

TRANSNET



TRANSNET FREIGHT RAIL
a Division of
TRANSNET SOC LIMITED
(Registration No. 1990/000900/30)

REQUEST FOR PROPOSAL (“RFP”)

RFP NUMBER: CRAC-JHB-8873

DESCRIPTION: ROLLING STOCK ASSET MANAGEMENT SYSTEM IN TFR FOR A PERIOD OF 12 MONTHS, NATIONALLY.

ISSUE DATE : 03 SEPTEMBER 2012
CLOSING DATE : 25 SEPTEMBER 2012
OPTION DATE : 31 DECEMBER 2012
CLOSING TIME : 10H00

INFORMATION SESSION : 15 GIRTON ROAD, UMJANTSHI C BOARDROOM, INYANDA HOUSE 2, PARKTOWN
TIME: 9H00

TENDER BOX ALLOCATED AT THE CHAIRPERSON TRANSNET FREIGHT RAIL ACQUISITION COUNCIL, GROUND FLOOR, INYANDA HOUSE 1, 21 WELLINGTON ROAD, PARKTOWN, JOHANNESBURG.

TENDER ENVELOPE TO BE MARKED AS FOLLOWS: ROLLING STOCK ASSET MANAGEMENT SYSTEM IN TFR FOR A PERIOD OF 12 MONTHS.

RFQ NUMBER: CRAC-JHB-8873



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DESCRIPTION: ROLLING STOCK ASSET MANAGEMENT SYSTEM IN TFR FOR A PERIOD OF 12 MONTHS.

SCHEDULE OF DOCUMENTS

1. Notice to Bidders
2. Requisition for quotation
3. Information Session (No information session for this tender)
4. Scope of Work and General specification
5. Returnable Schedules / Documents
6. Supplier Declaration Form
7. Contractual Safety Clause
8. General Tender Conditions(CSS5-goods)
9. Standard Terms and Conditions of Conduct(US7 – Services)
10. Non-Disclosure
11. Supplier Code of Conduct

“PREVIEW COPY ONLY”



SECTION 1

RFP NUMBER: CRAC-JHB-8873

DESCRIPTION: ROLLING STOCK ASSET MANAGEMENT SYSTEM IN TFR FOR A PERIOD OF 12 MONTHS.

NOTICE TO BIDDERS

Quotations are requested from interested Respondents to supply the above-mentioned requirement to TRANSNET FREIGHT RAIL.

On or after 03/09/2012 the RFP documents may be inspected at, and are obtainable during office hours (08h00 to 15h00) Monday to Friday from the office of TRANSNET Freight Rail, Tender Advice Centre, Ground Floor, Inyanda house 1, 21 Wellington Road, Park town.

A non-refundable tender fee of R250.00 (inclusive of Vat) is applicable per tender (listed below). Payment is to be made to Transnet Freight Rail, Standard Bank Account number 203158598, Branch code 004805. The deposit slip must reflect the tender number and the Company Name.

NOTE: This amount is not refundable.

Receipts to be presented prior to collection of the RFP.

NAME	:	Goodhope Kunene
Tel	:	(011) 584-0607
Email	:	Goodhope.Kunene@transnet.net

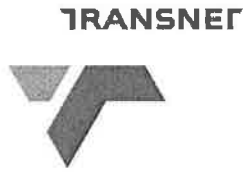
Tenders in Duplicate must reach the Chairperson, TRANSNET Freight Rail Acquisition Council, before the closing hour on the date shown below, and must be enclosed in a sealed envelope which must have inscribed on the outside:

Tender No : CRAC-JHB-8873

Description: Rolling Stock Asset Management System in TFR for a period of 12 months.

Closing date and time: 25 September 2012 at 10h00

Closing address (refer options below)



DELIVERY INSTRUCTIONS FOR THIS RFP: CRAC-JHB-8873

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

**THE CHAIRPERSON
TRANSNET FREIGHT RAIL ACQUISITION COUNCIL
INYANDA HOUSE
21 WELLINGTON ROAD
PARKTOWN
JOHANNESBURG
2001**

The measurements of the "tender slot" are 500mm wide x 100mm high, and Respondents must please Ensure that response documents or files are not larger than the above dimensions. Responses which are Too bulky (i.e. more than 100mm thick) must be split into two or more files, and placed in separate Envelopes.

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

- 3** If dispatched by courier, the envelope must be addressed as follows and delivered to the Office of The Chairperson, TRANSNET Freight Rail Acquisition Council and a signature obtained from that Office.
1. Please note that this RFP closes punctually at 10:00 on Tuesday 25 September 2012
 2. If responses are not posted or delivered as stipulated herein, such responses will not be considered and will be treated as "UNRESPONSIVE"
 3. NO EMAIL OR FACSIMILE RESPONSES WILL BE CONSIDERED
 4. The responses to this RFP will be opened as soon as practicable after the expiry of the time advertised for receiving them.
 5. TRANSNET shall not, at the opening of responses, disclose to any other company any confidential details pertaining to the Quotations received, i.e. pricing, delivery, etc. The names and location of the Respondents will, however, be divulged to other Respondents upon request.
 6. Envelopes must not contain documents relating to any RFP other than that shown on the envelope.
 7. No slips are to be attached to the response documents. Any additional conditions must be embodied in an accompanying letter. Alterations, additions or deletions must not be made by the Respondent to the actual RFP documents.



RFP NUMBER: CRAC-JHB-8873

DESCRIPTION: ROLLING STOCK ASSET MANAGEMENT SYSTEM IN TFR FOR A PERIOD OF 12 MONTHS.

8. BROAD-BASED BLACK ECONOMIC EMPOWERMENT (“BBBEE”)

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

Transnet would accordingly allow a “preference” in accordance with the 10% preference system, as per the Preferential Procurement Policy Framework Act 5 of 2000 (as amended) to companies who provide a BBBEE accreditation Certificate. All procurement and disposal transactions in excess of R30000 will be evaluated accordingly. All transactions below R 30.000 will as far as possible be earmarked for EME’s.

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

In terms of Government Gazette No. 32467, Notice No. 810 dated 31 July 2009, as from 1 February 2010 only BBBEE certificates issued by Accredited Verification Agencies of Verification Agencies that are in possession of a valid pre-assessment letter from South African National Accreditation System will be valid.

However accreditation certificates issued by non-accredited verification agencies before 01 February 2010 and which are still within their one (1) year validity period will still be acceptable, until their expiry date provided that the accreditation was done in accordance with the latest codes (i.e. those promulgated on 9 February 2007).

BBBEE Accreditation Certificates issued after the published date i.e. 01 February 2010, by a Verification Agency not approved by SANAS, will NOT be acceptable as from 01 February 2010.

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

- (a) **Large Enterprises (i.e. annual turnover >R35 million):**
 - Rating level based on all 7 (seven) elements of the BBBEE scorecard
 - Enterprises to provide BBBEE certificate and detailed scorecard (to be renewed annually)
- (b) **Qualifying Small Enterprises – QSE (i.e. annual turnover >R5 million but <R35 million):**
 - Rating based on any 4 (four) of the elements of the BBBEE scorecard
 - Enterprises to provide BBBEE certificate and detailed scorecard (to be renewed annually)
- (c) **Exempted Micro Enterprises – EME (i.e. annual turnover <R5m are exempted from being rated or verified):**



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

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

Each Respondent is required to furnish proof of its BBEE status (Certificate and Detailed Scorecard) and ensure that the documentation is valid at the date of Tender Submission as stipulated above to TRANSNET.

Failure to submit your BBEE Certificate and Detailed Scorecard will result in a score of zero being allocated for BBEE evaluation.

<p>Turnover: Indicate your company's most recent annual turnover:</p> <p>R.....</p>
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- If annual turnover <R5m, please attach auditors / accounting officers letter confirming annual turnover and percentage black ownership as well as Black Women ownership
- If annual turnover >R5m please attach BBEE certificate and detailed scorecard from an accredited rating agency.

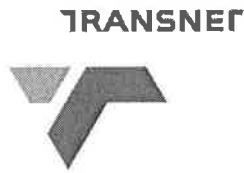
The DTI has created an online **B-BBEE Registry** (<http://www.dti.gov.za>) in order to provide a central and standardized source of the B-BBEE status of all entities, and to facilitate the flow of this information amongst entities by providing a Unique Profile Number (UPN) per each listing. Existing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

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

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

Kindly provide Transnet with your DTI B-BBEE UNIQUE PROFILE NUMBER with all tender submissions.

<p>DTI BBEE UNIQUE PROFILE NUMBER:</p> <p>.....</p>
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Failure to submit your BBBEE information in terms of the above-mentioned clauses will result in a score of zero being allocated for BBBEE evaluation.

9. COMMUNICATION

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

A respondent may, however, BEFORE THE CLOSING DATE AND TIME, direct any enquiries relating to the RFP to the TRANSNET employee as indicated in (2) above.

10. RFP SCHEDULE

Respondents will be contacted as soon as practicable with a status update. At this time short-listed Respondents may be asked to meet with TRANSNET representatives. Respondents are to provide a list of persons who are mandated to negotiate on behalf of their company, together with their contact details.

10.1 INSTRUCTIONS FOR COMPLETING THE RFP

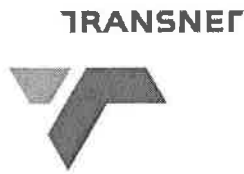
- (i) Sign one set of documents (sign and date the bottom of each page). This set will serve as the legal and binding copy. A duplicate set of documents is required. This second set can be a copy of the original signed Proposal.
- (ii) Both sets of documents to be submitted to the address specified above.
- (iii) The following returnable documents must accompany all Proposals:
 - The Respondent's latest audited financial statements;
 - The Respondent's valid Tax Clearance Certificate.
 - A CD copy where applicable

11. COMPLIANCE

The Respondent shall be in full and complete compliance with any and all applicable State and Local Laws and Regulations.

12. ADDITIONAL NOTES:

- All returnable documents as indicated in the Proposal Form (Section 3) must be returned with the response
- Changes by the Respondent to its submission will not be considered after the closing date
- The person or persons signing the Proposal must be legally authorized by the Respondent to do so (Refer Section 4). A list of those person(s) authorized to negotiate on your behalf must be submitted along with the Proposal
- All prices must be quoted in South African Rand
- TRANSNET reserves the right to undertake post-tender negotiations with the preferred Respondent or any number of short-listed Respondents



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

**FAILURE TO OBSERVE ANY OF THE ABOVE-MENTIONED REQUIREMENTS
MAY RESULT IN THE PROPOSAL BEING REJECTED.**

13. DISCLAIMERS

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

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

Kindly note that TRANSNET will not reimburse any Respondent for any preparation costs or other work

Performed in connection with the Proposal, whether or not the Respondent is awarded a contract.

- 14. Any PROPOSAL submitted by a Respondent is subject to negotiation and review of the proposed contract by Trans net's Legal Counsel.**

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NAME OF RESPONDENT:

PHYSICAL ADDRESS:

Indent's contact person:	Name:	_____
	Designation:	_____
	Telephone:	_____
	Cell phone:	_____
	Facsimile:	_____
	Email:	_____

**TRANSNET urges its clients and suppliers to report
Any fraud or corruption
On the part of Transnet' employees to
TIP-OFFS ANONYMOUS: 0800 003 056**

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SECTION 2

RFP NUMBER: CRAC-JHB-8873

DESCRIPTION: ROLLING STOCK ASSET MANAGEMENT SYSTEM IN TFR FOR A PERIOD OF 12 MONTHS.

REQUISITION FOR PROPOSAL

Refer Document attached hereto

REQUISITION FOR PROPOSAL

MESSRS:

Tel (011)
 Fax (011)

ISSUE DATE 03-09-2012

CLOSING DATE 25-09-2012 (10h00)

SUPPLY CHAIN SERVICES	
Contact:	Goodhope Kunene
Tel:	011 584 0607

Prices in South African currency, including all costs.

Direct to consignees

ITEM NO:	DESCRIPTION:	PRICE:
Total price		
2.Prices must be V.A.T. exclusive		
3. Direct delivered to:	Transnet Freight Rail	
4.Contact person:	Goodhope Kunene 011 584-0607	

5.COMPULSARY DOCUMENTS

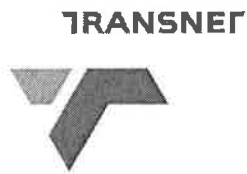
NOTE

:5.1.Return of tender documents

The tender documents must be submitted on the closing date in **duplicate** and failure To do so may automatically disqualify your offer.

5.2.The following documents are compulsory, and they must be attached to the tender document If **Not** your tender may not be considered.

- a) Tax Clearance Certificate
- b) Supplier Declaration Form
- c) Current Vat Registration No.
- d) BBBEE level certification and Score Card



6. FRAUD HOTLINE

Transnet strives to be fair, equitable and just in all its dealings with tenderers. As such we encourage all tenderers to report any practice, activity or information that they are aware of or become aware of which may result in any perception of or actual fraud being committed against or in the name of Transnet. The hotline details are:-

Hotline telephone: 0800 003 056

Email: transnet@tip-offs.com

Fax: 0800 007 788

All information received will be treated with the utmost confidentiality

7. BUSINESS ADJUDICATION CRITERIA:

Commercial Offer

- Competitive Pricing

Technical Offer

- The ability to provide a team with basic knowledge of all SAP modules and minimum k4-k5 skill level for the following modules:
- ABAP, MM, PM, SD, CS, CP, SM.
- Proof of similar implementations with references

BBBEE

- Broad Based Economic Empowerment status of the company.
Provide BBBEE certification

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SECTION 3

RFP NUMBER: CRAC-JHB-8873

DESCRIPTION: ROLLING STOCK ASSET MANAGEMENT SYSTEM IN TFR FOR A PERIOD OF 12 MONTHS.

INFORMATION BRIEFING SESSION:

A **COMPULSORY** Information briefing session will be held at the following venue:

Time : 09h00

Date : 13 September 2012

Venue : Umjantshi C boardroom, Inyanda house 2, Parktown

1 ATTENDANCE CERTIFICATE

This is to certify that.....

Representative/s of

.....

Has/have today attended the Tender briefing in respect of the proposed:

.....
TRANSNET'S REPRESENTATIVE
REPRESENTATIVE

.....
TENDERER'S

DATE





SECTION 4

RFP NUMBER: CRAC-JHB-8873

DESCRIPTION: ROLLING STOCK ASSET MANAGEMENT SYSTEM IN TFR FOR A PERIOD OF 12 MONTHS.

SCOPE OF WORK

1. Background

Rolling Stock Management within Capital Program does not have an automated capability to manage the life cycle of the fleet. The project is in the process to implement a rolling stock asset management system for Transnet Freight Rail. A software solution is purchased and the solution must be fully integrated with the existing TRE applications.

2. Purpose/ Objective

TRE does not have the resource capacity to accommodate the changes required for the project in the required timelines for the project.

The project requires a SAP team to develop the changes in the TRE application under the supervision of the project and with the guidance of the TRE resources.

