TRANSNET

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-LSE 15081

FOR THE PROVISION OF SERVICE: VEGETATION CONTROL FOR A PERIOD OF 12 MONTHS

SERVICES REQUIRED AT: LADYSMITH FOOTBRIDGE TO DANSKRAAL YARD

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ISSUE DATE:	**03 OCTOBER 2014**
CLOSING DATE:	**23 OCTOBER 2014**
CLOSING TIME:	**10:00**
SITE BRIEFING :	**LADYSMITH STATION**
DATE AND TIME:	**14 OCTOBER 2014 @ 10H00**
VALIDITY :	**31 JANUARY 2014**

NB: **DOCUMENTS TO BE SUBMITTED IN DUPLICATE**

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:	Post or Courier
CLOSING VENUE:	Chairman Transnet Freight Rail Acquisition Council Ground Floor Inyanda House 1 21 Wellington Road Parktown Johannesburg 2001 Tender Box

1 Responses to RFQ

Responses to this RFQ 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 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 points and preference which will be allocated 20 points, dependent on the value of the Services
- The 80/20 preference point system applies where the acquisition of the 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 RFP will be cancelled

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:

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

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

Enterprises will be rated by such agencies based on the following:

c) **Large Enterprises** [i.e. annual turnover greater than R35 million]:

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- Rating level based on all seven elements of the B-BBEE scorecard

d) **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

e) **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 and B-BBEE status level.

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

Transnet will accordingly allocate a maximum of **20 [twenty] points** in accordance with the **80/20** preference point system prescribed in the Preferential Procurement Policy Framework Act (PPPFA), Act 5 of 2000 and its Regulations to the Respondent's final score based on an entity's B-BBEE scorecard rating. *[Refer **Annexure A** for further details].*

N.B. Failure to submit a B-BBEE certificate, which is valid as at the Closing Date of this RFP, will result in a score of zero being allocated for B-BBEE.

[Refer Section 4, Vendor Application Form, for Returnable Documents required]

3 Communication

a) 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.

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

Name:	Ms Princess Ngubo	Mrs Thobekile Khumalo
Email:	princess.ngubo@transnet.net	083 284 5679

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

Telephone	011 544 9486	Fax 011 774 9760
Email	prudence.nkabinde@transnet.net	

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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.

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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

14 TRANSNET WILL UTILISE THE FOLLOWING CRITERIA [NOT NECESSARILY IN THIS ORDER] IN CHOOSING A SUPPLIER/SERVICE PROVIDER, IF SO REQUIRED:

- Administrative responsiveness - Completeness of response and returnable documents
- Substantive responsiveness – Prequalification criteria, if any, must be met
- Weighted evaluation based on 80/20 preference point system:
  - Pricing and price basis [firm] - whilst not the sole factor for consideration, competitive pricing and overall level of unconditional discounts[1] will be critical

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

    $$PS = 80\left(1 - \frac{Pt - Pmin}{Pmin}\right)$$

    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

[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.*

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Preference points will be awarded to a bidder for attaining the B-BBEE status level of contribution in accordance with the table below: ***[Delete column that is not applicable]***

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

15 Validity Period

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

This RFQ is valid until _____.

16 Banking Details

BANK: _____

BRANCH NAME / CODE: _____

ACCOUNT HOLDER: _____

ACCOUNT NUMBER: _____

17 Company Registration

Registration number of company / C.C. _____

Registered name of company / C.C. _____

18 Disclosure of Prices Quoted

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

YES ☐ NO ☐

19 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 will result in a Respondent's disqualification. Respondents are therefore urged to ensure that all these Documents are returned with their Quotations.

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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 1 : Notice to Bidders	
Valid B-BBBE 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	
- Valid B-BBBE 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	
PCO CERTIFICATE (Department of Agriculture)	
SECTION 2: QUOTATION FORM	

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.

c) ***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.***

d) 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 3 : Standard Terms and Conditions of Contract for the Supply of Goods or Services to Transnet	
SECTION 4 : Vendor Application Form	
- Original cancelled cheque or bank verification of banking details	
- Certified copies of IDs of shareholder/directors/members [as applicable]	
- Certified copy of Certificate of Incorporation [CM29/CM9 name change]	
- Certified copy of share certificates [CK1/CK2 if C.C.]	
- Entity's letterhead	
- Certified copy of VAT Registration Certificate [RSA entities only]	
- Certified copy of valid Company Registration Certificate [if applicable]	
- A signed letter from Respondent's auditor or accountant confirming most recent annual turnover figures	
SECTION 5: Certificate of Attendance	

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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 and Services to Transnet [Section 3 hereof]; and
- any other standard or special conditions mentioned and/or embodied in this Request for Quotation.

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

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

Price Schedule

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

Item No	Description of Goods	Unit of Measure	Quantity	Unit Price (ZAR)	Total Price (ZAR)
1	Vegetation Control	----------	----------	----------	----------

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.

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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 or services specified in the Order [collectively, the **Products**] 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.

20 CONFORMITY WITH ORDER

Products/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 Products/Services shall be fit for their purpose and of satisfactory quality.

21 DELIVERY AND TITLE

21.1 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.

21.2 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.

22 PRICE AND PAYMENT

22.1 Prices specified in an Order cannot be increased. Payment for the Products/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.

22.2 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

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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.

23 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 Products/Services or any written material provided to Transnet relating to any Products/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 Products; or

b) modify or replace the Products/Services so that they become non-infringing,

provided that in both cases the Products/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 Products/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 Products/Services after Supplier's/Service Provider's prior written request to remove the same.

24 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.

25 PUBLICITY

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

26 TERMINATION OF ORDER

26.1 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

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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.

26.2 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.

26.3 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.

26.4 If the Products 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 Products or any damage caused due to the failure or delay in the delivery.

27 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.

28 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.

29 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.

30 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.

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31 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.

32 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 23, 24, **Error! Reference source not found.**, 25 and **Error! Reference source not found.**. 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.

33 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.

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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 :	

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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

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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						

Respondent's Signature

Date & Company Stamp

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	

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Section 5

CERTIFICATE OF ATTENDANE OF INFORMATION BRIEFING SESSION

It is hereby certified that -

1. .....

2. .....

Representative(s) of .....
(name of company)

attended the information briefing session in respect of the proposed Service to be rendered in terms of this RFQ on .....2014.

.....	.....
TRANSNET'S REPRESENTATIVE	RESPONDENT'S REPRESENTATIVE
DATE.....	**DATE.....**

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A.2.3 VEGETATION

All brush, bug weed, noxious weeds and trees are to be cut down to a height no higher than 100mm above ground level.
All cut trees and noxious weeds must be sprayed with the supplied herbicides.
All old palm leaves to be removed on a regular basis.

