



TRANSNET FREIGHT RAIL, a division of

TRANSNET SOC LTD

Registration Number 1990/000900/30

[hereinafter referred to as **Transnet**]

REQUEST FOR QUOTATION [RFQ] No CRAC JHB 10 898

SUPPLY, INSTALLATION AND COMMISSIONING OF HEAT PUMP UNITS AND ELECTRICAL WORKS ON DAY TO DAY BASES IN CENTRAL REGION FOR A PERIOD OF 24 MONTHS (2 YEARS).

TENDER DOC. COLLECTION:

**TENDER ADVICE CENTRE
INYANDA HOUSE 1
21 WELLINGTON RD
PARKTOWN**

TENDER PRICE:

R 250.00

TFR ACCOUNT:

STD BANK 203158598

BRANCH CODE:

004805

RFQ NUMBER

CRAC JHB 10 898

ISSUE DATE:

25 JUNE 2013

BRIEFING DATE:

11 JULY 2013

CLOSING DATE:

16 JULY 2013

TENDER CLOSING TIME:

10:00 A.M

BID VALIDITY PERIOD: 90 DAYS FROM CLOSING DATE: 30 SEPTEMBER 2013

Briefing venue:

**at Inyanda House 2, 15 Girton Rd
Parktown, Ground Floor
Barongwa Board**

Time:

10:00 to 11:30 am

NB: tenderers are requested to bring tender document/s on the day of briefing session.

Section 1
NOTICE TO BIDDERS

Quotations which must be completed as indicated in Section 2 of this RFQ are to be submitted as follows:

METHOD:	HAND DELIVERY
CLOSING VENUE:	The Secretary Acquisition Council Transnet Freight Rail Ground Floor Inyanda House 1 Park Town

1 Responses to RFQ

Responses to this RFQ [**Quotations**] must not include documents or reference relating to any other quotation or proposal. Any additional conditions must be embodied in an accompanying letter.

2 Broad-Based Black Economic Empowerment [B-BBEE]

Transnet fully endorses and supports the Government's Broad-Based Black Economic Empowerment Programme and it would therefore prefer to do business with local business enterprises who share these same values. Transnet will accordingly allow a "preference" to companies who provide a valid B-BBEE Verification Certificate. All procurement transactions will be evaluated accordingly.

2.1 B-BBEE Scorecard and Rating

As prescribed in terms of the Preferential Procurement Policy Framework Act (PPPFA), Act 5 of 2000 and its Regulations, Respondents are to note the following:

- Proposals will be evaluated on price which will be allocated 80 or 90 points and preference which will be allocated 20 or 10 points, dependent on the value of the Goods or Services.
- The 80/20 preference point system applies where the acquisition of the Goods or Services will be less than R1 000 000.00.
- If the 80/20 preference point system is stipulated and all Bids received exceed R1 000 000.00, the RFQ will be cancelled.
- The 90/10 preference point system applies where acquisition of the Goods or Services will exceed R1 000 000.00
- If the 90/10 preference point system is stipulated and all Bids received are equal to or below R1 000 000.00, the RFQ will be cancelled.
- In this RFQ, Transnet will apply **90/10** preference point system prescribed in the PPPFA.

In compliance with the Government Gazette No 34612, Notice No. 754 dated 23 September 2011, as from 1 October 2011 valid B-BBEE Verification Certificates must be issued by:

- (i) Verification Agencies accredited by the South African National Accreditation System [SANAS]; or

- (ii) Registered Auditors approved by the Independent Regulatory Board of Auditors [IRBA], in accordance with the approval granted by the Department of Trade and Industry.

Enterprises will be rated by such agencies 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]:

In accordance with B-BBEE Codes of Good Practice [Statement 000, Section 4], any enterprise with an annual total revenue of R 5 million or less qualifies as an EME.

- Automatic rating of B-BBEE Level 4 irrespective of race or ownership
- Black ownership greater than 50% or Black Women ownership greater than 50% automatically qualify as B-BBEE Level 3

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, B-BBEE status level and validity date.

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

Transnet will accordingly allocate a maximum of **90/10 points** in accordance with the **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- B-BBEE Preference Points Claim Form** 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 clause **Error! Reference source not found.** below for Returnable Documents required]*

3 Communication

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

A Respondent may, however, before the closing date and time, direct any written enquiries relating to the RFQ to the following Transnet employee:

Name: **Zakhele Nxumalo**
 Email: zakhele.nxumalo@transnet.net

Respondents may also, at any time after the closing date of the RFQ, communicate with the Secretariat of the Transnet Acquisition Council on any matter relating to its RFQ response:

Telephone **011 544-9486**

Email TAC.SECRETARIAT@transnet.net

4 Tax Clearance

The Respondent's original valid Tax Clearance Certificate must accompany the Quotation. Failure to provide this document with the RFQ submission will result in disqualification.

5 VAT Registration

The valid VAT registration number must be stated here: _____ *[if applicable]*.

6 Legal Compliance

The successful Respondent shall be in full and complete compliance with any and all applicable national and local laws and regulations.

7 Changes to Quotations

Changes by the Respondent to its submission will not be considered after the closing date and time.

8 Pricing

All prices must be quoted in South African Rand on a fixed price basis, excluding VAT.

9 Prices Subject to Confirmation

Prices quoted which are subject to confirmation will not be considered.

10 Negotiations

Transnet reserves the right to undertake post-tender negotiations with selected Respondents or any number of short-listed Respondents.

11 Binding Offer

Any Quotation furnished pursuant to this Request shall be deemed to be an offer. Any exceptions to this statement must be clearly and specifically indicated.

12 Disclaimers

Transnet is not committed to any course of action as a result of its issuance of this RFQ and/or its receipt of a Quotation in response to it. Please note that Transnet reserves the right to:

- modify the RFQ's goods / service(s) and request Respondents to re-bid on any changes;
- reject any Quotation which does not conform to instructions and specifications which are detailed herein;
- disqualify Quotations submitted after the stated submission deadline;
- not necessarily accept the lowest priced Quotation;
- reject all Quotations, if it so decides;

- place an order in connection with this Quotation at any time after the RFQ's closing date;
- award only a portion of the proposed goods / service/s which are reflected in the scope of this RFQ;
- split the award of the order/s between more than one Supplier/Service Provider; or
- make no award at all.

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 below whether or not they have been found guilty of a serious breach of law during the past 5 [five] years:

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.

13 Evaluation Criteria

Transnet will utilise the following criteria in choosing a Supplier/Service Provider, if so required:

PRE-QUALIFICATION:

- Technical threshold of 100%:
- Warrantee/Guarantee of equipment on offer
- Compliance to specifications in line with scope of work and schedule of quantities.
 - Capacity/resources-of contractor (after sales service)
 - Work plan /Delivery Schedule with project delivery time and guide lines
 - Previous project experience of company.
 - Energy Efficiency Rating of product offered
 - SARACA Registration Health, Risk and Safety Plan

- Weighted evaluation based on 90/10 preference point system:

- Pricing and price basis [firm] - whilst not the sole factor for consideration, competitive pricing and overall level of unconditional discounts¹ will be critical

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

$$PS = 90 \left(1 - \frac{Pt - Pmin}{Pmin} \right)$$

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)
1	20
2	18
3	16
4	12
5	8
6	6
7	4
8	2
Non-compliant contributor	0

¹ 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.

- **PRE-QUALIFICATION: THRESHOLD OF 100%**
- - **Phase 1: Threshold of 100%**
 - Contenders will not proceed to the second phase if below valid documentation is not attached and will be disqualified and not proceed to the next evaluation phase.
 - **Valid copies:**
 - Letter of good standing with the commissioner Workmen's compensation Commissioner (**Department of Labour**)
 - Registration with the Department of labour (Plumbing and Air conditioning works)
 - Technical Data Sheets of equipment on offer
 - Copy of Construction industry development board registration (CIDB)
 - Accreditation by Electrical Constructors Association or boards registration (ECA or ECB registration)
 - Certificate copy of national trade test certificate (red seal certificate)
 - Proof of wiremen's license qualification (copy of blank COC)
 - Valid Doctors certificates of technical staff (Signe and Stamped)
 - An original or certified copy of a valid tax clearance certificate
 - A clause by clause stamen of compliance to the general conditions of contract, the project specification and general specifications.
 - **Phase 2:**
 - A minimum of 60 point to be obtained for functionality (technical quality) before a tenderer may progress to the following evaluation stage, Phase 3, 90/10 in respect of price and preference claimed as mentioned below:
- **COMMERCIAL:**
- competitive pricing 90%
- Weighted evaluation based on 90/10 preference point system as indicated in paragraph 2:
 - Pricing and price basis [firm] - whilst not the sole factor for consideration, competitive pricing and overall level of unconditional discounts² will be critical
 - B-BBEE status of company 10%

14 Validity Period

Transnet desires a validity period of 90 [thirty] days from the closing date of this RFQ.

This RFQ is valid until 30 September 2013

15 Banking Details

BANK: _____

BRANCH NAME / CODE: _____

ACCOUNT HOLDER: _____

ACCOUNT NUMBER: _____

16 Company Registration

Registration number of company / C.C. _____

Registered name of company / C.C. _____

17 Disclosure of Prices Quoted

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

YES NO

18 Returnable Documents

Returnable Documents means all the documents, Sections and Annexures, as listed in the tables below.

- a) Respondents are required to submit with their Quotations the **mandatory Returnable Documents**, as detailed below.

Failure to provide all these Returnable Documents at the Closing Date and time of this RFQ will result in a Respondent's disqualification. Respondents are therefore urged to ensure that all these Documents are returned with their Quotations.

All Sections, as indicated in the footer of each page, must be signed, stamped and dated by the Respondent. Please confirm submission of these mandatory Returnable Documents by so indicating [Yes or No] in the table below:

Returnable Documents	Submitted [Yes or No]
SECTION 2 : Quotation Form	
- Original valid Tax Clearance Certificate [Consortia / Joint Ventures / Sub-contractors must submit a separate Tax Clearance Certificate for each party]	
ANNEXURE : Technical Submission/Questionnaire	

- b) In addition to the requirements of section (a) above, Respondents are further required to submit with their Quotations the following **essential Returnable Documents** as detailed below.

Failure to provide all these Returnable Documents may result in a Respondent's disqualification. Respondents are therefore urged to ensure that all these documents are returned with their Quotations.

"PREVIEW COPY ONLY"

All Sections, as indicated in the footer of each page, must be signed, stamped and dated by the Respondent. Please confirm submission of these essential Returnable Documents by so indicating [Yes or No] in the table below:

Returnable Documents	Submitted [Yes or No]
SECTION 1 : Notice to Bidders	
<ul style="list-style-type: none"> - Valid B-BBEE Verification Certificate [RSA Large Enterprises and QSEs] Note: failure to provide a valid B-BBEE Verification Certificate at the closing date and time of the tender will result in an automatic score of zero being allocated for B-BBEE scorecard 	
<ul style="list-style-type: none"> - Valid B-BBEE certificate from auditor, accounting officer or SANAS accredited Verification Agency [RSA EMEs] Note: failure to provide a valid B-BBEE Verification Certificate at the closing date and time of the tender will result in an automatic score of zero being allocated for B-BBEE scorecard 	
<ul style="list-style-type: none"> - In the case of Joint Ventures, a copy of the Joint Venture Agreement or written confirmation of the intention to enter into a Joint Venture Agreement 	
<ul style="list-style-type: none"> - SECTION 3 : Standard Terms and Conditions of Contract for the Supply of Goods or Services to Transnet 	
SECTION 4 : Vendor Application Form	
<ul style="list-style-type: none"> - Original cancelled cheque or bank verification of banking details 	
<ul style="list-style-type: none"> - Certified copies of IDs of shareholder/directors/members [as applicable] 	
<ul style="list-style-type: none"> - Certified copy of Certificate of Incorporation [CM29/CM9 name change] 	
<ul style="list-style-type: none"> - Certified copy of share certificates [CK1/CK2 if C.C.] 	
<ul style="list-style-type: none"> - Entity's letterhead 	
<ul style="list-style-type: none"> - Certified copy of VAT Registration Certificate [RSA entities only] 	
<ul style="list-style-type: none"> - Certified copy of valid Company Registration Certificate [if applicable] 	
<ul style="list-style-type: none"> - A signed letter from Respondent's auditor or accountant confirming most recent annual turnover figures 	
ANNEXURE A – B-BBEE Preference Points Claim Form	

Section 2 QUOTATION FORM

I/We _____
hereby offer to supply the goods/services at the prices quoted in the Price Schedule below, 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 or 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.

Price Schedule

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

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

Notes to Pricing:

- a) All Prices must be quoted in South African Rand, exclusive of VAT
- b) 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.
- c) 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.

PRICE SCHEDULE

RFQ/TENDER No. CRAC JHB 10 898

Section 3: PRICING AND DELIVERY SCHEDULE

Respondents are required to complete the table below:

Item No	Description of Item	Estimated Quantity	Unit Price	TOTAL PRICE [ZAR]
1	NORMAL TIME -SKILLED LABOUR (PER HOUR)	1	R -	R -
	SEMI SKILLED LABOUR (PER HOUR)	1	R -	R -
	UNSKILLED LABOUR (PER HOUR)	1	R -	R -
2	MARK UP ON MATERIAL (Percentage - %)	1	R -	R -
3	Supply and installation of Heat Pumps	1	R -	R -
4	Supply and install 3.6KW pump complete with controller flow valves	1	R -	R -
5	Supply and install 5.1 KW pump with complete controller flow valves	1	R -	R -
6	Supply and install 7.0 KW pump complete with controller flow valves	1	R -	R -
7	Supply and install 9.3 KW pump complete with controller flow valves	1	R -	R -
8	Supply and install 16.3 KW pump complete with controller, flow valves	1	R -	R -
9	Supply and install 20 KW pump complete with controller, flow valves,	1	R -	R -
10	Supply and install 36 KW pump complete with controller, flow valves,	1	R -	R -
11	Supply and install 54 KW pump complete with controller, flow valves	1	R -	R -
12	Supply and install 70 KW pump complete with controller, flow valves	1	R -	R -
13	Supply and install 88 KW pump complete with controller, flow valves	1	R -	R -
14	Penetration through existing walls to proposed Heat Pump location .(Job)	1	R -	R -
15	Electrical certificate of compliance per installation .(Job)	1	R -	R -

16	Plumbing certificate of compliance per installation .(Job)	1	R	-	R	-
	EXTRAS					
17	Additional Pipe Work 15 mm per metre (Mt)	1	R	-	R	-
18	Additional Pipe Work 22 mm per metre (Mt)	1	R	-	R	-
19	Additional Pipe Work 28 mm per metre (Mt)	1	R	-	R	-
20	Additional Electrical Cable per metre (Mt)	1	R	-	R	-
21	Additional Circulation Pump (Ea)	1	R	-	R	-
22	Additional Electrical work (Job)	1	R	-	R	-
	Geyser Blanket (Job)	1	R	-	R	-
	Lagging of all Pipe Work (Job)	1	R	-	R	-
TOTAL PRICE, exclusive of VAT:					R	-

"PREVIEW COPY ONLY"

Section 3

STANDARD TERMS AND CONDITIONS FOR THE SUPPLY OF GOODS OR SERVICES TO TRANSNET

A Supplier/Service Provider shall be obliged to adhere to the Standard Terms and Conditions for the Supply of Goods and Services to Transnet as expressed hereunder. Should the Respondent find any condition(s) unacceptable, it should indicate which condition(s) is/are unacceptable and offer an alternative(s). A Quotation 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.

1 SOLE AGREEMENT

Unless otherwise agreed in writing, these terms [**Terms** and each **Term**] and Transnet's purchase order(s) [**Order** or **Orders**] represent the only conditions upon which Transnet SOC Ltd [**Transnet**] procures goods [**the Goods**] or services [**the Services**] specified in the Order from the person to whom the Order is addressed [**the Supplier/Service Provider**]. Transnet does not accept any other conditions which the Supplier/Service Provider may specify, unless otherwise agreed to by Transnet in writing. In the event of any inconsistency between these Terms and any Order, these Terms shall take precedence.

2 CONFORMITY WITH ORDER

Goods/Services shall conform strictly with the Order. The Supplier/Service Provider shall not vary the quantities specified and/or the specification, if any, stipulated in the Order, without the prior written consent of Transnet. The Supplier/Service Provider warrants that the Goods/Services shall be fit for their purpose and of satisfactory quality.

3 DELIVERY AND TITLE

3.1 The delivery dates and addresses are those in the Order. Time shall be of the essence in respect of the Supplier's/Service Provider's obligations under the Order.

3.2 The Supplier/Service Provider will not be excused for delay in delivery or performance except due to circumstances outside its control and then only subject to the Supplier/Service Provider having notified Transnet in writing on becoming aware of such circumstances. Transnet may terminate an Order, in whole or in part, without incurring any liability to the Supplier/Service Provider if such a delay becomes, in Transnet's absolute opinion, significant.

3.3 Risk of loss or damage to Goods shall pass to Transnet on delivery, and title shall pass to Transnet when payment to the Supplier for the Goods has been effected.

3.4 If on delivery, the Goods/Services do not conform to the Order, Transnet may reject the Goods/Services and the Supplier/Service Provider shall promptly rectify any defects or in Transnet's opinion, supply appropriate replacement Goods/Services at the Supplier's/Service Provider's expense within the specified delivery times, without any liability due by Transnet. Goods shall be subject to such testing and/or inspection as Transnet may consider necessary.

4 PRICE AND PAYMENT

4.1 Prices specified in an Order cannot be increased. Payment for the Goods/Services shall be made by Transnet against an original undisputed invoice(s) [a Tax Invoice], supporting documentation and

month-end statement from the Supplier/Service Provider. Tax Invoices plus supporting documentation shall be posted to the address shown in the Order.

- 4.2 Payment of the Supplier's/Service Provider's valid Tax Invoice(s) will be made by Transnet in the South African currency and on the terms stated in the Order, the standard payment terms being 30 [thirty] days from date of receipt by Transnet of a month-end statement, unless otherwise agreed to in writing. Transnet shall arrange for payment of such Tax Invoices and any pre-authorised additional expenses incurred, provided that the authorised expenses are supported by acceptable documentary proof of expenditure incurred [where this is available]. Any amounts due in terms of these Terms shall be paid to the Supplier/Service Provider, taking into account any deduction or set-off and bank charges.

5 PROPRIETARY RIGHTS LIABILITY

If any allegations should be made or any claim asserted against Transnet that ownership of, or any act or omission by Transnet in relation to Goods/Services or any written material provided to Transnet relating to any Goods/Services or pursuant to an Order being a violation or infringement of any third party's contractual, industrial, commercial or intellectual property rights including but not limited to any patent, registered design, design right, trade mark, copyright or service mark on any application thereof, the Supplier/Service Provider hereby indemnifies Transnet against and hold it harmless from any and all losses, liabilities, costs, claims, damages and expenses [including any legal fees] arising directly or indirectly from such allegation or claim provided that this indemnity shall not apply where the allegation or claim arises solely as a result of the Supplier/Service Provider following a design or process originated and furnished by Transnet. The Supplier/Service Provider shall either

- a) procure for Transnet the right to continue using the infringing Goods; or
- b) modify or replace the Goods/Services so that they become non-infringing,

provided that in both cases the Goods/Services shall continue to meet Transnet's requirements and any specifications stipulated in the Order. Should neither option be possible, the Supplier/Service Provider may remove, with Transnet's prior written consent, such Goods/Services and will pay to Transnet a sum equivalent to the purchase price. If Transnet refuses to give such consent, the Supplier/Service Provider shall have no liability in respect of any continued use of the infringing Goods/Services after Supplier's/Service Provider's prior written request to remove the same.

6 PROPRIETARY INFORMATION

All information which Transnet has divulged or may divulge to the Supplier/Service Provider and any information relating to Transnet's business which may have come into the Supplier's/Service Provider's possession whilst carrying out an Order, and the existence of the Order, shall be treated by the Supplier/Service Provider as confidential information and shall not, without Transnet's prior written consent, be disclosed to any third party, or be used or copied for any purposes other than to perform the Order. This clause does not apply to information which is public knowledge or available from other sources other than by breach of this Term. Upon request by Transnet, the Supplier/Service Provider shall return all materials issued pursuant to the Order and, pending this, shall protect Transnet's rights in any such materials. Such confidential information shall at all material times be the property of Transnet.

7 DEVELOPMENT WORK IN THE PRODUCTION OF GOODS

If the production or provision of any Goods involves research and/or development which are wholly or partly funded by Transnet, then all intellectual property or other rights as a result thereof shall be the property of Transnet on creation.

8 PUBLICITY

The Supplier/Service Provider shall not name Transnet or use its trademarks, service marks [whether registered or not] or Goods in connection with any publicity without Transnet's prior written consent.

9 AFTER SALES SERVICE

The Supplier shall provide replacement parts necessary to ensure the uninterrupted operation of the Goods supplied for the duration of the warranty period, from delivery of any particular item of the Goods and if requested by Transnet shall make these parts available to a third party maintainer of Transnet's choice at the same price as if the parts had been supplied to Transnet. The Supplier undertakes to provide a maintenance service for Goods, should Transnet so request, on terms to be agreed. If the Order so indicates, the Supplier will provide a warranty service for the Goods at a level to be agreed with Transnet.

10 TERMINATION OF ORDER

10.1 Transnet may cancel an Order in whole or in part at any time upon at least 7 [seven] days' written notice to the Supplier/Service Provider, or when there is a change in control of the Supplier/Service Provider or the Supplier/Service Provider commits any serious breach or any repeated or continued material breach of its obligations under these Terms and/or Order or shall have been guilty of conduct tending to bring itself into disrepute, on written notice to the Supplier/Service Provider when such work on the Order shall stop.

10.2 Transnet shall pay the Supplier/Service Provider a fair and reasonable price for justified work in progress, where such price reflects only those costs not otherwise recoverable by the Supplier/Service Provider, at the time of termination, and the Supplier/Service Provider shall give Transnet full assistance to check the extent of such work in progress. Payment of such price shall be in full and final satisfaction of any claims arising out of such termination and upon such payment the Supplier/Service Provider shall deliver to Transnet all work, including any materials, completed or in progress. The sum payable to the Supplier/Service Provider under this clause will not in any event exceed the total amount that would have been payable to the Supplier/Service Provider had the Order not been terminated.

10.3 In the event of termination the Supplier/Service Provider must submit all claims within 2 [two] months of termination after which time claims will only be met in what Transnet considers exceptional circumstances.

10.4 If the Goods or Services are not provided in accordance with an Order, the Order shall be deemed terminated and the Supplier/Service Provider shall compensate Transnet for any costs incurred in obtaining substitute Goods or any damage caused due to the failure or delay in the delivery.

11 ACCESS

The Supplier/Service Provider shall be liable for the acts, omissions and defaults of its personnel or agents who, for the purposes of the Order, shall be treated as if they are the Supplier's/Service Provider's employees. The Supplier/Service Provider shall ensure that any such personnel or agents, whilst on

Transnet's premises, shall comply with Transnet's health and safety, security and system security rules and procedures as and where required.

12 WARRANTY

The Supplier/Service Provider warrants that it is competent to supply the Goods/Services in accordance with these Terms to the reasonable satisfaction of Transnet and that all Goods/Services delivered under the Order: (a) conform and comply in all relevant legislation, standards, directives and orders related to *[inter alia]* the supply, manufacture and use of the Goods/Services in force at the time of delivery, and to any specifications referred to in the Order; (b) will not cause any deterioration in the functionality of any Transnet equipment; and (c) do not infringe any third party rights of any kind. The Supplier/Service Provider hereby indemnifies Transnet against all losses, liabilities, costs, claims, damages, expenses and awards of any kinds incurred or made against Transnet in connection with any breach of this warranty.

13 INSOLVENCY

If the Supplier/Service Provider shall have a receiver, manager, administrator, liquidator or like person appointed over all or any part of its assets or if the Supplier/Service Provider compounds with its creditors or passes a resolution for the writing up or administration of the Supplier/Service Provider, Transnet is at liberty to terminate the Order or Orders forthwith, or at its option, to seek performance by any such appointed person.

14 ASSIGNMENT

The Supplier/Service Provider shall not assign its obligations under an Order without Transnet's prior written consent, which consent shall not be unreasonably withheld or delayed.

15 NOTICES

Notices under these Terms shall be delivered by hand to the relevant addresses of the parties in the Order or may be served by facsimile or by email, in which event notice shall be deemed served on acknowledgement of receipt by the recipient.

16 LAW

Orders shall be governed by and interpreted in accordance with South African law and any disputes arising herein shall be subject to South African arbitration under the rules of the Arbitration Foundation of South Africa, which rules are deemed incorporated by reference in this clause. The reference to arbitration shall not prevent Transnet referring the matter to any South African courts, having jurisdiction, to which the Supplier/Service Provider hereby irrevocably submits but without prejudice to Transnet's right to take proceedings against the Supplier/Service Provider in other jurisdictions and/or obtaining interim relief on an urgent basis from a court of competent jurisdiction pending the decision in other courts or from instituting in any court of competent jurisdiction any proceedings for an interdict or any other injunctive relief. If the Supplier/Service Provider does not have a registered office in the South Africa it will at all times maintain an agent for service of process in South Africa and shall give Transnet the name and address of such agent as such may be amended, in writing, from time to time.

17 GENERAL

Completion or termination of an Order shall be without prejudice to any Term herein which by its nature would be deemed to continue after completion or termination, including but not limited to clauses, and. Headings are included herein for convenience only. If any Term herein be held illegal or unenforceable, the

validity or enforceability of the remaining Terms shall not be affected. No failure or delay by Transnet to enforce any rights under these Terms will operate as a waiver thereof by Transnet. All rights and remedies available to either party under these Terms shall be in addition to, not to the exclusion of, rights otherwise available at law.

18 COUNTERPARTS

These Terms and conditions may be signed in any number of counterparts, all of which taken together shall constitute one and the same instrument. Any party may enter into this agreement by signing any such counterpart.

"PREVIEW COPY ONLY"

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

SIGNED at _____ on this ____ day of _____ 20__

.....
SIGNATURE OF RESPONDENT'S AUTHORISED REPRESENTATIVE

NAME: _____

DESIGNATION: _____

REGISTERED NAME OF COMPANY: _____

PHYSICAL ADDRESS:

Respondent's contact person: *[Please complete]*

Name	:	_____
Designation	:	_____
Telephone	:	_____
Cell Phone	:	_____
Facsimile	:	_____
Email	:	_____
Website	:	_____

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

Section 4
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 company's letterhead confirm physical and postal addresses
6. **Original** valid SARS Tax Clearance Certificate
7. **Certified copy** of VAT Registration Certificate
8. **Certified copy** of valid Company Registration Certificate [if applicable]
9. A signed letter from your auditor or accountant confirming most recent annual turnover figures

Vendor Application Form

Company trading name

Company registered name

Company Registration Number or ID Number if a Sole Proprietor

Form of entity [√] CC Trust Pty Ltd Limited Partnership Sole Proprietor

VAT number [if registered]

Company telephone number

Company fax number

Company email address

Company 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 company provide Products Services Both

Area of delivery National Provincial Local

Is your company a public or private entity Public Private

Does your company have a Tax Directive or IRP30 Certificate Yes No

Main product or services [e.g. Stationery/Consulting]

Complete B-BBEE Ownership Details:

% Black ownership % Black women ownership % Disabled Black ownership

Does your company have a B-BBEE certificate Yes No

What is your B-BBEE status [Level 1 to 9 / Unknown]

How many personnel does the firm 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 Company / Organisation:

Name		Designation	
Signature		Date	

Information Session**RFQ SITE MEETING****A COMPULSORY INFORMATION MEETING WILL BE HELD AT THE FOLLOWING VENUE:**

Venue Inyanda House 2
 Time 10H00 to 11:30 am
 Date 11 July 2013

5.1 ATTENDANCE CERTIFICATE

This is to certify that.....

Representative/s of

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

-

TRANSNET'S REPRESENTATIVE

TENDERER'S REPRESENTATIVE

DATE:.....

- **VERY IMPORTANT**

ANY TENDERER NOT ATTENDING THE INFORMATION MEETING WILL AUTOMATICALLY BE EXCLUDED FROM THE BUSINESS AWARDING PROCESS

Annexure B

NON-DISCLOSURE AGREEMENT

entered into by and between

TRANSNET SOC LTD

Registration Number 1990/000900/30

and

Registration Number _____

RFP Number: CRAC JHB 10 898

"PREVIEW COPY ONLY"

TABLE OF CONTENTS

1	INTERPRETATION	25
2	CONFIDENTIAL INFORMATION.....	26
3	RECORDS AND RETURN OF INFORMATION	27
4	ANNOUNCEMENTS	27
5	DURATION	27
6	PRINCIPAL.....	27
7	ADEQUACY OF DAMAGES.....	27
8	PRIVACY AND DATA PROTECTION.....	27
9	GENERAL.....	28

"PREVIEW COPY ONLY"

Respondent's Signature

Date & Company Stamp

THIS AGREEMENT is made between

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

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

and

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

whose registered office is at _____

WHEREAS

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

IT IS HEREBY AGREED

19 INTERPRETATION

In this Agreement:

19.1 **Agents** mean directors, officers, employees, agents, professional advisers, contractors or sub-contractors, or any Group member;

19.2 **Bid or Bid Document** means Transnet's Request for Information [**RFI**] Request for Proposal [**RFP**] or Request for Quotation [**RFQ**], as the case may be;

19.3 **Confidential Information** means any information or other data relating to one party (the **Disclosing Party**) and/or the business carried on or proposed or intended to be carried on by that party and which is made available for the purposes of the Bid to the other party (the **Receiving Party**) or its Agents by the Disclosing Party or its Agents or recorded in agreed minutes following oral disclosure and any other information otherwise made available by the Disclosing Party or its Agents to the Receiving Party or its Agents, whether before, on or after the date of this Agreement, and whether in writing or otherwise, including any information, analysis or specifications derived from, containing or reflecting such information but excluding information which:

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

Respondent's Signature

Date & Company Stamp

source is not bound by any duty of confidentiality owed, directly or indirectly, to the Disclosing Party in relation to such information;

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

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

20 CONFIDENTIAL INFORMATION

20.1 All Confidential Information given by one party to this Agreement (the **Disclosing Party**) to the other party (the **Receiving Party**) will be treated by the Receiving Party as secret and confidential and such Receiving Party 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.

20.2 The Receiving Party will only use the Confidential Information for the sole purpose of technical and commercial discussions between the parties in relation to the Bid or for the subsequent performance of any contract between the parties in relation to the Bid.

20.3 Notwithstanding clause 20.1 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 20.2 above, provided that the Receiving Party shall ensure that such Agents are made aware prior to the disclosure of any part of the Confidential Information that the same is confidential and that they owe a duty of confidence to the Disclosing Party. The Receiving Party shall at all times remain liable for any actions of such Agents that would constitute a breach of this Agreement; or to the extent required by law or the rules of any applicable regulatory authority, subject to clause 20.4 below.

20.4 In the event that the Receiving Party is required to disclose any Confidential Information in accordance with clause 0 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.

20.5 In the event that any Confidential Information shall be copied, disclosed or used otherwise than as permitted under this Agreement then, upon becoming aware of the same, without prejudice to any rights or remedies of the Disclosing Party, the Receiving Party shall as soon as practicable notify the Disclosing Party of such event and if requested take such steps (including the institution of legal proceedings) as shall be necessary to remedy (if capable of remedy) the default and/or to prevent further unauthorised copying, disclosure or use.

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

21 RECORDS AND RETURN OF INFORMATION

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

21.2 The Receiving Party shall keep a written record, to be supplied to the Disclosing Party upon request, of the Confidential Information provided and any copies made thereof and, so far as is reasonably practicable, of the location of such Confidential Information and any copies thereof.

21.3 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.

21.4 The Company shall on request supply a certificate signed by a director as to its full compliance with the requirements of clause 0 above.

22 ANNOUNCEMENTS

22.1 Neither party will make or permit to be made any announcement or disclosure of its prospective interest in the Bid without the prior written consent of the other party.

22.2 Neither party shall make use of the other party's name or any information acquired through its dealings with the other party for publicity or marketing purposes without the prior written consent of the other party.

23 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.

24 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.

25 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.

26 PRIVACY AND DATA PROTECTION

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

26.2 The Receiving Party warrants that it and its Agents have the appropriate technical and organisational measures in place against unauthorised or unlawful processing of data relating to

the Bid and against accidental loss or destruction of, or damage to such data held or processed by them.

27 GENERAL

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

oooOOOooo

Respondent's Signature

Date & Company Stamp

TECHNICAL PROJECT SPECIFICATIONS AND THE SCOPE OF WORK

IS HEREWITH ATTACHED

"PREVIEW COPY ONLY"

Respondent's Signature

Date & Company Stamp

TRANSNET



CRAC JHB 10 898

A DIVISION OF TRANSNET LIMITED

**REAL ESTATE MANAGEMENT TECHNICAL
SPECIFICATION**

**PROJECT SPECIFICATION FOR THE SUPPLY,
INSTALLATION AND COMMISSIONING OF HEAT PUMP
UNITS AND ELECTRICAL WORKS ON A DAY TO DAY
BASIS IN THE CENTRAL REGION FOR A 24 MONTH
PERIOD**

"PREVIEW COPY ONLY"

© This document as a whole is protected by copyright. The information herein is the sole property of Transnet Ltd. It may not be used, disclosed or reproduced in part or in whole in any manner whatsoever, except with the written permission of and in a manner permitted by the proprietors.



INDEX**APPENDIX 1**

- 1.0 SCOPE
- 2.0 GLOSARY TERMS
- 3.0 INFORMATION REQUIRED FROM TENDERERS
- 4.0 REFERENCES
- 5.0 INSTALLATION
- 6.0 CIVIL WORK
- 7.0 ELECTRICAL WORK
- 8.0 ELECTICAL SUPPLY SYSTEM
- 9.0 SERVICE CONDITIONS
- 10.0 TENDERING PROCEDURE
- 11.0 TESTS
- 12.0 COMMISSIONING OF EQUIPMENT
- 13.0 GUARANTEE
- 14.0 MAINTENANCE SCHEDULE

APPENDIX 2**PROJECT SPECIFICATION**

- 1.0 SCOPE
- 2.0 DRAWINGS AND HEATLOAD CALCULATION
- 3.0 HEAT PUMP UNITS
- 4.0 ELECTRICAL WORKS.
- 5.0 SITE INSPECTION
- 6.0 GENERAL

APPENDIX 3**TECHNICAL DATA SHEET****APPENDIX 4****SCHEDULE OF REQUIREMENTS & DEVIATIONS****APPENDIX 5****SCHEDULE OF WORK AND PRICES**



APPENDIX 1

1.0 SCOPE

1. This appendix together with accompanying appendix 2 and 3 calls for the supply, installation and commissioning of heat pumps and electrical works which shall in all respects comply to SABS 1125, SABS 0147 and SANS 10142-1.

2.0 GLOSARY OF TERMS

- 2.1 MOS Act means the Machinery and Occupational Safety Act (Act 6 of 1983)
- 2.2 OHS Act means the Occupational Health and Safety Act (Act 85 of 1993)
- 2.3 SANS means the South African National Standards.
- 2.4 SANS 10142-1 means the code of practice for wiring of premises, part 1: Low voltage installations, edition 1.01 of 2003.
- 2.5 SANS 10114-1 means the interior lighting regulation, part 1: Artificial lighting of interiors, edition 2.01 of 1998

3.0 INFORMATION REQUIRED FROM TENDERERS.

- 3.1 Tenderers shall state whether the make of heat pumps offered has been inspected and tested by the South African Bureau of Standards and found to be in compliance with SABS 1125.
 - 3.2 Where air heat pumps offered have been evaluated by the South African Bureau of Standards, tenderers shall submit copies of the Bureau's reports and findings together with their tender submission.
 - 3.3 All name plate information in the order as listed in SABS 1125.
 - 3.4 Descriptive pamphlets and brochures of equipment offered.
 - 3.5 Noise level rating of heat pumps offered.
 - 3.6 An electrical certificate of compliance for work performed.
-



CRAC JHB 10 898

- 3.7 All electrical material offered shall be SABS approved.
- 3.8 All information requested in appendix 3 accompanying this schedule.
- 3.9 Failure to submit the above information may preclude a tender from consideration.

4.0 REFERENCES.

The following publications (latest edition) are referred to herein and used to Compile this specification:-

- 4.1 **Occupational Health and Safety Act.**
Act 85 of 1993 OHS Act
- 4.2 Act 6 of 1983 MOS Act
- 4.3 **South African Bureau of Standard:-**
SABS 1125 Standard specification for Heat Pumps.
- 4.4 **South African Bureau of Standards:-**
SANS 10142-1
- 4.5 **South African Bureau of Standards:-**
SANS 10114-1

5.0 INSTALLATION

- 5.1 Installation of heat pumps shall be completed in a workmanlike manner and fully in accordance with the manufacturer's installation instructions and specific requirement of Spoornet as laid down in appendix 2.

- 5.2 Manufacturer's installation and operating instructions shall be included in the delivery of heat pumps.

- 5.8 Unless otherwise stated in appendix 2, the contractor shall be responsible to restore all walls and floor waterproofing were overturned during construction.

6.0 CIVIL WORK

- 6.1 Openings in the walls, floors, roofs etc. for the heat pump equipment will be for the responsibility of the contractor.
-

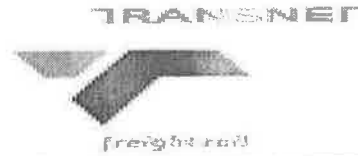
**CRAC JHB 10 898**

- 6.2 The contractor shall ensure that all openings are made weatherproof and that the paintwork be restored to the original colour.
- 6.3 The contractor will be responsible to seal off and weatherproof all openings where old equipment has been removed.
- 6.4 Supply and install all water piping.
- 6.5 Supply and install lagging on all piping.

7.0 ELECTRICAL WORK

- 7.1 Electrical/control cables exposed within occupied spaces shall be concealed in a suitable duct such as "Ega-duct" or similar and on the outside of the building in a suitable PVC or Steel Metal duct.
- 7.2 Electrical/control cables shall be properly secured to ceilings, walls, floors, etc. by means of saddles /polly saddles /cable clips or suitable trunking and shall be protected against any form of mechanical damage.
- 7.3 Suitable cable glands shall be used to all electrical and control cables, enter/exit the unit and or switch boxes.
- 7.4 Unless otherwise stated in appendix 2, the contractor shall provide openings in the walls, roofs or floors for pipes and cables as well as making good thereafter.
- 7.5 Unless otherwise stated in appendix 2, others will provide an electrical supply. Full details at the time of tendering.
- 7.6 All electrical work shall comply to SANS 10142-1.

7. The contractor shall, when working on distribution boards label all new circuits as well as any circuits that have been altered or added during the electrical works'
- 7.8 Where electrical control cables between the indoor and condensing units are exposed, these cables shall be concealed in egaduct or similar or fastened on to galvanised cable racking. The colour of the respective ducts shall match the colour of the wall it is mounted on.
- 7.9 The contractor shall, when making terminations of any kind, do so in suitable termination boxes, junction boxes or equivalent so that during maintenance Or repair work, all connections can be accessed.
-



CRAC JHB 10 898

8.0 ELECTRICITY SUPPLY SYSTEM

8.1 The electricity supply system will be three phase, 4 wire, and 50Hz alternating current With earthed neutral at a nominal voltage of 380/220v.

8.2.1 The voltage may vary within the ranges of 95 % to 105 % of the nominal and Equipment offered shall be suitable for successful operation at any voltage within these ranges.

9.0 SERVICE CONDITIONS

9.1 The equipment shall be designed and rated for continuous operation under the following conditions :-

Altitude	: 0 to 1800 meters above sea level
Ambient temperature	: 5degrees to + 40 degrees Celsius (daily : Average of +35degrees Celsius)
Humidity	: As high as 86 %.

10.0 TENDERING PROCEDURE

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

10.2 The tenderer shall motivate a statement of non-compliance.

10.3 Equipment type test certificates as specified shall be submitted with the tender. These shall be in English or a certified translation.

10.4 Tenderers shall submit descriptive literature consisting of detailed technical Specifications, general construction details and principal dimensions, together with clear illustrations of the equipment offered.

10.5 The tender shall provide a breakdown in prices stating the tender price and work to be done for each major portion of the of the contract.



CRAC JHB 10 898

11.0 TESTS

- 11.1 The contractor shall be responsible for carrying out all functional tests after installation of units.
- 11.2 The contractor shall arrange with the Manager or his representative to be present to witness the on-site tests on the system.

12.0 COMMISSIONING OF EQUIPMENT

- 12.1 Commissioning of equipment will only take place after all defects have been rectified to the satisfaction of the Manager.
- 12.2 On completion of commissioning the contractor will hand the equipment over to the Manager or his representative together with an Electrical Certificate of Compliance with SANS 10142-1.

13.0 GUARANTEE

- 13.1 All equipment shall be guaranteed against faulty workmanship and/or material for a period of 12 months after acceptance of the installation, The contractor shall be required to perform x3 minor services and x1 major service on the air-conditioning equipment during this period.

14.0 MAINTENANCE SCHEDULE

- 14.1 Contractors must submit with their tenders, a maintenance schedule as per the Manufacturer's recommendation for the specific product supplied. The schedule Will include the cleaning (taking into the account the operational environment of the premises) and the replacement cycle of the given device.

"PREVIEW COPY ONLY"



APPENDIX 2

PROJECT SPECIFICATION

1.0 SCOPE

This specification calls for the supply; installation and commissioning of heat pump equipment as well as electrical works to be completed at various sites in the central region.

2.1 DRAWINGS AND HEATLOAD CALCULATION

2.2 Sketches will indicate the floor plan layout and roof layout of the heat pump space if any is needed.

3.0 HEAT PUMP UNITSGeysers (100--150 Litres)

- 3.1 The geyser power supplies shall remain the same (to the elements as a back up power supply, thermostats turned down to 40°C) however the geyser shall be heated by an Optimum Heat Pump.
- 3.2 Hot water heat pumps will be purchased and installed by the contractor.
- 3.3 The contractor shall supply and install a suitable power supply with a waterproof isolator at the unit and suitable circuit breaker in the distribution board.
- 3.4 The units shall have a heating capacity of no less than 3.6KW.
- 3.5 The power supply points(waterproof isolators) will be provided adjacent to the unit by the contractor.
- 3.6 Power shall be obtained from the distribution board and the contractor will be responsible for all electrical connections.
- 3.7 The heat pump will be controlled by a programmable device for setting water temperature and on and off times.
- 3.8 The control device will be installed in a suitable lockable box.

Geysers (150--200 Litres)

- 4.1 The geyser power supplies shall remain the same (to the elements as a back
-

CRAC JHB 10 898

up power supply, thermostats turned down to 40°C) however the geyser shall be heated by an Optimum Heat Pump.

- 4.2 Hot water heat pumps will be purchased and installed by the contractor.
- 4.3 The contractor shall supply and install a suitable power supply with a waterproof isolator at the unit and suitable circuit breaker in the distribution board.
- 4.4 The units shall have a heating capacity of no less than 5.1KW.
- 4.5 The power supply points (waterproof isolators) will be provided adjacent to the unit by the contractor.
- 4.6 Power shall be obtained from the distribution board and the contractor will be responsible for all electrical connections.
- 4.7 The heat pump will be controlled by a programmable device for setting water temperature and on and off times.
- 4.8 The control device will be installed in a suitable lockable box.

Geysers (250--400 Litres)

- 5.1 The geyser power supplies shall remain the same (to the elements as a back up power supply, thermostats turned down to 40°C) however the geyser shall be heated by an Optimum Heat Pump.
- 5.2 Hot water heat pumps will be purchased and installed by the contractor.
- 5.3 The contractor shall supply and install a suitable power supply with a waterproof isolator at the unit and suitable circuit breaker in the distribution board.
- 5.4 The units shall have a heating capacity of no less than 7.0KW.
- 5.5 The power supply points (waterproof isolators) will be provided adjacent to the unit by the contractor.
- 5.6 Power shall be obtained from the distribution board and the contractor will be responsible for all electrical connections.
- 5.7 The heat pump will be controlled by a programmable device for setting water temperature and on and off times.
- 5.8 The control device will be installed in a suitable lockable box.