3. Technical Specification

Introduction

The changes in the TRE applications are identified and detail functional specifications will be drafted by the SAP team with the guidance of TRE application specialists.

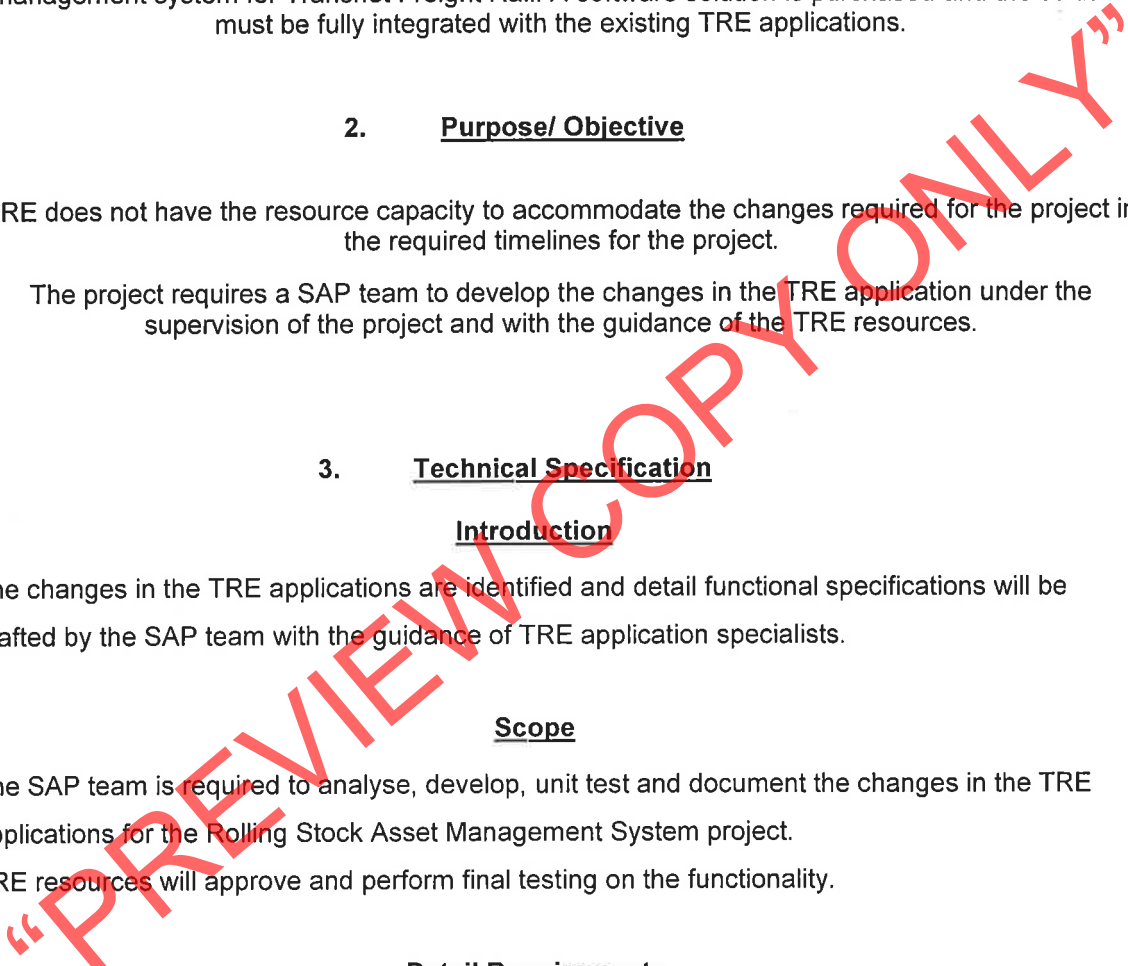
Scope

The SAP team is required to analyse, develop, unit test and document the changes in the TRE applications for the Rolling Stock Asset Management System project.

TRE resources will approve and perform final testing on the functionality.

Detail Requirements

The SAP team must develop, test and document 14 TRE SAP interfaces from TRE to TFR applications. The interfaces can be RFC to RFC or RFC via web methods to a non-SAP application. The resource must be able to independently test syntax and semantics for the interfaces.





Interface name	Source	Target	Interface method	Complexity
Classifications	Maximo	TRE SAP PM	Web methods	Low
Classification attributes	Maximo	TRE SAP PM	Web methods	Low
Asset creation and update	Maximo	TRE SAP PM	Web methods	High
Item Master	TRE SAP MM	Maximo	Web methods	Low
Job plans	TRE SAP PM	Maximo	Web methods	Low
Component asset management	TRE SAP MM	Maximo	Web methods	High
Creation and updates of work orders	Maximo	TRE SAP PM	Web methods	High
Creation and updates of work orders	TRE SAP PM	Maximo	Web methods	High
Meter readings	TRE SAP PM	Maximo	Web methods	Medium
Invoices	TRE SAP PM	TFR SAP FI	RFC	Medium
Payment details	TFR SAP FI	TRE SAP FI	RFC	Medium
Maintenance schedule	TRE SAP PM	Maximo	Web methods	Medium
Maintenance catalogue repair codes	TRE SAP PM	Maximo	Web methods	Medium
Availability/Un availability of Asset in functional location & status	Maximo	TRE SAP PM	Web methods	Low

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The requirement is to analyse, develop and test the changes to the existing system for serialization and management of component data.

The requirement is to ensure that the existing interfaces between the TRE and TFR system around SAP SD/SM/PM continue to work the container and tarpaulin business even if the rolling stock component is removed.

The requirement is to analyse, develop and test the changes required for new functions to sell rolling stock maintenance to customers other than TFR. Currently all the maintenance work performed by TRE is interfaced to TFR via automatic interfaces. Any external customer agreement is with TFR and the work is processed through the same interface. TFR plans to withdraw from this relationship and alternative processes have to be developed to sell maintenance directly to customers other than TFR.

Define KPI and controls, and develop reports around the KPI and controls to measure the effective operation of the TRE system. Monitoring tools to understand the effectiveness and efficiency of the sales systems need to be analysed, designed, tested and implemented.

Timeline/ Timeframe

The resources must start on 1 November 2012, or sooner.

UAT must be completed by 28 February 2013 and implementation and handholding must be completed by end April 2013.

Other Requirements

A fixed price contract will be required for the period indicated. Payments will be effective on agreed milestones as proposed by the vendor.

The team will primarily be located at 18a Girton Road, Parktown. They might be requested on occasion to attend workshops at 160 Lynette street in Kilner Park, Pretoria at no extra cost.

An indication of resources that will be required from TRE is also required and whether they need to be available full time or whether they can be made available as and when required.

SECTION 5

RFP NUMBER: CRAC-JHB-8873
DESCRIPTION: ROLLING STOCK ASSET MANAGEMENT SYSTEM IN TFR FOR A PERIOD OF 12 MONTHS.

RETURNABLE DOCUMENTS

Refer Document attached hereto

C.1.Returnable Schedules / Documents required for tender evaluation purposes

	Returnable Schedules / Documents	YES/NO/NA
1	Certificate Of Authority For Joint Ventures (Where Applicable	x
2	Schedule of the Tenderers Experience	x
3	Certificate of Attendance at Clarification Meeting	x
5	Supplier Declaration form (version2)	X
6	Letter of Good Standing with the Compensation Commissioner	x
7	Original / Certified BBBEE Rating Certificate With Detailed Scorecard	X
8	Statement Of Compliance With Requirements Of The Scope Of Work	x
9	Certified Copy of Financial Statements (for the past 3 years) including Balance sheets where BBBEE not provided.	x
10	Certified Copy of Share Certificates CK1 & CK2	x
11	Certified Copy Of Certificate Of Incorporation and CM29 and CM9	x
12	Certified Copy of Identity Documents of Shareholders/Directors/Members (Where Applicable)	x
13	Cancelled Cheque	X
14	Original current Tax Clearance Certificate	X
15	Original Vat Registration Certificate	X
16	Copy of BEE Policy/BEE Plan/Employment Policy/Procurement Policy	X



SECTION 6

RFP NUMBER: CRAC-JHB-8873
DESCRIPTION: ROLLING STOCK ASSET MANAGEMENT SYSTEM IN TFR FOR A PERIOD OF 12 MONTHS.

Transnet Supplier Declaration/Application

The Financial Director or Company Secretary

Transnet Vendor Management has received a request to load your company on to the Transnet vendor database. Please furnish us with the following to enable us to process this request:

1. Complete the "Supplier Declaration Form" (SDF) on page 2 of this letter
2. **Original** cancelled cheque **OR** letter from the bank verifying banking details (**with bank stamp**)
3. **Certified** copy of Identity document of Shareholders/Directors/Members (where applicable)
4. **Certified** copy of certificate of incorporation, CM29 / CM9 (name change)
5. **Certified** copy of share Certificates of Shareholders, CK1 / CK2 (if CC)
6. A letter with the company's letterhead confirming physical and postal addresses
7. **Original or certified** copy of SARS Tax Clearance certificate and Vat registration certificate
8. A signed letter from the Auditor / Accountant confirming most recent annual turnover and percentage black ownership in the company **AND/OR** BBBEE certificate and detailed scorecard from an accredited rating agency (SANAS member).

NB:
 • **Failure to submit the above documentation will delay the vendor creation process.**
 • *Where applicable, the respective Transnet business unit processing your application may request further information from you. E.g. proof of an existence of a Service/Business contract between your business and the respective Transnet business unit etc.*

IMPORTANT NOTES:

- a) **If your annual turnover is less than R5 million**, then in terms of the DTI codes, you are classified as an Exempted Micro Enterprise (EME). If your company is classified as an EME, please include in your submission, a signed letter from your Auditor / Accountant confirming your company's most recent annual turnover is less than R5 million and percentage of black ownership and black female ownership in the company **AND/OR** BBBEE certificate and detailed scorecard from an accredited rating agency (e.g. permanent SANAS Member), should you feel you will be able to attain a better BBBEE score.
- b) **If your annual turnover is between R5 million and R35million**, then in terms of the DTI codes, you are classified as a Qualifying Small Enterprise (QSE) and you claim a specific BBBEE level based on any 4 of the 7 elements of the BBBEE score-card, please include your BEE certificate in your submission as confirmation of your status.
 NB: BBBEE certificate and detailed scorecard should be obtained from an accredited rating agency (e.g. permanent SANAS Member).
- c) **If your annual turnover is in excess of R35million**, then in terms of the DTI codes, you are classified as a Large Enterprise and you claim a specific BEE level based on all seven elements of the BBBEE generic score-card. Please include your BEE certificate in your submission as confirmation of your status.
 NB: BBBEE certificate and detailed scorecard should be obtained from an accredited rating agency (permanent SANAS Member).
- d) **To avoid PAYE tax being automatically deducted from any invoices received from you**, you must also contact the Transnet person who lodged this request on your behalf, so as to be correctly classified in terms of Tax legislation.



- e) Unfortunately, **No payments can be made to a vendor** until the vendor has been registered, and no vendor can be registered until the vendor application form, together with its supporting documentation, has been received and processed.
- f) Please return the completed Supplier Declaration Form (SDF) together with the required supporting documents mentioned above to the Transnet Official who is intending to procure your company's services/products in order that he/she should complete and Internal Transnet Departmental Questionnaire before referring the matter to the appropriate Transnet Vendor Master Office.

Regards,

Transnet Vendor/Supplier Management [please substitute this with your relevant Transnet department before sending this document out]

Supplier Declaration Form

Company Trading Name							
Company Registered Name							
Company Registration Number Or ID Number If A Sole Proprietor							
Form of entity	CC	Trust	Pty Ltd	Limited	Partnership	Sole Proprietor	
VAT number (if registered)							
Company Telephone Number							
Company Fax Number							
Company E-Mail Address							
Company Website Address							
Bank Name				Bank Account Number			
Postal Address						Code	
Physical Address						Code	
Contact Person							
Designation							
Telephone							
Email							
Annual Turnover Range (Last Financial Year)		< R5 Million		R5-35 million		> R35 million	
Does Your Company Provide		Products		Services		Both	
Area Of Delivery		National		Provincial		Local	
Is Your Company A Public Or Private Entity		Public			Private		
Does Your Company Have A Tax Directive Or IRP30 Certificate		Yes			No		
Main Product Or Service Supplied (E.G.: Stationery/Consulting)							
BEE Ownership Details							
% Black Ownership		% Black women ownership		% Disabled person/s ownership			
Does your company have a BEE certificate			Yes	No			
What is your broad based BEE status (Level 1 to 9 / Unknown)							
How many personnel does the firm employ		Permanent		Part time			
Transnet Contact Person							
Contact number							
Transnet operating division							



Duly Authorised To Sign For And On Behalf Of Firm / Organisation

Name		Designation	
Signature		Date	

Stamp And Signature Of Commissioner Of Oath

Name		Date	
Signature		Telephone No.	

NB: Please return the completed Supplier Declaration Form (SDF) together with the required supporting documents mentioned above to the Transnet Official who is intending to procure your company's services/products.

2. VENDOR TYPE OF BUSINESS

(Please tick as applicable)

(* - Minimum requirements)

2.1 Indicate the business sector in which your company is involved/operating:

Agriculture		Mining and Quarrying	
Manufacturing		Construction	
Electricity, Gas and Water		Finance and Business Services	
Retail, Motor Trade and Repair Services		Wholesale Trade, Commercial Agents and Allied Services	
Catering, accommodation and Other Trade		Transport, Storage and Communications	
Community, Social and Personal Services		Other (Specify)	
Principal Business Activity *			
Types of Services Provided			
Since when has the firm been in business?			

2.2 What is your company's annual turnover (excluding VAT)? *

<R20k	>R20k <R0.3m	>R0.3m <R1m	>R1m <R5m	>R6m <R10m	>R11m <R15m	>R16m <R25m	>R26m <R30m	>R31m <R34m	>R35m

2.3 Where are your operating/distribution centres situated *



3. VENDOR OWNERSHIP DETAIL

(Please tick as applicable) (* - Minimum requirements)

3.1 Did the firm previously operate under another name? *

YES NO

3.2 If Yes state its previous name:*

Registered Name
Trading Name

3.3 Who were its previous owners / partners / directors?*

SURNAME & INITIALS	ID NUMBERS
--------------------	------------

3.4 List Details of current partners, proprietors and shareholders by name, identity number, citizenship, status and ownership as relevant: *

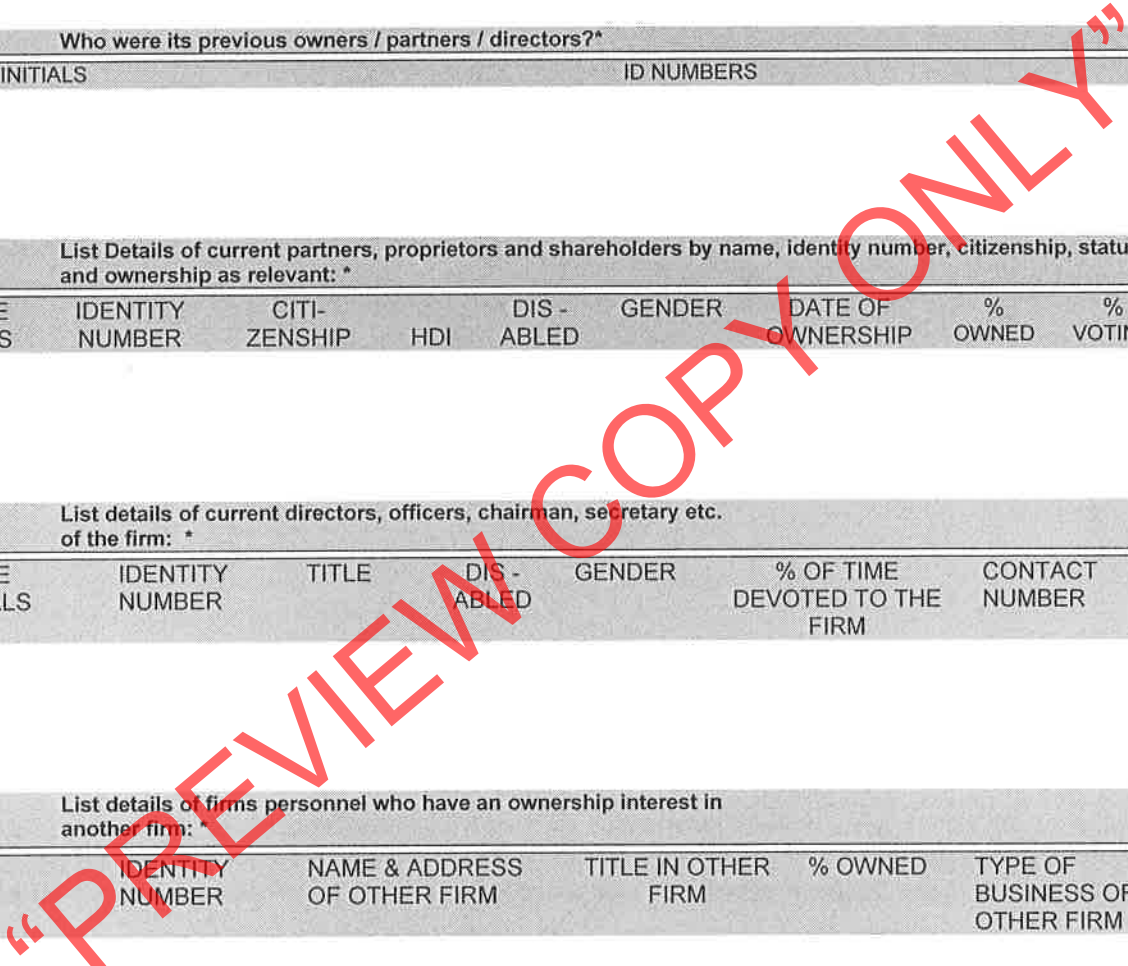
SURNAME & INITIALS	IDENTITY NUMBER	CITI-ZENSHIP	HDI	DIS- ABLED	GENDER	DATE OF OWNERSHIP	% OWNED	% VOTING
--------------------	-----------------	--------------	-----	------------	--------	-------------------	---------	----------

3.5 List details of current directors, officers, chairman, secretary etc. of the firm: *

SURNAME & INITIALS	IDENTITY NUMBER	TITLE	DIS- ABLED	GENDER	% OF TIME DEVOTED TO THE FIRM	CONTACT NUMBER
--------------------	-----------------	-------	------------	--------	-------------------------------	----------------

3.6 List details of firms personnel who have an ownership interest in another firm: *

SURNAME & INITIALS	IDENTITY NUMBER	NAME & ADDRESS OF OTHER FIRM	TITLE IN OTHER FIRM	% OWNED	TYPE OF BUSINESS OF OTHER FIRM
--------------------	-----------------	------------------------------	---------------------	---------	--------------------------------



4. VENDOR DETAIL

(Please tick as applicable) (* - Minimum requirements)

4.1 How many personnel does the firm employ? *

	BLACK	WHITE	COLOURED	INDIAN	OTHER	TOTAL
Permanent						

Respondent's signature

20
Date and company stamp



Part Time						
-----------	--	--	--	--	--	--

4.1.1 In terms of above kindly provide numbers on women and disabled personnel? *

	BLACK	WHITE	COLOURED	INDIAN	OTHER	TOTAL
Women						
Disabled						

4.2 Provide Details of Contact Person/s Responsible for Broad Based Black Economic Empowerment (BBBEE) in the Company *

SURNAME	INITIALS	DESIGNATION	TELEPHONE NO.

4.2.1 Is your company a value adding supplier (i.e. registered as a vendor under the VAT Act of 1991, where NPAT + total labour cost > 25% of total revenue)?

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

4.2.2 Is your company a recipient of Enterprise Development Contributions?*

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

4.2.3 May the above mentioned information be shared and included in Transnet Supplier Database for future reference? *

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

4.2.4 If you are successful in the tender/contract (where applicable) and this is awarded to your company / organisation, will this have a positive impact on your employment plans? *

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

4.2.5 If yes (above) kindly provide the following information:

	BLACK	WHITE	COLOURED	INDIAN	OTHER	TOTAL
Permanent						
Part Time						

4.2.6 In terms of above kindly provide numbers on woman and disabled personnel:

	BLACK	WHITE	COLOURED	INDIAN	OTHER	TOTAL
Women						
Disabled						

4.2.7 Are any of your members/shareholders/directors ex employees of Transnet?

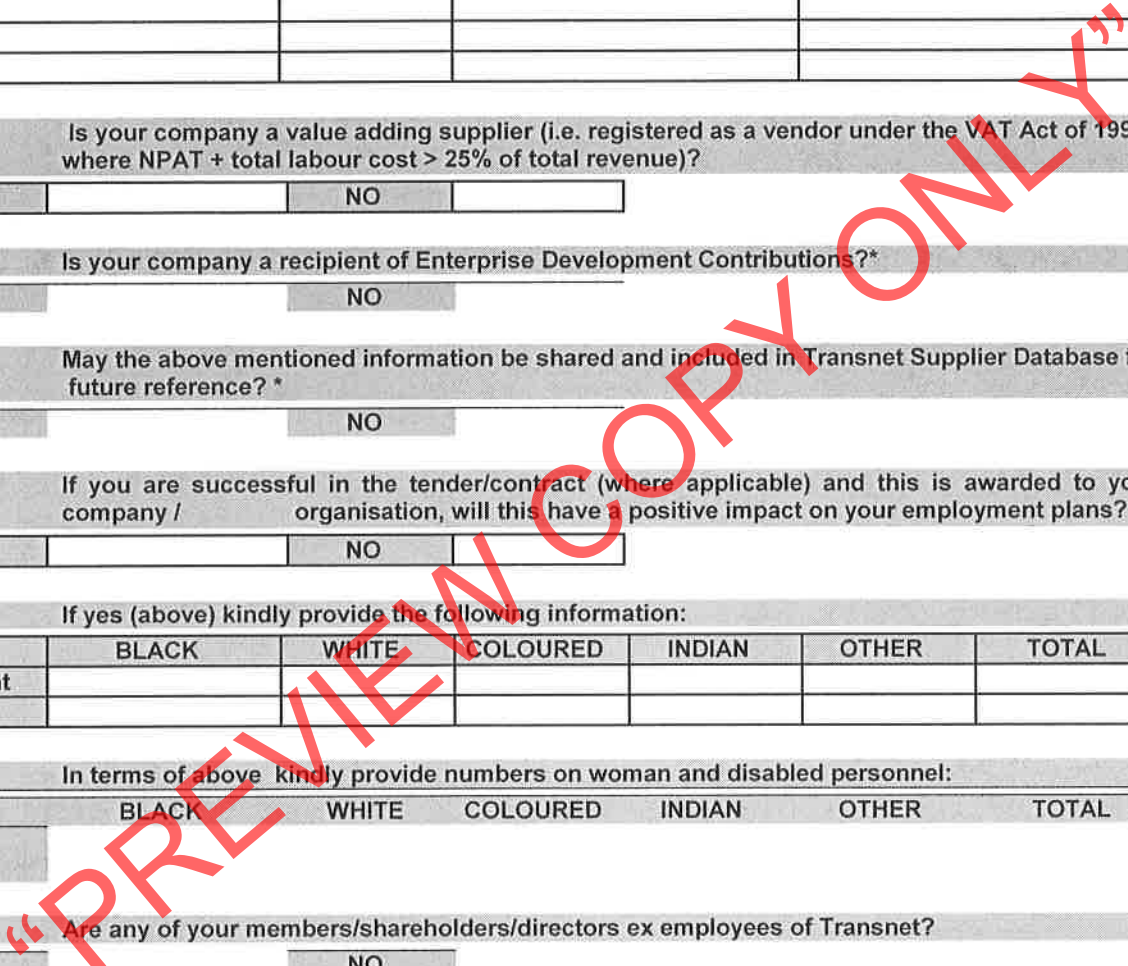
YES		NO	
-----	--	----	--

4.2.8 Are any of your family members employees of Transnet?

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

4.2.9 If Yes to points 4.2.7 & 4.2.8, list details of employees/ex-employees

SURNAME & INITIALS	IDENTITY NUMBER	NAME & ADDRESS OF OTHER FIRM	TITLE IN OTHER FIRM	% OWNED	TYPE OF BUSINESS OF OTHER FIRM





Internal Transnet Departmental Questionnaire (for office use only)

Section 1: To be completed by the Transnet Requesting / Sourcing Department

TFR	TRE	TPT	TPL	TNPA	TRN
Create	Amend	Block	Unblock	Once-Off / Emergency	
Extend	Delete	Undele			

Supplier's trading name

Supplier's registered name

Please indicate if the Supplier has a contract with sourcing Transnet OD Yes No

If yes please submit a copy of the letter of award

a) What is being procured from the supplier?

i. Products only	Yes	No
ii. Services only	Yes	No
iii. Labour only	Yes	No
iv. Mix of services and products	Yes	No
v. Mix of services and labour	Yes	No

b) If your answer is **YES** to questions II, III, IV or V in paragraph a) above, please indicate whether the relevant **PAYE questionnaires** have been forwarded to the appropriate **Transnet Operational Divisions'** decision making bodies / **Strategic Supply Management** team for a directive /decision on tax withholding from payments to this supplier.

Yes No

c) If your reply to (b) is "NO", please furnish reasons :

d) Certification and Approval of proposed Vendor Creation/Unblocking/Other Changes by Transnet Official with Appropriate Delegated Authority :

*I HEREBY CERTIFY THAT THE TRANSNET DETAILED PROCUREMENT PROCESS (DPP) / PROCUREMENT MECHANISM HAS **IN ALL RESPECTS** BEEN ADHERED TO AND I THEREFORE APPROVE THE PROPOSED VENDOR CREATION/APPROVAL/OTHER CHANGES TO BE EFFECTED ON THE VENDOR MASTER*

Name	Grade	Date								Signature
		Y	Y	Y	Y	M	M	D	D	

Tel No:	Fax
---------	-----

Section 2: To be completed by the BEE Department (this section is for Confirmation/Determining of BEE Status)

NARROW BASED (NB)				BROADBASED (BBEE)						
BEE O/S	BWBE	DPBE	MR	CONTB. LEVEL	EME: <R5m	QSE: >R5m <R35m	LARGE: >R35m	VALIDITY DATE		
Name	Grade	Date								Signature
		Y	Y	Y	Y	M	M	D	D	
		Y	Y	Y	Y	M	M	D	D	



SECTION 7

RFP NUMBER: CRAC-JHB-8873

DESCRIPTION: ROLLING STOCK ASSET MANAGEMENT SYSTEM IN TFR FOR A PERIOD OF 12 MONTHS.

TRANSNET LIMITED / CONTRACTORS / SUB-CONTRACTORS

CONTRACTUAL SAFETY CLAUSES WHICH WILL FORM PART OF ANY RESULTING CONTRACT

The parties agree on the following arrangements according to section 37 (2) of the Occupational Health and Safety Act, 1993 (Act 85 of 1993) to ensure compliance by the mandatory with provisions of the Act.

- 1) That the contractor is an "employer" in his own right as defined in section 1 of Act 85 of 1993 and that he must fulfill all his obligations as an employer in terms of the Act.
- 2) The contractor shall comply with the requirements of Act 85 of 1993 in its entirety.
- 3) Where special permits are required, such as electrical switching, hot work permits, etc. the contractor shall obtain them from a person designated by Transnet Limited for this purpose, and all requirements of the contractor must rigidly comply with the permit.
- 4) The contractor shall conduct a risk assessment of the work to be performed by a competent person prior to the commencement of work, to identify risks and hazards that persons may be exposed to, analyse and evaluate identified hazards.
- 5) The contractor shall have a documented Health and Safety Plan based on the risks and hazards identified before commencement of work.
- 6) The Health and Safety Plan shall include the following:
 - 6.1 The safety management structure to be instituted with all appointments in terms of the Act and Regulations
 - 6.2 The safe working methods and procedures to be implemented to ensure work is performed in compliance to the Act.
 - 6.3 The safety equipment, devices and clothing to be made available by the contractor to his employees.
 - 6.4 The site access control measures pertaining to health and safety to be implemented.
 - 6.5 Control measures for ensuring that the Health and Safety Plan is maintained and monitored for the duration of the contract.



- 7) The contractor shall ensure that all work is performed under the close supervision of a person trained to understand the hazards associated with the work performed and who has authority to ensure that the necessary precautionary measures are implemented.
- 8) The contractor must appoint a Health and Safety Co-ordinator to liaise with Transnet Limited on matters pertaining to occupational health and safety.
- 9) The appointed Safety Co-ordinator must liaise at least once a week with the* Health and Safety Section / Risk Manager /Occupational Risk Manager of Transnet Limited.
- 10) The contractor shall furnish the* Health and Safety Section/ Risk Manager/ Occupational Risk Manager of Transnet Limited immediately with full particulars of any sub-contractor which he may involve in the contract in order that the sub-contractor himself can be made aware of all the clauses in this contract pertaining to health and safety.
- 11) The contractor shall stop any subcontractor from executing work which is not in accordance with the Health and Safety Plan or which poses a threat to health and safety of persons.
- 12) The contractor shall ensure that all his employees and visitors undergoes health and safety induction pertaining to the hazards prevalent, proof of such training must be kept on file.
- 13) In the event where the risk assessment reveals the risk relating to working from an elevated position the contractor shall cause the designation of a competent person, responsible for the preparation of a Fall Protection Plan.
- 14) The Fall Protection Plan shall include:
 - 14.1 A risk assessment of all work carried out from an elevated position
 - 14.2 Procedures and methods to address all the identified risks per location
 - 14.3 Evaluation of employees physical and psychological fitness necessary to work at elevated position.
 - 14.4 The training of employees working from an elevated position.
 - 14.5 Procedure addressing the inspection, testing and maintenance of all fall protection equipment.
- 15) The contractor shall advise the * Health and Safety Section / Risk Manager/ Occupational Risk Manager of Transnet Limited of any hazardous situations which may arise from work being performed either by the contractor or his sub-contractor.
- 16) Copies of all appointments required by the act must be given to * Health and Safety Section / Risk Manager / Occupational Risk Manager of Transnet Limited.
- 17) The contractor shall ensure that a Health and Safety File is available which shall include all documentation as required by the Act, copy of his and his subcontractors Risk Assessment and Health and Safety Plan.
- 18) All incidents referred to in Section 24 of the Act involving the contractor and his subcontractor on Transnet Ltd premises, shall be reported as prescribed. Transnet Ltd hereby obtains an interest in the issue of any investigation, formal inquiry conducted in



- terms of Section 31 and 32 of the Act into any incident involving the contractor, his subcontractor, any person or machinery under his control on Transnet Ltd premises.
- 19) No alcohol or any other intoxicating substance shall be allowed on Transnet Ltd premises. The contractor shall not allow anyone under or suspected to be under the influence of alcohol or any other intoxicating substance on Transnet Ltd premises.
 - 20) A letter of good standing in terms of Section 80 (Employer to register with the Compensation Commissioner) of the Compensation for Occupational Injuries and Disease Act 1993 (Act 130 of 1993) must also be furnished.
 - 21) All clauses in the contract pertaining health and safety forms an integral part of the contract and if not complied with may be construed as breach of contract.

