7 Should:

- a) the Service Provider effect or attempt to effect a compromise or composition with its creditors; or
- b) either Party be provisionally or finally liquidated or placed under judicial management, whether provisionally or finally; or

- c) either Party cease or threaten to cease to carry on its normal line of business or default or threaten to default in the payment of its liabilities generally, or commit any act or omission which would be an act of insolvency in terms of the Insolvency Act, 24 of 1936 [as may be amended from time to time];

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

20 ASSIGNMENT

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

21 FORCE MAJEURE

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

21.2 Each Party will take all reasonable steps by whatever lawful means that are available, to resume full performance as soon as practicable and will seek agreement to modification of the relevant provisions of the Agreement in order to accommodate the new circumstances caused by the act of *force majeure*. If a Party fails to agree to such modifications proposed by the other Party within 90 [ninety] days of the act of *force majeure* first occurring, either Party may thereafter terminate the Agreement with immediate notice.

22 EQUALITY AND DIVERSITY

22.1 The Service Provider will not victimise, harass or discriminate against any employee of either Party to the Agreement or any applicant for employment with either Party to the Agreement due to their gender, race, disability, age, religious belief, sexual orientation or part-time status. This provision applies, but is not limited to employment, upgrading, work environment, demotion, transfer, recruitment, recruitment advertising, termination of employment, rates of pay or other forms of compensation and selection for training.

22.2 Both Parties to the Agreement undertake that they will not, and shall procure that its employees, agents and Subcontractors will not breach any applicable discrimination legislation and any amendments and re-enactments thereof.

23 NON-WAIVER

23.1 Failure or neglect by either Party, at any time, to enforce any of the provisions of the Agreement, shall not, in any manner, be construed to be a waiver of any of that Party's rights in that regard and in terms of the Agreement.

23.2 Such failure or neglect shall not, in any manner, affect the continued, unaltered validity of the Agreement, or prejudice the right of that Party to institute subsequent action.

24 PARTIAL INVALIDITY

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

25 DISPUTE RESOLUTION

25.1 Should any dispute of whatsoever nature arise between the Parties concerning the Agreement, the Parties shall try to resolve the dispute by negotiation within 10 [ten] Business Days of such dispute arising.

25.2 If the dispute has not been resolved by such negotiation, either of the Parties may refer the dispute to AFSA and notify the other Party accordingly, which proceedings shall be held in Johannesburg.

25.3 Such dispute shall be finally resolved in accordance with the rules of AFSA by an arbitrator or arbitrators appointed by AFSA.

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

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

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

26 ADDRESSES FOR NOTICES

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

a) **Transnet**

(i) For legal notices: [●]

Fax No. [●]

Attention: Legal Department

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

b) **The Service Provider**

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

27 WHOLE AND ONLY AGREEMENT

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

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

28 AMENDMENT AND CHANGE CONTROL

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

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

29 GOVERNING LAW

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

29.1 Change of Law

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

30 COUNTERPARTS

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

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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 [REDACTED] preference points shall be awarded as follows:

	POINTS
B-BBEE STATUS LEVEL OF CONTRIBUTION	[REDACTED]
FURTHER RECOGNITION CRITERIA [FRC]	[REDACTED]
Total points for B-BBEE and FRC shall not exceed	[REDACTED]

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]	Number of Points [Maximum 20]	Number of Points [Maximum 30]
1	10	20	30
2	9	18	27
3	8	16	24
4	5	10	15
5	4	8	12
6	3	6	9
7	2	4	6
8	1	2	3
Non-compliant contributor	0	0	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, 20 or 30 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: