



TRANSNET FREIGHT RAIL
DIVISION of
TRANSNETSOC LIMITED
(Registration No. 1990/000900/06)

REQUEST FOR QUOTATION (“RFQ”)

RFQ NUMBER: CRAC-VEG-8329

OPEN EARTHWORKS DRAINAGE CHANNEL, REMOVE SPOILT VEGETATION AND PLACE SLEEPERS AT KARSENE YARD

ISSUE DATE	:	24 FEBRUARY 2012
BRIEFING SESSION	:	06 MARCH 2012
BRIEFING TIME	:	09H30
CLOSING DATE	:	20 MARCH 2012
CLOSING TIME	:	10H00
VALIDITY PERIOD	:	14 JUNE 2012

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

Respondent's Signature

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Date and Company Stamp



RFQ NUMBER: CRAC-VEG-8329

OPEN EARTHWORKS DRAINAGE CHANNEL, REMOVE SPOILT VEGETATION AND PLACE SLEEPERS AT KARSENE YARD

SCHEDULE OF DOCUMENTS

Section

- 1. Notice to Bidders**
- 2. Background, Overview and Scope of Requirements**
- 3. Certificate of briefing session attendance**
- 4. Proposal Form**
- 5. Resolution of Board of Directors (Respondent's Representative)**
- 6. Certificate of Acquaintance with RFQ Documents**
- 7. General Tender Conditions (CSS5 – Goods)**
- 8. Standard Terms and Conditions of Contract (US7 - Goods)**
- 9. Non-Disclosure Agreement**
- 10. Suppliers code of conduct**
- 11. Suppliers declaration forms**

Respondent's Signature

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Date and Company Stamp



SECTION 1

RFQ NUMBER: CRAC-VEG-8329

OPEN EARTHWORKS DRAINAGE CHANNEL, REMOVE SPOILT VEGETATION AND PLACE SLEEPERS AT KARSENE YARD

NOTICE TO BIDDERS

1. Quotations are requested from interested persons, companies, close corporations or enterprises (hereinafter referred to as the "**Respondent(s)**") to supply the above-mentioned requirement to Transnet.
2. On or after 24th February 2012 documents may be inspected at, and are obtainable from Office of Transnet Freight Rail, Tender Advise Centre, **Inyanda 1, Ground Floor, 21 Wellington Road, Parktown.**
- 2.1 Tender documents may be obtained from the above address during office hours between 08H00-15H00, and a non refundable tender fee of R150.00 is applicable per tender. Payment is to be made to Transnet Freight Rail, at Standard Bank Account number 203158598, Branch code 004805. The deposit slip must reflect RFQ CRAC-VEG-8329 and your company Name. Receipts to be presented prior to collection of the tender(s).
- 2.2. **In terms of Safety Requirements tenderers must wear their Personal Protective Equipment (PPE) for site visits otherwise they will be restricted entry on the tracks.**
3. In the interest of fairness and transparency the said **information** will then be made available to the other Respondents who have collected RFQ documents.
For specific queries before the closing of the RFQ, the following Transnet employee(s) may be contacted
- 3.1 **For queries:** Winston Baloyi at tel: (011)584 0606 e-mail:winston.baloyi@transnet.net
- 3.2 **Compulsory site visits will be conducted over a period of 1 day(s) (6th March).**

Details of the Location:

Date: 6th March 2012
Address: No.1 Anvil Road
Transnet building
7th Floor Boardroom
Isando

Respondent's Signature

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Date and Company Stamp



Time: 09H30

The agenda and sequence of locations will be provided at the meeting.

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

RFQ NO	:CRAC-VEG-8329
Description	:OPEN EARTHWORKS DRAINAGE CHANNEL, REMOVE SPOILT VEGETATION AND PLACE SLEEPERS AT KARSENE YARD
Closing date and time	:20 MARCH 2012 (10H00)
Closing address (refer to paragraph 5 below)	

5. DELIVERY INSTRUCTIONS FOR THIS RFQ

- 5.1** If posted, the envelope must be addressed to the Secretary, Transnet Freight Rail Acquisition Council, P.O. Box 4244; Johannesburg; 2000 and must be dispatched in time for sorting by the Post Office to reach the Secretary before the closing time of the RFQ. In the event of the late receipt of a Proposal, the Respondent's franking machine impression will not be accepted as proof that the response was posted in time.

- 5.2** If delivered by hand, the envelope is to be deposited in the TRANSNET Freight Rail Acquisition Council tender box which is located at the foyer on the ground floor, Inyanda House 1 , 21 Wellington Road, Parktown; Johannesburg, and should be addressed as follows:

<p>THE CHAIRPERSON TRANSNET FREIGHT RAIL ACQUISITION COUNCIL INYANDA HOUSE 21 WELLINGTON ROAD PARKTOWN JOHANNESBURG, 2001</p>
--

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

<p>THE CHAIRPERSON TRANSNET FREIGHT RAIL ACQUISITION COUNCIL INYANDA HOUSE 21 WELLINGTON ROAD PARKTOWN JOHANNESBURG, 2001</p>
--

6. Please note that this RFQ closes punctually at **10:00 on Tuesday 20 March 2012.**
7. If responses are not posted or delivered as stipulated herein, such responses will not be considered and will be treated as "UNRESPONSIVE."

Respondent's Signature

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Date and Company Stamp



8. NO EMAIL OR FACSIMILE RESPONSES WILL BE CONSIDERED.
9. The responses to this RFQ will be opened as soon as practicable after the expiry of the time advertised for receiving them.
10. Transnet shall not, at the opening of responses, disclose to any other company any confidential details pertaining to the quotations / information received, i.e. pricing, delivery, etc. The names and location of the Respondents will, however, be divulged to other Respondents upon request.
11. Envelopes must not contain documents relating to any RFQ other than that shown on the envelope. All envelopes must reflect the return address of the Respondent on the reverse side.
12. No slips are to be attached to the response documents. Any additional conditions must be embodied in an accompanying letter. Subject only to clause 22 (*Alterations made by the Respondent to Tendered Prices*) of the US7 General Tender Conditions, alterations, additions or deletions must not be made by the Respondent to the actual RFQ documents.

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

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

Transnet would accordingly allow a “preference” in accordance with the 10% preference system, as per the Preferential Procurement Policy Framework Act 5 of 2000 (as amended) to companies who provide a BBBEE accreditation Certificate. All procurement and disposal transactions in excess of R30000 will be evaluated accordingly. All transactions below R 30,000 will as far as possible be earmarked for EME’s.

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

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

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

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

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

- (a) **Large Enterprises (i.e. annual turnover >R35 million):**
 - Rating level based on all 7 (seven) elements of the BBBEE scorecard

Respondent’s Signature

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Date and Company Stamp



- Enterprises to provide BBBEE certificate and detailed scorecard (to be renewed annually)
- (b) **Qualifying Small Enterprises – QSE (i.e. annual turnover >R5 million but <R35 million):**
 - Rating based on any 4 (four) of the elements of the BBBEE scorecard
 - Enterprises to provide BBBEE certificate and detailed scorecard (to be renewed annually)
- (c) **Exempted Micro Enterprises – EME (i.e. annual turnover <R5m are exempted from being rated or verified):**
 - Automatic BBBEE Level 4 rating, irrespective of race ownership, i.e. 100% BBBEE recognition
 - Black ownership >50% or Black Women ownership >30% automatically qualify as Level 3 BBBEE rating, i.e. 110% BBBEE recognition
 - EME’s should provide documentary proof of annual turnover (i.e. audited financials) plus proof of Black ownership if Black ownership >50% or Black Women ownership >30% (to be renewed annually) from their Auditors / Accounting Officers

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

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

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

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

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

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

Respondent’s Signature

Date and Company Stamp



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

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

DTI BBBEE UNIQUE PROFILE NUMBER:
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14. COMMUNICATION

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

A respondent may, however, BEFORE THE CLOSING DATE AND TIME, direct any enquiries relating to the RFP to the Transnet employee as indicated in clause 2 above, and may also at any time after the closing date of the RFP, communicate with the Secretary of the Transnet Freight Rail Acquisition Council, at telephone number 011 544 9496 or fax no. 011 774 9760 on any matter relating to its RFQ response.

15. RFQ SCHEDULE

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

16. INSTRUCTIONS FOR COMPLETING THE RFQ

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

17. COMPLIANCE

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

18. ADDITIONAL NOTES:

- All returnable documents as indicated in the Proposal Form (Section 3) must be returned with the response
- Respondent are to note that Proposals in which firm prices are quoted for the duration of any resulting contract may you receive precedence over price which are subject to adjustment
- Changes by the Respondent to its submission will not be considered after the closing date
- The person or persons signing the Proposal must be legally authorized by the Respondent to do so (Refer Section 4). A list of those person(s) authorized to negotiate on your behalf (if not the authorized signatories) must also be submitted along with the Proposal together with their contact details.

Respondent's Signature

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Date and Company Stamp



- All prices must be quoted in South African Rands
- Transnet reserves the right to undertake post-tender negotiations with selected Respondents or any number of short-listed Respondents and may wish to visit the Respondent's place of manufacture (works) during this process.

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

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

19. DISCLAIMERS

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

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

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

20. PAYMENT TERMS

Bidders are to take note that Transnet will not consider proposals that require a down - payment together with the contract. Material and components may only be invoiced after such component has been installed and commissioned. Payment for components delivered or on hand will not be considered unless the component has been installed, commissioned and is operational.

21. LEGAL REVIEW

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

Respondents to complete this section:

Respondent's Signature

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Date and Company Stamp



NAME OF RESPONDENT

PHYSICAL ADDRESS

.....

Respondent's contact person:

Name.....

Designation.....

Telephone.....

Cell Phone.....

Facsimile.....

Email.....

Website.....