*As applicable

“PREVIEW COPY ONLY”



SECTION 8

GENERA
L
TENDER
CONDITIONS

FORM CSS5 (REVISED FEBRUARY 2007)

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1. GENERAL

All tenders and subsequent contracts and orders shall be subject to the following procedures as laid down by Transnet Limited herein after referred to as "Transnet" and are to be strictly adhered to by Tenderers (where applicable).

2. LODGING OF TENDER

- 2.1 Tenders shall be lodged with Transnet not later than the closing date and time specified for the receipt thereof, in accordance with the directions issued with tender documents.
- 2.2 Tenders shall be transmitted in a sealed envelope and placed in the Tender Box at a venue stipulated in the Request for Tender (RFT) or Request for Proposals (RFP) or Request for Quotations (RFQ), with the tender number and subject endorsed on the left hand bottom corner of the envelope. This condition shall NOT apply if tenders are submitted by means of a private computerised system.
- 2.3 Tenders may be transmitted electronically to a specified e-mail address, or by facsimile to a specified fax number, all of which will be stipulated in the RFT, RFP, or RFQ (collectively Tender Documents) whatever the case may be. Such Tenders will if delivered on or before the closing date and hour set out in Tender Documents for receiving tenders will be accepted by Transnet if the Tenderer's name, the items tendered for, the tendered price of each item (or one inclusive price where this is required) are all clearly stated, provided however that the tender is confirmed by a letter on the Tenderer's official letterhead and signed by the same person who signed the tender document on behalf of the tenderer, or the official tender form duly completed, is posted or forwarded by courier service not later than the closing date for the receipt of tenders

3. USE OF TENDER FORMS

Where special forms are issued by Transnet for the submission of tenders, Tenderers are required to submit their tenders in the appropriate spaces on such official forms and not on office stationery bearing their own special conditions of tender; non-compliance with this conditions may result in the rejection of a tender. Tenderers must delete items on the tender form for which they have not quoted or where the price has been provided for elsewhere in the tender documents.

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

- 4.1 A non-refundable charge may be raised for tender forms, plans, specifications and samples depending on the nature, magnitude and value of technical information or samples supplied.
- 4.2 If, any of the drawings and specifications referred to in tender forms are the official publications of recognised standardising bodies, copies of such drawings and specifications shall be acquired by Tenderers at their own expense.

5. DEFAULTS BY TENDERERS

- 5.1 If the Tenderer, after he has been notified of the acceptance of his tender/quotation fails to:-
- 5.1.1 enter into a formal memorandum of agreement when called upon to do so in terms of clause 14, within such period as Transnet may specify; or
- 5.1.2 accept an order in terms of the tender/quotation; or
- 5.1.3 when called upon to do so, fails to furnish satisfactory security of the fulfilment of the contract in terms of clause 15;



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

- 5.2 If any person or enterprise or firm which has submitted a tender/quotation, concluded a contract, or in the capacity of agent or subcontractor, has been associated with such tender or contract:
- 5.2.1 Has withdrawn such tender/quotation after the advertised date and hour for the receipt of tenders; or
- 5.2.2 has, after having been notified of the acceptance of his tender/quotation, failed or refused to sign a contract when called upon to do so in terms of any condition forming part of the tender documents; or
- 5.2.3 *has carried out any contract resulting from such tender/quotation in an unsatisfactory manner or has breached any condition of such contract; or*
- 5.2.4 has offered, promised or given a bribe in relation to the obtaining or the execution of such contract, or
- 5.2.5 has acted in a fraudulent or improper manner or in bad faith towards Transnet or any Government Department or towards any public body, company or person; or
- 5.2.5 has made any incorrect statement in the affidavit or certificate referred to in Clause 11 and is unable to prove to the satisfaction of Transnet that
- (i) he made the statement in good faith honestly believing it to be correct; and
- (ii) before making such statement he took all reasonable steps to satisfy himself of its correctness; or
- 5.2.6 caused Transnet damage, or to incur costs in order to meet the Contractor's requirements and which could not be recovered from the Contractor; then
- a tender from any such person or enterprise shall be disqualified and the person, enterprise or firm including any directors shall subject to clause 5.3 be disqualified from tendering for any Transnet business.
- 5.3 Any person, or enterprise, or firm against whom a decision has been given under the provisions of clauses 5.2.2 or 5.2.4 may make representations to the Group Chief Executive of Transnet, whose decision shall be final.
- 5.4 Any disqualification imposed upon any person or enterprise, unless Transnet determines otherwise, shall apply to any other enterprise under the same or different names of disqualified persons or enterprise, or firm or associates and shall for avoidance of doubt also be applied to any agent or employee of the person or enterprise concerned.



6. CURRENCY

Prices must be quoted in the currency of the Republic of South Africa in respect of local supplies. Prices in any other currency may be rejected by Transnet save where such price is quoted for imported Goods only.

7. EXCHANGE AND REMITTANCE

The Contractor 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 Contractor, effect payment overseas direct to the principal/supplier of such percentage of the contract or order value as may be stipulated by the Contractor in his tender documents and any variation in the amount to be so paid which may arise as a result of fluctuations in the rate of exchange involved, will be for the account of the Contractor .

- 7.1 The Contractor who desires to avail himself of the aforementioned facility must at the same time of tendering furnish the information called for in the clause "Exchange and Remittance" of the tender document and also furnish full details of the principals/suppliers to whom payment is to be made.
- 7.2 The Contractor shall at his own cost obtain forward exchange cover on foreign currency to protect himself 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.
- 7.3 Should it be necessary for the Contractor to establish a letter of credit through a bank, where the whole or a portion of the contract or order value is to be remitted overseas by him against a contract or order and where the Goods are to be collected by or delivered to Transnet's overseas forwarding agent, then such letter of credit must clearly stipulate that for payment purposes an "Original Ocean Bill of Lading" will be the only recognised document as proof that the Goods have been collected/delivered. Failure to comply with this requirement will result in delays in delivery and payment of the Goods.

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

8. ACCEPTANCE OF TENDER/QUOTATION

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



9. LAW GOVERNING CONTRACT

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

10. IDENTIFICATION

If the Tenderer is a company, the full names of the directors shall be stated in the tender/quotation. If the Tenderer is a partnership or an individual trading under a trade name, the full names of the partners or of such individual, as the case may be, shall be furnished.

11. FORMAL NOTIFICATION REGARDING NAME OF SUCCESSFUL TENDERER

In the case of tenders returnable to the Chairman of the Tender Board, unsuccessful Tenderers will be formally notified of the names of successful Tenderers as soon as possible after the closing date for receipt of the tender in question. In the case of tenders/quotations returnable to Transnet, unsuccessful Tenderers shall, upon application, be furnished with similar information.

12. UNAUTHORISED COMMUNICATION ABOUT TENDERS

- 12.1 Where tenders are returnable to the Chairman of the Tender Board, Tenderers may at any time communicate with the Chairman on any matter relating to their tender but, in the absence of written authority from the Chairman, no communication on a question affecting a service, purchase, sales or disposal of assets or Goods, which is the subject of a tender, shall take place between Tenderers or other potential suppliers or any member of the Tender Board or official of Transnet during the period between the closing date for the receipt of the tender and the date of the notification of the successful Tenderer. A tender, in respect of which any such unauthorised communication has occurred, may be disqualified.
- 12.2 Where tenders are returnable to Transnet, Tenderers may at any time communicate with the designated representative of Transnet to whom tenders/quotations are to be submitted on any matter relating to their tender / quotation but, in the absence of written authority from the designated representative of Transnet concerned, no communication on a question affecting a service, purchase, sale or disposal of assets or Goods which is the subject of a tender/quotation shall take place between any other officer of Transnet and Tenderers or other potential suppliers during the period between the closing date for the receipt of the tender / quotation and the date of notification of the successful Tenderer. A tender / quotation, in respect of which any such unauthorised communication has occurred, may be disqualified.



13. TENDERER'S SAMPLES

- 13.1 If samples are required from Tenderers, such samples shall be suitably marked with the Tenderer's name and address, the tender number and the tender item number and must be despatched in time to reach the addressee as stipulated in the tender form on or before the closing date of the tender. Failure to submit samples by the due date may result in the rejection of a tender.
- 13.2 Transnet reserves the right to retain samples furnished by Tenderers in compliance with tender conditions.
- 13.3 Payment will not be made for successful Tenderer's samples that may be retained by Transnet for the purpose of checking the quality and workmanship of Goods delivered in execution of contracts.
- 13.4 If unsuccessful Tenderer's samples are retained and Tenderers require payment therefor, Transnet will make payment at the tendered price of the Goods. If it is not desired to retain such samples and Tenderers require their return Transnet will accept responsibility for its return to the Tenderer's nearest station or siding in South Africa.
- 13.5 Transnet will not accept liability for samples furnished by Tenderers on their own initiative. If Tenderers desire such samples returned it will be at their own risk and cost.

14. CONTRACT DOCUMENTS

The contract documents will comprise the General Tender Conditions the special conditions (if applicable) and General Terms and Conditions of Contract (US7)(Revised February 2007) which will constitute the contract upon receipt by the Tenderer of the acceptance letter, subject to all amendments proposed by the parties.

15. SECURITIES

- 15.1 The successful Tenderer, when called upon to do so, shall provide security to the satisfaction of Transnet for the due fulfilment of a contract or order. Such security shall be in the form of:
- 15.1.1 Government or approved Municipal stocks in negotiable form; or
- 15.1.2 a deed of suretyship furnished by an approved bank, building society, insurance or guarantee corporation carrying on business in South Africa.
- 15.2 The security may be applied in whole or part at the discretion of Transnet to make good any loss or damage which Transnet may incur in consequence of a breach of the contract or any part thereof.
- 15.3 For the purpose of clause 15.1.2 Transnet will supply "Deed of Suretyship" forms to the successful Tenderer for the completion by his sureties, and no guarantee in any other form will be accepted. Copies of such form will be supplied to Tenderers on request. For this purpose "Deed of Suretyship" forms will be provided which shall be completed and returned to Transnet or a designated official by the successful Tenderer within 30 (thirty) days from the date of the letter of acceptance. No payment will be made until the forms, duly completed, are delivered to Transnet. Failure to return the Deed of Suretyship within the prescribed time shall, save where prior extension has been granted, entitle Transnet without notice to the tenderer to cancel the agreement with immediate effect. .



15.4 The security shall be an amount which will not exceed 5 (five) percent of the value of the contract or order unless otherwise stipulated in the tender form.

15.5 *Additional costs incurred by Transnet for visits or extensions to visits necessitated by reason of default on the part of the successful Tenderer will be for the account of the successful Tenderer.*

16. DELIVERY BASIS

16.1 The prices quoted must be on a delivered price basis in accordance with the terms and at the delivery point or points specified in Transnet's tender forms. Tenders for supply on any other basis of delivery are liable to disqualification. The time for delivery stated by the Tenderer must be inclusive of all non-working days or holidays, and of periods occupied in stocktaking or in effecting repairs to or overhauling plant, which would ordinarily occur within the delivery period given by the Tenderer.

16.2 *Tenderers must furnish their tender prices under the appropriate columns in the 'Scope of Requirements' of the tender on the following basis :*

16.2.1 Local Supplies - column A i.e. Prices for Goods to be manufactured, produced or assembled in the RSA, or imported supplies held in South Africa. to be quoted on a Delivered RSA named Destination basis.

16.2.2 Imported Supplies - column B i.e. Prices for Goods to be imported from all sources to be quoted on a DDU, delivered end destination RSA basis (Delivered, Duty Unpaid to named Destination, ICC Incoterms 2000)

16.3 *The attention of Tenderers is drawn to the fact that should Transnet's departmental railage account numbers be used in respect of "Delivered Prices", Transnet reserves the right to cancel such contract/order with immediate effect and enforce the conditions of clause 15 headed "Rights on Cancellation" of form US7 (Revised February 2007).*

17. SHIPMENT

17.1 Where shipping is arranged by the successful Tenderer :

The successful Tenderer shall arrange direct with a shipping company for the Ocean Bill of Lading to be drawn in favour of Transnet or a designated official, at a port of entry.

To ensure prompt clearance at RSA port of entry.

17.1.1 the first set of negotiable shipping documents shall be posted within a maximum period of three (3) days from date of shipment to Transnet or a designated official; and

17.1.2 within twenty-four (24) hours of mailing the first set of documents, the second set of negotiable documents shall be posted to Transnet or designated official.

The successful Tenderer shall be liable for all costs, including harbour storage charges, incurred in consequence of breach of any of the abovementioned provisions.

17.2. Where shipping is arranged by the forwarding agent appointed by Transnet:

Shipping arrangements by Transnet's nominated forwarding agent shall be made direct with a shipping company to allow the Ocean Bill of Lading to be drawn in favour of Transnet or designated official at a port of entry.



- 17.2.1 *It should be noted that when Goods are offered on a free on board an ex manufacturer's/supplier's works basis, Transnet reserves the right to nominate its own forwarding agent on condition that the successful Tenderer will not recover any additional costs from Transnet.*
- 17.2.2 It will be a condition that all Goods collected by or delivered to Transnet's forwarding agent against any resulting contract/order must be accompanied by the overseas manufacturer's/supplier's commercial invoices (which must clearly reflect Transnet's contract / order number) and packing lists/specifications or be handed to Transnet's forwarding agent not later than 3 (three) days prior to the vessel's scheduled date of departure.
- 17.2.3 In respect of airfreight shipments the Executive Manager, South African Airways, Johannesburg International Airport must be reflected in the column "Sold to" appearing on the overseas supplier's/manufacturer's commercial invoices.

It is imperative that the above be strictly adhered to as Goods cannot be cleared by Transnet at a port of entry in the RSA without the required documentation.

Any demurrage charges applicable to the Goods which may become payable due to late or non-submission of the aforementioned documentation will be for the successful Tenderer's account.

18. EXPORT LICENCE

The award of this tender/quotation for Goods to be imported may be subject to the issue of an export licence. If necessary, the manufacturer or his overseas agent shall be required to apply for such licence.

19. QUALITY OF MATERIAL

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

20. PRICES SUBJECT TO CONFIRMATION

20.1 A tender/quotation with prices which are subject to confirmation will not be considered.

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

21. DELETION OF ITEMS NOT TENDERED FOR

The Tenderer must delete items for which he does not tender or, if the price had been included elsewhere in the tender.

22. ALTERATIONS MADE BY THE TENDERER TO TENDER PRICES

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



23. VALUE ADDED TAX

- 23.1 In respect of local supplies, i.e. Goods to be manufactured, produced or assembled in the RSA, or imported supplies held or already in transit to South Africa, the prices quoted by the Tenderer are to be exclusive of Value added tax (VAT) which must be shown separately at the standard rate on the invoice.
- 23.2 In respect of imported supplies, i.e. Goods to be imported from all sources where Transnet is responsible for the clearance of the supplies at the port of entry, Value Added Tax (VAT) will be paid by Transnet upon arrival of the Goods in the Republic of South Africa.
- 23.2.1 The invoicing by the Tenderer on behalf of his overseas principal, represents a supply made by the principal, which is not subject to VAT.
- 23.2.2 The Tenderer's invoice/s for the local portion only (i.e. the "commission" for the services rendered) must show the Value Added Tax (VAT) separately at zero percent if the services are in compliance with section 11(2) of the VAT Act. No. 89 of 1991

24. TERMS AND CONDITIONS OF TENDER

The Tenderer shall adhere to the standard terms and conditions of contract a set out in Form US7 (Revised February 2007), copy attached hereto.

Should the Tenderer find any conditions unacceptable, he should indicate which conditions are unacceptable and offer an alternative. Please note that any alternative offered shall be subject to and compared with acceptance of the US7 or alternatives offered by other Tenderers, except penalties for late deliveries, the exclusion of which may disqualify the tender, save where indicated otherwise by Transnet.

25. IMPORTANT NOTICE TO TENDERERS REGARDING PAYMENT

25.1 *Method of Tendering:*

- 25.1.1 The attention of the Tenderer is directed to clause 8 of form US7 (Revised February 2007) which sets out the conditions of payment on which tender price/s shall be based.
- 25.1.2 However, in addition to the foregoing the Tenderer is invited to submit offers based on alternative methods of payment and/or financing proposals.
- 25.1.3 The Tenderer is required to give full particulars of the terms that will be applicable to his alternative offers as the financial merits thereof will be evaluated and taken into consideration when the tender is adjudicated.
- 25.1.4 The Tenderer must, therefore, in the first instance, tender strictly in accordance with clause 25.1.1 above.
- 25.1.5 The Tenderer shall clearly indicate the terms of payment. Alternative terms of payment offered shall clearly indicate the manner in which the main offer is affected, with respect to each country of origin.
- 25.1.6 Failure to comply with clauses 25.1.4 and 25.1.5 above may preclude a tender from further consideration.

NOTE: The successful Tenderer shall, where applicable, be required to furnish a guarantee covering any advance payments.

25.2 *Conditional Discount:*

Respondent's signature

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Date and company stamp



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

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

26. QUANTITIES (PERIOD CONTRACTS ONLY)

It must be clearly understood that although Transnet does not bind itself to purchase any definite quantity/quantities under any contract which may be entered into pursuant to this tender, the successful Tenderer nevertheless undertakes to supply against the contract such quantities as may be ordered against contract orders which are posted or delivered by hand or transmitted electronically on or before the expiry date of such contract.

It is furthermore a condition that Transnet will not accept liability for any material/stocks specially ordered or carried by the Tenderer with a view to meeting the requirements under any such contract.

The estimated planned quantity/quantities likely to be ordered by Transnet per annum is/are furnished in Annexure A attached to the relevant tender. For avoidance of doubt the estimated quantities are estimates and Transnet reserves the right to order quantities sufficient for its operational requirements.

26.1 DELIVERY PERIOD:

26.1.1 FIXED QUANTITY REQUIREMENTS

It will be a condition of any resulting contract/order that the delivery period embodied therein will be governed by the provisions of clause 13, 14 and 15 of form US7 (Revised February 2007).

26.1.2 PERIOD CONTRACTS

It will be a condition of any resulting contract/order that the delivery period embodied therein will be governed by the provisions of clause 13, 14 and 15 of form US7 (Revised February 2007).

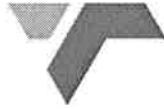
26.1.3 PROGRESS REPORT

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

26.1.4 EMERGENCY DEMANDS: AS AND WHEN REQUIRED

If, due to breakdowns, derailments, storm damage or similar unforeseen circumstances, supplies of the material covered by the tender are required at short notice for immediate delivery, the Contractor will be given first right of refusal of such business. If he is unable to meet the desired delivery period, Transnet reserves the right to purchase such supplies as may be required to meet the emergency outside the contract if immediate delivery can be offered from any other source.

The "Non-Fulfilment of Contract Orders" clause will not be applicable in these circumstances.



26.1.5 NON-FULFILMENT OF CONTRACT ORDERS: (AS AND WHEN REQUIRED, PERIOD CONTRACTS ONLY)

The tender is subject to conditions contained in clauses 13, 14 and 15 of form US7 (Revised February 2007).

27. PACKING AND MARKING

27.1 TIMBER USED FOR CRATING, PACKING AND WEDGING, ETC.

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

27.2 PRINTING ON CONTAINERS AND PACKINGS

Printing appearing on all containers and packing of South African manufactured Goods shall be in English.

27.3 USE OF MOBILE CONTAINERS AND SARTAINERS

Mobile containers and sartiners are not to be used for Goods which are to be despatched "FT" (Free Traffic).

28. PLANS, DRAWINGS, DIAGRAMS, SPECIFICATION, ETC.

28.1 COPYRIGHT IN PLANS, DRAWINGS, DIAGRAMS AND DOCUMENTS COMPILED BY CONTRACTOR FOR PURPOSE OF CONTRACT WORK:

The successful Tenderer grants to Transnet a non-exclusive licence, in accordance with the provisions of section 22 of the Copyright Act, 1978,

- (a) to copy any plan, diagram, drawing, specification, bill of quantities, design calculation or other similar document made, other than under the direction or control of Transnet, by the Tenderer in connection with the tender;
- (b) to make free and unrestricted use thereof for its own purposes;
- (c) to provide copies thereof to consultants of Transnet to be used by them for the purposes of the consultancy; and
- (d) to provide other parties with copies thereof for the purpose of tenders invited by it.

The Tenderer, furthermore, if any plan, diagram, drawing, specification, bill of quantities, design calculation or other similar document made, other than under the direction or control of Transnet a similar non-exclusive licence for the purposes set out herein.

The provisions of this clause 28.1 shall not apply to documents made, in the case of equipment to be supplied, in connection with the manufacturing process of the equipment supplied but only to the equipment supplied itself. No separate or extra payment shall be due by Transnet in respect of any non-exclusive licence granted in terms of this clause.



28.2 DRAWINGS AND SPECIFICATIONS

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

28.3 TENDERER'S DRAWINGS

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

28.4 FOREIGN SPECIFICATIONS

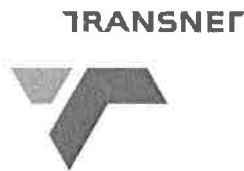
The Tenderer quoting for Goods in accordance with foreign specifications, other than British and American standards, is to submit translated copies of such specifications with the tender. In the event of any departures or variations between the foreign specification(s) quoted in the tender form, full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

28.5 USE OF SI ("Systeme International") UNITS

The Tenderer must ensure that all capacities, physical dimensions and sizes of material and fasteners are in units complying with the SI unless otherwise specifically called for by Transnet.

29. VISITS TO FOREIGN COUNTRIES

- 29.1 Tenderers must furnish details in a covering letter if it is considered necessary that employees of Transnet should carry out inspection and/or witness any tests at the premises of the successful Tenderer or his subcontractors in the country of origin for the purpose of product demonstration and/or final acceptance or for any other reason.
- 29.2 If the Tenderer considers overseas visits to be necessary he must provide the following information in a covering letter in respect of each visit:
- 29.2.1 Countries and places to be visited.
 - 29.2.2 Number of employees and disciplines involved.
 - 29.2.3 Number of man days involved.
 - 29.2.4 Motivation for visit.
- 29.3 Transnet will make all arrangements in regard to booking of air journeys, hotel reservations, transport to and from airports, hotels, places of inspection, etc. and all expenses will be for the account of Transnet.
- 29.4 Before a visit is undertaken, such as envisaged in this clause 29, Transnet and the successful Tenderer will agree in writing on the number of employees of Transnet that should undertake the visit and the number of man days involved in the visit.



30. TENDERS BY FOREIGN TENDERERS OR ON THEIR BEHALF

- 30.1 Tenders submitted by foreign Principals may be forwarded direct by the Principals to the Chairman of the Tender Board or to a designated official of Transnet according to whichever officer is specified in the tender documents, or may be so forwarded on the Principal's behalf by their South African representatives and/or agents provided that written proof is submitted that such representative/agent has been duly authorised to act in that capacity by the Principal. Failure to submit such authorisation by the representative/agent shall disqualify the Tender.
- 30.2 When legally authorised to prepare and submit tenders on behalf of their Principals not domiciled in the Republic of South Africa, representatives and / or agents must compile the tenders in the names of such Principals and sign them on behalf of the latter.
- 30.3 South African representatives and / or agents of successful foreign Tenderers must when so required enter into formal memoranda of agreement in the name of their Principals and must sign such agreements on behalf of the latter. In every such case a Legal Power of Attorney from their Principals must be furnished to Transnet by South African representative and/or agents authorising them to enter into and sign such agreements.

Such Powers of Attorney must comply with Government Notice No. 1160 of 27 June 1930 (and any amendments thereto) - "Rules of the Supreme Court of South Africa for the authentication of documents executed outside the Republic for use within the Republic. The Powers of Attorney must be signed by Principals under the same title as used in the tender documents.

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

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

The Power of Attorney must authorise the South African representative or agent to choose *domicilium citandi et executandi* as provided for in Clause 8 of the General Conditions of Transnet Tenders, Contracts and Orders Form US7 (Revised February 2007).

- 30.4 If payment is to be made in South Africa, the Contractor (i.e. the Principals, or the South African agents or representatives), must notify Transnet in writing whether :
- 30.4.1 Cheques are to be drawn for payment to the credit of the Contractor's account at a bank in South Africa, in which case the name and branch of such bank shall be furnished; or
- 30.4.2 Cheques are to be made out in favour of the Contractors and forwarded to their South African agent or representative, in which case such agent or representative, must be duly authorised to sign the receipt on the cheque and discharge it on behalf of his Principals.

- 30.5 The attention of the Tenderer is invited to Clause 15 regarding the provision of security for the fulfilment of contracts and orders and the manner and form in which such security is to be furnished.

31. PREPRODUCTION SAMPLES

Should it be necessary to submit a pre-production sample for approval by Transnet prior to the commencement of delivery of the Goods against any resulting contract, Tenderers are to note that for the purpose of calculating



penalties for late delivery (if applicable) in terms of Clause 30 of form US7 (Revised October 2005) the actual contractual delivery date will be considered to be;

31.1 the period offered by the successful Tenderer to submit the pre-production sample calculated as from the seventh day after the date of the letter of acceptance;

PLUS

31.2 the period required by Transnet to approve the pre-production sample calculated as from the date of receipt thereof;

PLUS

31.3 the period offered to effect delivery of the Goods calculated as from the date of approval of the pre-production sample by Transnet.

Tenderers will not be held responsible for late delivery of the Goods resulting from delays on the part of Transnet to approve the pre-production sample.

32. RAILAGE FREIGHT AND OTHER CHARGES

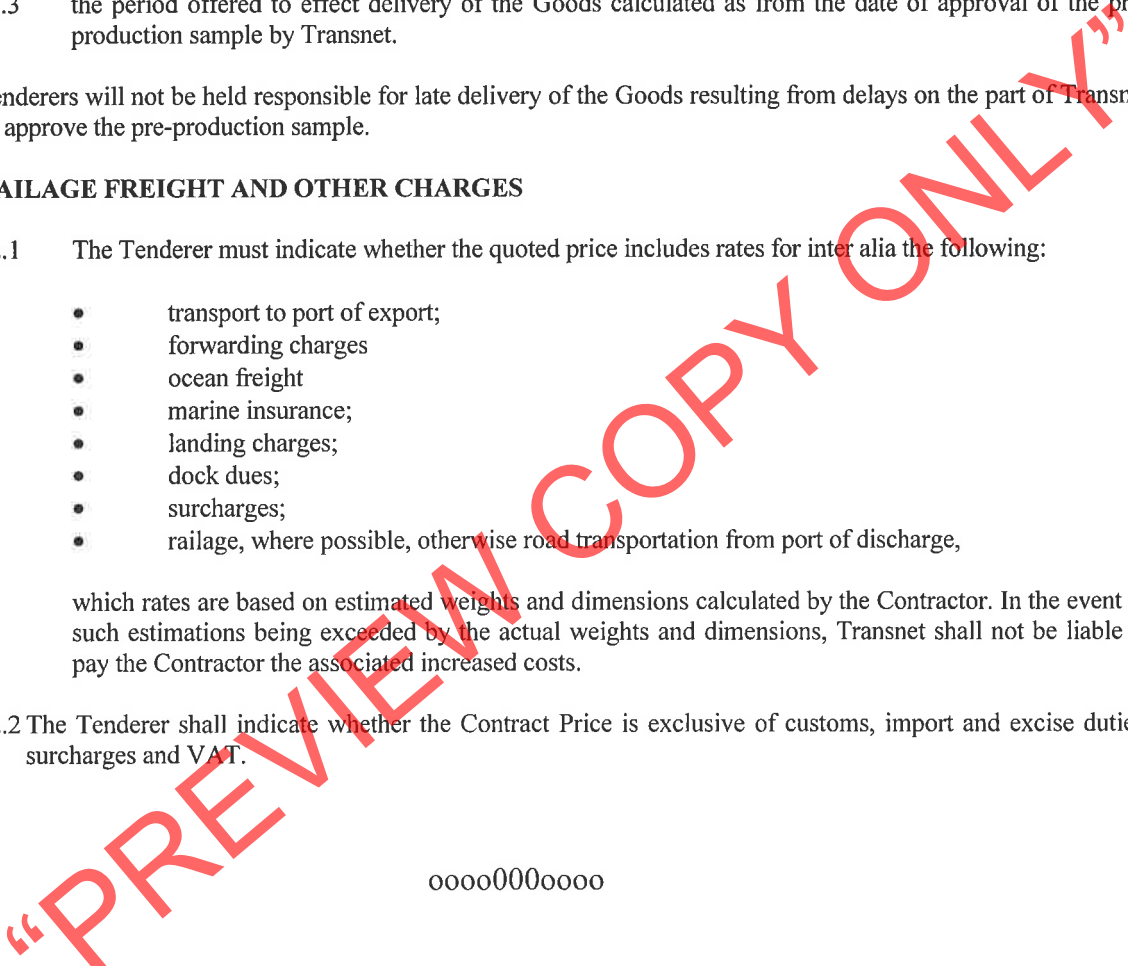
32.1 The Tenderer must indicate whether the quoted price includes rates for inter alia the following:

- transport to port of export;
- forwarding charges
- ocean freight
- marine insurance;
- landing charges;
- dock dues;
- surcharges;
- railage, where possible, otherwise road transportation from port of discharge,

which rates are based on estimated weights and dimensions calculated by the Contractor. In the event of such estimations being exceeded by the actual weights and dimensions, Transnet shall not be liable to pay the Contractor the associated increased costs.

32.2 The Tenderer shall indicate whether the Contract Price is exclusive of customs, import and excise duties, surcharges and VAT.

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SECTION 9

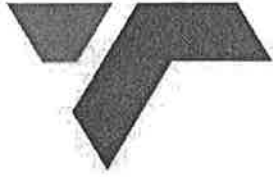
RFP NUMBER: CRAC-JHB-8873
DESCRIPTION: ROLLING STOCK ASSET MANAGEMENT SYSTEM IN TFR FOR A PERIOD OF 12 MONTHS.

STANDARD TERMS AND CONDITIONS OF CONTRACT (US7 – SERVICES)

Refer Document attached hereto

“PREVIEW COPY ONLY”

TRANSNET



STANDARD TERMS AND CONDITIONS OF CONTRACT

FOR THE PROVISION OF SERVICES TO TRANSNET

FORM US7 – SERVICES

Revised August 2008

“PREVIEW COPY ONLY”

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1. INTRODUCTION

When an Agreement is entered into between Transnet and the Supplier of Services to Transnet, these Standard Terms and Conditions of Contract, the General Tender Conditions, a Schedule of Requirements and/or Work Order(s) including such special conditions as applicable, and any terms in the associated tender documents, exclusively govern the provision of Services by the Supplier to Transnet.

2. DEFINITIONS

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

- 2.1. **"AFSA"** means the Arbitration Foundation of South Africa;
- 2.2. **"Agreement"** means the Agreement and its associated schedules and/or annexures and/or appendices, including the Schedule of Requirements and/or Work Order(s), specifications for the Services and such special conditions as shall apply to the Agreement, together with the General Tender Conditions and any additional provisions in the associated bid documents tendered by the Supplier (as agreed between the Parties), which collectively and exclusively govern the provision of Services by the Supplier to Transnet;
- 2.3. **"Background Intellectual Property"** means all Intellectual Property introduced and required by either Party to give effect to their obligations under this Agreement owned in whole or in part by or licensed to either Party or their affiliates prior to the Commencement Date or developed after the Commencement Date otherwise pursuant to the Agreement;
- 2.4. **"Business Day(s)"** means Mondays to Fridays between 07:30 and 16:00, excluding public holidays;
- 2.5. **"Commencement Date"** means the effective date at which time the Supplier's provision of Services to Transnet in terms of the Agreement shall commence, as detailed in Schedule 1 hereto (SCHEDULE OF REQUIREMENTS / WORK ORDER);
- 2.6. **"Confidential Information"** means any information or other data, whether in written, oral, graphic or in any other form such as in documents, papers, memoranda, correspondence, notebooks, reports, drawings, diagrams, discs, articles, samples, test results, prototypes, designs, plans, formulae, patents, or inventor's certificates, which a Party discloses or provides to the other Party (intentionally or unintentionally, or as a result of one Party permitting the representative of the other Party to visit any of its premises), or which otherwise becomes

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

- 2.6.1. information relating to methods of operation, data and plans of the disclosing Party;
- 2.6.2. the contents of the Agreement;
- 2.6.3. private and personal details of employees or clients of the disclosing Party or any other person where an onus rests on the disclosing Party to maintain the confidentiality of such information;
- 2.6.4. any information disclosed by either Party and which is clearly marked as being confidential or secret;
- 2.6.5. information relating to the strategic objectives and planning of the disclosing Party relating to its existing and planned future business activities;
- 2.6.6. information relating to the past, present and future research and development of the disclosing Party;
- 2.6.7. information relating to the business activities, business relationships, products, services, customers, clients and subcontractors of the disclosing Party where an onus rests on the disclosing Party to maintain the confidentiality of such information;
- 2.6.8. information contained in the software and associated material and documentation belonging to the disclosing Party;
- 2.6.9. technical and scientific information, Know-How and trade secrets of a disclosing Party including inventions, applications and processes;
- 2.6.10. Copyright works;
- 2.6.11. commercial, financial and marketing information;
- 2.6.12. data concerning architecture, demonstrations, tools and techniques, processes, machinery and equipment of the disclosing Party;
- 2.6.13. plans, designs, concepts, drawings, functional and technical requirements and specifications of the disclosing Party;
- 2.6.14. information concerning faults or defects in goods, equipment, hardware or software or the incidence of such faults or defects; and
- 2.6.15. information concerning the charges, Fees and / or costs of the disclosing Party or its authorised subcontractors, or their methods, practices or service performance levels actually achieved;

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- 2.7. **“Copyright”** means the right in expressions, procedures, methods of operations or mathematical concepts, computer program codes, compilations of data or other material, literary works, musical works, artistic works, sound recordings, broadcasts, program carrying signals, published editions, photographic works, or cinematographic works of the copyright owner to do or to authorise the doing of certain acts specified in respect of the different categories of works;
- 2.8. **“Default”** means any breach of the obligations of either Party (including but not limited to fundamental breach or breach of a fundamental term) or any Default, act, omission, negligence or statement of either Party, its employees, agents or subcontractors in connection with or in relation to the subject of the Agreement and in respect of which such Party is liable to the other;
- 2.9. **“Deliverable(s)”** means any and all works of authorship, products and materials developed, written, prepared, assembled, integrated, modified or provided by the Supplier in relation to the Services;
- 2.10. **“Designs”** means registered designs and/or design applications and will include the monopoly right granted for the protection of an independently created industrial design including designs dictated essentially by technical or functional considerations as well as topographies of integrated circuits and integrated circuits;
- 2.11. **“Fee(s)”** shall mean the agreed Fees for the Services to be purchased from the Supplier by Transnet, as detailed in the Schedule of Requirements or Work Order(s), issued in accordance with the Agreement, as amended by mutual agreement between the Parties and in accordance with the provisions of the Agreement from time to time;
- 2.12. **“Foreground Intellectual Property”** means all Intellectual Property developed by either Party pursuant to the Agreement;
- 2.13. **“Intellectual Property”** means Patents, Designs, Know-How, Copyright and Trade Marks and all rights having equivalent or similar effect which may exist anywhere in the world and includes all future additions and improvements to the Intellectual Property;
- 2.14. **“Know-How”** means all Confidential Information of whatever nature relating to the Intellectual Property and its exploitation as well as all other Confidential Information generally relating to Transnet’s field of technology, including technical information, processing or manufacturing techniques, Designs, specifications, formulae, systems, processes, information concerning materials and marketing and business information in general;
- 2.15. **“Materials”** means the Deliverables, the Supplier Materials and the Third Party Materials;
- 2.16. **“Parties”** means the Parties to the Agreement together with their subsidiaries, divisions, business units, successors-in-title and their assigns;

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- 2.17. **"Party"** means either one of these Parties;
- 2.18. **"Patents"** means registered patents and patent applications, once the latter have proceeded to grant, and includes a right granted for any inventions, products or processes in all fields of technology;
- 2.19. **"Permitted Purpose"** means any activity or process to be undertaken or supervised by Personnel or employees of one Party during the term of the Agreement, for which purpose authorised disclosure of the other Party's Confidential Information or Intellectual Property is a prerequisite in order to enable such activity or process to be accomplished;
- 2.20. **"Personnel"** means any partner, employee, agent, consultant, independent associate or supplier, subcontractor and the staff of such subcontractor, or other authorised representative of either Party;
- 2.21. **"Purchase Order(s)"** means official orders issued by an operating division of Transnet to the Supplier for the provision of Services;
- 2.22. **"Schedule of Requirements"** means Schedule 1 hereto, unless substituted by a Work Order or Work Orders, as defined;
- 2.23. **"Service(s)"** means Service(s) provided to Transnet by the Supplier, pursuant to the Schedule of Requirements or Work Order(s) in terms of the Agreement;
- 2.24. **"Service Level Agreement" or "SLA"** means the processes, deliverables, key performance indicators and performance standards relating to the Services to be provided by the Supplier;
- 2.25. **"Subcontract"** means any contract or agreement or proposed contract or agreement between the Supplier and any third party whereby that third party agrees to provide to the Supplier the Services or any part thereof;
- 2.26. **"Supplier Materials"** means all works of authorship, products and materials (including, but not limited to, data, diagrams, charts, reports, specifications, studies, inventions, software, software development tools, methodologies, ideas, methods, processes, concepts and techniques) owned by, or licensed to, the Supplier prior to the Commencement Date or independently developed by the Supplier outside the scope of the Agreement at no expense to Transnet, and used by the Supplier in the performance of the Services;
- 2.27. **"Third Party Material"** means software, software development tools, methodologies, ideas, methods, processes, concepts and techniques owned by, or licensed to a third party and used by the Supplier in the performance of the Services;

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- 2.28. **“Trade Marks”** means registered trade marks and trade mark applications and includes any sign or logo, or combination of signs and/or logos capable of distinguishing the goods or services of one undertaking from those of another undertaking;
- 2.29. **“VAT”** means Value-Added Tax in terms of the Value-Added Tax Act, No 89 of 1991: and
- 2.30. **“Work Order(s)”** means a detailed scope of work for a Service required by Transnet, including timeframes, deliverable, Fees and costs for the supply of the Service to Transnet, which may be appended to the Agreement from time to time.

3. INTERPRETATION

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

4. NATURE AND SCOPE

- 4.1. The Agreement is an agreement under the terms and conditions of which the Supplier will arrange for the provision to Transnet of the Services, which meet the requirements of Transnet, the delivery of which Services is controlled by means of Purchase Orders to be issued by Transnet and executed by the Supplier, in accordance with the Agreement.
- 4.2. Such Purchase Orders shall be agreed between the Parties from time to time, subject to the terms of the Schedule of Requirements and / or relevant Work Order(s).
- 4.3. Each properly executed Purchase Order forms an inseparable part of the Agreement as if it were fully incorporated into the body of the Agreement.
- 4.4. During the period of the Agreement, both Parties can make written suggestions for amendments to the Schedule of Requirements or Work Orders, in accordance with procedures set out in clause 28 (AMENDMENT AND CHANGE CONTROL) below. A Party will advise the other

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Party within 14 (fourteen) Business Days, or such other period as mutually agreed, whether the amendment is acceptable.

- 4.5. Insofar as any term, provision or condition in the Schedule of Requirements and/or Work Order(s) conflicts with a like term, provision or condition in the Agreement and/or a Purchase Order, or where the Agreement is silent on the matter, the term, provision or condition in the Schedule of Requirements and/or Work Order(s) shall prevail.
- 4.6. Time will be of the essence and the Supplier will perform its obligations under the Agreement in accordance with the timeframe(s) (if any) set out in the relevant schedule, save that the Supplier will not be liable under this clause if it is unable to meet such obligation within the time required as a direct result of any act or omission by Transnet and it has used its best endeavours to advise Transnet of such act or omission. In the event of such delay, any time deadlines detailed in the relevant schedule shall be extended by a period equal to the period of that delay.

5. AUTHORITY OF PARTIES

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

6. WARRANTIES

- 6.1. The Supplier warrants to Transnet that -
- 6.1.1. it has full capacity and authority to enter into and to perform the Agreement and that the Agreement is executed by duly authorised representatives of the Supplier;
- 6.1.2. it will discharge its obligations under the Agreement and any annexure or schedule hereto with all due skill, care and diligence;
- 6.1.3. it will be solely responsible for the payment of remuneration of its Personnel. The Supplier will be solely responsible for the payment of remuneration and associated benefits, if any, and for withholding and remitting income tax for its Personnel in conformance with any applicable laws and regulations;
- 6.1.4. it will procure licences for Transnet in respect of all Third Party Material detailed in the Work Order(s), and will procure the right for Transnet to take such copies (in

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whole or in part) of such Third Party Materials as it may reasonably require for the purposes of back-up for archiving and disaster recovery; and

- 6.1.5. the use or possession by Transnet of any Materials will not subject Transnet to any claim for infringement of any Intellectual Property Rights of any third party.
- 6.2. The Supplier warrants that it will perform its obligations under the Agreement in accordance with the Service Levels as defined in the relevant schedule. Transnet may at its discretion audit compliance with the Service Levels, provided that any such audit is carried out with reasonable prior notice and in a reasonable way so as not to have an adverse effect on the performance of the Services. Without prejudice to sub-clause 6.3 below, in the event that the Supplier fails to meet the Service Levels, Transnet may claim appropriate service credits or invoke a retention of Fees as detailed in the relevant schedule and/or Work Order.
- 6.3. The Supplier warrants that for a period of 90 (ninety) days from Acceptance of the Deliverables they will, if properly used, conform in all materials respects with the requirements set out in the relevant schedule. The Supplier will at its expense remedy any such non-conformance as soon as possible but in any event within 30 (thirty) days of notification by Transnet. In the event that the Supplier fails or is unable to remedy such non-conformance within such time-scale, Transnet will be entitled to employ a third party to do so in place of the Supplier and any excess charges or costs incurred by Transnet as a result shall be paid by the Supplier.
- 6.4. The Supplier will remedy any defect within 14 (fourteen) days of being notified of that defect by Transnet in writing.
- 6.5. The Supplier will not be liable to remedy any problem arising from or caused by any modification made by Transnet to the Deliverables, or any part thereof, without the prior approval of the Supplier.
- 6.6. The Supplier shall advise Transnet of the effects of any steps proposed by Transnet pursuant to sub-clause 6.5 above, including but not limited to any cost implications or any disruption or delay in the performance of the Services. The Parties agree that any changes to the Services, including the charges for the Services or any timetables for delivery of the Services, will be agreed in accordance with the change control procedure, as set out in clause 28 (AMENDMENT AND CHANGE CONTROL).
- 6.7. The Supplier warrants that -
- 6.7.1. it has, using the most up-to-date software available, tested for (and deleted) all commonly known viruses in the Materials and for all viruses known by the Supplier at the date of the relevant Work Order; and

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- 6.7.2. at the time of delivery to Transnet, the Materials do not contain any trojan horse, worm, logic bomb, time bomb, back door, trap door, keys or other harmful components.

