



TRANSNET PROPERTY

TRANSNET PROPERTY
an Operating Division of
TRANSNET SOC
(Registration No. 1990/000900/30)

REQUEST FOR Quotation (“RFQ”)

RFQ NUMBER: CRAC DNR P12-69/9689

DESCRIPTION: TREE FELLING BETWEEN NOTTINGHAM ROAD AND BALGOWAN
(119 KM)

ONCE OFF

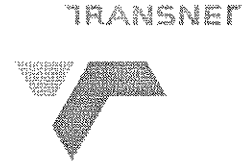
ISSUE DATE : 20 NOVEMBER 2012
BRIEFING SESSION : 28 NOVEMBER 2012
TIME : 10H00
CLOSING DATE : 13 DECEMBER 2012
CLOSING TIME : 10H00
OPTION DATE : 31 MARCH 2013
VENUE : NOTTINGHAM ROAD STATION

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

Respondent's Signature

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Date and Company Stamp



RFQ NUMBER: DBN P12-069/9689

DESCRIPTION: TREE FELLING BETWEEN NOTTINGHAM ROAD AND BALGOWAN
(119KM)

ONCE-OFF

SCHEDULE OF DOCUMENTS

Section

1. Notice to Bidders
2. Background, Overview and Scope of Requirements
3. Quotation Form
4. Requisition for Quotation
5. Resolution of Board of Directors (Respondent's Representative)
6. Certificate of Acquaintance with RFQ Documents
7. Service Fees and Costs
8. General Tender Conditions (CSS5 – Services)
9. Standard Terms and Conditions of Contract (US7 - Services)
10. Certificate of Attendance of Information of Briefing Session
11. Supplier Declaration Form
12. Non-Disclosure Agreement
13. Supplier Code of Conduct

Respondent's Signature

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Date and Company Stamp



SECTION 1

RFQ NUMBER: DBN P12-069/9689

**DESCRIPTION: TREE FELLING BETWEEN NOTTINGHAM ROAD AND BALGOWAN
(119KM)**

ONCE-OFF

NOTICE TO BIDDERS

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

On or after 20th November 2012 the RFQ documents are obtainable from the office of Tender Advice Centre, Inyanda House 1, Ground Floor, 21 Wellington Road, Parktown, Johannesburg. A non-refundable Quotation fee of R150.00 (Inclusive of VAT) is applicable per quotation. Payment is to be made to Transnet Freight Rail, Standard Bank Account number 203158598, Branch Code, 004805. The deposit slip must reflect RFQ, CRAC DNR P12-069/9689 and the Company Name. Receipts to be presented prior to collection of the RFQ's

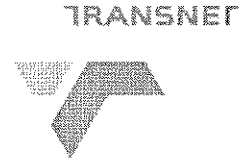
NOTE: 1.1 This amount is not refundable. RFQ documents will only be available until 15H00 on 27 November 2012

2. A compulsory information briefing session will be conducted at Nottingham Road Station on the **28 November 2012, at 10h00**.
 - Respondents failing to attend the compulsory information briefing session will be disqualified.
 - Respondents without a valid RFQ document in their possession will not be allowed to attend the briefing session.
 - Respondents to provide own transportation
 - As the briefing session will be held in an operational area of Transnet, all people entering the premises may be subjected to a substance abuse test. This is a standard operational requirement for TFR, when entering any operational area in order that TFR may address the risk of injury. Any person that fails such test will not be permitted to enter the premises and thereby forfeits rights to be allowed access to the briefing session and will subsequently not be permitted to submit a bid for the tender.

Respondent's Signature

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Date and Company Stamp



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

For specific queries before the closing of the RFQ, the following TRANSNET Freight Rail employee(s) may be contacted by email only:

Name : Princess Ngubo
Division : Transnet Freight Rail, (SCS) Procurement
Phone No. : 031 361 4557
Email : Princess.Ngubo@transnet.net

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

In the interest of fairness and transparency the said information will then be made available to the other Respondents who have collected RFQ documents. For this purpose all Respondents need to indicate their intention to respond by informing the above-mentioned Transnet employee (per email only) of their contact numbers as soon as possible but before 27 November 2012.

4. Quotations **in DUPLICATE** must reach The Secretary, Transnet Acquisition Council, before the closing hour on the date shown below, and must be enclosed in a sealed envelope which must have inscribed on the outside:

RFQ No	: DBN P12-069/9689
Description	: Tree Felling Between Nottingham Road and Balgowan
Closing date and time	: 13 December 2012, at 10h00
Closing address	: (refer options paragraph 4 below)

4. **DELIVERY INSTRUCTIONS FOR THIS RFQ**

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

THE SECRETARY
TRANSNET ACQUISITION COUNCIL



GROUND FLOOR
TENDER BOX
INYANDA HOUSE 1
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.

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

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

5. Please note that this RFQ closes punctually at 10:00 on Thursday 13 December 2012.
6. If responses are not posted or delivered as stipulated herein, such responses will not be considered and will be treated as "UNRESPONSIVE."
7. NO EMAIL OR FACSIMILE RESPONSES WILL BE CONSIDERED.
8. The responses to this RFQ will be opened as soon as practicable after the expiry of the time advertised for receiving them.
9. Transnet shall not, at the opening of responses, disclose to any other company any confidential details pertaining to the Quotations / information received, i.e. service fees, deliverables, etc. The names and location of the Respondents will, however, be divulged to other Respondents upon request.
10. Envelopes must not contain documents relating to any RFQ other than that shown on the envelope. All envelopes must reflect the return address of the Respondent on the reverse side.

Respondent's Signature

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Date and Company Stamp



11. No slips are to be attached to the response documents. Any additional conditions must be embodied in an accompanying letter. Subject only to clause 22 (*Alterations made by the Respondent to Tendered Prices*) of the General Tender Conditions, alterations, additions or deletions must not be made by the Respondent to the actual RFQ documents.

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

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

Transnet would therefore prefer to do business with local business enterprises who share these same values and who are prepared to contribute to meaningful BBBEE initiatives (including, but not limited to subcontracting and Joint Ventures) as part of their RFQ responses. Transnet will 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 R30 000 (thirty thousand S.A. Rand) will be evaluated accordingly. All transactions below this threshold will, as far as possible, be set aside for Exempted Micro Enterprises (EMEs).

Consequently, when Transnet invites prospective suppliers to submit Quotations for its goods and services, it urges Respondents (Large Enterprises and QSE's – see below) to have themselves accredited by any one of the various Accreditation Agencies available who do their BBBEE ratings in accordance with the **latest Codes (i.e. those promulgated on 9 February 2007)**.

Although no agencies have, as yet, been accredited by SANAS (South African National Accreditation System), Transnet will, in the interim, accept rating certificates of Respondents who have been verified by agencies who do their BBBEE ratings in accordance with the latest Codes as promulgated on 9 February 2007. This will be an interim arrangement only until such time as the SANAS List has been approved by the DTI. (Certificates are valid for a period of one year only).

