

**TRANSNET FREIGHT RAIL**an Operating Division of **TRANSNET SOC LTD**

(Registration No. 1990/000900/30)

**REQUEST FOR QUOTATION [RFQ]****FOR THE PROVISION OF STRESS MEASUREMENT ON RAILWAY TRACKS AND RELATED MAINTENANCE ACTIVITIES UNDER THE DEPOT ENGINEER, ISANDO****FOR A PERIOD OF FOUR MONTHS****RFQ NUMBER CRAC-EFQ 10597****ISSUE DATE: 07 MAY 2013****BRIEFING SESSION 14 MAY 2013****VENUE: NO. 1 ANVIL STREET, TRANSENT BUILDING,  
ISANDO. 6<sup>th</sup> FLOOR BOARD ROOM 601****TIME: 10:00 AM****CLOSING DATE: 23 MAY 2013****CLOSING TIME: 10:00 AM****BID VALIDITY PERIOD: 90 days (22 AUGUST 2013)****FOR DIRECTIONS / SITE CONTACT STANLEY  
(011 570 7307/ 071 889 8023)**

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ANNEXURE A – B-BBEE PREFERENCE POINT CLAIMS FORM	

**LIST OF ACRONYMS**

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

**REQUEST FOR QUOTATION [RFQ]****CRAC-EFQ 10597****FOR THE PROVISION OF STRESS MEASUREMENT ON RAILWAY TRACKS AND RELATED MAINTENANCE ACTIVITIES UNDER THE DEPOT ENGINEER, ISANDO****FOR A PERIOD OF FOUR MONTHS****Section 1****NOTICE TO BIDDERS****1 PROPOSAL REQUEST**

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

On or after 07/05/2013, the RFP documents may be inspected at, and are obtainable from the office of the Secretariat, Tender Advice Centre, Ground Floor, Inyanda House1, 21 Wellington Road, ParkTown, Johannesburg, on payment of an amount of R100.00 (inclusive of VAT) per set. Payment is to be made as follows: Transnet Freight Rail Standard Bank Account number 203158598, Branch code 004805

## NOTES –

- a) This amount is not refundable.
- b) A receipt for such payment made must be presented when collecting the RFP documents and submitted with your Proposal.

RFP documents will only be available until 15:00 pm on 14 May 2012.

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

**2 FORMAL BRIEFING**

A compulsory pre-proposal RFP briefing will be conducted at ISANDO, on the 14 May 2012, at Board Room 7<sup>th</sup> Floor for a period of ± 1 hour. [Respondent to provide own transportation and accommodation].

- 2.1 A Certificate of Attendance in the form set out in Section 14 hereto must be completed and submitted with your Proposal.
- 2.2 Respondents failing to attend the compulsory RFP briefing will be disqualified.
- 2.3 Respondents without a valid RFP document in their possession will not be allowed to attend RFP briefing.

- 2.4 The briefing session will start punctually at 9:00 AM and information will not be repeated for the benefit of Respondents arriving late.

### 3 PROPOSAL SUBMISSION

Proposals 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:

RFP No: CRAC-EFQ 10597  
 Description: FOR THE PROVISION OF STRESS  
 MEASUREMENT ON RAILWAY TRACKS AND RELATED MAINTENANCE  
 ACTIVITIES UNDER THE DEPOT ENGINEER, ISANDO  
 Closing date and time: 23 MAY 2013 at 10:00 AM  
 Closing address: [Refer options in paragraph 4 below]

### 4 DELIVERY INSTRUCTIONS FOR RFP

#### 4.1 Delivery by hand

If delivered by hand, the envelope is to be deposited in the Transnet tender box which is located at Transnet Acquisition Council, Ground Floor, Tender Box, Inyanda House 1, 21 Wellington Road, Parktown, Johannesburg, 2001.

, and should be addressed as follows:

THE SECRETARY  
 TRANSNET ACQUISITION COUNCIL  
 INYANDA HOUSE 1  
 TENDER BOX  
 GROUND FLOOR  
 21 WELLINGTON ROAD  
 PARKTOWN, JOHANNESBURG

- a) The measurements of the "tender slot" are 400mm wide x 100mm high, and Respondents must please ensure that response documents or files are not larger than the above dimensions. Responses which are too bulky [i.e. more than 100mm thick] must be split into two or more files, and placed in separate envelopes, each such envelope to be addressed as required in paragraph 3 above.
- b) It should also be noted that the above tender box is located at the Ground Floor main entrance in Wellington Road and is accessible to the public 24 hours a day, 7 days a week.

#### 4.2 Despatch by courier

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

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

- 4.3 Please note that this RFP closes punctually at 10:00 AM on Thursday 23 May 2012.
- 4.4 If responses are not delivered as stipulated herein, such responses will not be considered and will be treated as "UNRESPONSIVE."
- 4.5 No email or facsimile responses will be considered, unless otherwise stated herein.
- 4.6 The responses to this RFP will be opened as soon as practicable after the expiry of the time advertised for receiving them.
- 4.7 Transnet shall not, at the opening of responses, disclose to any other company any confidential details pertaining to the Proposals / information received, i.e. pricing, delivery, etc. The names and locations of the Respondents will be divulged to other Respondents upon request.
- 4.8 Envelopes must not contain documents relating to any RFP other than that shown on the envelope. All envelopes must reflect the return address of the Respondent on the reverse side.
- 4.9 No slips are to be attached to the response documents. Any additional conditions must be embodied in an accompanying letter. Subject only to clause 18 [*Alterations made by the Respondent to Tendered Prices*] of the General Bid Conditions, alterations, additions or deletions must not be made by the Respondent to the actual RFP documents.

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

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

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

Consequently, when Transnet invites prospective Service Providers to submit Proposals for its various expenditure programmes, it urges Respondents [*Large Enterprises and QSE's - see below*] to have themselves accredited in compliance with the Government Gazette No 34612, Notice No. 754 dated 23 September 2011. As from 1 October 2011 valid B-BBEE Accreditation Certificates must be issued by

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

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

### 5.1 B-BBEE Rating

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

- a) **Large Enterprises** [i.e. annual turnover greater than R35 million]:
  - Rating level based on all seven elements of the B-BBEE scorecard

- b) **Qualifying Small Enterprises – QSE** [i.e. annual turnover between R5 million and R35 million]:
- Rating based on any four of the elements of the B-BBEE scorecard
- c) **Exempted Micro Enterprises – EME** [i.e. annual turnover less than R5 million]:
- EMEs are exempted from B-BBEE accreditation
  - Automatic rating of Level 4 B-BBEE irrespective of race or ownership greater than 50% or Black Women ownership greater than 50% automatically qualify as Level 3 B-BBEE
  - Sufficient evidence to qualify as an EME would be a certificate (which may be in the form of a letter) from an auditor or accounting officer or a certificate from a Verification Agency accredited by SANAS. The certificate must confirm the company's turnover, black ownership / black female ownership and B-BBEE status level.
  - Respondents are 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 a certificate in respect of EMEs].
  - Transnet will accordingly allocate a maximum of 10/20 [ten/twenty] points in accordance with the 80/20 / 90/10 preference point system prescribed in the Preferential Procurement Policy Framework Act (PPPFA), Act 5 of 2000 and its Regulations to the Respondent's final score based on an entity's B-BBEE scorecard rating. [Refer Annexure A for further details].
  - N.B. Failure to submit a B-BBEE certificate, which is valid as at the Closing Date of this RFP, will result in a score of zero being allocated for B-BBEE.
  - [Refer Section 4, Vendor Application Form, for Returnable Documents required]
  - EME's should provide documentary proof of annual turnover [i.e. annual financials signed off by an accounting officer] plus proof of Black ownership if Black ownership is greater than 50% and/or Black Women ownership is greater than 50%

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

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

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

R\_\_\_\_\_

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

## 5.2 Joint Ventures and Subcontractors

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

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

### 5.3 B-BBEE Registration

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

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

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

## 6 COMMUNICATION

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

6.1 For specific queries relating to this RFP, a Bid Clarification Request Form should be submitted before 12:00 on 22 May 2013, substantially in the form set out in Section 12 hereto. In the interest of fairness and transparency Transnet's response to such a query will then be made available to the other Respondents who have collected RFP documents. For this purpose all Respondents need to indicate by email their intention to respond to this RFP by informing Transnet of their contact details as soon as possible but before **23 May 2013** to TAC.SECRETARIAT@transnet.net.

6.2 After the closing date of the RFP, a Respondent may communicate with the Secretary of the Transnet Acquisition Council, at telephone number 011 544 9486, email [TAC.SECRETARIAT@transnet.net](mailto:TAC.SECRETARIAT@transnet.net) or facsimile number 011 774 9760 on any matter relating to its RFP Proposal.

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

## 7 INSTRUCTIONS FOR COMPLETING THE RFP

7.1 Sign one set of documents [sign, stamp and date the bottom of each page]. This set will serve as the legal and binding copy. A duplicate set of documents is required. This second set can be a copy of the original signed Proposal.