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

- 6.8. The Supplier undertakes to comply with South Africa's general privacy protection in terms of the Bill of Rights (Section 14) in connection with the Agreement and shall procure that its Personnel shall observe the provisions of such Act (as applicable) or any amendments and re-enactments thereof and any regulations made pursuant thereto.
- 6.9. The Supplier warrants that it has taken all reasonable precautions to ensure that, in the event of a disaster, the impact of such disaster on the ability of the Supplier to comply with its obligations under the Agreement will be reduced to the greatest extent possible, and that the Supplier shall ensure that it has appropriate, tested and documented recovery arrangements in place.

7. TRANSNET'S OBLIGATIONS

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

8. GENERAL OBLIGATIONS OF THE SUPPLIER

- 8.1. The Supplier shall –
- 8.1.1. respond promptly to all complaints and enquiries from Transnet;
- 8.1.2. inform Transnet immediately of any dispute or complaint arising in relation to the provision of the Services.

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- 8.1.3. conduct its business in a professional manner that will reflect positively upon the Supplier and the Supplier's Services;
 - 8.1.4. keep full records clearly indicating all transactions concluded by the Supplier relating to the performance of the Services and keep such records for at least 5 (five) years from the date of each such transaction;
 - 8.1.5. obtain, and at all times maintain in full force and effect, any and all licenses, permits and the like required under applicable laws for the provision of the Services and the conduct of the business and activities of the Supplier; and
 - 8.1.6. comply with all applicable environmental legislation and regulations, and demonstrate sound environmental policies, management and performance.
- 8.2. The Supplier acknowledges and agrees that it shall at all times -
- 8.2.1. render the Services and perform all its duties with honesty and integrity;
 - 8.2.2. communicate openly and honestly with Transnet and demonstrate a commitment to performing the Services timeously, efficiently and to the required standards;
 - 8.2.3. endeavour to provide the highest possible standards of service and professionalism, with a reasonable degree of care and diligence;
 - 8.2.4. use its best endeavours and make every diligent effort to meet agreed deadlines;
 - 8.2.5. treat its own Personnel, as well as all Transnet's officers, employees, agents and consultants, with fairness and courtesy and respect for their human rights;
 - 8.2.6. practice and promote its own internal policies aimed at prohibiting and preventing unfair discrimination (as further referred to in clause 22 – EQUALITY AND DIVERSITY);
 - 8.2.7. treat all enquiries from Transnet in connection with the Services with courtesy and respond to all enquiries promptly and efficiently. Where the Supplier is unable to comply with the provisions of this clause, the Supplier will advise Transnet of the delay and the reasons therefore and will keep Transnet informed of progress made regarding the enquiry;
 - 8.2.8. when requested by Transnet, provide clear and accurate information regarding the Supplier's own policies and procedures, excluding Know-How and other Confidential Information, except where a Non-Disclosure Agreement has been entered into between the Parties;

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- 8.2.9. not allow a conflict of interest to develop between its own interests (or the interests of any of its other customers) and the interests of Transnet;
- 8.2.10. not accept or offer, nor allow, induce or promote the acceptance or offering of any gratuity, enticement, incentive or gift that could reasonably be regarded as bribery or an attempt to otherwise exert undue influence over the recipient;
- 8.2.11. not mislead Transnet or its officers, employees and stakeholders, whether by act or omission;
- 8.2.12. not otherwise act in an unethical manner or do anything which could reasonably be expected to damage or tarnish Transnet's reputation or business image; and
- 8.2.13. immediately report to Transnet any unethical, fraudulent or otherwise unlawful conduct of which it becomes aware in connection with Transnet or the provision of Services.

9. FEES AND EXPENSES

- 9.1. In consideration of the provision of the Services, Transnet will pay to the Supplier the Fees detailed in the relevant schedule or Work Order.
- 9.2. Transnet will not be invoiced for materials used in the provision of the Services save for those materials (if any) set out in the Work Order and accepted by Transnet or in any relevant Work Order (which will be invoiced to Transnet at cost).
- 9.3. Unless otherwise agreed in a schedule or Work Order, Transnet will reimburse to the Supplier all reasonable and proper expenses incurred directly and solely in connection with the provision of the Services, provided that all such expenses -
 - 9.3.1. are agreed by Transnet in advance;
 - 9.3.2. are incurred in accordance with Transnet's standard travel and expenses policies;
 - 9.3.3. are passed on to Transnet at cost with no administration fee; and
 - 9.3.4. will only be reimbursed if supported by relevant receipts.
- 9.4. All invoices relating to Fees, out of pocket expenses and, if applicable, travel and accommodation costs, will provide the detail for each of the Personnel carrying out the Services and incurring the expenses, and the invoice will, where appropriate, include VAT as a separate item.

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10. INVOICING AND PAYMENT

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

11. FEE ADJUSTMENTS

- 11.1. Fees for Services rendered in terms of the Agreement shall be subject to review as indicated in the Schedule of Requirements or Work Orders annexed hereto from time to time.
- 11.2. No less than 2 (two) months prior to any proposed Fee adjustment, the Parties shall commence negotiations for Fees for the next period or as otherwise indicated and appended hereto.
- 11.3. Should Transnet and the Supplier fail to reach an agreement on Fees for the successive period, either Party shall be entitled to terminate the Agreement and/or the relevant Work Order after giving 30 (thirty) days written notice to the other.
- 11.4. Neither Party shall have any claim against the other of whatsoever nature by reason of such cancellation as envisaged in sub-clause 11.3 above.

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12. INTELLECTUAL PROPERTY RIGHTS

12.1. Title to Confidential Information

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

12.2. Title to Intellectual Property

- 12.2.1. All right, title and interest in and to Foreground Intellectual Property prepared conceived or developed by the Supplier, its researchers, agents and employees shall vest in Transnet and the Supplier acknowledges that it has no claim of any nature in and to the Foreground Intellectual Property. The Supplier shall not at any time during or after the termination or cancellation of the Agreement dispute the validity or enforceability of such Foreground Intellectual Property, or cause to be done any act or thing contesting or in any way impairing or tending to impair any part of that right, title and interest to any of the Foreground Intellectual Property and shall not counsel or assist any person to do so.
- 12.2.2. Transnet shall be entitled to seek protection in respect of the Foreground Intellectual Property anywhere in the world as it shall decide in its own absolute discretion and the Supplier shall reasonably assist Transnet in attaining and maintaining protection of the Foreground Intellectual Property.
- 12.2.3. Where the Foreground Intellectual Property was created by the Supplier or its researchers, agents and employees and where Transnet elects not to exercise its

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option to seek protection or decides to discontinue the financial support of the prosecution or maintenance of any such protection, Transnet shall notify the Supplier who shall have the right of first refusal to file or continue prosecution or maintain any such applications and to maintain any protection issuing on the Foreground Intellectual Property.

12.2.4. No consideration shall be paid by Transnet to the Supplier for the assignment of any Foreground Intellectual Property from the Supplier to Transnet, over and above the sums payable in terms of this Agreement. The Supplier undertakes to sign all documents and do all things as may be necessary to effect, record and perfect the assignment of the Foreground Intellectual Property to Transnet.

12.2.5. Subject to anything contrary contained in the Agreement and/or the prior written consent of Transnet (which consent shall not be unreasonably withheld), the Supplier shall under no circumstances be entitled as of right, or to claim the right, to use Transnet's Background Intellectual Property and/or Foreground Intellectual Property.

12.3. Title to Improvements

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

12.4. Unauthorised Use of Confidential Information

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

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12.5. Unauthorised Use of Intellectual Property

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

13. SUPPLIER'S PERSONNEL

- 13.1. The Supplier's Personnel shall be regarded at all times as employees, agents or subcontractors of the Supplier and no relationship of employer and employee shall arise between Transnet and any Supplier Personnel under any circumstances regardless of the degree of supervision that may be exercised over the Personnel by Transnet.
- 13.2. The Supplier warrants that all its Personnel will be entitled to work in South Africa or any other country in which the Services are to be performed.
- 13.3. The Supplier will ensure that its Personnel comply with all reasonable requirements made known to the Supplier by Transnet concerning conduct at any Transnet premises or any other premises upon which the Services are to be performed (including but not limited to security regulations, policy standards and codes of practice and health and safety requirements). The Supplier will ensure that such Personnel at all times act in a lawful and proper manner in accordance with these requirements.
- 13.4. Transnet reserves the right to refuse to admit or to remove from any premises occupied by or on behalf of it, any Supplier Personnel whose admission or presence would, in the reasonable opinion of Transnet, be undesirable or who represents a threat to confidentiality or security or

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whose presence would be in breach of any rules and regulations governing Transnet's Personnel, provided that Transnet notifies the Supplier of any such refusal (with reasons why). The reasonable exclusion of any such individual from such premises shall not relieve the Supplier from the performance of its obligations under the Agreement.

- 13.5. The Supplier agrees to use all reasonable endeavours to ensure the continuity of its Personnel assigned to perform the Services. If any re-assignment by the Supplier of those Personnel is necessary, or if Transnet advises that any such Personnel assigned are in any respect unsatisfactory, including where any such Personnel are, or are expected to be or have been absent for any period, then the Supplier will promptly supply a replacement of equivalent calibre and experience, and any such replacement shall be approved by Transnet prior to commencing provision of the Services, such approval not to be unreasonably withheld.

14. LIMITATION OF LIABILITY

- 14.1. Neither Party excludes or limits liability to the other Party for -

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

- 14.2. The Supplier shall indemnify and keep Transnet indemnified from and against liability for damage to any Transnet property (whether tangible or intangible) or any other loss, costs or damage suffered by Transnet to the extent that it results from any act of or omission by the Supplier or its Personnel in connection with the Agreement. The Supplier's liability arising out of this sub-clause 14.2 shall be limited to a maximum amount payable in respect of any one occurrence or a series of related occurrences in a single calendar year, such amount to be agreed in writing by the Parties.

- 14.3. Subject always to sub-clauses 14.1 and 14.2, the liability of either the Supplier or Transnet under or in connection with the Agreement, whether for negligence, misrepresentation, breach of contract or otherwise, for direct loss or damage arising out of each Default or series of related Defaults shall not exceed 100% (one hundred percent) of the Fees paid under the schedule or Work Order to which the Default(s) relates.

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

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- 14.5. If for any reason the exclusion of liability in sub-clause 14.4 above is void or unenforceable, either Party's total liability for all loss or damage under the Agreement shall be as provided in sub-clause 14.3 above.
- 14.6. Nothing in this clause 14 shall be taken as limiting the liability of the Supplier in respect of clause 12 (INTELLECTUAL PROPERTY RIGHTS) or clause 16 (CONFIDENTIALITY).

15. INSURANCES

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

16. CONFIDENTIALITY

- 16.1. The Parties hereby undertake the following, with regard to Confidential Information -
- 16.1.1. not to divulge or disclose to any person whomsoever in any form or manner whatsoever, either directly or indirectly, any Confidential Information of the other, without the prior written consent of such other Party, other than when called upon to do so in accordance with a statute, or by a court having jurisdiction, or by any other duly authorised and empowered authority or official, in which event the Party

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

- 16.1.2. not to use, exploit, permit the use of, directly or indirectly, or in any other manner whatsoever apply the Confidential Information, disclosed to it as a result of the Agreement, for any purpose whatsoever other than for the purpose for which it is disclosed or otherwise than in strict compliance with the provisions in the Agreement;
- 16.1.3. not to make any notes, sketches, drawings, photographs or copies of any kind of any part of the disclosed Confidential Information, without the prior written consent of such other Party, except when reasonably necessary for the purpose of this Agreement, in which case such copies shall be regarded as Confidential Information;
- 16.1.4. not to de-compile, disassemble or reverse engineer any composition, compilation, concept application, item, component de-compilation, including software or hardware disclosed and shall not analyse any sample provided by Transnet, or otherwise determine the composition or structure or cause to permit these tasks to be carried out except in the performance of its obligations pursuant to this Agreement;
- 16.1.5. not to exercise less care to safeguard Transnet Confidential Information than the Party exercises in safeguarding its own competitive, sensitive or Confidential Information;
- 16.1.6. Confidential Information disclosed by either Party to the other or by either Party to any other party used by such Party in the performance of the Agreement, shall be dealt with as "restricted" or shall be dealt with according to any other appropriate level of confidentiality relevant to the nature of the information concerned, agreed between the Parties concerned and stipulated in writing for such information in such cases;
- 16.1.7. the Parties shall not make or permit to be made by any other person subject to their control, any public statements or issue press releases or disclose Confidential Information with regard to any matter related to the Agreement, unless written authorisation to do so has first been obtained from the Party first disclosing such information;

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- 16.1.8. each Party shall be entitled to disclose such aspects of Confidential Information as may be relevant to one or more technically qualified employees or consultants of the Party who are required in the course of their duties to receive the Confidential Information for the Permitted Purpose provided that the employee or consultant concerned has a legitimate interest therein, and then only to the extent necessary for the Permitted Purpose, and is informed by the Party of the confidential nature of the Confidential Information and the obligations of the confidentiality to which such disclosure is subject and the Party shall ensure such employees or consultants honour such obligations;
- 16.1.9. each Party shall notify the other Party of the name of each person or entity to whom any Confidential Information has been disclosed as soon as practicable after such disclosure;
- 16.1.10. each Party shall ensure that any person or entity to which it discloses Confidential Information shall observe and perform all of the covenants the Party has accepted in the Agreement as if such person or entity has signed the Agreement. The Party disclosing the Confidential Information shall be responsible for any breach of the provisions of the Agreement by the person or entity, and
- 16.1.11. each Party may by written notice to the other Party specify which of the Party's employees, officers or agents are required to sign a non-disclosure undertaking.
- 16.2. The duties and obligations with regard to Confidential Information in this clause 16 shall not apply where -
- 16.2.1. a Party can demonstrate that such information is already in the public domain or becomes available to the public through no breach of the Agreement by that Party, or its Personnel; or
- 16.2.2. was rightfully in a Party's possession prior to receipt from the other Party, as proven by the first-mentioned Party's written records, without an infringement of an obligation or duty of confidentiality; or
- 16.2.3. can be proved to have been rightfully received by a Party from a third party without a breach of a duty or obligation of confidentiality; or
- 16.2.4. is independently developed by a Party as proven by its written records.
- 16.3. This clause 16 shall survive termination for any reason of the Agreement and shall remain in force and effect from the Commencement Date of the Agreement and 5 (five) years after the termination of the Agreement. Upon termination of the Agreement, all documentation furnished to the Supplier by Transnet pursuant to the Agreement shall be returned to Transnet including,

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

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

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

18. TERM AND TERMINATION

- 18.1. The Agreement shall commence on the Commencement Date, as specified in the schedules hereto, and shall continue subject to termination in accordance with the provisions of the Agreement or otherwise in accordance with law or equity.
- 18.2. Transnet may terminate the Agreement without cause by giving the Supplier 30 (thirty) days' notice in writing.
- 18.3. Either Party may terminate the Agreement forthwith by notice in writing to the other Party where the other Party has committed a material Default and, where such Default is capable of remedy, has failed to remedy such Default within 30 (thirty) days of receiving notice specifying the Default and requiring its remedy.
- 18.4. Either Party may terminate the Agreement forthwith by notice in writing to the other Party when the other Party is unable to pay its debts as they fall due or commits any act or omission which would be an act of insolvency in terms of the Insolvency Act, 1936 (as amended), or if any action, application or proceeding is made with regard to it for -
- 18.4.1. a voluntary arrangement or composition or reconstruction of its debts;
 - 18.4.2. the presentation of an administrative petition;
 - 18.4.3. its winding-up or dissolution;
 - 18.4.4. the appointment of a liquidator, trustee, receiver, administrative receiver or similar officer; or
 - 18.4.5. any similar action, application or proceeding in any jurisdiction to which it is subject.
- 18.5. Transnet may terminate the Agreement at any time within 2 (two) months of becoming aware of a change of control of the Supplier by notice in writing to the Supplier. For the purposes of this clause, "control" means the right to direct the affairs of a company whether by ownership of shares, membership of the board of directors, agreement or otherwise.