Geysers (400--500 Litres)



CRAC JHB 10 898

- 6.1 The geyser power supplies shall remain the same (to the elements as a back up power supply, thermostats turned down to 40°C) however the geyser shall be heated by an Optimum Heat Pump.
- 6.2 Hot water heat pumps will be purchased and installed by the contractor.
- 6.3 The contractor shall supply and install a suitable power supply with a waterproof isolator at the unit and suitable circuit breaker in the distribution board.
- 6.4 The units shall have a heating capacity of no less than 9.3KW.
- 6.5 The power supply points(waterproof isolators) will be provided adjacent to the unit by the contractor.
- 6.6 Power shall be obtained from the distribution board and the contractor will be responsible for all electrical connections.
- 6.7 The heat pump will be controlled by a programmable device for setting water temperature and on and off times.
- 6.8 The control device will be installed in a suitable lockable box.

Geysers (1000 Litres)

- 7.1 The geyser power supplies shall remain the same (to the elements as a back up power supply, thermostats turned down to 40°C) however the geyser shall be heated by an Optimum Heat Pump.
- 7.2 Hot water heat pumps will be purchased and installed by the contractor.
- 7.3 The contractor shall supply and install a suitable power supply with a waterproof isolator at the unit and suitable circuit breaker in the distribution board.
- 7.4 The units shall have a heating capacity of no less than 16.3KW.
- 7.5 The power supply points(waterproof isolators) will be provided adjacent to the unit by the contractor.
- 7.6 Power shall be obtained from the distribution board and the contractor will be responsible for all electrical connections.
- 7.7 The heat pump will be controlled by a programmable device for setting water temperature and on and off times.
- 7.8 The control device will be installed in a suitable lockable box.

Geysers (1200 Litres)

**CRAC JHB 10 898**

- 8.1 The geyser power supplies shall remain the same (to the elements as a back up power supply, thermostats turned down to 40°C) however the geyser shall be heated by an Optimum Heat Pump.
- 8.2 Hot water heat pumps will be purchased and installed by the contractor.
- 8.3 The contractor shall supply and install a suitable power supply with a waterproof isolator at the unit and suitable circuit breaker in the distribution board.
- 8.4 The units shall have a heating capacity of no less than 20.0KW.
- 8.5 The power supply points(waterproof isolators) will be provided adjacent to the unit by the contractor.
- 8.6 Power shall be obtained from the distribution board and the contractor will be responsible for all electrical connections.
- 8.7 The heat pump will be controlled by a programmable device for setting water temperature and on and off times.
- 8.8 The control device will be installed in a suitable lockable box.

"PREVIEW COPY ONLY"

Geysers (1600--2000 Litres)

- 9.1 The geyser power supplies shall remain the same (to the elements as a back
-

**CRAC JHB 10 898**

- up power supply, thermostats turned down to 40°C) however the geyser shall be heated by an Optimum Heat Pump.
- 9.2 Hot water heat pumps will be purchased and installed by the contractor.
- 9.3 The contractor shall supply and install a suitable power supply with a waterproof isolator at the unit and suitable circuit breaker in the distribution board.
- 9.4 The units shall have a heating capacity of no less than 36.0KW.
- 9.5 The power supply points (waterproof isolators) will be provided adjacent to the unit by the contractor.
- 9.6 Power shall be obtained from the distribution board and the contractor will be responsible for all electrical connections.
- 9.7 The heat pump will be controlled by a programmable device for setting water temperature and on and off times.
- 9.8 The control device will be installed in a suitable lockable box.

Geysers (2000--2500 Litres)

- 10.1 The geyser power supplies shall remain the same (to the elements as a back up power supply, thermostats turned down to 40°C) however the geyser shall be heated by an Optimum Heat Pump.
- 10.2 Hot water heat pumps will be purchased and installed by the contractor.
- 10.3 The contractor shall supply and install a suitable power supply with a waterproof isolator at the unit and suitable circuit breaker in the distribution board.
- 10.4 The units shall have a heating capacity of no less than 54.0KW.
- 10.5 The power supply points (waterproof isolators) will be provided adjacent to the unit by the contractor.
- 10.6 Power shall be obtained from the distribution board and the contractor will be responsible for all electrical connections.
- 10.7 The heat pump will be controlled by a programmable device for setting water temperature and on and off times.
- 10.8 The control device will be installed in a suitable lockable box.

Geysers (3000--3500 Litres)

CRAC JHB 10 898

- 11.1 The geyser power supplies shall remain the same (to the elements as a back up power supply, thermostats turned down to 40°C) however the geyser shall be heated by an Optimum Heat Pump.
- 11.2 Hot water heat pumps will be purchased and installed by the contractor.
- 11.3 The contractor shall supply and install a suitable power supply with a waterproof isolator at the unit and suitable circuit breaker in the distribution board.
- 11.4 The units shall have a heating capacity of no less than 70.0KW.
- 11.5 The power supply points (waterproof isolators) will be provided adjacent to the unit by the contractor.
- 11.6 Power shall be obtained from the distribution board and the contractor will be responsible for all electrical connections.
- 11.7 The heat pump will be controlled by a programmable device for setting water temperature and on and off times.
- 11.8 The control device will be installed in a suitable lockable box.

Geysers (4000--5000 Litres)

- 12.1 The geyser power supplies shall remain the same (to the elements as a back up power supply, thermostats turned down to 40°C) however the geyser shall be heated by an Optimum Heat Pump.
- 12.2 Hot water heat pumps will be purchased and installed by the contractor.
- 12.3 The contractor shall supply and install a suitable power supply with a waterproof isolator at the unit and suitable circuit breaker in the distribution board.
- 12.4 The units shall have a heating capacity of no less than 88.0KW.
- 12.5 The power supply points (waterproof isolators) will be provided adjacent to the unit by the contractor.
- 12.6 Power shall be obtained from the distribution board and the contractor will be responsible for all electrical connections.
- 12.7 The heat pump will be controlled by a programmable device for setting water temperature and on and off times.
- 12.8 The control device will be installed in a suitable lockable box.

5 **General**



CRAC JHB 10 898

5.1 COC for each individual installation (Electrical).

5.2 COC for each individual installation (Plumbing).

6.0 SITE INSPECTION

6.1 A site inspection will be arranged, which must be attended by tenderers. Further details regarding date and time will appear in the covering letter.

70 GENERAL

7.1 Should any technical information be required, tenders may contact Mr M J Potgieter at 083 253 7733 or Office No.: 011 774 2981.

7.2 Tenderers shall quote their earliest completion time, as the work is urgently required.

7.3 Brochures of equipment shall be submitted with tenders.

- NB :**
- All isolators to be of the "Crabtree" brand.
 - All circuit breakers to be of the "CBI" Brand.
 - All pipes to be fitted with lagging.
 - A "COC" SHALL BE ISSUED ON COMPLETION OF WORKS.

Contractors must buy Heat Pumps at the rebated price from Eskom's accredited registered suppliers.