12.1 Enterprises will be rated by such agency based on the following:

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

- Rating level based on all seven elements of the BBBEE scorecard

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

- Rating based on any four of the elements of the BBBEE scorecard

(c) **Exempted Micro Enterprises – EME (i.e. annual turnover <R5 million):**

- EMEs are exempted from BBBEE accreditation
- Automatic rating of Level 4 BBBEE irrespective of race of ownership, i.e. 100% BBBEE recognition
- Black ownership >50% or Black Women ownership >30% automatically qualify as Level 3 BBBEE, i.e. 110% BBBEE recognition
- EME's should only provide documentary proof of annual turnover (i.e. audited financials) plus proof of Black ownership if Black ownership >50% or Black Women ownership >30%



- 12.2 In addition to the above, Respondents who wish to enter into a Joint Venture or subcontract portions of the contract to BBBEE companies, must state in their RFQs the percentage, of the total contract value that will be allocated to such BBBEE companies, should they be successful in being awarded any business. A rating certificate in respect of such BBBEE JV-partners and / or sub-contractor(s), as well as a breakdown of the distribution of the aforementioned percentage must also be furnished with the RFQ response to enable Transnet to evaluate / adjudicate all RFQs received on a fair basis.
- 12.3 Respondents will be required to furnish proof of the above to Transnet. (i.e. a detailed scorecard as stipulated above in respect of Large Enterprises and QSEs, or proof of turnover in respect of EMEs). Failure to do so will result in a score of zero being allocated for BBBEE.

Turnover: Kindly indicate your company's annual turnover for the past year R.....

- If annual turnover <R5m, please attach audited financials.
- If annual turnover >R5m please attach an accreditation certificate issued by an Accreditation Agency, together with all the relevant score sheets pertaining thereto.

13. SOCIO-ECONOMIC OBLIGATIONS FOR FOREIGN RESPONDENTS

Foreign Respondents' socio-economic obligations under this procurement programme will fall under the associated Government initiative, namely, the Competitive Supplier Development Programme ("CSDP") as developed by the Department of Public Enterprises, details of which are appended hereto at Annexure A.

14. COMMUNICATION

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

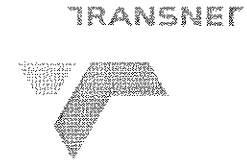
A respondent may, however, BEFORE THE CLOSING DATE AND TIME, direct any enquiries relating to the RFQ to the Transnet employee as indicated in clause 2 above, and may also at any time after the closing date of the RFQ, communicate with the Secretary of the Transnet Freight Rail Acquisition Council, at telephone number 011 544 9486 or fax no. 011 774 9129 on any matter relating to its RFQ response.

15. RFQ SCHEDULE

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

16. INSTRUCTIONS FOR COMPLETING THE RFQ

- (i) Signed set of documents (sign and date the bottom of each page). This set will serve as the legal and binding copy...
- (ii) Set of documents to be submitted to the address specified above.
- (iii) The following returnable documents must accompany all Quotations:
 - See Section 9 - Supplier Declaration Form



17. COMPLIANCE

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

18. ADDITIONAL NOTES:

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

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

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

19. DISCLAIMERS

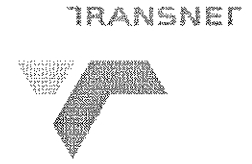
Respondents are hereby advised that Transnet is not committed to any course of action as a result of its issuance of this RFQ and/or its receipt of a Quotation in response to it. In particular, please note that Transnet reserves the right to:

- modify the RFQ's Services and request Respondents to re-bid on any changes
- reject any Quotation which does not conform to instructions and specifications which are detailed herein
- disqualify Quotations submitted after the stated submission deadline
- not necessarily accept the lowest priced Quotation
- reject all Quotations, if it so decides
- award a contract in connection with this Quotation at any time after the RFQ's closing date
- award only a portion of the proposed Services which are reflected in the scope of this RFQ
- split the award of the contract between more than one Supplier

Respondent's Signature

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Date and Company Stamp



- make no award of a contract

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

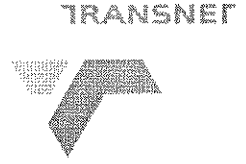
20. LEGAL REVIEW

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

“PREVIEW COPY ONLY”

Respondent's Signature

Date and Company Stamp



Respondents to complete this section:

NAME OF RESPONDENT
PHYSICAL ADDRESS
.....

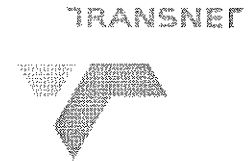
Respondent's contact person:	Name.....
	Designation.....
	Telephone.....
	Cell Phone.....
	Facsimile.....
	Email.....
	Website.....

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

“PREVIEW COPY ONLY”

Respondent's Signature

Date and Company Stamp



SECTION 2

RFQ NUMBER: DBN P12-069/9689

DESCRIPTION: TREE FELLING BETWEEN NOTTINGHAM ROAD AND BALGOWAN
(119KM)

ONCE-OFF

BACKGROUND, OVERVIEW AND SCOPE OF REQUIREMENTS

1. BACKGROUND

This work covers Tree Felling between Nottingham Road and Balgowan as per attached specification.

2. SCOPE OF REQUIREMENTS

Please see attached specification	
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3. GENERAL INFORMATION

It is required that all Transnet operating divisions will be included in the scope of this Quotation.

The service provider(s) shall be fully responsible to Transnet for the acts and omissions of persons directly or indirectly employed by them.

The service provider(s) must provide the identified information requested and comply with the requirements stated in the RFQ.

PART A: GENERAL CONDITIONS OF CONTRACT

A.1 SCOPE OF WORK

- A.1.1 All trees to be cut. This is to be carried out on both sides of the track.
- A.1.2 This contract covers the felling of approx. 140 trees. This is between Nottingham Road and Balgowan.
All logs must be removed from site to an area indicated at the site meeting.
- A.1.3 All trees in Transnet property-Right hand side, to be cut to a height of no more than 2m. That includes any trees cut in the property adjacent to TFR ROW.
- A.1.4 All trees on the left side must be cut to a height of no more than 300mm above ground level; These cut logs etc must be stacked. See clause below.
- A.1.5 Trees between 119/6 and 119/8- -right side must be cut to a height of no more that 300mm. These are all the old dead trees in the adjacent land owners property.
- A.1.6 All cut trees and braches must be cut into manageable lengths-max 2m in length and stacked on site.
- A.1.7 Any fence line dropped or damaged during the felling must be re-instated to its original position and standard.
- A.1.8 Please note that all trees cut in TFR property must be treated with herbicide. NOT THOSE IN THE ADJACENT LANDOWNERS PROPERTY.

A.2 DEFINITIONS

A.2.1. TREE CATEGORIES

All trees and saplings within the areas indicated must be felled.