7.2 Both sets of documents to be submitted to the address specified in paragraph 4 above.

7.3 All returnable documents listed in the Proposal Form [Section 4] must be returned with your Proposal.

## 8 COMPLIANCE

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



## 9 ADDITIONAL NOTES

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

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

## 10 DISCLAIMERS

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

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

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

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

#### **11 LEGAL REVIEW**

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

**Transnet urges its clients, suppliers and the general public  
to report any fraud or corruption on the part of Transnet employees to**

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

**RFQ CRAC-EFQ 10597**

**FOR THE PROVISION OF STRESS MEASUREMENT ON RAILWAY TRACKS AND RELATED  
MAINTENANCE ACTIVITIES UNDER THE DEPOT ENGINEER, ISANDO**

**FOR A PERIOD OF FOUR MONTHS**

**"PREVIEW COPY ONLY"**

## Section 2

### BACKGROUND, OVERVIEW AND SCOPE OF REQUIREMENTS

#### 1 BACKGROUND

Stress measurement on railway tracks is pre-requisite of Transnet annual maintenance plan, this service was last conducted in 2012 and now due for consideration.

#### 2 EXECUTIVE OVERVIEW

Most Transnet Operating Divisions currently procure their Stress measurement requirements through a number of service providers. Our objective is to source all activity through a Preferred Service Provider(s) capable of servicing all Transnet Operating Divisions in locations around the country. Other key considerations include all other associated work on lines owned and maintained by Transnet.

It also seeks to improve its current processes for providing these Services to its end user community throughout its locations.

The selected Service Provider(s) will share in the mission and business objectives of Transnet. These mutual goals will be met by meeting contractual requirements and new challenges in an environment of teamwork, joint participation, flexibility, innovation and open communications. In this spirit of partnership, Transnet and its Service Provider(s) will study the current ways they do business to enhance current practices and support processes and systems. Such a partnership will allow Transnet to reach higher levels of quality, service and profitability.

Specifically, Transnet seeks to benefit from this partnership in the following ways:

- 2.1 Transnet must receive reduced cost of acquisition and improved service benefits resulting from the Service Provider's economies of scale and streamlined service processes.
- 2.2 Transnet must achieve appropriate availability that meets user needs while reducing costs for both Transnet and the chosen Service Provider(s).
- 2.3 Transnet must receive proactive improvements from the Service Provider with respect to supply of Services and related processes.
- 2.4 Transnet's overall competitive advantage must be strengthened by the chosen Service Provider's leading edge technology and service delivery systems.
- 2.5 Transnet end users must be able to rely on the chosen Service Provider's personnel for service enquiries, recommendations and substitutions.
- 2.6 Transnet must reduce costs by streamlining its acquisition of Services, including managed service processes on a Group basis.

#### 3 SCOPE OF REQUIREMENTS

This contract covers the Rail stress measurement on railway track inclusive of all other associated work on lines owned and maintained by Transnet Freight Rail jurisdiction of the Depot Engineer, Isando East. The

contract area shall include lines in Springs - Nigel, Springs - Ogies, Springs – Trichardt, Sentrarrand area, Sentrarrand – Sybrand, Sentrarrand – Kaalfontein, Sentrarrand - Lud, Delmas – Hawerklip, the contractor will be required to work on site at any place within the area specified.

#### 4 GENERAL INFORMATION

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

#### 5 EXCHANGE AND REMITTANCE

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

5.1 ZAR 1.00 [South African currency] being equal to \_\_\_\_\_ *[foreign currency]*

5.2 \_\_\_\_\_ % in relation to tendered price(s) to be remitted overseas by Transnet

5.3 \_\_\_\_\_ *[Name of country to which payment is to be made]*

5.4 Beneficiary details:

Name *[Account holder]* \_\_\_\_\_

Bank *[Name and branch code]* \_\_\_\_\_

Swift code \_\_\_\_\_

Country \_\_\_\_\_

5.5 \_\_\_\_\_ *[Applicable base date of Exchange Rate used]*

#### EXPORT CREDIT AGENCY SUPPORTED FINANCE:

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

Under such circumstances the successful Respondent will agree to undertake:

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

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

**6 SERVICE LEVELS**

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

**Acceptance of Service Levels:**

YES	
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NO	
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**7 RISK**

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

**7.1 Quality of Services provided:**

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

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

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## 8 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	DESCRIPTION OF PROJECT	START /COMPLETION DATE	VALUE OF PROJECT	CONTACT PERSON	TELEPHONE

## 9 EVALUATION METHODOLOGY AND CRITERIA

Transnet will utilise the following methodology and criteria in selecting a preferred Service Provider, if so required:

### Pre-qualification Criteria:

- 1 Compliance to specification – in line with the scope of work and schedule of quantities
- 2 Capacity / Resources ( Proof of Qualifications and knowledge in Rail related projects / field) plus Track Master and Flagmen Certificates
- 3 Provide Health Safety File / Plan documentation in of Act 85 of 1993
- 4 Provide Letter of Good Standing issued by DTI
- 5 Delivery period (Response)

### Commercial:

- 3 Competitive pricing

### B-BBEE status of company

- 4 Provide BBBEE level Certification and Score Card

Weighted evaluation based on 80/20 or 90/10 preference point system:

- Pricing and price basis [firm] - whilst not the sole factor for consideration, competitive pricing and overall level of unconditional discounts<sup>1</sup> will be critical

**Transnet will utilise the following formula in its evaluation of Price:**

$$PS = 80 \left( 1 - \frac{P_t - P_{min}}{P_{min}} \right) \text{ OR } PS = 90 \left( 1 - \frac{P_t - P_{min}}{P_{min}} \right)$$

<sup>1</sup> Only unconditional discounts will be taken into account during evaluation. A discount which has been offered conditionally will, despite not being taken into account for evaluation purposes, be implemented when payment is effected.

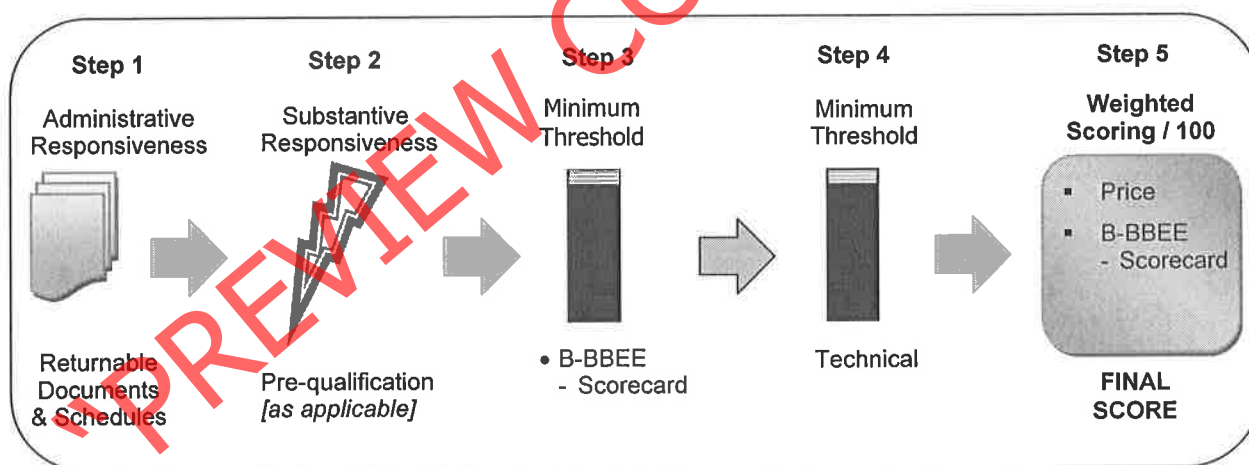
Where:

- Ps* = Score for the Bid under consideration
- Pt* = Price of Bid under consideration
- Pmin* = Price of lowest acceptable Bid

- B-BBEE status of company

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

B-BBEE Status Level of Contributor	Number of points (90/10 system)	Number of points (80/20 system)
1	10	20
2	9	18
3	8	16
4	5	12
5	4	8
6	3	6
7	2	4
8	1	2
Non-compliant contributor	0	0



**a. STEP ONE – TEST FOR ADMINISTRATIVE RESPONSIVENESS**

The test for administrative responsiveness will include the following:

EVALUATION CRITERIA	RFP REFERENCE
• whether the bid has been lodged on time	Section 1 paragraph 3
• whether all returnable documents and/or schedules [where applicable] were completed and returned by the closing date and time	Section 4
• whether the bid documentation has been duly signed by the Respondent.	Section 1 paragraph 7.1



***The test for administrative responsiveness [Step One] must be passed for a Respondent's proposal to progress to Step Two for further evaluation.***

**b. STEP TWO – TEST FOR SUBSTANTIVE RESPONSIVENESS TO RFP**

The test for substantive responsiveness to this RFP will include the following:

EVALUATION CRITERIA	RFP REFERENCE
<ul style="list-style-type: none"> <li>whether any pre-qualification criteria set by Transnet, have been met</li> </ul>	<i>Section 1 paragraphs 2.2, 6.1, 10.3</i> <i>Section 4 – validity period</i> <i>Section 8, General Bid Conditions clause 20</i> <i>Section 10</i>
<ul style="list-style-type: none"> <li>whether the bid contains a priced offer</li> </ul>	<i>Section 3</i>
<ul style="list-style-type: none"> <li>whether the bid materially complies with the scope and/or specification given</li> </ul>	<i>Section 2</i>
<ul style="list-style-type: none"> <li>whether all material terms and conditions stated in the bid document have been met</li> </ul>	<i>All Sections</i>

***The test for substantive responsiveness [Step Two] must be passed for a Respondent's proposal to progress to Step Three for further evaluation.***

a) **B-BBEE Rating**

(i) **B-BBEE Scorecard:**

EVALUATION CRITERION	RFP REFERENCE
<ul style="list-style-type: none"> <li>Current status evaluated according the B-BBEE Accreditation scorecard</li> </ul>	<i>Section 1, paragraph 5 &amp; Preferential Points Claim Form</i>

**c. STEP FOUR – TEST MINIMUM THRESHOLD FOR TECHNICAL CRITERIA**

**Technical Criteria:**

EVALUATION CRITERIA	RFP REFERENCE
<ul style="list-style-type: none"> <li>Acceptance of service levels</li> </ul>	<i>Section 2, paragraph 13</i>
<ul style="list-style-type: none"> <li>Control measures to mitigate Transnet's risk exposure</li> </ul>	<i>Section 2, paragraph 15</i>
<ul style="list-style-type: none"> <li>technical merit</li> <li>aesthetic and functional characteristics</li> <li>safety characteristics</li> <li>quality control practices</li> <li>reliability</li> <li>timing for completion of deliverables</li> <li>.</li> </ul>	<i>Section 2 [Scope of Requirements]</i>

**The minimum threshold for Step Four evaluation criteria must be met or exceeded for a Respondent's proposal to progress to Step Five for final evaluation.**

**d. STEP FIVE – FINAL WEIGHTED SCORING**

**a) Price Criteria:**

EVALUATION CRITERIA	RFP REFERENCE
• Commercial offer	Section 3
• Project lead times for completion of Deliverables	Section 2 paragraph 5.3 & Section 3
• Entity's financial stability	Financial Statements – returnable document

**b) Broad-Based Black Economic Empowerment criteria**

- **B-BBEE - current scorecard** [Refer paragraph 17.4(a)(i) above]

**e. SUMMARY OF EVALUATION THRESHOLD AND WEIGHTINGS**

EVALUATION CRITERIA	MINIMUM THRESHOLD [%]
<b>Technical / functionality</b>	

EVALUATION CRITERIA	FINAL WEIGHTED SCORES
<b>Competitive Price</b>	
<b>B-BBEE - Scorecard</b>	
<b>TOTAL SCORE:</b>	<b>100</b>

*Note: Transnet reserves the right to conduct post-tender negotiations with the preferred Respondent(s)*

**REQUEST FOR QUOTATION [RFQ]**

**FOR THE PROVISION OF STRESS MEASUREMENT ON RAILWAY TRACKS AND RELATED MAINTENANCE ACTIVITIES UNDER THE DEPOT ENGINEER, ISANDO**

**FOR A PERIOD OF FOUR MONTHS**

**Section 3****PRICING AND DELIVERY SCHEDULE****Price Schedule**

I/We quote as follows for the goods required, on a "delivered nominated destination" basis, excluding VAT:

Item No	Description of Goods	Quantity	Unit Price (ZAR)	Total Price (ZAR)
1	Stress measurements on railway tracks for a period of 4 months			

**Delivery Lead-Time from date of purchase order :** \_\_\_\_\_ **[days/weeks]**

**Notes to Pricing:**

- b) All Prices must be quoted in South African Rand, exclusive of VAT
- c) To facilitate like-for-like comparison bidders must submit pricing strictly in accordance with this price schedule and not utilise a different format. Deviation from this pricing schedule could result in a bid being disqualified.
- d) Please note that should you have offered a discounted price(s), Transnet will only consider such price discount(s) in the final evaluation stage if offered on an unconditional basis.

I/We quote as follows for the goods required, on a "delivered nominated destination" basis, excluding VAT:

I/We \_\_\_\_\_

hereby offer to supply the goods/services at the prices quoted in the Price Schedule above, in accordance with the conditions related thereto.

I/We agree to be bound by those terms and conditions in:

the Standard Terms and Conditions for the Supply of Goods and Services to Transnet [Section 3 hereof]; and any other standard or special conditions mentioned and/or embodied in this Request for Quotation.

I/We accept that unless Transnet should otherwise decide and so inform me/us, 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.

I/We further agree that if, after I/we have been notified of the acceptance of my/our Quotation, I/we fail to deliver the said goods/service/s within the delivery lead-time quoted, Transnet may, without prejudice to any other legal remedy which it may have, cancel the order and recover from me/us any expenses incurred by Transnet in calling for Quotations afresh and/or having to accept any less favourable offer.

c) Prices quoted must be held valid for a period of 90 [ninety] days

Respondents are to indicate whether prices quoted would be subject to adjustment after a period of 4 months, and if so which proposed adjustment factor(s) would be utilised

**REQUEST FOR QUOTATION [RFQ]**

**FOR THE PROVISION OF STRESS MEASUREMENT ON RAILWAY TRACKS AND RELATED MAINTENANCE ACTIVITIES UNDER THE DEPOT ENGINEER, ISANDO**

**FOR A PERIOD OF FOUR MONTHS**

**Section 4****PROPOSAL FORM**

I/We \_\_\_\_\_

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

of *[full address]*

\_\_\_\_\_

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

represented by \_\_\_\_\_

in my capacity as \_\_\_\_\_

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

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

1. Standard Terms and Conditions of Contract [Form ST&C – Services];
2. General Bid Conditions – Services; and
3. any other standard or special conditions mentioned and/or embodied in this Request for Proposal.

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

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

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

I/We accept that any contract resulting from this offer will be for a period of 4 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 ourselves.

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

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

Name of Entity: \_\_\_\_\_

Facsimile: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

#### **NOTIFICATION OF AWARD OF RFP**

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

#### **VALIDITY PERIOD**

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

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

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

(i) Registration number of company / C.C. \_\_\_\_\_

(ii) Registered name of company / C.C. \_\_\_\_\_

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

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

**CONFIDENTIALITY**

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

**DISCLOSURE OF PRICES TENDERED**

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

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

**PRICE REVIEW**

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

**RETURNABLE DOCUMENTS AND SCHEDULES**

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

SECTION 1 : Notice to Bidders	√
ANNEXURE A : B-BBEE Preference Points Claim Form	√
SECTION 2 : Background, Overview and Scope of Requirements	√
SECTION 3 : Pricing & Delivery Schedule	√
SECTION 4 : Proposal Form	√
SECTION 5 : Vendor Application Form	

- Original cancelled cheque or bank verification of banking details	
- Certified copies of IDs of shareholder/directors/members [as applicable]	√
- Certified copy of Certificate of Incorporation [CM29/CM9 name change]	√
- Certified copy of share certificates [CK1/CK2 if CC]	
- Entity's letterhead	
- Original Tax Clearance Certificate	√
- Certified copy of VAT Registration Certificate	√
- Certified copy of Company Registration Certificate	√
- Valid B-BBEE Accreditation Certificate [Large Enterprises and QSEs]	√
- Annual financials signed off by an accounting officer [EMEs]	√
- Audited Financials for previous 3 years - Large Enterprises and QSEs	√
SECTION 6 : Signing Power - Resolution of Board of Directors	√
SECTION 7 : Certificate of Acquaintance with RFP Documents	√
SECTION 8 : General Bid Conditions – Services	√
SECTION 9 : Standard Terms and Conditions of Contract	√
SECTION 10 : RFP Declaration Form	√
SECTION 11 : Breach of Law	√
SECTION 12 : Bid Clarification Request Form	√
SECTION 13 : Supplier Code of Conduct	√
SECTION ..... : Certificate of attendance of RFP Briefing	√
SECTION ..... : Specifications	√
SECTION ..... : Non-Disclosure Agreement	√

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

#### **CONTINUED VALIDITY OF RETURNABLE DOCUMENTS**

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



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

SIGNED at \_\_\_\_\_ on this \_\_\_\_ day of \_\_\_\_\_ 2012

SIGNATURE OF WITNESSES

ADDRESS OF WITNESSES

1 \_\_\_\_\_  
Name \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2 \_\_\_\_\_  
Name \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

SIGNATURE OF RESPONDENT'S AUTHORISED REPRESENTATIVE:

\_\_\_\_\_

NAME: \_\_\_\_\_

DESIGNATION: \_\_\_\_\_

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**RFQ CRAC-EFQ 10597**  
**FOR THE PROVISION OF STRESS MEASUREMENT ON RAILWAY TRACKS AND RELATED MAINTENANCE ACTIVITIES UNDER THE DEPOT ENGINEER, ISANDO**  
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**Section 5**

**VENDOR APPLICATION FORM**

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

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

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

**Vendor Application Form**

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

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

*Complete B-BBEE Ownership Details:*

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

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

Transnet contact person	
Contact number	
Transnet Operating Division	

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

Name		Designation	
Signature		Date	

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**Section 6**

**SIGNING POWER – RESOLUTION OF BOARD OF DIRECTORS**

NAME OF ENTITY: \_\_\_\_\_

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

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

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

FULL NAME \_\_\_\_\_

\_\_\_\_\_  
SIGNATURE CHAIRMAN

FULL NAME \_\_\_\_\_

\_\_\_\_\_  
SIGNATURE SECRETARY



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**Section 7**

**CERTIFICATE OF ACQUAINTANCE WITH RFP DOCUMENTS**

NAME OF ENTITY:

\_\_\_\_\_

I/We

\_\_\_\_\_ do

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

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

SIGNED at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_ 2012

\_\_\_\_\_  
SIGNATURE OF WITNESS

\_\_\_\_\_  
SIGNATURE OF RESPONDENT



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**Section 8**

**GENERAL BID CONDITIONS - SERVICES**

**Refer General Bid Conditions appended hereto**

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### **Section 9**

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

**Refer Form ST&C appended hereto.**

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

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





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**Section 10**

**RFP DECLARATION FORM**

NAME OF ENTITY: \_\_\_\_\_

We \_\_\_\_\_ do hereby certify that:

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

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

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

ADDRESS:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Indicate nature of relationship with Transnet:

\_\_\_\_\_

\_\_\_\_\_



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

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

SIGNED at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_ 2012

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

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**IMPORTANT NOTICE TO RESPONDENTS**

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

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**Section 11**

**BREACH OF LAW**

NAME OF ENTITY: \_\_\_\_\_

I/We \_\_\_\_\_

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

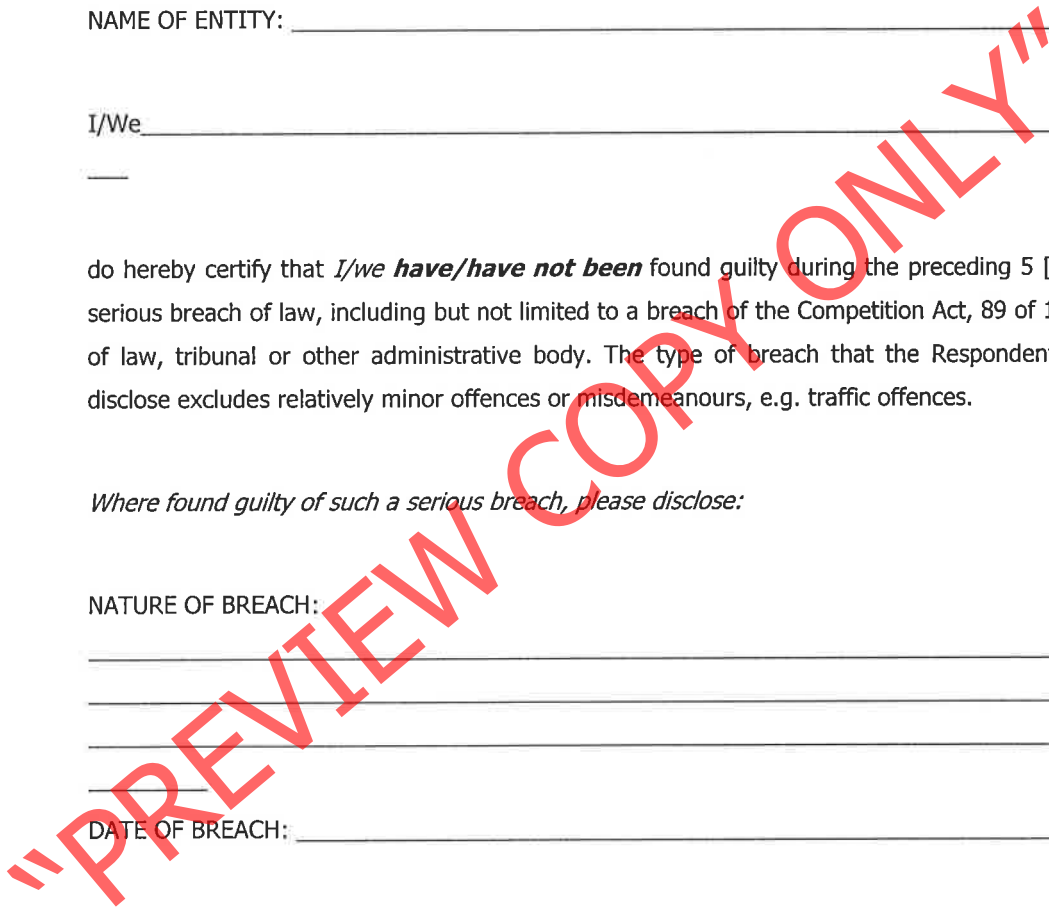
*Where found guilty of such a serious breach, please disclose:*

NATURE OF BREACH:  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

DATE OF BREACH: \_\_\_\_\_

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

SIGNED at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_





\_\_\_\_\_  
\_\_\_\_\_

SIGNATURE OF WITNESS  
RESPONDENT

SIGNATURE OF

**"PREVIEW COPY ONLY"**





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**Section 13**

**SUPPLIER CODE OF CONDUCT**

Transnet aims to achieve the best value for money when buying or selling goods and/or 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:

- The Transnet Procurement Procedures Manual [**PPM**];
- 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 [**B-BBEE**]; and
- The Prevention and Combating of Corrupt Activities Act.

This Code of Conduct has been included in this RFP to formally apprise prospective 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 Company [SOC], 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.

1. *Transnet will not participate in corrupt practices and therefore 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, to:
    - illegally influence their judgement or conduct or to ensure the desired outcome of a sourcing activity;
    - win or retain business or to influence any act or decision of any decision stakeholders involved in sourcing decisions; or
    - 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" Hot line to report these acts [0800 003 056].
2. *Transnet is firmly committed to the ideas of free and competitive enterprise.*
- Suppliers are expected to comply with all applicable laws and regulations regarding fair competition and antitrust.
  - Transnet does not engage with non-value adding agents or representatives solely for the purpose of increasing B-BBEE spend [fronting].
3. *Transnet's relationship with Suppliers requires us to clearly define requirements, 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. These include, but are not limited to:
    - misrepresentation of their product [e.g. origin of manufacture, specifications, intellectual property rights];
    - collusion;
    - failure to disclose accurate information required during the sourcing activity [e.g. ownership, financial situation, B-BBEE status];
    - 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 is 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.

#### **Conflicts 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.

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



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FOR A PERIOD OF FOUR MONTHS

Section 14

CERTIFICATE OF ATTENDANCE AT THE RFP BRIEFING

It is hereby certified that –

1. \_\_\_\_\_

2. \_\_\_\_\_

Representative(s) of \_\_\_\_\_ [name of entity]

attended the site meeting / RFP briefing in respect of the proposed Services to be supplied in terms of this RFP on \_\_\_\_\_ 2012

\_\_\_\_\_  
TRANSNET'S REPRESENTATIVE

\_\_\_\_\_  
RESPONDENT'S REPRESENTATIVE

DATE \_\_\_\_\_

DATE \_\_\_\_\_

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RFQ CRAC-EFQ 10597

FOR THE PROVISION OF STRESS MEASUREMENT ON RAILWAY TRACKS AND  
RELATED MAINTENANCE ACTIVITIES UNDER THE DEPOT ENGINEER, ISANDO

FOR A PERIOD OF FOUR MONTHS

Section 15

SPECIFICATIONS AND SCOPE OF WORK

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## STRESS MEASUREMENT

### 1.0 SCOPE

- 1.1.1 This contract covers the Rail stress measurement on railway track inclusive of all other associated work on lines owned and maintained by Transnet Freight Rail under jurisdiction of the Depot Engineer, Isando East. The contract area will include lines in Springs-Nigel, Springs-Ogics, Springs-Trichardt, Sentrand area, Sentrand-Sybrand, Sentrand- Kaalfontein, Sentrand-lud, Delmas-Hawerklip, the Contractor will be required to work on site at any place within the area specified.

### 2.0 SCOPE OF WORK

- 2.1 Rail stress measurements with a Stress Measurement Frame that is suitably and accurately calibrated inclusive of all work associated with the rail stress measurement.
- 2.2 Rail stress measurement should only be done when the rail is in tension mode, preferably at a temperature between 5°C and 20°C.
- 2.3 Loosen the rail over 20m length and lift the rail 70mm high, using the rail stress measurement frame.
- 2.4 Measure the lifting force required to lift the rail 70mm and determine the stress free rail temperature.
- 2.5 All supervision and labour, tools and equipment unless otherwise specified, required for carrying out the work.
- 2.6 Daily scheduling of all the machines, equipment and labour to suit the rail stress measurement activities.
- 2.7 Any work arising out of or incidental to the above or required of the Contractor for the proper completion of the contract in accordance with the true meaning and intent of the contract documents.



### 3.0 SPECIFIC REQUIREMENTS.

- 3.1.1 It is a specific condition of this contract that Rail Stress Measurement is done in line with a program of Rail Stress Measurement. The Contractor shall therefore have to move from one section to another and re-establish. Our sections are about  $\pm 500$ km so you must be prepared to work all around our section.
- 3.1.2 The Contractor shall clearly and comprehensively state in his tender what production rates are offered.
- 3.1.3 As per Clause 5.1 of the E5 (MW) (Nov 1996) the risk associated with normal weather (rain, high or low rail temperature) is with the contractor.
- 3.1.4 Occupations are not always granted on time as requested and approved. Occupation time is from 06:00-14H00 as requested and approved, due to train operational reasons, some delays occur, resulting in production work time shifting into the warmer part of the day. The risk of obtaining suitable rail temperature shall in such cases rest with the Contractor. The waiting time on site before occupations are granted shall not be considered a basis for a claim for Standing Time.

### 4.0 DEFINITIONS

- 4.1.1 or the purposes of this contract the definitions in terms of clause 1 of the General Conditions of Contract E.5 (M.W.) (November 1996) shall be amplified as follows: -
- 4.1.2 Project Manager: The person or juristic person appointed by Transnet from time to time as the Project Manager, to administer the contract.
- 4.1.3 Technical Officer (TO): Any person appointed by the Project Manager to deputies for him in supervising and carrying out the contract.
- 4.1.4 Normal Working Hours (NWH): A continuous shift of 8, 0 hours out of every 24 hours for 5 consecutive days out of every 7 days or for 10 consecutive days out of every 14 days. The Contractor will determine the starting times in consultation with the T.O. These times may vary to suit seasonal changes or train timetables.
- 4.1.5 Working time: The time between the actual start and end times of an occupation.
- 4.1.6 Overtime:
- 4.1.6.1 Shifts worked in excess of Normal Working Hours (clause 5.3)
- 4.1.6.2 Normal Shift Working (not exceeding Normal Working Hours):
- 4.1.6.3 Shifts (8.0 hours) worked on Saturdays up to Normal Working Hours (clause 5.4)
- 4.1.6.4 Shifts (8.0 hours) worked on Sundays up to Normal Working Hours (clause 5.3)
- 4.1.6.5 Shifts (8.0 hours) worked on Public Paid Holidays up to Normal Working Hour (clause 5.3)



- 4.1.7 Machinery: The machinery provided by the Contractor for executing the Work, complete with all fittings, accessories and ancillary equipment including trailers, caravans and spare parts, as may be required to comply with the Contract requirements. test edition of specification/standards: All specifications referred to in the contract documents, but not bound therein, shall be the latest edition or revision, which was published up to 3 months prior to the closing date of tenders.

## 5.0 COMMENCEMENT AND DURATION OF CONTRACT

- 5.1.1 Starting date.
- 5.1.2 The Contractor shall start work on 03 June 2013 or as soon as possible afterwards. The Contractor must state in his tender what the earliest possible commencement date will be.
- 5.1.3 Duration of contract  
The contract will commence and continue for a period of four months.
- 5.1.4 Schedule and program of work.  
The Contractor shall commence work according to a work schedule that will be provided by the T.O after award of the contract and no deviations from the program allowed unless authorized by the T.O. There will be provisional and may change as required by the T.O.

## 6 PENALTIES

- 6.1.1 If the contractor fails to complete the work by the agreed date of completion, a penalty of R 2000 per day will be paid for each day worked past the contract duration.
- 6.1.2 Production rate is a minimum of 15 tests a day.
- 6.1.2.1.1 If the contractor fails to reach the daily targets as stipulated under Production rate without any substantial reasons. (In house disputes within the Contractor and his/her employees are not considered reasons enough), a penalty of R 1 000 per day will be paid by the contractor
- 6.1.2.1.2 If the Contractor continue not to meet the minimum production rate, Transnet reserves the right to either reduce payments on a proportional rate basis by 10% on all production related rates in accordance with the actual production rate or terminate the contract with immediate effect.



**6.2 Order of Work**

The order of operations is left to the Contractor with the provision that: -

- 6.2.1 Transnet Freight Rail will supply all the material that may be required.
- 6.2.2 Any Perway material off-loaded in the section before, or left in the section after any shift shall be adequately secured to prevent unauthorized persons tampering with the material.

**6.3 Preparation of track for Stress measurement**

- 6.3.1 The Contractor shall provide all resources and labour to do all preparations on the track on which work is required.
- 6.3.2 After doing the test the contractor must do all the preparations for the following day

**7.1 Safety**


- 7.2 The Contractor shall comply with requirements of safety legislation and regulations in all respects.
- 7.3 Security for all of the Contractor's staff, vehicles, Machinery, equipment and materials shall remain the responsibility of the Contractor. Transnet Freight Rail in this regard shall entertain no claim whatsoever.
- 7.3.1 The Contractor shall prepare and submit safety plan with the tender document to Transnet Freight Rail with Certificates:-
  - Letter of Good Standing
  - Track master certificate
  - Trained First aider certificates
  - Reference/Previous performance record (Experience in the same/similar/ or any project)

**N.B after the tender is awarded to the contractor; the contractor will be required to submit a detailed safety file before signing the contract (minimum of two weeks).**

<i>Front page with emergency numbers according to Risk</i>
Eg. PM's ,TFRCR, Depot Manager, Medical, Fire, CTC, SAP, Security, Env. Specialist etc.
<b>SHEQ PLAN</b>
Completed Risk Assessment (identification & evaluation)?
Documented plan of safe work procedures to mitigate, reduce or control risks?





eg Fall protection plan - (where applicable)	
A comprehensive monitoring plan (all audits)?	
A completed review plan of the H&S plan?	
<b>WSWP AND JOB OBSERVATIONS</b>	
Are there specific safe working procedures for all safety critical tasks?	
All scheduled Job observation reports completed? (eg for new staff etc)	
All Job observation reports completed on all safety critical tasks?	
<b>APPOINTMENTS</b>	
Annexure 2 of the E4E (As a competent person) completed?	
Trained and certified first aider on site? (GSR 3) (where required)	
SHE Rep's appointed in writing?	
Documented Health and Safety organigram (including sub-contractors where applicable)	
Others? (Specify -	
<b>CERTIFICATES</b>	
Site access certificate (Annexure 4 of E4E)?	
Machine operators?	
Lifting equipment and operators?	
Test certificates (where applicable) eg. Brake test, Gases in tunnels etc.	
Hazardous waste removal / disposal certificate (where applicable)	
Copies of medical surveillance records:(where applicable)	
- Fitness certificates "e.g. working at heights .	
Copies of hazardous waste removal/storage certificates?	
Gas Welding certification?	
<b>IOD's AND INCIDENT REPORTS</b>	
All Injury on Duties reported?	
All Incidents reported?	
All Investigations completed and meaningful recommendations made?	
All Corrective Actions completed within specified time frames?	
<b>AUDITS AND INSPECTIONS</b>	
Behavioural audit reports completed?	
Reports of various safety Audits? (eg PPE compliance etc)	
Record of site inspections?	
Applicable Checklist completed e.g. ladders, scaffolding, etc	
Documented emergency procedures and emergency equipment list? (where applicable)	
Reports on condition of plant /equipment (in site diary)	
Report on the use of Approved technical plans where necessary (eg wiring diagrams etc)?	
<b>MINUTES OF MEETINGS</b>	
Completed agenda and minutes of Site safety meetings	
Records of Daily Safety Talks (includes signed attendance register)	

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<b>TRAINING</b>
Induction training registers?
Copies of Certificates of other training (Eg. Flagmen, technical training etc.)?
<b>GENERAL</b>
Copy of Letter of good standing (WCC)?
Notice of construction work to Dept. of Labour (where applicable)?
Notices served by Dept. of Labour?
Section 37(2) (OHS Act) agreements. (Written defined responsibilities by mandataries)?
Declaration assuming duties of the CEO (Annexure 3 B4E)?

- 7.4 The method of work shall be such that at all times it shall comply with Transnet Specification.
- 7.5 Normal protection measures in accordance with the Transnet Protection Manual shall apply.
- 7.6 All protection arrangements shall at all times remain under the supervision and responsibility of a Transnet Freight Rail track master or track inspector.
- 7.7 The Contractor shall supply his own flagmen for the protection process.
- 7.8 The Contractor shall appoint a person at every work site whose sole task shall be to be on the lookout for approaching rail traffic. This employee shall operate an audible warning device to timeously warn all people on the work site of approaching rail traffic. See clause 9.10 for Safety Procedure.
- 7.9 The Contractor shall not allow any persons on the work site to venture within the structure gauge of any adjacent line when this warning procedure is not operating effectively.
- 7.10 An effective safety procedure to be followed by all personnel on any work site in the case of approaching rail traffic shall be compiled by the Contractor and implemented before any work commences. This procedure shall be updated whenever the need arises and any changes shall be communicated to all employees on a work site before work proceeds.
- 7.11 No separate payment shall be made for this and the costs hereof will be deemed to be included in the rates tendered.

## 8.0 TRAINING

### General:-

- The Contractor shall ensure that all staff working on or with the contract are adequately trained, so as to comply with any relevant safety and quality requirements.
- It is the Contractor's responsibility to ensure that his staff is trained. At the commencement of the contract, Transnet shall assist the contractor with the initial on-the-job training for the staff as specified below, so as to assist the Contractor to qualify the worker's / staff



## 9.0 TRAINING OF FLAGMEN:

- 9.0.1 Flagmen used, may be either Transnet employees or employees of the Contractor.
- 9.0.2 Where flagmen are required to be provided by the contractor, the appropriate training for the flagmen can be provided by Transnet at the start of the contract.
- 9.0.3 Where Transnet requires flagmen to be trained, the pre-requisites for such persons to qualify for training shall be basic literacy skills and Basic English language ability.
- 9.0.4 *Flagmen* must be officially trained, evaluated and certified competent, (Spoornet 407 – Item Number 37/270451 - "Certificate of Competency") by a designated competent person, before being used on protection duties. This certificate of competency shall remain valid for two (2) years only after, which re-testing and re-certification of competency will be required.
- 9.0.5 In cases where a person was not performing flagmen duties for a period of 6 months or longer, he must be re-tested and again be re-certified competent, before he may be re-used for Protection Duties.
- 9.0.6 The Transnet Freight Rail Depot Engineer remains ultimately responsible in terms of the requirements of Act 85 for the safe working environment of his own personnel as well as contractor's personnel within the track maintenance environment on his depot.
- 9.0.7 The Project Manager is therefore also responsible for ensuring that any changes in the Protection Procedures that may occur over time are effectively communicated to any flagmen prior to them being used for Protection Duties

## 10.0 FINANCIAL

### 10.1 Value Added Tax.

- 10.1.1 The tendered rates in the schedule of quantities and prices must exclude VAT. VAT will be calculated and added to the total of the monthly payment.



## 10.2 Site Establishment.

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10.2.1 Only one (1) payment shall be made for the establishment of site. Any re-establishment within the depot area will not be paid for. No other payments will be made for Preliminary, General and Site Establishment.

## 10.3 Schedule of Quantities and Prices.

10.3.1 The quantities in the Schedule of Quantities and Prices are estimated and may be more or less than stated.

### 10.2 camp office, site conditions and requirements

Access to Work site, office, workshops and camps:-

- The Contractor may make use of existing roads to gain access to site.
- Transnet Freight Rail will entertain no claims from the Contractor for production delays work done or expenditure incurred in gaining access to the work sites, offices, workshops or campsites.

### 10.3 Site books

The Contractor shall record all site activities on a triplicate book, which has the company name and logo and shall indicate all the site activities for each day. In addition to clause 13.3 of the B.5 (M.W.) (November 1996) the Contractor shall record in the site diary: -

- Planned Occupation times and Actual Working times - including all time lost attributable to Transnet Freight Rail
- Details of plant, machinery and labour on site shall be recorded signed by the Contractor's representative and countersigned by the Transnet Freight Rail representative on a daily based. Insofar as machinery is concerned this shall include model, type, number. Insofar as labour is concerned it shall include grade and number.
- A Site Instruction book(Triplicate book) must be available on site at all times for the use of the T.O. and the Contractor

### 10.4 Site meetings

10.4.1 The Contractor shall attend meetings at dates and times convened by the T.O.

10.4.2 (Normally once a week). Such meetings shall be for the purpose of discussing actual progress versus initial programme, delays, materials, conditions and specifications, etc. The meeting will be held under the chairmanship of the T.O. and the proceedings



will be minuted on the site instruction book.



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#### **10.5 Danger of Contact with Electrical Conductors**

- 10.5.1 The majority of the work will take place under or adjacent to electrified lines. Campsites, offices and workshops facilities within the railway reserve will generally be in close proximity of live electrical equipment.
- 10.5.2 The Contractor's attention is therefore drawn to the instructions laid down in the specification for Works on, over, under or adjacent to Railway lines and near high voltage equipment - E7/1 (July 1998).
- 10.5.3 The Contractor shall, before commencing with any work, ascertain from the appointed Electrical Officer (Contracts) for the particular work area whether overhead or other electrical equipment are affected by the works and he shall ensure that all precautionary measures laid down in the E7/1 (July 1998), and by the Electrical Officer (Contracts) are strictly observed.

#### **10.6 Services**

- 10.6.1 The Contractor shall inspect each worksite in advance of the day of the occupation for the presence of services that might interfere with the operation. In the event of the Contractor encountering any services that could affect the works, he shall notify the T.O. immediately and make arrangements for the removal thereof as specified in clause 5 of the E.S (M.W.) (November 1996).

#### **10.7 Occupations**

- 10.7.1.1 The T.O. will realistically arrange in between trains occupations. These will guarantee a minimum 6 hours of time available on track.
- 10.7.1.2 The Contractor shall however allow that: -
- 10.7.1.3 Any adjacent track will run normal train services at normal section speed. The Contractor will be required to apply his Safety Procedure in order to safeguard his employees against the danger of normal rail traffic passing close by on the adjacent line.

#### **11.0 TO BE SUPPLIED BY THE CONTRACTOR**

- 11.1 Except where otherwise specified, the Contractor shall at his own cost provide all labour, transport, consumable stores, fist fastening tools, other tools and equipment, services, materials and ingredients of every description required for the carrying out and completion of his contractual obligations and to the satisfaction of the T.O.



#### 11.2 Safety Procedures.

- 11.2.1 Complete Safety procedures as per clause 7.1.



#### 11.3 Flagmen.

- 11.3.1 A minimum of 3 Flagmen for the protection of the work site.

#### 11.4 Machine and Labour schedules.

- 11.4.1 The Contractor in his tender shall supply accurate and comprehensive details of all staff and Machinery, which will be available on site for Stress measurement operation.

### 12.0 TO BE SUPPLIED BY TRANSNET FREIGHT RAIL

12.1 Transnet Freight Rail will supply all permanent way materials i.e. Pads and fastenings for the execution of the works. It will be available at Sentrarrand and Delmas materials store.

12.2 Transnet will have an Electrical officer available for any electrical related issues.

### 13.0 RAIN AND ADVERSE WEATHER CONDITIONS

13.1 The Contractor shall allow in his tender that weather conditions may adversely affect his rate of progress and plan his progress as well as plant and labour capacity accordingly.

13.2 The risk for loss in production due to normal weather prevailing for the area shall be on the Contractor. In the event of abnormal weather conditions prevailing, the onus for proof shall be on the Contractor and Transnet Freight Rail shall consider a claim upon written proof submitted by the Contractor.

### 14 SUPPORTING DOCUMENTS

14.0 The following specifications and documents shall, inter-alia, form part of this Specification:

- 14.0.1 General Conditions of Contract E5 (MW) (November 1996)  
14.0.2 Spoornet's Manual for Track Maintenance (2012)  
14.0.3 Specification for works on, over, under or adjacent to railway lines and near high voltage equipment E7/1 (July 1998)



## 15 PRECEDENCE OF CONTRACT DOCUMENTS



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15.0 In the event of any discrepancy or inconsistency between contract documents, the order of precedence shall be.

- 15.0.1 Contractor's letter accompanying his tender and subsequent correspondence.
- 15.0.2 Project specification together with particular drawings.
- 15.0.3 E.5 (M.W.) (November 1996) General Conditions of Contract for Maintenance of Assets.

## 16 MEASUREMENT AND PAYMENT

16.0 ITEM 1: A Site Establishment will be paid only once the contractor establishes his operation in a new yard.

- 16.0.1 Site Establishment shall not be paid for unless pre-approved by the T.O.
- 16.0.2 This Site Establishment payment shall be independent of whether the Contractor uses the free on-rail facility or moved his operation by road.
- 16.0.3 No separate payment shall be made if the Contractor chooses to move his operation by road instead of by rail.
- 16.0.4 This payment shall be an all-inclusive payment for all costs incurred by the Contractor associated with the establishment of his operation in the depot area.

### 16.1 ITEM 2: RAIL STRESS MEASUREMENT OF TRACK

- 16.1.1 Payment shall be made for Rail Stress Measurement for each rail measured with the Stress Frame.

### 16.2 ITEM 4 STANDING TIME

- 16.3.1 Payment per hour for standing time will be made when the Contractor was required to be available for work and the occupations are cancelled at short notice and his availability turns out to be fruitless.
- 16.3.2 Standing time will apply if cancellation of an occupation happens on the same day as what the occupation was supposed to take place.
- 16.3.4 If notice of cancellation of an occupation is given to the Contractor at least before the end of the shift preceding the occupation-day or before 12H00 on the day preceding the occupation day then Standing time will not apply.
- 16.3.5 Occupations completed before the end of an announced occupation shall not be a basis for any claim for standing time.
- 16.3.6 Payment shall be per hour and shall be inclusive for the whole of the relaying operation.



### 16.3 ITEM 5 OVERTIME



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- 6.4.1 Overtime will be paid per hour for approved occupation time worked in accordance with clause 2.9.
- 6.4.2 Overtime shall only be worked in exceptional cases.
- 6.4.3 Overtime shall not be paid unless the Technical Officer prior to the Overtime being worked has given written approval after consultation with the Project Manager.
- 16.4.4 The rates for Overtime shall be inclusive for the relaying operation as a whole.

### 16.5.1 ITEM 5.4 NIGHT SHIFT ALLOWANCE

1. Normal Shift Allowance (not exceeding Normal Working Hours)
2. Normal Shift Allowance (not exceeding Normal Working Hours) will be paid for one shift of 8.0-hours worked in accordance with Normal Shift Working. See clause 2.10.
3. If this Normal Shift Rate (not exceeding Normal Working Hours) is paid on a particular day none of the occupation time up to 8.0 hours for that shift will qualify for Overtime payment.
4. If the total occupation time on any particular day exceeds the 8.0-hour shift then Overtime will apply at the respective rates. See clause 2.9.
5. The rates for Normal Shift Working (not exceeding Normal Working Hours) shall be inclusive for the relaying operation as a whole.

### 16.6. ITEM DAY LABOUR

1. Payment shall be made for work in accordance with Day labour rates for other work, which is not included in the rates tendered.
2. The actual time worked by Flagmen on Protection duties shall be paid for against the relevant rate as Day Labour.
3. The other Day Labour rates shall be used only in exceptional cases.
4. Payment for work in accordance with Day labour rates shall not be made unless prior written agreement with the Technical Officer and after consultation with the Project Manager.
5. Day Labour rates shall be all inclusive except for transport, which shall be paid separately.





**17. SCHEDULE OF QUANTITIES FOR RAIL STRESS MEASUREMENT (2013-2014)**  
(All quantities are approximate)

ITEM	DESCRIPTION	UNIT	QTY	RATE	TOTAL
1.0	Site Establishment	Sum	1		
2.0	Stress Measurements ( both legs = 1 Set )	Set	750		
3.0	Boxing in and out of ballast ( Pandrol sleepers)	Per 20m	200		
4.0	Boxing in and out of ballast ( Fist sleepers)	Per 20m	550		
4.0	Standing Time				
5.0	Overtime				
5.1	Overtime Weekdays-Normal Overtime	Operation Hour/Month			
5.2	Overtime Saturdays-Saturday time	Operation Hour/Month			
5.3	Overtime Sundays and Public Holidays-Sunday time	Operation Hour/Month			
5.4	Night shift allowance	Operation Hour/Month			
6.0	Day Labour				
6.1	Driver	Man Hour	1		
6.2	Infra-workers	Man Hour	20		
6.3	Track inspector	Man Hour	1		
6.4	Flagman	Man Hour	2		
		<b>SUB TOTAL</b>			
		<b>VAT</b>	<b>14%</b>		
		<b>TOTAL</b>			



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**FOR A PERIOD OF FOUR MONTHS**

**Section 16**

**NON-DISCLOSURE AGREEMENT [NDA]**

**NON-DISCLOSURE AGREEMENT**

entered into by and between

**TRANSNET SOC LTD**

Registration Number 1990/000900/30

and

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

**RFQ NUMBER CRAC- EFQ 10597**

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**THIS AGREEMENT is made between**

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

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

**and**

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

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

\_\_\_\_\_

**WHEREAS**

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

**IT IS HEREBY AGREED**

• **INTERPRETATION**

In this Agreement:

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

- 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
  - 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
  - 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; and
- **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.
- **CONFIDENTIAL INFORMATION**
  - All Confidential Information given by one party to this Agreement (the **Disclosing Party**) to the other party (the **Receiving Party**) will be treated by the Receiving Party as secret and confidential and will not, without the Disclosing Party's written consent, directly or indirectly communicate or disclose (whether in writing or orally or in any other manner) Confidential Information to any other person other than in accordance with the terms of this Agreement.
  - The Receiving Party will only use the Confidential Information for the sole purpose of technical and commercial discussions between the parties in relation to the Bid or for the subsequent performance of any contract between the parties in relation to the Bid.
  - Notwithstanding clause •o above, the Receiving Party may disclose Confidential Information:
    - to those of its Agents who strictly need to know the Confidential Information for the sole purpose set out in clause •o above, provided that the Receiving Party shall ensure that such Agents are made aware prior to the disclosure of any part of the Confidential Information that the same is confidential and that they owe a duty of confidence to the Disclosing Party. The Receiving Party shall at all times remain liable for any actions of such Agents that would constitute a breach of this Agreement; or
    - to the extent required by law or the rules of any applicable regulatory authority, subject to clause •o below.

- In the event that the Receiving Party is required to disclose any Confidential Information in accordance with clause -o- above, it shall promptly notify the Disclosing Party and cooperate with the Disclosing Party regarding the form, nature, content and purpose of such disclosure
- or any action which the Disclosing Party may reasonably take to challenge the validity of such requirement.
- 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.
- All Confidential Information shall remain the property of the Disclosing Party and its disclosure shall not confer on the Receiving Party any rights, including intellectual property rights over the Confidential Information whatsoever, beyond those contained in this Agreement.
- **RECORDS AND RETURN OF INFORMATION**
  - The Receiving Party agrees to ensure proper and secure storage of all Information and any copies thereof.
  - 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.
  - The Company shall, within 7 (seven) days of receipt of a written demand from Transnet:
    - return all written Confidential Information (including all copies); and
    - expunge or destroy any Confidential Information from any computer, word processor or other device whatsoever into which it was copied, read or programmed by the Company or on its behalf.
  - The Company shall on request supply a certificate signed by a director as to its full compliance with the requirements of clause -o- above.
- **ANNOUNCEMENTS**
  - Neither party will make or permit to be made any announcement or disclosure of its prospective interest in the Bid without the prior written consent of the other party.
  - 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.

• **DURATION**

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

• **PRINCIPAL**

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

• **ADEQUACY OF DAMAGES**

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

• **PRIVACY AND DATA PROTECTION**

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

• **GENERAL**

- 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.
- 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.
- 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.

- o This Agreement may only be modified by a written agreement duly signed by persons authorised on behalf of each party.
- o Nothing in this Agreement shall constitute the creation of a partnership, joint venture or agency between the parties.
- o This Agreement will be governed by and construed in accordance with South African law and the parties irrevocably submit to the exclusive jurisdiction of the South African courts.

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**GENERAL BID CONDITIONS - SERVICES**

**[March 2012]**

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## 1 DEFINITIONS

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

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

## 2 GENERAL

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

## 3 LODGING OF BID DOCUMENTS

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

## 4 USE OF BID FORMS

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

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

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

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

## 6 DEFAULTS BY RESPONDENTS

- 6.1 If the Respondent, after it has been notified of the acceptance of its Bid fails to:
- enter into a formal contract when called upon to do so in terms of clause 14 [*Contract Documents*], within such period as Transnet may specify; or
  - accept an order in terms of the Bid; or
  - when called upon to do so, furnish satisfactory security of the fulfilment of the contract in terms of clause 15 [*Securities*],

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

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

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

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

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

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

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

## **7 CURRENCY**

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

## **8 EXCHANGE AND REMITTANCE**

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

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

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

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

## **9 ACCEPTANCE OF BID**

9.1 Transnet does not bind itself to accept the lowest or any Bid.

- 9.2 Transnet reserves the right to accept any Bid in whole or in part.
- 9.3 Upon the acceptance of a Bid by Transnet, the parties shall be bound by these General Bid Conditions and the Standard Terms and Conditions of Contract [Form ST&C – Services] and any schedule of “Special Conditions” or otherwise which form part of the Bid Documents.
- 9.4 Where the Respondent has been informed by Transnet per facsimile message or email of the acceptance of its Bid, the acknowledgement of the receipt transmitted shall be regarded as proof of delivery to the Respondent.

## **10 LAW GOVERNING CONTRACT**

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

## **11 IDENTIFICATION**

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

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

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

## **13 UNAUTHORISED COMMUNICATION ABOUT BIDS**

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

## **14 CONTRACT DOCUMENTS**

- 14.1 The contract documents will comprise these General Bid Conditions and the Standard Terms and Conditions of Contract [Form ST&C – Services] and any schedule of “Special Conditions” or otherwise which form part of the Bid Documents.

- 14.2 These contract documents will constitute the contract between the parties upon receipt by the Respondent of Transnet's letter of acceptance / intent, subject to all additional amendments and/or special conditions thereto as agreed to by the parties.

## **15 SECURITIES**

- 15.1 The successful Respondent, when called upon to do so, shall provide security to the satisfaction of Transnet for the due fulfilment of a contract or order. Such security shall be in the form of a deed of suretyship [**Deed of Suretyship**] furnished by an approved bank, building society, insurance or guarantee corporation carrying on business in South Africa.
- 15.2 The security may be applied in whole or part at the discretion of Transnet to make good any loss or damage which Transnet may incur in consequence of a breach of the contract or any part thereof.
- 15.3 Such security, if required, shall be an amount which will be stipulated in the Bid Documents.
- 15.4 For the purpose of clause 15.1 above, Transnet will supply a Deed of Suretyship form to the successful Respondent for completion and no guarantee in any other form will be accepted. A copy of such form will be supplied to Respondents on request. For this purpose a Deed of Suretyship form will be provided which shall be completed and returned to Transnet or a designated official by the successful Respondent within 30 [thirty] days from the date of the letter of acceptance. No payment will be made until the form, duly completed, is delivered to Transnet. Failure to return the Deed of Suretyship within the prescribed time shall, save where prior extension has been granted, entitle Transnet without notice to the Service Provider to cancel the contract with immediate effect.
- 15.5 Additional costs incurred by Transnet necessitated by reason of default on the part of the Service Provider in relation to the conditions of this clause 15 will be for the account of the Service Provider.

## **16 PRICES SUBJECT TO CONFIRMATION**

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

## **17 DELETION OF SERVICES EXCLUDED FROM BID**

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

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

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



## 19 VALUE-ADDED TAX

- 19.1 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 VAT which must be shown separately at the standard rate on the Service Provider's Tax Invoice.
- 19.2 In respect of Services to be provided by a foreign principal:
- a) the invoicing by the Service Provider on behalf of its foreign principal represents a service rendered by the principal;
  - b) the Service Provider's Tax Invoice(s) for the local portion only [i.e. the "commission" for the services rendered locally] must show the VAT separately

## 20 TERMS AND CONDITIONS OF BID

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

## 21 IMPORTANT NOTICE TO RESPONDENTS REGARDING PAYMENT

### 21.1 Method of Payment

- a) The attention of the Respondent is directed to clause 10 [*Invoices and Payment*] of Form ST&C – Services, which sets out the conditions of payment on which Bid price(s) shall be based.
- b) However, in addition to the foregoing the Respondent is invited to submit offers based on alternative methods of payment and/or financing proposals.
- c) The Respondent is required to give full particulars of the terms that will be applicable to its alternative offer(s) and the financial merits thereof will be evaluated and taken into consideration when the Bid is adjudicated.
- d) The Respondent must, therefore, in the first instance, tender strictly in accordance with clause 21.1a) above. Failure to comply with clause 21.1a) above may preclude a Bid from further consideration.

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

### 21.2 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 Service Provider's month-end statement reflecting the relevant Tax Invoice(s) for payment purposes, provided the conditions of the order or contract have been fulfilled and the Tax

Invoice is correct in all respects as referred to in the contract or order. Incomplete and/or incorrect Tax Invoices shall be returned and the conditional period will be recalculated from the date of receipt of the correct documentation.

## **22 PLANS, DRAWINGS, DIAGRAMS, SPECIFICATIONS AND DOCUMENT**

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

## **23 VISITS TO FOREIGN COUNTRIES**

23.1 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 preferred Respondent or its subcontractors overseas for the purpose of a product demonstration and/or final acceptance or for any other reason.

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

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

23.3 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.

23.4 Before a visit is undertaken, such as envisaged in this clause 23, Transnet and the Respondent will agree in writing on the number of employees of Transnet that should undertake the visit and the number of man-days involved in the visit.

## **24 BIDS BY OR ON BEHALF OF FOREIGN RESPONDENTS**

24.1 Bids submitted by foreign principals may be forwarded direct by the principals to the Secretary of the Acquisition Council or to a designated official of Transnet according to whichever officer is specified in the Bid Documents, or may be so forwarded on the principal's behalf by its South African representative or agent provided that written proof is submitted that such representative or agent has been duly authorised to act in that capacity by the principal. Failure to submit such authorisation by the representative or agent shall disqualify the Bid.

24.2 When legally authorised to prepare and submit Bids on behalf of their principals not domiciled in the Republic of South Africa, representatives or agents must compile the Bids in the names of such principals and sign them on behalf of the latter.

24.3 South African representatives or agents of a successful foreign Respondent must when so required enter into a formal contract in the name of their principals and must sign such contract on behalf of

the latter. In every such case a legal Power of Attorney from their principals must be furnished to Transnet by the South African representative or agents authorising them to enter into and sign such contract.

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

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

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

24.5 The attention of the Respondent is directed to clause 15 above [Securities] regarding the provision of security for the fulfilment of contracts and orders and the manner and form in which such security is to be furnished.

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

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

**"PREVIEW COPY ONLY"**

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## 1 INTRODUCTION

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

## 2 DEFINITIONS

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

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

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

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

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

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

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

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

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



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

### 3 INTERPRETATION

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

### 4 NATURE AND SCOPE

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

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

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

## **5 AUTHORITY OF PARTIES**

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

## **6 WARRANTIES**

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

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

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

## **7 TRANSNET'S OBLIGATIONS**

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

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

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

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

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

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

## 9 FEES AND EXPENSES

- 9.1 In consideration of the provision of the Services, Transnet will pay to the Service Provider the Fees detailed in the relevant schedule or Work Order.
- 9.2 Transnet will not be invoiced for materials used in the provision of the Services save for those materials [if any] set out in the Work Order and accepted by Transnet or in any relevant Work Order [which will be invoiced to Transnet at cost].

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

## 10 INVOICING AND PAYMENT

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

## 11 FEE ADJUSTMENTS

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

## 12 INTELLECTUAL PROPERTY RIGHTS

### 12.1 Title to Confidential Information

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

### 12.2 Title to Intellectual Property

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

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

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

**12.3 Title to Improvements**

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

**12.4 Unauthorised Use of Confidential Information**

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

**12.5 Unauthorised Use of Intellectual Property**

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



### **13 SERVICE PROVIDER'S PERSONNEL**

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

### **14 LIMITATION OF LIABILITY**

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

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

- 14.4 Subject to clause 14.1 above, and except as provided in clauses 14.2 and 14.3 above, in no event shall either Party be liable to the other for indirect or consequential loss or damage or including indirect or consequential loss of profits, business, revenue, goodwill or anticipated savings of an indirect nature or loss or damage incurred by the other Party as a result of third party claims.
- 14.5 If for any reason the exclusion of liability in clause 14.4 above is void or unenforceable, either Party's total liability for all loss or damage under the Agreement shall be as provided in clause 14.3 above.
- 14.6 Nothing in this clause 14 shall be taken as limiting the liability of the Service Provider in respect of clause 12 [*Intellectual Property Rights*] or clause 16 [*Confidentiality*].

## 15 INSURANCES

- 15.1 Without limiting the liability of the Service Provider under the Agreement, the Service Provider shall take out insurance in respect of all risks for which it is prudent for the Service Provider to insure against, including any liability it may have as a result of its activities under the Agreement for theft, destruction, death or injury to any person and damage to property. The level of insurance will be kept under review by Transnet, on an annual basis, to ensure its adequacy, provided that any variation to the level of such insurance shall be entirely at the discretion of the Service Provider.
- 15.2 The Service Provider shall arrange insurance with reputable insurers and will produce to Transnet evidence of the existence of the policies on an annual basis within 30 [thirty] days after date of policy renewals.

## 16 CONFIDENTIALITY

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

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

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

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

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

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

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

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

## 18 TERM AND TERMINATION

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

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

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

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

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

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

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

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

## 19 CONSEQUENCE OF TERMINATION

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

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

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

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

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

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

19.7 Should:

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

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

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

## 20 ASSIGNMENT

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

## 21 FORCE MAJEURE

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

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

## 22 EQUALITY AND DIVERSITY

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

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

**23 NON-WAIVER**

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

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

**24 PARTIAL INVALIDITY**

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

**25 DISPUTE RESOLUTION**

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

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

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

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

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

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

**26 ADDRESSES FOR NOTICES**

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

a) **Transnet**

(i) For legal notices: [•]

Fax No. [•]

Attention: Legal Department

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

**b) The Service Provider**

- (i) For legal notices: [●]  
Fax No. [●]  
Attention: [●]

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

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

26.3 Any notice shall be deemed to have been given:

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

**27 WHOLE AND ONLY AGREEMENT**

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

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

**28 AMENDMENT AND CHANGE CONTROL**

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

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



**29 GOVERNING LAW**

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

**29.1 Change of Law**

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

**30 COUNTERPARTS**

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

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"PREVIEW COPY ONLY"