For more info, call Eskom's INTERGRATED DEMAND MANAGEMENT (011)800- 4744

TENDERER'S SIGNATURE DATE

TECHNICAL DATA SHEET



CRAC JHB 10 898

- 1.0 Make of units _____
- 2.0 Model number of units _____
- 3.0 Heating capacity of different units _____ KW
- 4.0 KW usage of different units _____ KW
- 5.0 Type of heating (electric or reverse cycle) _____
- 6.0 Noise level rating of different units _____
- 7.0 Electric power supply required _____
- 8.0 Installation period (working days) _____

TENDERER'S SIGNATURE DATE

"PREVIEW COPY ONLY"



CRAC JHB 10 898

Special requirements and deviations from the specifications

Area with horizontal lines for text entry, overlaid with a large red watermark reading "PREVIEW COPY ONLY".

"PREVIEW COPY ONLY"

TRANSNET LIMITED
(REGISTRATION NO. 90/00900/30)

Project specification:-



CRAC JHB 10 898

Heat Pumps supplied and installed at TFR central region

TENDER NO: CRAC JHB 10 898

SCHEDULE OF WORK AND PRICES

ITEM	DESCRIPTION	QTY	UNIT PRICE	TOTAL
1	NORMAL TIME -SKILLED LABOUR (PER HOUR)	1	R -----	R -----
	SEMI SKILLED LABOUR (PER HOUR)	1	R -----	R -----
	UNSKILLED LABOUR (PER HOUR)	1	R -----	R -----
2	MARK UP ON MATERIAL (Percentage - %)		R -----	R -----
3	Supply and installation of Heat Pumps		R -----	R -----
4	Supply and install 3.6 KW pump complete with controller, flow valves, in line strainer, vibration pads and temperature probes, all plumbing work with suitable A-Grade copper tubing and connectors, and electrical work with suitable circuit breakers, isolators and cabling included up to a maximum length of five metres. .(Job)	1	R -----	R -----
5	Supply and install 5.1 KW pump complete with controller, flow valves, in line strainer, vibration pads and temperature probes, all plumbing work with suitable A-Grade copper tubing and connectors, and electrical work with suitable circuit breakers, isolators and cabling included up to a maximum length of five metres. .(Job)	1	R -----	R -----
6	Supply and install 7.0 KW pump complete with controller, flow valves, in line strainer, vibration pads and temperature probes, all plumbing work with suitable A-Grade copper tubing and connectors, and electrical work with suitable circuit breakers, isolators and cabling included up to a maximum length of five metres. .(Job)	1	R -----	R -----
7	Supply and install 9.3 KW pump complete with controller, flow valves, in line strainer, vibration pads and temperature probes, all plumbing work with suitable A-Grade copper tubing and connectors, and electrical work with suitable circuit breakers, isolators and cabling included up to a maximum length of five metres. .(Job)	1	R -----	R -----
8	Supply and install 16.3 KW pump complete with controller, flow valves, in line strainer, vibration pads and temperature probes, all plumbing work with suitable A-	1	R -----	R -----



CRAC JHB 10 898

	Grade copper tubing and connectors, and electrical work with suitable circuit breakers, isolators and cabling included up to a maximum length of five metres. .(Job)			
9	Supply and install 20 KW pump complete with controller, flow valves, in line strainer, vibration pads and temperature probes, all plumbing work with suitable A-Grade copper tubing and connectors, and electrical work with suitable circuit breakers, isolators and cabling included up to a maximum length of five metres. .(Job)	1	R -----	R -----
10	Supply and install 36 KW pump complete with controller, flow valves, in line strainer, vibration pads and temperature probes, all plumbing work with suitable A-Grade copper tubing and connectors, and electrical work with suitable circuit breakers, isolators and cabling included up to a maximum length of five metres. .(Job)	1	R -----	R -----
11	Supply and install 54 KW pump complete with controller, flow valves, in line strainer, vibration pads and temperature probes, all plumbing work with suitable A-Grade copper tubing and connectors, and electrical work with suitable circuit breakers, isolators and cabling included up to a maximum length of five metres. .(Job)	1	R -----	R -----
12	Supply and install 70 KW pump complete with controller, flow valves, in line strainer, vibration pads and temperature probes, all plumbing work with suitable A-Grade copper tubing and connectors, and electrical work with suitable circuit breakers, isolators and cabling included up to a maximum length of five metres. .(Job)	1	R -----	R -----
13	Supply and install 88 KW pump complete with controller, flow valves, in line strainer, vibration pads and temperature probes, all plumbing work with suitable A-Grade copper tubing and connectors, and electrical work with suitable circuit breakers, isolators and cabling included up to a maximum length of five metres. (Mt)	1	R -----	R -----
14	Penetration through existing walls to proposed Heat Pump location .(Job)	1	R -----	R -----
15	Electrical certificate of compliance per installation .(Job)	1	R -----	R -----
16	Plumbing certificate of compliance per installation .(Job)	1	R -----	R -----
	EXTRAS			
17	Additional Pipe Work 15 mm per metre (Mt)	1	R -----	R -----
18	Additional Pipe Work 22 mm per metre (Mt)	1	R -----	R -----
19	Additional Pipe Work 28 mm per metre (Mt)	1	R -----	R -----
20	Additional Electrical Cable per metre (Mt)	1	R -----	R -----

TRANENET



CRAC JHB 10 898

21	Additional Circulation Pump (Ea)	1	R -----	R -----
22	Additional Electrical work (Job)	1	R -----	R -----
23	Geyser Blanket (Job)	1	R -----	R -----
24	Lagging of all Pipe Work (Job)	1	R -----	R -----

GROSS TOTAL R _____

14%VAT R _____

AMOUNT DUE R _____

"PREVIEW COPY ONLY"

TRANSNET



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

FORM ST&C - SERVICES [March 2012]

"PREVIEW COPY ONLY"

TABLE OF CONTENTS

1	INTRODUCTION.....	3
2	DEFINITIONS	3
3	INTERPRETATION	6
4	NATURE AND SCOPE	6
5	AUTHORITY OF PARTIES	7
6	WARRANTIES	7
7	TRANSNET'S OBLIGATIONS	9
8	GENERAL OBLIGATIONS OF THE SERVICE PROVIDER.....	9
9	FEES AND EXPENSES.....	10
10	INVOICING AND PAYMENT	11
11	FEE ADJUSTMENTS	11
12	INTELLECTUAL PROPERTY RIGHTS	12
13	SERVICE PROVIDER'S PERSONNEL	14
14	LIMITATION OF LIABILITY.....	14
15	INSURANCES	15
16	CONFIDENTIALITY	15
17	TOTAL OR PARTIAL FAILURE TO PERFORM THE SCOPE OF SERVICES.....	17
18	TERM AND TERMINATION	17
19	CONSEQUENCE OF TERMINATION.....	18
20	ASSIGNMENT.....	19
21	FORCE MAJEURE.....	19
22	EQUALITY AND DIVERSITY	19
23	NON-WAIVER	20
24	PARTIAL INVALIDITY	20
25	DISPUTE RESOLUTION	20
26	ADDRESSES FOR NOTICES	20
27	WHOLE AND ONLY AGREEMENT.....	21
28	AMENDMENT AND CHANGE CONTROL	21
29	GOVERNING LAW.....	22
30	COUNTERPARTS	22

"PREVIEW COPY ONLY"

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;

Respondent's Signature

Date & Company Stamp

- 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

Respondent's Signature

Date & Company Stamp

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].

Respondent's Signature

Date & Company Stamp

- 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 be 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 or 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

Respondent's Signature

Date & Company Stamp

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

Respondent's Signature

Date & Company Stamp

- 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].

Respondent's Signature

Date & Company Stamp

29 GOVERNING LAW

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

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.

"PREVIEW COPY ONLY"

oooOOOooo

Respondent's Signature

Date & Company Stamp