A.2.2. ACCEPTABLE CONTROL

Trees will be deemed cut when the stump height is not more than 300mm above the ground level

A.3 PROGRAMME OF WORK

The contractor shall within seven [7] days of handing over or signing the site access certificate, provide a programme of his intended activities.

A.4 COMPLETION OF WORK

The work is to be completed with in the time period depicted. See letter of appointment.

A.5 SUCCESSFUL TENDERER

This contract will be awarded in terms of provisions of the CIDB Standard for Uniformity in Construction Procurement (September 2005) as amended in Board Notice 68 or 2005 in Government Gazette 27831 of 22 July 2005 and Board Notice 99 of 2005 in Government Gazette 28127 of 14 October.

A.6 VENDOR APPLICATION (SUPPLIER APPLICATION FORM)

Please note that all Tenderers who have not previously been awarded a Transnet Freight Rail contract must complete a Vendor Declaration application form **in full**. Pay special attention to page 9 of this annexure.

If you are awarded this contract and have not completed this document, it will cause delays in the payment of this contract.

All contractors who have **Transnet Freight Rail Vendor numbers** need not complete this document. However, whenever there is an amendment to your company or banking details, this form must be completed.

A.7 PRIORITY OF WORK

The Contractor will be required to commence work within 7 days of notification of acceptance of tender, failure to do so; can lead to the contract being cancelled by Transnet Freight Rail.

A.8 ACCESS TO SITE

The contractor shall satisfy him/her self fully as to the nature and extent of the site and works during the site inspection. Access to the site may only be done by means of established maintenance roads. No new roads or any illegal level crossings may be built.

A.9 SITE ACCESS CERTIFICATE.

Before the contractor may commence with the contract, he must be in possession of a **Site Access Certificate**. A safety awareness briefing session will be held with his/her staff.

A.10 TRESSPASSING ON PRIVATE PROPERTY

Furthermore the contractor shall be responsible for all damages resulting from his failure to comply with requirements.

A.11 SCHEDULE OF QUANTITIES

Rates to be submitted in black ink against all scheduled items. The contractor to supply a fixed amount (lump sum) for the application of the supplied herbicides.

A.12 CONDITIONS OF CONTRACT

No tender will be considered unless the contractor certifies that he/she has acquainted him/herself with all these documents and attended the site inspection.

A.13 PROJECT MANAGER

For the purpose of this contract, the "Project Manager" shall be the duly appointed Transnet employee of at least middle management grading, or any persons lawfully acting in that capacity. Only instructions issued by him, or the applicable Supervisor, to the contractor is allowed.

A.14 INDEMNITIES AND INSURANCE

A.14.1 The contractor shall take every precaution not to cause damage to property or injury to any person as a result of his execution of the work.

A.14.2 In the case where a risk of legal liability for accidental death of or injury to third persons and or accidental loss of, or damage to third party property may arise out of the contract work, the contractor shall arrange for such public liability insurance, and provide evidence of same to Transnet.

A.14.3 The Contractor shall insure against loss of or damage to his/her own machinery, tools, equipment, materials and site establishment and any consequential financial losses arising from such damage. This insurance is to be maintained in force during the entire period of the contract. The Contractor shall likewise arrange his/her own insurance in respect of motor vehicle

liabilities and employer's common law liabilities of the Contractor.

A.15 SAFETY ON SITE

- A.15.1 Transnet Freight Rail will not be held responsible for any losses, damage or injury to workmen while working on Transnet Freight Rail property.
- A.15.2 The Contractor shall comply with the provisions of the Occupational Health and Safety Act (Act 85 of 1993). For the purpose of this Act, the site/s occupied by the Contractor is transferred, for the duration of the Contract, to the control of the Contractor, as if it is his/her property. As employer, he/she is in every respect responsible for compliance with the provisions of this Act.
- A.15.3 The contractor shall, in particular, comply with the Compensation for Occupational Injuries and Diseases Act (Act 130 of 1993). The contractor shall produce proof of his/her registration and good standing with the Compensation Commissioner of the act. This proof shall be submitted with the return of these documents during the tender stage.
- A.15.4 The E7/1 (July 1998) Specification for Works On, Over, Under or Adjacent to Railway lines and near High Voltage Equipment, shall form an integral part of this contract.
- A.15.5 The Contractor is to ensure that the area where work is in progress is cordoned off, with hazard tape to prevent all persons not required for the cutting and removal of the vegetation and trees from entering into the area.
- A.15.6 The contractor must at all times ensure that his staff working next to the railway track wears reflective clothing. It is also recommended that a competent person is appointed who will keep all the contractors staff aware of train movements. It is also recommended that he use a warning device, e.g. a siren or a whistle etc. The staff must be made aware of the fact that the railway tracks are multi-directional.
- A.15.7 Before the successful contractor can commence with this contract, a Safety awareness Briefing session will be held with him/her and all staff that will be working on this contract. On the completion of the information session, the contractor will be asked to sign a document indicating his understanding of the dangers working next to the railway track and overhead traction lines. Refusal to sign this document can cause the contract to be cancelled by Transnet Freight Rail.

A.16 PERSONAL SAFETY EQUIPMENT

The following safety equipment shall be worn by staff operating the: -

A.16.1 Chain saws

- a) Safety chainsaw trousers- ballistic padding

A.17 COMPLIANCE WITH STATUTES

- A.17.1 The Contractor's method applied for felling of the trees, including the procedures for the procurement, storage, handling, transportation, application and general use of chemicals shall comply with all the applicable legislation, Codes of Practise and local, Regional or Provincial Authorities, including but not restricted to:
- a) The Fertilisers farm Feeds, Agricultural Remedies and Stock Remedies Act (Act 36 of 1947) as amended.
- b) The Hazardous Substances Act (Act 15 of 1973) as amended.

- c) The Water Act (Act 54 of 1956) and the Water Amendment Act (Act 96 of 1984) (where applicable).
- d) National Environmental Management Act (Act 73 of 1998).
- e) The Environmental Conservation Act (Act 73 of 1989).
- f) SABS Code of Practise No. 0-206-1985 "Safety Procedures for the disposal of surplus pesticide and associated toxic waste".
- g) Conservation of Agricultural resources Act (Act 43 of 1983)(CARA) as amended.
- h) Common law of nuisance.
- i) Mountain Catchment Area Act (Act 63 of 1970).

A.17.2 The Contractor's authorised representative, when applying chemical herbicides, shall be a **Registered Pest Control Operator**, specialising in the field of weed control and registered in terms of the Farm Feeds Agricultural and Stock Remedies Act, (Act 36 of 1947) as amended. **A registered Pest Control Operator shall be in direct control of work taking place on site.** Proof of Certificate of Registration is to be submitted with the tender, if the contractor is going to apply chemicals.

A.17.3 Declared weeds and declared plant invaders means Category 1, 2 & 3 plants that are proclaimed under the Conservation of Agricultural Resources Act (Act 43 of 1983), listed in regulation 15.

A.18 AUTHORISED PERSONS

Only persons authorised by the Supervisor or Contractor may make entries in the site diary & site instruction books.

A.19 INCOMPETENT EMPLOYEES

Any person employed by the Contractor on the Works, who is in the opinion of the Project Manager or his designated representative, incompetent, or who may act in any improper manner, may be discharged from the Works. Such a person shall not again be employed on the Works, without the permission of the Project Manager.

A.20 MATERIALS

The contractor shall be responsible for the supply and safe storage of all materials and equipment required by him/her, to execute the work.

The contractor shall take cognisance of all agricultural and environmental factors, which may be affected by the use of any chemical, and he/she shall take all necessary precautions to ensure safe and effective use thereof. Notwithstanding the Engineer's approval for the use of any chemical substance, the Contractor shall be solely responsible for any damage, whatsoever, which may arise through its use.

A.21 CABLES

At all times, the contractor must ensure that the workers do not damage any of the Transnet cables that are found in our servitude. The cables will be found either buried close to the boundary fence (posts are painted yellow) or running in cable ducts. The sleeved cable ducts, in cuttings or embankments, are normally found running from the fence towards the apparatus case. The ducts are usually at right angles to the track. The contractor must also ensure that the potential for damage by fire is removed. After the contractor has cut down trees, branches, bug weed etc, no vegetation must be left within 2 metre of the painted fence or these cable ducts.

A.22 OCCUPATIONS

Transnet will arrange for the occupation of the track and/or overheads, if deemed necessary. This will only be arranged if there is a possibility of damage to the track and/or overhead power lines. Occupations must be applied for, a minimum of 28 days

before time. Occupations will only be granted for the period 09:00 to 15:00- Monday to Friday. The contractor can utilise the period before and after occupation to fell smaller trees and cut up any felled trees.

A.23 PERMIT

In the event of an occupation being taken, the contractor is to ensure that he/she appoints a responsible person who will sign the permit given to him/her by Transnet staff. The area the contractor is allowed to work will be indicated to him/her, and at no stage may he/she stray from this designated area. At all times, the person who signed the permit must be on site. Any failure to comply with these instructions will result in the works being stopped immediately.

A.24 CONSTRUCTION

A.24.1 SITE CONDITION AND ACCESS

The contractor shall make due allowance for work being carried out adjacent to fences, buildings and walls. The Contractor will be held responsible for any damage caused. Any repairs for damages etc will be to the Contractors account.

A.24.2 DISPOSAL OF VEGETATIVE MATERIAL

The Contractor at no additional costs shall remove all vegetative matter resulting from the cutting of grass, shrubs and trees. The contractor is to ensure that no vegetative matter is deposited into gullies, concrete channels or storm water drains. No disposal of vegetative matter may be done on adjacent lands. All litter/refuse found on site will be collected, and be deposited at a legal registered municipal dump/landfill site

A.24.3 METHOD OF VEGETATION CONTROL

Under no circumstance will burning of grass or leaves be allowed as a means of vegetation control.
The making of fires on Transnet property, for whatever purpose, is strictly prohibited.

A.25 HOURS OF DUTY

Work can only be carried out during the daylight hours of the week, between 07h00 and 16h00. When the contractor intends performing work on a weekend or a public holiday, the Project Manager or his designated representative must be notified well in advance. The area where work will be performed must also be conveyed to him.

A.26 ACCOMMODATION

No staff member of the contractor is allowed to sleep on Transnet Property.

A.27 VALUE ADDED TAX

VAT at the ruling percentage shall be paid separately on an add-on basis on the value of work paid should Contractor be registered. Proof of VAT registration certificate must be submitted with tender.

A.28 MEASUREMENT AND PAYMENT

A.28.1. BASIC PRINCIPALS

A.28.1.1 The unit of measurement for the contract will be a lump sum total.

The tendered price must be valid for a minimum of 60 days.

A.28.1.2 No additional payment will be made for the supply and application of materials and equipment. The Contractor shall therefore make due allowance for all procurement, handling, transport and incidental costs in the amounts tendered for the removal of all refuse from the site.

A.28.2 PAYMENT

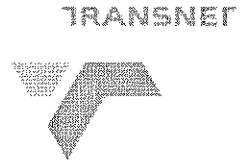
The total amount tendered, will be paid after an inspection and the production of a valid Tax Invoice for this amount.

Payment will be processed within terms of Transnet's P2P Policy.

“PREVIEW COPY ONLY”

PROJECT SPECS:- CUT VEGETATION AND TREAT NOXIOUS PLANTS

Contract Data					
Price List					
Item no.	Description	Unit	Qty	Rate	Price
1	Cut trees on the right hand side	each	38		
2	Cut trees on the left 119/3 to 119/6-Left side	each	43		
3	Old dead trees - 119/6 to 119/22	each	59		
4					
5					
6					
7					
8					
9					
10					
11					
12					
13					
14					
15	Total		140		
	Total Price (Excl Vat)=		R		



4. EXCHANGE AND REMITTANCE

The attention of the Respondents is specially directed to clause 7 (*Exchange and Remittance*) of the General Tender Conditions Form CSS5. The Respondent is also to note that the particulars of the exchange rate on which the Respondent has based its tendered price(s), is/are to be stipulated hereunder only if Transnet is requested by the Respondent to effect payment overseas direct to the Respondent's principal/supplier.

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

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

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

(d) (Applicable date of Exchange Rate used)

5. NATIONAL RAILWAY SAFETY REGULATOR ACT

In compliance with the **National Railway Safety Regulator Act, 16 of 2002**, the successful Respondent (the "Supplier") shall ensure that the Services to be supplied to Transnet, under the terms and conditions of a contract between the parties, comply fully with the specifications as set forth in this RFQ, and shall thereby adhere to railway safety requirements and/or regulations. Permission for the engagement of a subcontractor by the Supplier, as applicable, both initially and during the course of a contract, shall be subject to a review of the capability of the proposed subcontractor to comply with the specified railway safety requirements and/or regulations. The Supplier and/or its subcontractor shall grant Transnet access, during the term of the contract, to review any safety-related activities, including the coordination of such activities across all parts of the organisation.

Accepted:

YES	

NO	



6. SERVICE LEVELS

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

Accepted:

YES	
-----	--

NO	
----	--

7. CONTINUOUS IMPROVEMENT INITIATIVES AND VALUE ADD

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

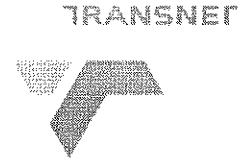
Accepted:

YES	
-----	--

NO	
----	--

If “yes”, please specify.

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



8.

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

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

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

.....

.....

.....

.....

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

.....

.....

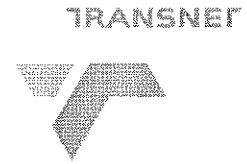
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(iii) compliance with the Occupational Health and Safety Act, 85 of 1993 (refer clause 8.1(f) of Form US7)

.....

.....

.....



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

.....

9. REFERENCES

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

Name of Company	Contact Person	Telephone number

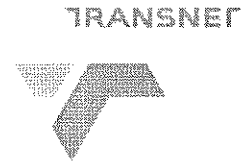
10. EVALUATION CRITERIA

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

- Pricing (fees) - Whilst not the sole factor for consideration, competitive pricing will be critical in indicating how much you value Transnet's business
- Service level guarantees
- An explicit commitment to continuous improvement initiatives
- Compliance - Completeness of your responses and content of the Quotation will be considered
- Financial strength
- References
- Fixed price for one year
- BBBEE status of company
- Country-wide network (national footprint)
- Additional value-added services

 Respondent's Signature

 Date and Company Stamp



SECTION 3

RFQ NUMBER: DBN P12-069/9689

**DESCRIPTION: TREE FELLING BETWEEN NOTTINGHAM ROAD AND BALGOWAN
(119KM)**

ONCE-OFF

QUOTATION FORM

I/We _____
(name of company, close corporation or partnership)

of (full address) _____

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

represented by _____
in my capacity as _____

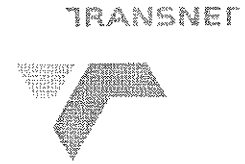
being duly authorised thereto by a Resolution of the Board of Directors or Members or Certificate of Partners, as the case may be, dated _____ a certified copy of which is annexed hereto, hereby offer to supply the above-mentioned Services at the prices quoted in the schedule of Service Fees in accordance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

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

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

Respondent's Signature

Date and Company Stamp



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

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

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

I/We accept that any contract resulting from this offer will be for a period of ~~3 (three) months~~ only, and agree to a penalty clause to be negotiated with Transnet, which will allow Transnet to invoke a penalty (details to be negotiated) against us should the delivery of the Services be delayed due to non-performance by us.

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

Respondent to indicate *domicillium citandi et executandi* hereunder:

NOTIFICATION OF AWARD OF RFQ

As soon as possible after approval to award the contract/s, the successful Respondent (the Supplier) will be informed of the acceptance of its Quotation. Unsuccessful Respondents will be advised in writing of the name of the successful Supplier and the reason as to why their Quotations have been unsuccessful, for example, in the category of price, delivery period, quality, BBBEE status or for any other reason.

VALIDITY PERIOD

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

This RFQ is valid until _____ (State alternative validity period/date).

Respondent's Signature

Date and Company Stamp



TAX (VAT) REGISTRATION NUMBER

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

TAX CLEARANCE CERTIFICATE

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

Indicate tax clearance certificate expiry date: _____

BANKING DETAILS

BANK: _____

BRANCH NAME / CODE: _____

ACCOUNT HOLDER: _____

ACCOUNT NUMBER: _____

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

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

- (i) Registration number of company / C.C.
- (ii) Registered name of company / C.C.
- (iii) Full name(s) of director/member(s) Address/Addresses ID Number/s

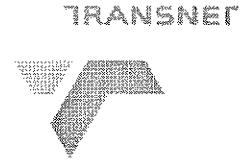
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REGISTRATION CERTIFICATE

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

Respondent's Signature

Date and Company Stamp



NAME AND ADDRESS OF ACCREDITED AGENT

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

Name
Address

CONFIDENTIALITY

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

DISCLOSURE OF PRICES TENDERED

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

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

DECLARATION OF RELATIONSHIP WITH TRANSNET PERSONEL

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

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

If YES, please indicate below:

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

ADDRESS

Indicate nature of relationship (if any):

Respondent's Signature

Date and Company Stamp



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

PRICE REVIEW

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

RETURNABLE DOCUMENTS

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

Notice to Bidders – Section 1	✓
Background overview – Section 2	✓
Quotation Form – Section 3	✓
Resolution of Board of Directors (Respondent's Representative) - Section 4	✓
Certificate of Acquaintance with RFQ Documents – Section 5	✓
Service Fees and Costs - Section 6	✓
General Tender Conditions - Form CSS5 – Section 7	✓
Conditions of Contract - Form US7 – Section 8	✓
Supplier Declaration Form – Section 9 (1 – 8 Important)	✓
Certificate of attendance of RFQ Briefing – Section 10	✓
Non-Disclosure Agreement – Section 11	✓
Certificate Of Compliance With The Bargaining Council	✓

NOTE: Sections 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10, as indicated in the footer of each page, must be signed and dated by the Respondent.

PREVIEW COPY ONLY

 Respondent's Signature

 Date and Company Stamp



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

SIGNED at _____ on this _____ day of _____ 2011.

SIGNATURE OF WITNESSES:

ADDRESS OF WITNESSES:

1 _____ 1 _____

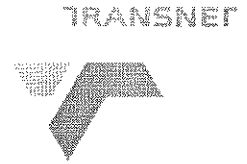
2 _____ 2 _____

SIGNATURE OF RESPONDENT'S AUTHORISED REPRESENTATIVE:

NAME

DESIGNATION

“PREVIEW COPY ONLY”



SECTION 4

RFQ NUMBER: DBN P12-069/9689

**DESCRIPTION: TREE FELLING BETWEEN NOTTINGHAM ROAD AND BALGOWAN
 (119KM)**

ONCE-OFF

REQUISITION FOR QUOTATION

COMPANY NAME:

.....

.....

.....

Tel (011)
 Fax (011)

ISSUE DATE 20 -11- 2012

CLOSING DATE 13- 12- 2012 (10h00)

SUPPLY CHAIN SERVICES
Contact: Princess Ngubo
Tel: 031 361 4557
Fax:031 361 4085

"PREVIEW COPY ONLY"

Prices in South African currency, including all costs.			
Direct to consignees			
ITEM NO:	DESCRIPTION		
1.	Tree Felling Between Nottingham Road and Balgowan		
Total price for the service			
2.Prices must be V.A.T. exclusive			
3. Direct delivered to:	Holly Balgowan		
4.Contact person:	Ivan Ball (083 407 3422) Princess Ngubo (031 361 4557)		

.....
 Respondent's Signature

.....
 Date and Company Stamp



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 will automatically disqualify your offer.

5.2. The following documents are compulsory, and they must be attached to the tender document if it's a copy must be certified.

If **Not** your tender will not be considered.

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

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:

7.1. "Order winning criteria"

7.1.1. Competitive pricing

7.1.2 Lead Time/Delivery Period

7.1.3 Compliance to Specification

7.1.4 Previous Performance Record

7.2. "BBBEE"

7.2.1. Provide BBBEE level Certification

7.3. "CIDB" Category SH1



SECTION 5

RFQ NUMBER: DBN P12-069/9689

**DESCRIPTION: TREE FELLING BETWEEN NOTTINGHAM ROAD AND BALGOWAN
(119KM)**

ONCE-OFF

SIGNING POWER: RESOLUTION OF BOARD OF DIRECTORS

NAME OF COMPANY: _____

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

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

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

FULL NAME _____

SIGNATURE CHAIRMAN

FULL NAME _____

SIGNATURE SECRETARY



SECTION 6

RFQ NUMBER: DBN P12-069/9689

**DESCRIPTION: TREE FELLING BETWEEN NOTTINGHAM ROAD AND BALGOWAN
(119KM)**

ONCE-OFF

CERTIFICATE OF ACQUAINTANCE WITH RFQ DOCUMENTS

NAME OF COMPANY: _____

I/We _____ do

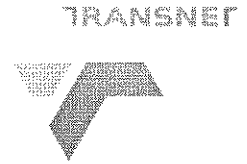
hereby certify that I/we acquainted myself/ourselves with all the documentation comprising this RFQ and all conditions contained therein, as laid down by Transnet Limited for the carrying out of the proposed supply/service/works for which I/we submitted my/our response.

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

SIGNED at _____ on this _____ day of _____ 2011

WITNESS: _____

SIGNATURE OF RESPONDENT



SECTION 7

RFQ NUMBER: DBN P12-069/9689

**DESCRIPTION: TREE FELLING BETWEEN NOTTINGHAM ROAD AND BALGOWAN
 (119KM)**

ONCE-OFF

SERVICE FEES AND COSTS

"PREVIEW COPY ONLY"

SCHEDULE OF WORK AND PRICES					
		Qty	Unit	Rate	Price
<u>GROSS TOTAL</u>		R	_____		
<u>14% V.A.T.</u>		R	_____		
<u>AMOUNT DUE</u>		R	_____		

 Respondent's Signature

 Date and Company Stamp



SECTION 8

RFQ NUMBER: DBN P12-069/9689

DESCRIPTION: TREE FELLING BETWEEN NOTTINGHAM ROAD AND BALGOWAN
(119KM)

ONCE-OFF

GENERAL TENDER CONDITIONS - GOODS

Refer Form CSS5 attached hereto.

“PREVIEW COPY ONLY”

TRANSNET



GENERAL TENDER CONDITIONS - SERVICES

FORM CSS5

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USE OF TENDER FORMS.....	3	2
THE RAISING OF A CHARGE FOR PLANS, SPECIFICATIONS, AND TENDER FORMS	4	2
DEFAULTS BY RESPONDENTS.....	5	2
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1. GENERAL

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

2. LODGING OF TENDER

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

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

3. USE OF TENDER FORMS

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

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

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

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

5. DEFAULTS BY RESPONDENTS

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

- (a) enter into a formal contract when called upon to do so in terms of clause 13 (*Contract Documents*), within such period as Transnet may specify; or
- (b) accept an order in terms of the tender or quotation; or
- (c) when called upon to do so, furnish satisfactory security of the fulfilment of the contract in terms of clause 14 (*Securities*);

Transnet may, in any such case, without prejudice to any other legal remedy which it may have, proceed to accept any other tender or quotation or, if it is necessary to do so, call for

Respondent's Signature

Date & Company Stamp

tenders or quotations afresh, and may recover from the defaulting Respondent any additional expense incurred by it in calling for new offers or in accepting a higher offer.

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

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

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

5.3 Any person or enterprise or company against whom a decision has been given under the provisions of sub-clauses 5.2(b), 5.2(d) or 5.2(e) above, may make representations to the Chief Operating Officer of Transnet Group, whose decision shall be final.

5.4 Any disqualification imposed upon any person or enterprise or company, unless Transnet determines otherwise, shall apply to any other enterprise under the same or different names of disqualified persons or enterprise or company (or associates thereof) and shall for avoidance of doubt also be applied to any agent or employee of the person or enterprise or company concerned.

Respondent's Signature

Date & Company Stamp

6. CURRENCY

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

7. EXCHANGE AND REMITTANCE

The Respondent should note that where the whole or a portion of the contract or order value is to be remitted overseas, Transnet shall, if requested to do so by the Supplier, effect payment overseas directly to the foreign principal or service provider of such percentage of the contract or order value as may be stipulated by the Respondent in its Tender Documents and any variation in the amount to be so paid, which may arise as a result of fluctuations in the rate of exchange involved, will be for the account of the Supplier.

7.1 The Respondent who desires to avail itself of the aforementioned facility must at the time of tendering furnish the information called for in the clause "Exchange and Remittance" of the Tender Documents and also furnish full details of the principals or service providers to whom payment is to be made.

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

Transnet will not recognise any claim for adjustment of the order and/or contract price under clause 7.2 above, if the increase in price arises after the date on which the Services were to be delivered, as set out in the order and/or contract, or any subsequent agreement between the parties.

8. ACCEPTANCE OF TENDER OR QUOTATION

8.1 Transnet does not bind itself to accept the lowest or any tender or quotation nor will it give any reasons for the rejection of a tender or quotation. Transnet reserves the right to accept any tender in whole or in part.

8.2 Upon the acceptance of a tender or quotation by Transnet, the parties shall be bound by these General Tender Conditions and the Standard Terms and Conditions of Contract (Form US7 - Services).

8.3 Where the acceptance by Transnet of the Respondent's offer/bid is delivered by letter, the South African Post Office shall be regarded as the agent of Transnet and delivery of such notice of acceptance to the South African Post Office shall be considered as delivery to the Respondent.

Respondent's Signature

Date & Company Stamp

8.4 Where the Respondent has been informed by Transnet per facsimile message of the acceptance of its tender or quotation, the acknowledgement of receipt transmitted by its facsimile machine shall be regarded as proof of delivery to the Respondent.

9. LAW GOVERNING CONTRACT

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

10. IDENTIFICATION

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

11. FORMAL NOTIFICATION REGARDING NAME OF SUCCESSFUL RESPONDENT

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

12. UNAUTHORISED COMMUNICATION ABOUT TENDERS

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

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13. CONTRACT DOCUMENTS

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

14. SECURITIES

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

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

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

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

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

15. PRICES SUBJECT TO CONFIRMATION

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

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

16. DELETION OF SERVICES EXCLUDED FROM OFFER/BID

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

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17. ALTERATIONS MADE BY THE RESPONDENT TO TENDERED PRICES

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

18. VALUE-ADDED TAX

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

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

- (a) The invoicing by a local Supplier on behalf of its foreign principal represents a Service rendered by the principal, which is not subject to VAT;
- (b) The Supplier's Tax Invoice(s) for the local portion only (i.e. the "commission" for the Services rendered locally) must show the Value-Added Tax (VAT) separately at zero percent if the Services are in compliance with Section 11(2) of the VAT Act, 89 of 1991.