A.2.4 CHEMICAL CONTROL

Only a suitably qualified person competent in the use of herbicides may administer the herbicide. Such application will be done under the supervision of a PCO who will be qualified and registered with the relevant authorities. The PCO will be a full time employee of the contractor. Transnet Freight Rail will supply the contractor on a regular basis only SABS approved chemicals to be sprayed.
All herbicide containers given to contractors must be returned to Transnet Freight Rail once they have been emptied. Transnet Freight Rail will arrange for them to be destroyed. Herbicide containers must not be used for any other purpose except as a container for that specific herbicide.

A.2.5 HERBICIDE DAILY RECORD

An accurate daily log sheet indicating all usage of herbicide should be kept by the contractor. Om completion of the contractor the log sheets must be handed in to the supervisor with the site diary and site instruction book.

A.2.6 STUMP TREATMENT

For the stump treatment to be effective the following must be done.
The plant must be cut done as close to the ground as is practical. The ideal cut is short, with a level cut surface, none of the bark torn away from the wood and no exposed roots. Herbicides should be applied as soon as possible, at least within 12 hours. Old cuts must be re - cut or the bark must be opened all round the stump as per suppliers' instructions.

A.2.6.1 HERBICIDE APPLICATION

Refer to attached spreadsheet indicating dosages to be use in the application of herbicides. Only use applicable SABS approved herbicides issued by Transnet Freight Rail.

A.3 PROGRAMME OF WORK

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

A.4 COMPLETION OF WORK

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

A.5 SUCCESSFUL TENDERER

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

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A.6 VENDOR APPLICATION (SUPPLIER APPLICATION FORM)

Please note that all Tenderers who have not previously been awarded a Transnet Freight Rail contract must complete a Vendor Declaration application form **in full.** Pay special attention to page 9 of this annexure.
If you are awarded this contract and have not completed this document, it will cause delays in the payment of this contract.
All contractors who have **Transnet Freight Rail Vendor numbers** need not complete this document. However, whenever there is an amendment to your company or banking details, this form must be completed.

A.7 PRIORITY OF WORK

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

A.8 ACCESS TO SITE

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

A.9 SITE ACCESS CERTIFICATE.

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

A.10 TRESSPASSING ON PRIVATE PROPERTY

The contractor shall treat the property of adjacent landowners with due respect and shall take whatever steps are necessary to ensure that his staff do not enter, dump brush, cut grass, branches or trees onto private property.
Creating any form of pollution by the contractor, on these properties, will not be tolerated by Transnet Freight Rail, and will result in persons found guilty of such offences being ordered off the site permanently. Furthermore the contractor shall be responsible for all damages resulting from his failure to comply with requirements.

A.11 SCHEDULE OF QUANTITIES

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

A.12 CONDITIONS OF CONTRACT

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

A.13 PROJECT MANAGER

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

A.14 INDEMNITIES AND INSURANCE

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

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

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

A.15 SAFETY ON SITE

A.15.1 Transnet Freight Rail will not be held responsible for any losses, damage or injury to workmen while working on Transnet Freight Rail property.

A.15.2 The Contractor shall comply with the provisions of the Occupational Health and Safety Act (Act 85 of 1993). For the purpose of this Act, the site/s occupied by the Contractor is transferred, for the duration of the Contract, to the control of the Contractor, as if it is his/her property. As employer, he/she is in every respect responsible for compliance with the provisions of this Act.

A.15.3 The contractor shall, in particular, comply with the Compensation for Occupational Injuries and Diseases Act (Act 130 of 1993). The contractor shall produce proof of his/her registration and good standing with the Compensation Commissioner of the act. This proof shall be submitted with the return of these documents during the tender stage.

A.15.4 The E7/1 (July 1998) Specification for Works On, Over, Under or Adjacent to Railway lines and near High Voltage Equipment, shall form an integral part of this contract.

A.15.5 The contractor must at all times ensure that his staff working next to the railway track wears reflective clothing. It is also recommended that a competent person is appointed who will keep all the contractors staff aware of train movements. It is also recommended that he use a warning device, e.g. a siren or a whistle etc. The staff must be made aware of the fact that the railway tracks are multi-directional.

A.15.6 Before the successful contractor can commence with this contract, a Safety Induction session will be held with him/her and all staff that will be working on this contract. On the completion of the information session, the contractor will be asked to sign a document indicating his understanding of the dangers working next to the railway track and overhead traction lines. Refusal to sign this document can cause the contract to be cancelled by Transnet Freight Rail.

A.16 PERSONAL SAFETY EQUIPMENT

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

A.16.1 **Brush cutters**

a) Hard hat with inner liner
b) Gauze face shield or face shield with clear visor
c) Acetate spectacles with shaded lenses
d) Plastic or leather apron(optional)
e) Safety boots with steel toe caps

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again be employed on the Works, without the permission of the Project Manager.

A.21 MATERIALS

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

A.22 FOLIAR APPLICATION.

The following will have an influence as the effectiveness of the application of the supplied herbicides. The Transnet representative in attendance, will make a decision are these factors.

A.22.1 Time of Day to stop spraying
A.22.2 Rain Fastness
A.22.3 Water Quality
A.22.4 Wind strength.
A.22.5 Size of the Nozzle

A.26 CABLES

At all times, the contractor must ensure that the workers do not damage any of the Transnet cables that are found in our servitude. The cables will be found either buried close to the boundary fence (posts are painted yellow) or running in cable ducts. The sleeved cable ducts, in cuttings or embankments, are normally found running from the fence towards the apparatus case. The ducts are usually at right angels to the track. The contractor must also ensure that the potential for damage by fire is removed.

A.27 OCCUPATIONS

Transnet will arrange for the occupation of the track and/or overheads, if deemed necessary. This will only be arranged if there is a possibility of damage to the track and/or overhead power lines. Occupations must be applied for, a minimum of 28 days before time. Occupations will only be granted for the period 09:00 to 15:00- Monday to Friday. The contractor can utilise the period before and after occupation to fell smaller trees and cut up any felled trees.

A.28 PERMIT

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

A.29 CONSTRUCTION

A.29.1 SITE CONDITION AND ACCESS

Further to what is stated in clause B.1. -of this Special Conditions, the contractor shall make due allowance for work being carried out adjacent to fences, buildings and walls. The Contractor will be held responsible for any damage caused. Any repairs for damages etc will be to the Contractors account.

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A.29.2 DISPOSAL OF VEGETATIVE MATERIAL

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

A.29.3 METHOD OF VEGETATION CONTROL

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

A.30 HOURS OF DUTY

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

A.31 ACCOMMODATION

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

A.32 VALUE ADDED TAX

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

A.33 MEASUREMENT AND PAYMENT

A.33.1. BASIC PRINCIPALS

A.33.1.1 The unit of measurement for the contract will be a lump sum total. **Payment will be processed in 9 equal portions**.
The tendered price must be valid for a minimum of 60 days.