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18.6. Transnet may cancel any schedule hereto or Work Order at any time on giving the Supplier 30 (thirty) days' notice.

19. CONSEQUENCE OF TERMINATION

- 19.1. Termination in accordance with clause 18 (TERM AND TERMINATION) shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to either Party and all provisions which are to survive the Agreement or impliedly do so shall remain in force and in effect.
- 19.2. On termination of the Agreement or a Work Order, the Supplier will immediately deliver up, and procure that its Personnel will immediately deliver up to Transnet, all Deliverables and property belonging to Transnet (or, in the event of termination of a Work Order, such as is relevant to that Work Order) which may be in the possession of, or under the control of the Supplier, and certify to Transnet in writing that this has been done.
- 19.3. To the extent that any of the Deliverables and property referred to in sub-clause 19.2 above are in electronic form and contained on non-detachable storage devices, the Supplier will provide Transnet with unencrypted copies of the same on magnetic media and will irretrievably destroy and delete copies so held.
- 19.4. In the event that the Agreement is terminated by the Supplier under sub-clause 18.3 (TERM AND TERMINATION), or in the event that a Work Order is terminated by Transnet under sub-clause 18.6 (TERM AND TERMINATION), Transnet will pay to the Supplier all outstanding Fees (apportioned on a daily basis) relating to the work undertaken by the Supplier up until the date of such termination. Transnet will also pay the costs of any goods and materials ordered by the Supplier in relation to the such work for which the Supplier has paid or is legally obliged to pay, in which case, on delivery of such goods or materials, the Supplier will promptly deliver such goods and materials to Transnet or as it may direct.
- 19.5. The provisions of clauses 2 (DEFINITIONS), 6 (WARRANTIES), 12 (INTELLECTUAL PROPERTY RIGHTS), 14 (LIABILITY), 16 (CONFIDENTIALITY), 19 (CONSEQUENCE OF TERMINATION), 25 (DISPUTE RESOLUTION) and 29 (GOVERNING LAW) shall survive termination or expiry of the Agreement.
- 19.6. If either Party (the "Defaulting Party") commits a material breach of the Agreement and fails to remedy such breach within 10 (ten) Business Days of written notice thereof, the other Party (hereinafter the "Aggrieved Party"), shall be entitled, in addition to any other rights and remedies that it may have in terms of the Agreement, to terminate the Agreement forthwith without any liability and without prejudice to any claims which the Aggrieved Party may have for damages against the Defaulting Party. For the avoidance of doubt, if -

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- 19.6.1. the Supplier effects or attempts to effect a compromise or composition with its creditors; or
- 19.6.2. either Party is provisionally or finally liquidated or is placed under judicial management, whether provisionally or finally; or
- 19.6.3. either Party ceases or threatens to cease to carry on its normal line of business or defaults or threatens to default in the payment of its liabilities generally, or commits any act or omission which would be an act of insolvency in terms of the Insolvency Act, 1936 (as amended); then

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

20. ASSIGNMENT

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

21. FORCE MAJEURE

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

Respondent's Signature

Date & Company Stamp

22. EQUALITY AND DIVERSITY

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

23. NON-WAIVER

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

24. PARTIAL INVALIDITY

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

25. DISPUTE RESOLUTION

- 25.1. Should any dispute of whatsoever nature arise between the Parties concerning the Agreement, the Parties shall try to resolve the dispute by negotiation within 10 (ten) Business Days of such dispute arising.
- 25.2. If the dispute has not been resolved by such negotiation, either of the Parties may refer the dispute to AFSA and notify the other Party accordingly.
- 25.3. Such dispute shall be finally resolved in accordance with the rules of AFSA by an arbitrator or arbitrators appointed by AFSA.
- 25.4. This clause constitutes an irrevocable consent by the Parties to any proceedings in terms hereof, and neither of the Parties shall be entitled to withdraw from the provisions of this clause or claim at any such proceedings that it is not bound by this clause 25.

Respondent's Signature

Date & Company Stamp

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

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

26. ADDRESSES FOR NOTICES

26.1. The Parties to the Agreement select the physical addresses and facsimile ("fax") numbers, detailed in Schedule 2 hereto, as their respective addresses for giving or sending any notice provided for or required in terms of the Agreement, provided that either Party shall be entitled to substitute such other address or fax number, as may be, by written notice to the other.

26.2. Any notice addressed to a Party at its physical or postal address shall be sent by prepaid registered post, or delivered by hand, or sent by fax.

26.3. Any notice shall be deemed to have been given -

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

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

26.3.3. if faxed, on the date and time of sending of such fax, as evidenced by a fax confirmation printout, provided that such notice shall be confirmed by prepaid registered post on the date of dispatch of such fax, or, should no postal facilities be available on that date, on the next Business Day.

27. WHOLE AND ONLY AGREEMENT

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

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

28. AMENDMENT AND CHANGE CONTROL

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

28.2. In the event the Parties cannot agree upon changes, the Parties shall in good faith seek to agree any proposed changes using the dispute resolution procedures in clause 25 (DISPUTE RESOLUTION).

Respondent's Signature

Date & Company Stamp

29. GOVERNING LAW

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

30. COUNTERPARTS

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

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Respondent's Signature

Date & Company Stamp



SECTION 10

RFP NUMBER: CRAC-JHB-8873
DESCRIPTION: ROLLING STOCK ASSET MANAGEMENT SYSTEM IN TFR FOR A PERIOD OF 12 MONTHS.

NON-DISCLOSURE AGREEMENT

THIS AGREEMENT is made the day of 2012

BETWEEN:

- (1) **Transnet Limited** ("Transnet") (Registration Number 1990/000900/06) whose registered office is at 49th Floor, Carlton Centre, 150 Commissioner Street, Johannesburg 2001, and
- (2) [.....] ("the Company") (Registration Number) 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 Proposal.

IT IS HEREBY AGREED

1. Interpretation

1.1 In this Agreement:-

"Agents" means directors, officers, employees, agents, professional advisers, contractors or sub-contractors, or any Group member;

"Confidential Information" means Information 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 Proposal 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:-

- (i) is publicly available at the time of its disclosure or becomes publicly available (other than as result of disclosure by the Receiving Party or any of its Agents contrary to the terms of this letter); or
- (ii) 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
- (iii) 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;

"Group" means any subsidiary, any holding company and any subsidiary of any holding company of either party;

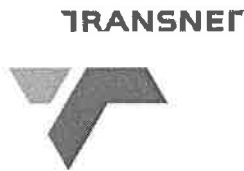
"Information" means all information in whatever form including, without limitation, any information relating to systems, operations, plans, intentions, market opportunities, know-how, trade secrets and business affairs whether in writing, conveyed orally or by machine-readable medium;

"Proposal" means the aggregation of Transnet's Request for Information (RFI) and Request for Proposal (RFP).

2. Confidential Information

- 2.1 The Receiving Party will treat and keep all Confidential Information 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 Proposal or for the subsequent performance of any contract between the parties in relation to the Proposal.
- 2.3 Notwithstanding clause 2.1, the Receiving Party may disclose Confidential Information:
- (i) To those of its Agents who strictly need to know the Confidential Information for the sole purpose set out in clause 2.2 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
 - (ii) 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 2.3 (ii) above, it shall promptly notify the Disclosing Party and co-operate 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.

Records and return of Information



- 3.1 The Receiving Party agrees to ensure proper and secure storage of all Information and any copies thereof to at least the same standard as the Receiving Party keeps its own Confidential Information. The Receiving Party shall not make any copies or reproduce in any form any Confidential Information except for the purpose of disclosure as permitted in accordance with this Agreement.
- 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 Receiving Party shall, within seven days of receipt of a written demand from the Disclosing Party or of its ceasing to be interested in the Proposal:
- (i) Return all written Confidential Information (including all copies); and
 - (ii) 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 Receiving Party or on its behalf (including by any person to whom disclosure has been made as permitted under clause 2.3(i) above).

The obligations in this clause 3.3 shall not apply to the extent that (but only for so long as) it is necessary to retain copies for the purpose of providing information to any regulatory authority in accordance with clause 2.3 (ii) above.

- 3.4 The Receiving Party shall on request supply a certificate signed by a director as to its full compliance with the requirements of clause 3.3 (ii) above.

4. Announcements

- 4.1 Neither party will make or permit to be made any announcement or disclosure of its prospective interest in the Proposal 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

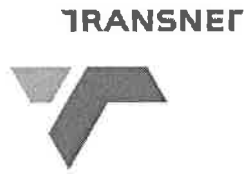
The obligations of each party and its Agents under this Agreement shall [be continuing and shall survive the termination of any discussions or negotiations between the parties regarding the Proposal continue for a period of 3 (three) years.

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 Proposal and in complying with the terms of this Agreement.

7. Representations

- 7.1 Each party agrees that any Information made available to the Receiving Party or its Agents for the purpose of negotiations or discussions in relation to the Proposal will not form the basis of, or any representation in relation to, any contract, nor constitute an offer or invitation by the Disclosing Party.



7.2 Except in the case of fraudulent misrepresentation, the Disclosing Party accepts no responsibility for nor makes any representation or warranty, express or implied, with respect to the accuracy, reliability or completeness of any Information made available to the Receiving Party or its Agents.

8. Adequacy of damages

8.1 Without prejudice to any other rights or remedies of the Disclosing Party, the Receiving Party acknowledges and agrees that damages would not be an adequate remedy for any breach by it of the provisions of this Agreement and that the Disclosing Party shall be entitled to seek the remedies of injunction, specific performance and other equitable relief for any threatened or actual breach of any such provision by the Receiving Party or its Agents, and no proof of special damages shall be necessary for the enforcement of the rights under this Agreement.

8.2 Nothing contained in this Agreement shall be construed as prohibiting the Disclosing Party from pursuing any other remedies available by 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.

9. Data Protection

The Receiving Party warrants that it and its Agents have the appropriate technical and organizational measures in place against unauthorized or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data held or processed by them.

10. General

10.1 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.

10.2 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.

10.3 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.

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

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

10.6 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.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective duly authorized representatives.

Respondent's signature

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Date and company stamp



TRANSNET LIMITED:

By:
(Signature)

Print name: _____

Title: _____

Date: _____

[Insert company name]:

By:
(Signature)

Print name: _____

Title: _____

Date: _____

“PREVIEW COPY ONLY”



delivering on our commitment to you

Suppliers Code of Conduct

“PREVIEW COPY ONLY”



Respondent's signature

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Date and company stamp



Suppliers Code of Conduct

Transnet aims to achieve the best value for money when buying or selling goods and obtaining services. This, however, must be done in an open and fair manner that supports and drives a competitive economy. Underpinning our process are several acts and policies that any supplier dealing with Transnet must understand and support.

These are:

- » Transnet Procurement Policy- A guide for tenderers;
- » Section 217 of the Constitution- the five pillars of Public PSCM (Procurement and Supply Chain Management): fair, equitable, transparent, competitive and cost effective;
- » The Public Finance Management Act (PFMA);
- » The Broad Based Black Economic Empowerment Act (BBBEE); and
- » The Anti-Corruption Act.

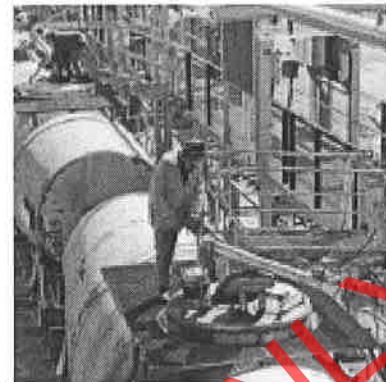
This code of conduct has been compiled to formally apprise Transnet Suppliers of Transnet's expectations regarding behaviour and conduct of its Suppliers.

Prohibition of Bribes, Kickbacks, Unlawful Payments, and Other Corrupt Practices

Transnet is in the process of transforming itself into a self-sustaining State Owned Enterprise, actively competing in the logistics industry. Our aim is to become a world class, profitable, logistics organisation. As such, our transformation is focused on adopting a performance culture and to adopt behaviours that will enable this transformation.

Transnet will not participate in corrupt practices. Therefore, it expects its suppliers to act in a similar manner.

- » Transnet and its employees will follow the laws of this country and keep accurate business records that reflect actual transactions with, and payments to, our suppliers.



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>> Employees must not accept or request money or anything of value, directly or indirectly, from suppliers.

Employees may not receive anything that is calculated to:

- Illegally influence their judgement or conduct or to influence the outcome of a sourcing activity;
- Win or retain business or to influence any act or decision of any person involved in sourcing decisions; gain an improper advantage.

>> There may be times when a supplier is confronted with fraudulent or corrupt behaviour of Transnet employees. We expect our suppliers to use our "Tip-offs Anonymous" Hotline to report these acts - 0800 003 056.

Transnet is firmly committed to free and competitive enterprise.

- >> Suppliers are expected to comply with all applicable laws and regulations regarding fair competition and antitrust practices
- >> Transnet does not engage non-value adding agents or representatives solely for the purpose of increasing BBBEE spend (fronting).

Transnet's relationship with suppliers requires us to clearly define requirements, to exchange information and share mutual benefits.

>> Generally, suppliers have their own business standards and regulations. Although Transnet cannot control the actions of our suppliers, we will not tolerate any illegal activities.



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These include, but are not limited to:

- Misrepresentation of their product (origin of manufacture, specifications, intellectual property rights, etc);
- Collusion;
- Failure to disclose accurate information required during the sourcing activity (ownership financial situation, BBBEE status, etc.);
- Corrupt activities listed above; and harassment, intimidation or other aggressive actions towards Transnet employees.

- >> Suppliers must be evaluated and approved before any materials, components, products or services are purchased from them. Rigorous due diligence must be conducted and the supplier is expected to participate in an honest and straight forward manner.
- >> Suppliers must record and report facts accurately, honestly and objectively. Financial records must be accurate in all material respects.



Conflict of Interest

A conflict of interest arises when personal interests or activities influence (or appear to influence) the ability to act in the best interests of Transnet. Examples are:

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

Show that you support good business practice by logging onto www.transnet-suppliers.net and completing the form.

This will allow us to confirm that you have received, and agree to, the terms and conditions set out in our Suppliers Code of Conduct.

**TIP-OFFS ANONYMOUS HOTLINE
0800 003 056**