19. TERMS AND CONDITIONS OF TENDER

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

20. IMPORTANT NOTICE TO RESPONDENTS REGARDING PAYMENT

20.1 Method of Payment

- (a) The attention of the Respondent is directed to clause 10 (*Invoicing and Payment*) of Form US7 – Services, which sets out the conditions of payment on which tender price(s) shall be based.
- (b) However, in addition to the foregoing the Respondent is invited to submit offers based on alternative methods of payment and/or financing proposals.
- (c) The Respondent is required to give full particulars of the terms that will be applicable to its alternative offer(s) and the financial merits thereof will be evaluated and taken into consideration when the tender is adjudicated.

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- (d) The Respondent must, therefore, in the first instance, tender strictly in accordance with sub-clause 20.1(a) above. Failure to comply with sub-clause 20.1(a) above may preclude a tender from further consideration.

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

20.2 Conditional Discount

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

21. PLANS, DRAWINGS, DIAGRAMS, SPECIFICATIONS AND DOCUMENTS

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

22. VISITS TO FOREIGN COUNTRIES

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

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

- (a) countries and places to be visited;
- (b) number of employees and disciplines involved;
- (c) number of man-days involved; and
- (d) motivation for the visit.

22.3 Transnet will make all arrangements with regard to booking of air journeys, hotel reservations, transport to and from airports, places of inspection or demonstration, etc. and all expenses will be for the account of Transnet.

22.4 Before a visit is undertaken, such as envisage in this clause 22, Transnet and the Supplier will agree in writing on the number of employees of Transnet that should undertake the visit and the number of man-days involved in the visit.

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23. TENDERS BY FOREIGN RESPONDENTS OR ON THEIR BEHALF

- 23.1 Tenders submitted by foreign principals may be forwarded direct by the principals to the Secretary of the Acquisition Council or to a designated official of Transnet according to whichever officer is specified in the Tender Documents, or may be so forwarded on the principal's behalf by its South African representative and/or agent provided that written proof is submitted that such representative / agent has been duly authorised to act in that capacity by the principal. Failure to submit such authorisation by the representative / agent shall disqualify the tender.
- 23.2 When legally authorised to prepare and submit tenders on behalf of their principals not domiciled in the Republic of South Africa, representatives and/or agents must compile the tenders in the names of such principals and sign them on behalf of the latter.
- 23.3 South African representatives and/or agents of successful foreign Respondents must when so required enter into a formal contract in the name of their principals and must sign such contracts on behalf of the latter. In every such case a legal Power of Attorney from their principals must be furnished to Transnet by the South African representative and/or agents authorising them to enter into and sign such contracts.
- (a) 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."
 - (b) The Powers of Attorney must be signed by principals under the same title as used in the Tender Documents.
 - (c) 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.
 - (d) If a Power of Attorney held by the South African representative or agent includes matters of a general nature besides provision for the entering into and signing of contracts with Transnet, a notarially certified copy thereof should be furnished.
 - (e) The Power of Attorney must authorise the South African representative or agent to choose the *domicilium citandi et executandi* as provided for in clause 26 (*Addresses for Notices*) of the Standard Conditions of Contract, Form US7 - Services.
- 23.4 If payment is to be made in South Africa, the foreign Supplier (i.e. the principal, or its South African agents or representatives), must notify Transnet in writing whether -
- (a) For payment by cheque --

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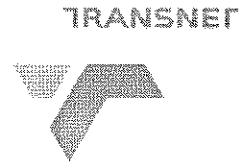
- (i) cheques are to be drawn for payment to the credit of the foreign Supplier's account at a bank in South Africa, in which case the name and branch of such bank shall be furnished; or
 - (ii) cheques are to be made out in favour of the foreign Supplier and forwarded to its South African agent or representative,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

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

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SECTION 9

RFQ NUMBER: DBN P12-069/9689

**DESCRIPTION: TREE FELLING BETWEEN NOTTINGHAM ROAD AND BALGOWAN
(119KM)**

ONCE-OFF

STANDARD TERMS AND CONDITIONS OF CONTRACT

FOR THE PROVISION OF GOODS TO TRANSNET

Refer Form US7 attached hereto.

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

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

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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 material 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.

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22. EQUALITY AND DIVERSITY

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

23. NON-WAIVER

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

24. PARTIAL INVALIDITY

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

25. DISPUTE RESOLUTION

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

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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.

“PREVIEW COPY ONLY”

Respondent's Signature

Date & Company Stamp



SECTION 10

RFQ NUMBER: DBN P12-069/9689

**DESCRIPTION: TREE FELLING BETWEEN NOTTINGHAM ROAD AND BALGOWAN
(119KM)**

ONCE-OFF

CERTIFICATE OF ATTENDANCE OF INFORMATION BRIEFING SESSION

It is hereby certified that -

- 1.
- 2.

Representative(s) of
(name of company)

attended the information briefing session in respect of the proposed Service to be rendered in terms of
this RFQ on2012.

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.....
TRANSNET'S REPRESENTATIVE

.....
RESPONDENT'S REPRESENTATIVE

DATE.....

DATE.....



SECTION 11

RFQ NUMBER: DBN P12-069/9689

DESCRIPTION: TREE FELLING BETWEEN NOTTINGHAM ROAD AND BALGOWAN
(119KM)

ONCE-OFF

SUPPLIER DECLARATION FORM ('SDF')

Refer document attached hereto



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	CITIZENSHIP	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						
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 (BBBEE)				VALIDITY DATE			
BEE O/S	BWBE	DPBE	MR	CONTR. LEVEL	EME: <R5m	QSE: >R5m <R35m	LARGE: >R35m				
Name		Grade		Date				Signature			
				Y	Y	Y	Y	M	M	D	D
				Y	Y	Y	Y	M	M	D	D



SECTION 12

RFQ NUMBER: DBN P12-069/9689

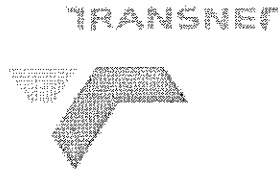
DESCRIPTION: TREE FELLING BETWEEN NOTTINGHAM ROAD AND BALGOWAN
(119KM)

ONCE-OFF

NON-DISCLOSURE AGREEMENT

Complete and sign NDA attached hereto

“PREVIEW COPY ONLY”



NON-DISCLOSURE AGREEMENT

THIS AGREEMENT is made at on the day of 2010

BETWEEN:

Transnet Limited ("Transnet") (Registration No. 1990/000900/06)

whose registered office is at 49th Floor, Carlton Centre, 150 Commissioner Street,
Johannesburg 2001, Gauteng, Republic of South Africa

and

.....
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

In this Agreement:-

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

"Confidential Information" means any information or other data relating to one party (the "Disclosing Party") and/or the business carried on or proposed or intended to be carried on by that party and which is made available for the purposes of the 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:-

- (a) is publicly available at the time of its disclosure or becomes publicly available (other than as a result of disclosure by the Receiving Party or any of its Agents contrary to the terms of this Agreement); or
- (b) was lawfully in the possession of the Receiving Party or its Agents (as can be demonstrated by its written records or other reasonable evidence) free of any restriction as to its use or disclosure prior to its being so disclosed; or
- (c) following such disclosure, becomes available to the Receiving Party or its Agents (as can be demonstrated by its written records or other reasonable evidence) from a source other than the Disclosing Party or its Agents, which source is not bound by any duty of confidentiality owed, directly or indirectly, to the Disclosing Party in relation to such information;

"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; and

"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:

(a) 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

(b) to the extent required by law or the rules of any applicable regulatory authority, subject to clause 2.4 below.