A.33.1.2 No additional payment will be made for the supply and application of materials and equipment. The Contractor shall therefore make due allowance for all procurement, handling, transport and incidental costs in the amounts tendered for the removal of all refuse from the site.

A.33.2 PAYMENT

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

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PROJECT SPECS:- CUT ALL VEGETATION AND TREAT NOXIOUS PLANTS

Contract Data
Price List

Item no.	Description	Unit	Qty	Rate	Price
1	Cut Vegetation, trees, reeds and noxious plants -9 month period	sqm	527400		
2	Spray noxious weeds/plants/trees-9 month period	sqm	527400		
3					
4					
5					
6					
7					
8					
9					
10					
11					
12					
13					
14					
15					
	Total Price (Excl Vat)=		**R**		

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TRANSNET

Appendix (i)

GENERAL BID CONDITIONS - SERVICES

[January 2014]

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1 DEFINITIONS

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

1.1 **Bid** shall mean a Respondent's tendered response / proposal to a Transnet RFP or RFQ;

1.2 **Bid Document(s)** shall mean a reference to a Request for Proposal or Request for Quotation;

1.3 **Day** shall mean any day other than a Saturday, Sunday or public holiday;

1.4 **Respondent(s)** shall mean a respondent/bidder to a Bid Document;

1.5 **RFP** shall mean Request for Proposal;

1.6 **RFQ** shall mean Request for Quotation;

1.7 **RFX** shall mean RFP or RFQ, as the case may be;

1.8 **Services** shall mean the services required by Transnet as specified in its Bid Document;

1.9 **Service Provider** shall mean the successful Respondent;

1.10 **Tax Invoice** shall mean the document as required by Section 20 of the Value-Added Tax Act, 89 of 1991, as may be amended from time to time;

1.11 **Transnet** shall mean Transnet SOC Ltd, a State Owned Company; and

1.12 **VAT** shall mean Value-Added Tax in terms of the Value-Added Tax Act, 89 of 1991, as may be amended from time to time.

2 GENERAL

All Bid Documents and subsequent contracts and orders shall be subject to the following general conditions as laid down by Transnet and are to be strictly adhered to by any Respondent to this RFX.

3 SUBMISSION OF BID DOCUMENTS

3.1 A Bid, which shall hereinafter include reference to an RFP or RFQ, shall be submitted to Transnet no later than the closing date and time specified in accordance with the directions issued in the Bid Documents. Late Bids will not be considered.

3.2 Bids shall be delivered in a sealed envelope in accordance with the instructions indicated in the Bid Documents with the Bid number and subject marked on the front of the envelope.

3.3 The Respondent's return address must be stated on the reverse side of the sealed envelope.

4 USE OF BID FORMS

4.1 Where special forms are issued by Transnet for the submission of Bids, Respondents are required to submit their Bids by completion of the appropriate sections on such official forms and not in other forms or documents bearing their own terms and conditions of contract. Non-compliance with this condition may result in the rejection of a Bid.

4.2 Respondents must note that the original Bid forms must be completed for submission and not a reprocessed copy thereof.

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4.3 Only if insufficient space has been allocated for a particular response may a Respondent submit additional information under separate cover using its company's letterhead. This must be duly cross-referenced in the RFX.

5 BID FEES

5.1 A non-refundable fee may be charged for Bid Documents, depending on the administrative cost of preparing and issuing such Bid Documents.

5.2 Only Respondents that have paid the Bid fee and provided proof of payment when submitting their Bid will be considered.

6 VALIDITY PERIOD

6.1 Respondents must hold their Bid valid for acceptance by Transnet at any time within the requested validity period after the closing date of the RFX.

6.2 Respondents may be requested to extend their validity period for a specified additional period. In such instances, Respondents will not be allowed to change any aspect of their Bid, unless they are able to demonstrate that the proposed change(s) is as a direct and unavoidable consequence of Transnet's extension of the validity period.

7 SITE VISIT / BRIEFING SESSION

Respondents may be requested to attend (i) a site visit where it is considered necessary to view the site prior to the preparation of Bids, or (ii) an RFX briefing session when Transnet deems it necessary to provide Respondents with additional information relevant to the compilation of their Bids. When such visits or sessions are indicated as compulsory in the Bid Document, Respondents are obliged to attend these meetings as failure to do so will result in their disqualification.

8 CLARIFICATION BEFORE THE CLOSING DATE

Should clarification be required on any aspect of the RFX before the closing date, the Respondent must direct such queries to the contact person identified in the Bid Document.

9 COMMUNICATION AFTER THE CLOSING DATE

After the closing date of a Bid [i.e. during the evaluation period] the Respondent may only communicate with the Secretary of the relevant Acquisition Council.

10 UNAUTHORISED COMMUNICATION ABOUT BIDS

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

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11 RETURNABLE DOCUMENTS

All returnable documents listed in the RFX Documents must be submitted with Respondent's Bid. Failure to submit mandatory returnable schedules / documents will result in disqualification. Failure to submit other schedules / documents may result in disqualification.

12 DEFAULTS BY RESPONDENTS

12.1 If the Respondent, after it has been notified of the acceptance of its Bid fails to:

a) enter into a formal contract when called upon to do so within such period as Transnet may specify; or

b) accept an order in terms of the Bid;

c) furnish satisfactory security when called upon to do so for the fulfilment of the contract; or

d) comply with any condition imposed by Transnet,

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

12.2 If any Respondent, who has submitted a Bid and/or concluded a contract with Transnet [hereinafter referred to as the **Service Provider**], or in the capacity of agent or subcontractor who has been associated with such Bid or contract:

a) has withdrawn such Bid after the advertised date and hour for the receipt of Bids; or

b) has, after having been notified of the acceptance of its Bid, failed or refused to sign a contract when called upon to do so in terms of any condition forming part of the Bid Documents; or

c) has carried out any contract resulting from such Bid in an unsatisfactory manner or has breached any condition of such contract; or

d) has offered, promised or given a bribe in relation to the obtaining or the execution of such contract; or

e) has acted in a fraudulent or improper manner or in bad faith towards Transnet or any government department or towards any public body, company or person; or

f) has made any misleading or incorrect statement either

(i) in the affidavit or certificate referred to in clause 18 *[Notice to Unsuccessful Respondents]*; or

(ii) in any other document submitted as part of its Bid submission

and is unable to prove to the satisfaction of Transnet that

- it made the statement in good faith honestly believing it to be correct; and
- before making such statement, it took all reasonable steps to satisfy itself of its correctness; or

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

h) has litigated against Transnet in bad faith;

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i) has been found guilty by a court of law, tribunal or other administrative body of a serious breach of any law, during the preceding 5 [five] years;

j) has been included as a company or person prohibited from doing business with the public sector on National Treasury's database of Restricted Suppliers or Register of Bid Defaulters;

then a Bid from any such Respondent shall be disqualified and the person, enterprise or company [including any directors] shall, subject to clause 12.3 below, be disqualified from bidding for any Transnet business through its "blacklisting" process.

12.3 Any person or enterprise or company against whom a decision to blacklist has been taken, may make representations to the Chief Financial Officer of Transnet SOC Ltd, whose decision shall be final.

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

13 CURRENCY

All monetary amounts referred to in a Bid response must be in Rand, the currency of the Republic of South Africa [**ZAR**], save to the extent specifically permitted in the RFX.

14 PRICES SUBJECT TO CONFIRMATION

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

14.2 Firm prices quoted for the duration of any resulting order and/or contract will receive precedence over prices which are subject to fluctuation if this is in Transnet's best interests.

15 ALTERATIONS MADE BY THE RESPONDENT TO BID PRICES

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

16 EXCHANGE AND REMITTANCE

16.1 The Respondent should note that where the whole or a portion of the contract or order value is to be remitted overseas, Transnet shall, if requested to do so by the Service Provider, effect payment overseas directly to the foreign principal of such percentage of the contract or order value as may be stipulated by the Respondent in its Bid Documents.

16.2 It is Transnet's preference to enter into Rand-based agreements. Transnet would request, therefore, that the Respondent give favourable consideration to obtaining forward exchange cover on the foreign currency portion of the Agreement at a cost that is acceptable to Transnet to protect itself against any currency rate fluctuation risks for the duration of any resulting contract or order.

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

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16.4 The South African Reserve Bank's approval is required before any foreign currency payments can be made to or on behalf of Respondents.

16.5 Transnet will not recognise any claim for adjustment of the order and/or contract price if the increase in price arises after the date on which agreement on an overall Rand contract has been reached.

16.6 Transnet reserves the right to request a pro-forma invoice/tax invoice in order to ensure compliance with the contract and Value-Added Tax Act no. 89 of 1991 [**VAT Act**].

17 ACCEPTANCE OF BID

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

17.2 Transnet reserves the right to accept any Bid in whole or in part.

17.3 Upon the acceptance of a Bid by Transnet, the parties shall be bound by these General Bid Conditions and any contractual terms and/or any schedule of "Special Conditions" or otherwise which form part of the Bid Documents.

17.4 Where the Respondent has been informed by Transnet per fax message or email of the acceptance of its Bid, the acknowledgement of receipt transmitted shall be regarded as proof of delivery to the Respondent.

18 NOTICE TO UNSUCCESSFUL RESPONDENTS

Unsuccessful Respondents shall be advised in writing that their Bids have not been accepted as soon as possible after the closing date of the Bid. On award of business to the successful Respondent all unsuccessful Respondents shall be informed of the name of the successful Respondent and of the reason as to why their Bids have not been successful.

19 TERMS AND CONDITIONS OF CONTRACT

19.1 The Service Provider shall adhere to the Terms and Conditions of Contract issued with the Bid Documents, together with any schedule of "Special Conditions" or otherwise which form part of the Bid Documents.

19.2 Should the Respondent find any conditions unacceptable, it should indicate which conditions are unacceptable and offer amendments/ alternatives by written submission on its company letterhead. Any such submission shall be subject to review by Transnet's Legal Counsel who shall determine whether the proposed amendments/ alternative(s) are acceptable or otherwise, as the case may be.

20 CONTRACT DOCUMENTS

20.1 The contract documents will comprise these General Bid Conditions, the Terms and Conditions of Contract and any schedule of "Special Conditions" which form part of the Bid Documents.

20.2 The abovementioned documents together with the Respondent's Bid response will constitute the contract between the parties upon receipt by the Respondent of Transnet's letter of award / intent, subject to all additional amendments and/or special conditions thereto as agreed to by the parties.

20.3 Should Transnet inform the Respondent that a formal contract will be signed, the abovementioned documents together with the Respondent's Bid response [and, if any, its covering letter and any subsequent exchange of correspondence] as well as Transnet's Letter of Acceptance/Intent, shall constitute a binding contract until the final contract is signed.

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21 LAW GOVERNING CONTRACT

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

22 IDENTIFICATION

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

23 CONTRACTUAL SECURITIES

23.1 The successful Respondent, when called upon to do so, shall provide security to the satisfaction of Transnet for the due fulfilment of a contract or order. Such security shall be in the form of an advanced payment guarantee [**APG**] and/or a performance bond [**Performance Bond**], as the case may be, to be furnished by an approved bank, building society, insurance or guarantee corporation carrying on business in South Africa.

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

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

23.4 The successful Respondent shall be required to submit to Transnet or Transnet's designated official the specified security document(s) within 30 [thirty] Days from the date of signature of the contract. Failure to return the securities within the prescribed time shall, save where prior extension has been granted, entitle Transnet without notice to the Service Provider to cancel the contract with immediate effect.

23.5 Additional costs incurred by Transnet necessitated by reason of default on the part of the Service Provider in relation to the conditions of this clause 23 will be for the account of the Service Provider.

24 DELETION OF ITEMS TO BE EXCLUDED FROM BID

The Respondent must delete items for which it does not wish to tender.

25 VALUE-ADDED TAX

25.1 In respect of local Services, i.e. Services to be rendered in the Republic of South Africa, the prices quoted by the Respondent are to be exclusive of VAT which must be shown separately at the standard rate on the Tax Invoice.

25.2 In respect of foreign Services rendered:

a) the invoicing by a South African Service Provider on behalf of its foreign principal rendering such Service represents a Service rendered by the principal; and

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b) the Service Provider's Tax Invoice(s) for the local portion only [i.e. the "commission" for the Services rendered locally] must show the VAT separately.

26 IMPORTANT NOTICE TO RESPONDENTS REGARDING PAYMENT

26.1 Method of Payment

a) The attention of the Respondent is directed to the Terms and Conditions of Contract which set out the conditions of payment on which Bid price(s) shall be based.

b) However, in addition to the aforegoing the Respondent is invited to submit offers based on alternative methods of payment and/or financing proposals.

c) The Respondent is required to give full particulars of the terms that will be applicable to its alternative offer(s) and the financial merits thereof will be evaluated and taken into consideration when the Bid is adjudicated.

d) The Respondent must, therefore, in the first instance, tender strictly in accordance with clause 26.1a) above. Failure to comply with clause 26.1a) above may preclude a Bid from further consideration.

NOTE: The successful Respondent [the **Service Provider**], where applicable, shall be required to furnish a guarantee covering any advance payments, as set out in clause 23 above *[Contractual Securities]*.

26.2 Conditional Discount

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

27 DELIVERY REQUIREMENTS

27.1 Period Contracts

It will be a condition of any resulting contract/order that the delivery period embodied therein will be governed by the provisions of the Terms and Conditions of Contract.

27.2 Progress Reports

The Service Provider may be required to submit periodical progress reports with regard to the delivery of the Services.

27.3 Emergency Demands as and when required

If, due to unforeseen circumstances, the rendering of the Services covered by the Bid are required at short notice for immediate delivery, the Service Provider will be given first right of refusal for such business. If it is unable to meet the desired critical delivery period, Transnet reserves the right to purchase such services as may be required to meet the emergency outside the contract if immediate delivery can be offered from any other source. The "*Total or Partial Failure to Perform the Scope of*

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Services" section in the Terms and Conditions of Contract will not be applicable in these circumstances.

28 SPECIFICATIONS AND COPYRIGHT

28.1 Specifications

The Respondent should note that, unless notified to the contrary by Transnet or a designated official by means of an official amendment to the Bid Documents, it is required to tender for the Services strictly in accordance with the specifications supplied by Transnet.

28.2 Copyright

Copyright in plans, drawings, diagrams, specifications and documents compiled by the Service Provider for the purpose of contract work shall be governed by the *Intellectual Property Rights* section in the Terms and Conditions of Contract.

29 BIDS BY OR ON BEHALF OF FOREIGN RESPONDENTS

29.1 Bids submitted by foreign principals may be forwarded directly by the principals or by its South African representative or agent to the Secretary of the Acquisition Council or to a designated official of Transnet according to whichever officer is specified in the Bid Documents.

29.2 In the case of a representative or agent, written proof must be submitted to the effect that such representative or agent has been duly authorised to act in that capacity by the principal. Failure to submit such authorisation by the representative or agent shall disqualify the Bid.

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

29.4 South African representatives or agents of a successful foreign Respondent must when so required enter into a formal contract in the name of their principals and must sign such contract on behalf of the latter. In every such case a legal Power of Attorney from their principals must be furnished to Transnet by the South African representative or agents authorising them to enter into and sign such contract.

a) Such Power of Attorney must comply with Rule 63 [Authentication of documents executed outside the Republic for use within the Republic] of the Uniform Rules of Court: Rules regulating the conduct of the proceedings of the several provincial and local divisions of the Supreme Court of South Africa.

b) The Power of Attorney must be signed by the principal under the same title as used in the Bid Documents.

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

d) The Power of Attorney must authorise the South African representative or agent to choose the *domicilium citandi et executandi* as provided for in the Terms and Conditions of Contract.

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

a) funds are to be transferred to the credit of the foreign Service Provider's account at a bank in South Africa, in which case the name and branch of such bank shall be furnished; or

b) funds are to be transferred to the credit of its South African agent or representative, in which case the name and branch of such bank shall be furnished.

30 CONFLICT WITH BID DOCUMENT

Should a conflict arise between these General Bid Conditions and the Bid Document issued, the conditions stated in the Bid Document shall prevail.

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Appendix (ii)

STANDARD TERMS AND CONDITIONS OF CONTRACT
FOR THE PROVISION OF SERVICES TO TRANSNET
[January 2014]

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1 INTRODUCTION

When an Agreement is entered into between Transnet SOC Ltd [**Transnet**] and the appointed supplier of Services to Transnet [**the Service Provider**], these Standard Terms and Conditions of Contract, the technical specifications for the Services, a 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;

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f) information relating to the past, present and future research and development of the disclosing Party;

g) information relating to the business activities, business relationships, products, services, customers, clients and Subcontractors of the disclosing Party where an onus rests on the disclosing Party to maintain the confidentiality of such information;

h) information contained in the software and associated material and documentation belonging to the disclosing Party;

i) technical and scientific information, Know-How and trade secrets of a disclosing Party including inventions, applications and processes;

j) Copyright works;

k) commercial, financial and marketing information;

l) data concerning architecture, demonstrations, tools and techniques, processes, machinery and equipment of the disclosing Party;

m) plans, designs, concepts, drawings, functional and technical requirements and specifications of the disclosing Party;

n) information concerning faults or defects in goods, equipment, hardware or software or the incidence of such faults or defects; and

o) information concerning the charges, Fees and / or costs of the disclosing Party or its authorised Subcontractors, or their methods, practices or service performance levels actually achieved;

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

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

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

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

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

2.12 **Foreground Intellectual Property** means all Intellectual Property developed by either Party pursuant to the Agreement;

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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;

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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 29 *[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.

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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

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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 29 *[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 Section 14 of the Bill of Rights in connection with the Agreement and shall procure that its Personnel shall observe the provisions of Section 14 [as applicable] or any amendments and re-enactments thereof and any regulations made pursuant thereto.

6.9 The Service Provider warrants that it has taken all reasonable precautions to ensure that, in the event of a disaster, the impact of such disaster on the ability of the Service Provider to comply with its obligations under the Agreement will be reduced to the greatest extent possible, and that the Service Provider shall ensure that it has appropriate, tested and documented recovery arrangements in place.

6.10 In compliance with the National Railway Safety Regulator Act, 16 of 2002, the Service Provider shall ensure that the Services, to be supplied to Transnet under the terms and conditions of the Agreement, comply fully with the specifications as set forth in Schedule 1 hereto, and shall thereby adhere [as applicable] to railway safety requirements and/or regulations. Permission for the engagement of a Subcontractor by the Service Provider [as applicable] shall be subject to a review of the capability of the proposed Subcontractor to comply with the specified railway safety requirements and/or regulations. The Service Provider and/or its Subcontractor shall grant Transnet access, during the term of the Agreement, to review any safety-related activities, including the coordination of such activities across all parts of its organisation.

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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 14 *[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 Verification 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;

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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 23 – *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 B-BBEE AND SOCIO-ECONOMIC OBLIGATIONS

9.1 B-BBEE Scorecard

a) Transnet fully endorses and supports the Broad-Based Black Economic Empowerment Programme and is strongly of the opinion that all South African business enterprises have an equal obligation to redress the imbalances of the past. It is also a fundamental requirement of the RFP that the Service Providerupplier also contributes to the Supplier Development Programme, as applied by Transnet.

b) In response to this requirement, the Service Provider shall submit to Transnet's Contract Manager or such other designated person details of its B-BBEE status in terms of the latest Codes of Good Practice issued in terms of the B-BBEE Act and proof thereof at the beginning of March each year during the currency of the Agreement.

c) The Service Provider undertakes to notify and provide full details to Transnet in the event there is:

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(i) a change in the Service Provider's B-BBEE status which is less than what it was at the time of its appointment including the impact thereof; and

(ii) a corporate or internal restructure or change in control of the Service Provider which has or likely to impact negatively on the Service Provider's B-BBEE status.

d) Notwithstanding any other reporting requirement in terms hereof, the Service Provider undertakes to provide any B-BBEE data (underlying data relating to the Service Provider which has been relied upon or utilised by a verification agency or auditor for the purposes of issuing a verification certificate in respect of the Service Provider B-BBEE status) which Transnet may request on written notice within 30 (thirty) days of such request. A failure to provide such data shall constitute a Service Provider Default and may be dealt with in accordance with the provisions of clause 19**Error! Reference source not found.**.

e) In the event there is a change in the Service Provider's B-BBEE status, then the provisions of clause 19**Error! Reference source not found.** shall apply.

9.2 **B-BBEE Improvement Plan**

a) Transnet encourages its Service Providers to constantly strive to improve their B-BBEE levels. To this end, the Service Provider undertakes to provide Transnet with a B-BBEE Improvement Plan to indicate the extent to which their B-BBEE status will be maintained or improved over the contract period, as per Annexure ..... of the RFP.

b) The Service Provider shall, for the duration of the Agreement, comply with the B-BBEE Improvement Plan.

c) The terms of the B-BBEE Improvement Plan and monetary value of the commitments thereunder shall not (unless otherwise agreed in writing) be less or less favourable than the commitments made by the Service Provider in such B-BBEE Improvement Plan.

9.3 **Supplier Development Implementation Plan**

a) In addition to the Supplier Development Plan which the Service Provider provided as part of its bid, the Service Provider undertakes, as stipulated in the RFP, to provide Transnet with a Supplier Development Implementation Plan [**the Implementation Plan**] setting out the nature, extent and monetary value of the Service Provider's commitments which the Service Provider shall undertake, as well as mechanisms and procedures to allow for access to information and verification of the Service Provider's compliance with the Implementation Plan, as shall be agreed with Transnet but in any event no later than 45 (forty five) days from the signature date of the LOI/LOA.

b) The Parties undertake to negotiate in good faith with a view to agreeing the content of the Implementation Plan by no later than 45 (forty five) days as aforesaid (or such later date as Transnet may consent to in writing).

c) If the Parties (acting reasonably and in good faith with due consideration to the Supplier Development Plan proposed by the Service Provider in response to the RFP fail to reach agreement on the Supplier Development Implementation Plan within the time limit stipulated in the clause above, it shall constitute a Service Provider Default and Clause 19**Error! Reference source not found.** shall apply.

d) The Supplier's Implementation Plan shall include, but not be limited to Technology transfer, New skills development, Job creation, Job preservation, Small business promotion and Rural integration and regional development.

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e) The terms of the Implementation Plan's and the monetary value of the commitments thereunder shall not (unless otherwise agreed in writing) be less or less favourable than the commitments made by the Service Provider in the Supplier Development Implementation Plan.

9.4 **Green Economy/Carbon Footprint**

a) In addition to the Supplier Development and B-BBEE commitments that the Service Provider makes, the Service Provider has in its bid provided Transnet with an understanding of the Service Provider's position with regard to issues such as waste disposal, recycling and energy conservation.

9.5 **Reporting**

a) The Service Provider shall monitor, audit, and record in an auditable manner, its own implementation and compliance with the B-BBEE Improvement Plan and the Supplier Development Implementation Plan and provide the Contract Manager with such information as the Contract Manager may reasonably request concerning the implementation of the B-BBEE Improvement Plan and the Supplier Development Implementation Plan.

b) The Service Provider shall, every 3 (three) months from the Commencement Date and within 7 (seven) days of the end of the calendar month of that 3 (three) months period, provide Transnet with a report (for monitoring purposes only) in respect of each of the undertakings stipulated in this clause 9.5.

c) Transnet, through its Supplier Development division, shall, every 6 (six) months from the Commencement Date, review and verify the Service Provider's undertakings stipulated in this clause with respect to B-BBEE and Supplier Development commitments, based on the Service Provider's report.

d) The Service Provider shall attach adequate proof to enable Transnet to verify compliance with the B-BBEE Improvement Plan and Supplier Development Implementation Plan.

e) Post verification of the submitted report to Transnet, Transnet shall engage with the Service Provider on the findings. The Contract Manager, assisted by the relevant specialist from Transnet's Supplier Development division, must report to the Service Provider at the end of every 6 (six) months as to whether or not the Contract Manager and/or the Supplier Development specialist reasonably considers, based on the information available to it, that the Service Provider has during such time complied with the B-BBEE Improvement Plan and the Supplier Development Implementation Plan and the extent, if any, to which the Service Provider has not so complied.

f) Without prejudice to the Transnet's rights under the Agreement:

(i) if the Contract Manager and/or Transnet's Supplier Development specialist reasonably considers that the Service Provider is not at any time complying with B-BBEE Improvement Plan and/or the Supplier Development Implementation Plan, the Contract Manager and/or the Supplier Development specialist may make such recommendations as is considered reasonably appropriate to the Service Provider as to the steps he reasonably considers should be taken by the Service Provider in order for the Service Provider to remedy such non-compliance and the time period within which such steps must be taken;

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(ii) If such recommendations are not implemented by the Service Provider in accordance with such recommendations, then the provisions of clause 9.6; and

(iii) Transnet may at any time request a meeting with the Service Provider to consider any non-compliance reported to it by the Supplier Development specialist of Transnet and/or the Contract Manager or which otherwise comes to its attention. Both Parties must attend such a meeting and negotiate in good faith with a view to reach agreement on the steps or actions that the Service Provider must undertake in order to remedy that non-compliance.

g) In the event the Service Provider is found not to have met the B-BBEE and Supplier Development requirements agreed upon in the B-BBEE Improvement Plan and the Supplier Development Implementation Plan, and/or is found to be fraudulent in submitting the reports, then Transnet shall impose a non-compliance penalty as provided for in clause 9.6 below or shall be entitled to terminate in terms of clauses 18 and 19.

h) For the sake of completion of its contractual obligations, the Service Provider shall be obliged to complete all the undertakings made under the B-BBEE Improvement Plan and the Supplier Development Implementation Plan 3 to 6 months before the Termination Date.

9.6 **Penalties**

Non Compliance Penalties:

a) If the Service Provider fails, at any time, to achieve its commitments under and in accordance with the B-BBEE Improvement Plan and the Supplier Development Implementation Plan ("a **Non Compliance**"), the Service Provider shall, subject to Clause 9.6 *[Non Compliance Penalty Cap]*, pay a Non Compliance penalty ("Non Compliance Penalty") to Transnet in respect of such Non Compliance at the applicable rate ("Applicable Rate"), as prescribed in clause 9.6(i) below.

(i) Non Compliance Penalties shall be calculated as a percentage of the Contract Value and accrue at the Applicable Rate per month until:

(ii) the date on which the Service Provider has remedied such Non Compliance by complying with the Supplier Development Implementation Plan and/or the B-BBEE Improvement Plan (as applicable); or if earlier

(iii) the Agreement being terminated.