2.4 In the event that the Receiving Party is required to disclose any Confidential Information in accordance with clause 2.3 (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.

3. Records and return of Information

3.1 The Receiving Party agrees to ensure proper and secure storage of all Information and any copies thereof 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:

- (a) Return all written Confidential Information (including all copies); and
- (b) expunge or destroy any Confidential Information from any computer, word processor or other device whatsoever into which it was copied, read or programmed by the Receiving Party or on its behalf (including by any person).

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 (b) 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 (b) 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 survive the termination of any discussions or negotiations between the parties regarding the Proposal and continue thereafter for a period of 5 (five) years.

6. Principal

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

7. Adequacy of damages

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

8. Privacy and Data Protection

- 8.1 The Receiving Party undertakes to comply with South Africa's general privacy protection in terms of the Bill of Rights (Section 14) in connection with this Proposal and shall procure that its personnel shall observe the provisions of such Act (as applicable) or any amendments and re-enactments thereof and any regulations made pursuant thereto.
- 8.2 The Receiving Party warrants that it and its Agents have the appropriate technical and organisational measures in place against unauthorised or unlawful processing of data relating to the Proposal and against accidental loss or destruction of, or damage to such data held or processed by them.

9. General

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

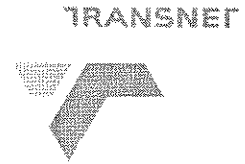
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective duly authorised representatives.

For and on behalf of TRANSNET LIMITED duly authorised thereto	For and on behalf of _____ duly authorised thereto
Name:	Name:
Position:	Position:
Signature:	Signature:
Date:	Date:

AS WITNESS: Name:	AS WITNESS: Name:
Signature:	Signature:
Date:	Date:

AS WITNESS: Name:	AS WITNESS: Name:
Signature:	Signature:
Date:	Date:

“PREVIEW COPY ONLY”



SECTION 13

RFQ NUMBER: DBN P12-069/9689

DESCRIPTION: TREE FELLING BETWEEN NOTTINGHAM ROAD AND BALGOWAN
(119KM)

ONCE-OFF

SUPPLIER CODE OF CONDUCT

Refer document attached hereto

“PREVIEW COPY ONLY”

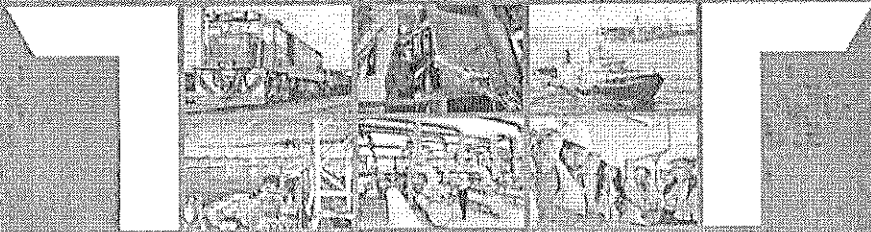
TRANSNET



delivering on our commitment to you

Suppliers Code of Conduct

“PREVIEW COPY ONLY”



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.

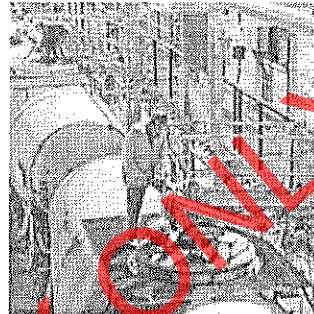
This code of conduct has been compiled to formally apprise Transnet Suppliers of Transnet's expectations regarding behaviour and conduct of its Suppliers.

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.



- » 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.

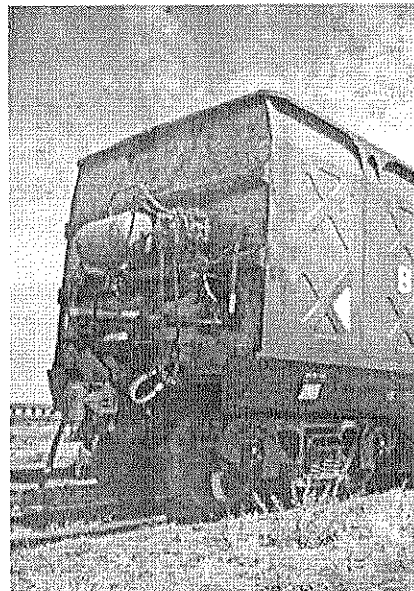
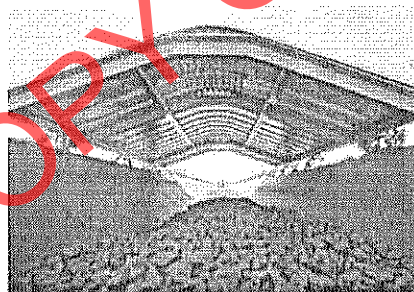
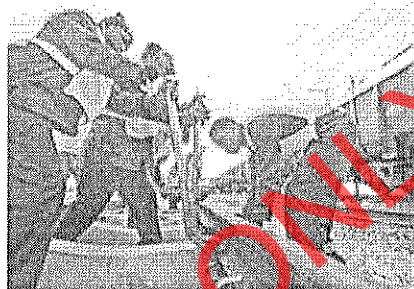
- » There may be times when a supplier is confronted with fraudulent or corrupt behaviour of Transnet employees. We expect our suppliers to use our "Tip-offs Anonymous" Hotline to report these acts: 0800 003 056.

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:

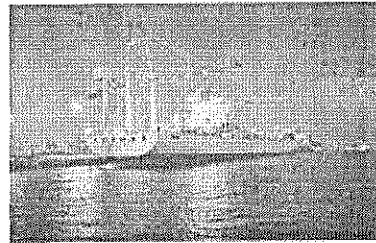
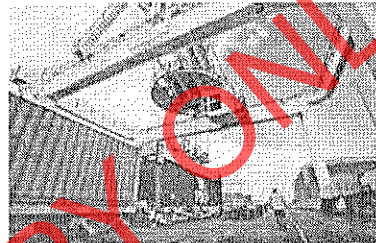
- Misrepresentation of their product (origin of manufacture, specifications, intellectual property rights, etc);
- Collusion;
- Failure to disclose accurate information required during the sourcing activity (ownership financial situation, BBBEE status, etc.);
- Corrupt activities listed above; and harassment,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