Applicable Rates of Non Compliance Penalties (for Large Enterprises Only):

b) In relation to the Supplier Development Implementation Plan, Non Compliance Penalties shall accrue at the following Applicable Rates:

(i) for the first month (or part thereof), a rate of 0.25% (one quarter per cent);

(ii) for the second month (or part thereof), a rate of 0.5% (one half a per cent);

(iii) for the third month (or part thereof), a rate of 1.0% (one per cent);

(iv) for the fourth month (or part thereof), a rate of 1.25% (one and one quarter per cent); and

(v) for any period of Non Compliance after the fourth month, a rate of 1.5% (one and a half per cent).

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c) In relation to the B-BBEE Improvement Plan, Non Compliance Penalties shall accrue at the following Applicable Rates:

(i) for the first month (or part thereof), a rate of 1.0% (one per cent);

(ii) for the second month (or part thereof), a rate of 1.5% (one and a half per cent);

(iii) for the third month (or part thereof), a rate of 2.0% (two per cent);

(iv) for the fourth month (or part thereof), a rate of 2.5% (two and a half per cent); and

(v) for any period of Non Compliance after the fourth month, a rate of 3% (three per cent).

Non Compliance Penalty Cap (for Large Enterprises):

d) The maximum amount of the Service Provider's liability to pay Non Compliance Penalties under this clause 9.6 shall not exceed:

(i) in the case of the Supplier Development Implementation Plan, 5% (five per cent) of the Contract Value; and

(ii) in the case of the B-BBEE Improvement Plan, 5% (five per cent) of the Contract Value, (each a Non Compliance Cap).

Applicable Rates of Non Compliance Penalties (for QSEs and EMEs):

e) In relation to the Supplier Development Implementation Plan, Non Compliance Penalties shall apply annually at the rate of 0.5% (one half per cent);

f) In relation to the B-BBEE Improvement Plan, Non Compliance Penalties shall apply annually at the rate of 0.5% (one half per cent).

Non Compliance Penalty Cap (for QSEs and EMEs):

g) The maximum amount of the Service Provider's liability to pay Non Compliance Penalties under this Clause 9.6 shall not exceed:

h) in the case of the Supplier Development Implementation Plan, 1.5% (one and a half per cent) of the Contract Value; and

i) in the case of the B-BBEE Improvement Plan, 1.5% (one and a half per cent) of the Contract Value, (each a Non Compliance Cap).

Non Compliance Penalty Certificate:

j) If any Non Compliance Penalty arises, the Contract Manager shall issue a Non Compliance Penalty Certificate on the last day of each month during such Non Compliance indicating the Non Compliance Penalties which have accrued during that period.

k) A Non Compliance Penalty Certificate shall be prima facie proof of the matters to which it relates. If the Service Provider disputes any of the amounts set out in a Non Compliance Penalty Certificate:

(i) the dispute shall be resolved in accordance with the provisions of the Agreement; and

(ii) if pursuant to that referral, it is determined that the Service Provider owes any amount to Transnet pursuant to the Non Compliance Penalty Certificate, then the Service Provider shall pay such amount to Transnet within 10 (ten) Business Days of

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the determination made pursuant to such determination and an accompanying valid Tax Invoice.

Payment of Non Compliance Penalties:

l) Subject to Clause k), the Service Provider shall pay the Non Compliance Penalty indicated in the Non Compliance Penalty Certificate within 10 (ten) Business Days of Transnet issuing a valid Tax Invoice to the Service Provider for the amount set out in that certificate. If Transnet does not issue a valid Tax Invoice to the Service Provider for Non Compliance Penalties accrued during any relevant period, those Non Compliance Penalties shall be carried forward to the next period.

m) The Service Provider shall pay the amount due within 10 (ten) days after receipt of a valid Tax Invoice from Transnet, failing which Transnet shall, without prejudice to any other rights of Transnet under the Agreement, be entitled to call for payment which may be in any form Transnet deems reasonable and/or appropriate.

n) Should the Service Provider fail to pay any Non Compliance Penalties within the time indicated in above (as applicable), Transnet shall be entitled to deduct the amount not paid by the Service Provider from the account of the Service Provider in the ensuing month.

o) The Non Compliance Penalties set forth in this Clause 9.6 are stated exclusive of VAT. Any VAT payable on Non Compliance Penalties will be for the account of the Service Provider.

10 FEES AND EXPENSES

10.1 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.

10.2 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].

10.3 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.

10.4 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.

11 INVOICING AND PAYMENT

11.1 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.

11.2 Transnet shall pay such amounts to the Service Provider, upon receipt of a valid and undisputed Tax Invoice together with the supporting documentation as specified in the Work Order appended

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hereto, once the valid and undisputed Tax Invoices, or such portion of the Tax Invoices which are valid and undisputed become due and payable to the Service Provider for the provision of the Services, in terms of clause 11.4 below.

11.3 All Fees and other sums payable under the Agreement are exclusive of VAT, which will be payable at the applicable rate.

11.4 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 valid and undisputed Tax Invoices and supporting documentation.

11.5 Where the payment of any Tax Invoice, or any part thereof which is not in dispute, is not made in accordance with this clause 11, 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.

12 FEE ADJUSTMENTS

12.1 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.

12.2 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.

12.3 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 26 of this Master Agreement *[Dispute Resolution]*.

13 INTELLECTUAL PROPERTY RIGHTS

13.1 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.

13.2 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

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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.

13.3 **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.

13.4 **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.

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13.5 **Unauthorised Use of Intellectual Property**

a) The Service Provider agrees to notify Transnet in writing of any conflicting uses of, and applications of registrations of Patents, Designs and Trade Marks or any act of infringement, unfair competition or passing off involving the Intellectual Property of Transnet of which the Service Provider acquires knowledge and Transnet shall have the right, as its own option, to proceed against any party infringing its Intellectual Property.

b) It shall be within the sole and absolute discretion of Transnet to determine what steps shall be taken against the infringer and the Service Provider shall co-operate fully with Transnet, at Transnet's cost, in whatever measure including legal action to bring any infringement of illegal use to an end.

c) The Service Provider shall cooperate to provide Transnet promptly with all relevant ascertainable facts.

d) If proceedings are commenced by Transnet alone, Transnet shall be responsible for all expenses but shall be entitled to all damages or other awards 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 awards arising out of proceedings.

14 SERVICE PROVIDER'S PERSONNEL

14.1 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.

14.2 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.

14.3 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.

14.4 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.

14.5 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

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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.

15 LIMITATION OF LIABILITY

15.1 Neither Party excludes or limits liability to the other Party for:

a) death or personal injury due to negligence; or

b) fraud.

15.2 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 15.2 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.

15.3 Subject always to clauses 15.1 and 15.2 above, the liability of either the Service Provider or Transnet under or in connection with the Agreement, whether for negligence, misrepresentation, breach of contract or otherwise, for direct loss or damage arising out of each Default or series of related Defaults shall not exceed 100% [one hundred per cent] of the Fees paid under the schedule or Work Order to which the Default(s) relates.

15.4 Subject to clause 15.1 above, and except as provided in clauses 15.2 and 15.3 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.

15.5 If for any reason the exclusion of liability in clause 15.4 above is void or unenforceable, either Party's total liability for all loss or damage under the Agreement shall be as provided in clause 15.3 above.

15.6 Nothing in this clause 15 shall be taken as limiting the liability of the Service Provider in respect of clause 13 *[Intellectual Property Rights]* or clause 17 *[Confidentiality]*.

16 INSURANCES

16.1 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.

16.2 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.

16.3 Subject to clause 16.4 below, if the Service Provider fails to effect adequate insurance under this clause 16, it shall notify Transnet in writing as soon as it becomes aware of the reduction or inadequate cover and Transnet may arrange or purchase such insurance. The Service Provider

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shall promptly reimburse Transnet for any premiums paid provided such insurance protects the Service Provider's liability. Transnet assumes no responsibility for such insurance being adequate to protect all of the Service Provider's liability.

16.4 In the event that the Service Provider receives written notice from its insurers advising of the termination of its insurance cover referred to in clause 16.1 above or if the insurance ceases to be available upon commercially reasonable terms, the Service Provider shall immediately notify Transnet in writing of such termination and/or unavailability, whereafter either the Service Provider or Transnet may terminate the Agreement on giving the other Party not less than 30 [thirty] days prior written notice to that effect.

17 CONFIDENTIALITY

17.1 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

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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.

17.2 The duties and obligations with regard to Confidential Information in this clause 17 shall not apply where:

a) a Party can demonstrate that such information is already in the public domain or becomes available to the public through no breach of the Agreement by that Party, or its Personnel; or

b) was rightfully in a Party's possession prior to receipt from the other Party, as proven by the first-mentioned Party's written records, without an infringement of an obligation or duty of confidentiality; or

c) can be proved to have been rightfully received by a Party from a third party without a breach of a duty or obligation of confidentiality; or

d) is independently developed by a Party as proven by its written records.

17.3 This clause 17 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 dyes, blocks, labels, advertising matter, printing matter and the like.

18 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.

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19 TERM AND TERMINATION

19.1 Notwithstanding the date of signature hereof, the Commencement Date if the Agreement is [●] and the duration shall be for a [●] [[●]] year 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.

19.2 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.

19.3 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.

19.4 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.

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

19.6 Notwithstanding this clause 19, either Party may cancel the Agreement without cause by giving 30 [thirty] days prior written notice thereof to the other Party.

20 CONSEQUENCE OF TERMINATION

20.1 Termination in accordance with clause 19 *[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.

20.2 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.

20.3 To the extent that any of the Deliverables and property referred to in clause 20.2 above are in electronic form and contained on non-detachable storage devices, the Service Provider will provide

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Transnet with unencrypted copies of the same on magnetic media and will irretrievably destroy and delete copies so held.

20.4 In the event that the Agreement is terminated by the Service Provider under clause 19.2 *[Term and Termination]*, or in the event that a Work Order is terminated by Transnet under clause 19.5 *[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.

20.5 The provisions of clauses 1 *[Definitions]*, 6 *[Warranties]*, 13 *[Intellectual Property Rights]*, 15 *[Limitation of Liability]*, 17 *[Confidentiality]*, 20 *[Consequence of Termination]*, 26 *[Dispute Resolution]* and 30 *[Governing Law]* shall survive termination or expiry of the Agreement.

20.6 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.

20.7 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.

21 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.

22 FORCE MAJEURE

22.1 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, lockout, government action, laws or regulations, terrorism or civil disturbance, defaults or other circumstances or factors beyond the reasonable

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control of either Party, and to the extent that the performance of obligations of either Party hereunder is delayed by virtue of the aforegoing, any period stipulated for any such performance shall be reasonably extended. Transnet may however rely on strikes, industrial dispute and riots as a ground of *force majeure*.

22.2 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.

23 EQUALITY AND DIVERSITY

23.1 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.

23.2 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.

24 NON-WAIVER

24.1 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.

24.2 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.

25 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.

26 DISPUTE RESOLUTION

26.1 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.

26.2 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.

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

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26.4 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 26.

26.5 This clause 26 is severable from the rest of the Agreement and shall remain in effect even if the Agreement is terminated for any reason.

26.6 This clause 26 shall not preclude either Party from seeking urgent relief in a court of appropriate jurisdiction, where grounds for urgency exist.

27 ADDRESSES FOR NOTICES

27.1 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 Counsel

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

b) **The Service Provider**

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

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

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

27.3 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.

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28 WHOLE AND ONLY AGREEMENT

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

28.2 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.

29 AMENDMENT AND CHANGE CONTROL

29.1 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.

29.2 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 26 *[Dispute Resolution]*.

30 GOVERNING LAW

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

30.1 **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 26 *[Dispute Resolution]* above.

31 COUNTERPARTS

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

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TRANSNET

delivering on our commitment *to you*

Suppliers Code of Conduct

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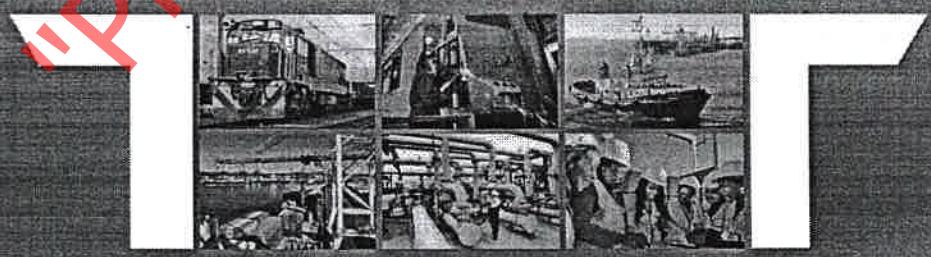
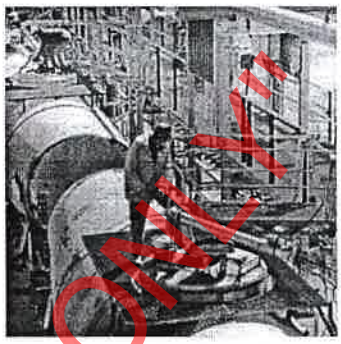


Suppliers Code of Conduct

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



These are:

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

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

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

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

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

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

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

  Employees may not recieve anything that is calculated to:

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

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

Transnet is firmly committed to free and competitive enterprise.

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

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

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

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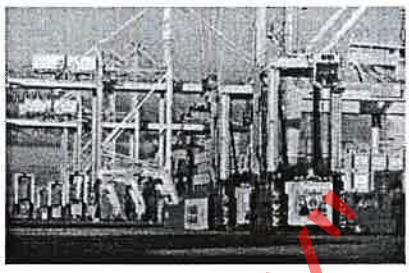
These include, but are not limited to:

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



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

Conflict of Interest

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

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

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

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

TIP-OFFS ANONYMOUS HOTLINE
0800 003 056