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

"Preview Copy Only"

Respondent's Signature

Date and Company Stamp



SECTION 2

RFQ NUMBER: CRAC-VEG-8329

OPEN EARTHWORKS DRAINAGE CHANNEL, REMOVE SPOILT VEGETATION AND PLACE SLEEPERS AT KARSENE YARD

SCOPE SPECIFICATION OF REQUIREMENTS

1. EVALUATION CRITERIA

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

- Pricing - Whilst not the sole factor for consideration, competitive pricing and overall level of discounts will be critical in the Evaluation and Recommendation.

“ORDER WINNING” CRITERIA

Commercial:

Sub-Criteria

- Competitive pricing

Technical:

Sub-Criteria

- Compliance to Specification
- Provide Letter of Good Standing in respect of Act 130 of 1993
- Provide your Company’s Safety Plan in respect of Act 85 of 1993.
- Provide copy of Statutory Minimum Wages and Salaries
- Provide certified copy of hand over certificate
- Delivery period required
- Briefing session attendance register

BBBEE

Sub-Criteria

- BBBEE certificate and scorecard

Respondent’s Signature

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Date and Company Stamp



ANNEXURE A

P R I C I N G S C H E D U L E

"Preview Copy Only"

Respondent's Signature

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Date and Company Stamp



TRANSNET LIMITED
(REGISTRATION No. 90/00900/06)
TRADING AS TRANSNET

PROJECT SPECIFICATIONS FOR

- **OPENING OF AN EARTHWORKS DRAINAGE CHANNEL.**
- **PLACING OF SLEEPERS.**
- **THE REMOVAL OF SPOIL MATERIAL AND VEGETATION.**

1. SCOPE

This section covers the specifications for an opening of an earthworks drainage channel. The placing of sleepers alongside the toe of ballast. The removal of spoil material and any vegetation that can obstruct the flow of water in the drainage channel.

2. DESCRIPTION OF WORK

- Creation of an earthworks drainage channel.
- Removal of spoil material and vegetation.
- Placing of sleepers alongside the toe of ballast and filling the spaces with concrete.
- Loading of spoil material into bags and loading them onto a tipper truck and taking it to a dumping site.

3. WORK METHOD

- The work shall be done according to project specifications and the instruction of the Technical Officer.
- The contractor shall thoroughly clean all work sites indicated in the specification and load it into the tipper truck and offload the spoil at a dumping site.
- The work sites pointed out must be thoroughly cleaned of all debris.
- The contractor shall unblock all the blocked culverts and shall remove all material that can obstruct the flow of water.
- The drainage channel must be 1m wide by 0,5m deep.
- The sleepers shall be placed in such a way as to prevent the ballast from falling into the drain.
- The spaces between the placed sleepers will be filled with concrete.

Respondent's Signature

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Date and Company Stamp



4. THE SITE

The site is located in Kaserne yard and is accessible via service road. The contractor shall be issued a site access certificate a day before the commencement of the project. The site shall be presented at the end of the contract period in a clean condition and environmentally safe.

No fires will be allowed on site, as this is a high-risk area.

5. TO BE SUPPLIED BY TRANSNET

Concrete sleepers

6. TO BE SUPPLIED BY THE CONTRACTOR

The Contractor shall supply all the necessary labour, transport, tools, plant, bags, machinery, consumables, accommodation and material etc. necessary to effect the standard of the work required.

The Contractor shall be available for work from 07:00 to 16:00, Monday to Friday and on weekends with prior arrangements with the technical officer .

7. DURATION OF CONTRACT

The contract will commence not later than one week after the signing of the contract. The contract shall not be longer than **5 WEEKS** from the date of commencing.

8. PENALTIES

A penalty of **R 500.00** per day will be imposed for late completion.

9. SAFETY

The contractor shall in particular comply with the following Acts:

- The Compensation for Occupational Injuries and Diseases Act, No.130 of 1993.
- The Occupational Health and Safety Act, 1993(Act 85 of 1993).

The contractor will ensure that a competent supervisor will oversee the safe running and completion of the works and related activities.

The contractor will issue all workers employed by him with the necessary protection clothing applicable to the type of work being performed.

The Contractor will be responsible to prevent fires, which could be caused by his personnel.

10. INSURANCE OF WORKS

Transnet will arrange the insurance (works and Public liability coverage) for the duration of the contract.

11. MEASUREMENT AND PAYMENT

Respondent's Signature

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Date and Company Stamp



Payment will be made at the end of the project according to the actual measurements that have been accepted by the Technical Officer in the site diary and in terms of this contract and according to the Schedule of Quantity of this specification against a statement submitted by the contractor and approved and certified by the Manager.

According to the Schedule of Quantities the contractor will charge for each sleeper placed and for each 1m^3 of concrete mixed. Payments to the Contractor will be made upon approval and certification by the Project Manager of the amounts claimed.

The Technical Officer will issue Completion Certificates only when he or she is satisfied that the Contractor has in fact, satisfactorily carried out the work. The Manager will satisfy himself by a study of the reports rendered by the Contractor or by inspection of the works or by a combination of both methods. Failure on the part of the Contractor to render the reports is liable to be considered by the Manager as sufficient ground for refusing to issue Certificates for Payment.

The contractor will prove that he is paying his labour according to the latest government laws on minimum wages and salaries and according the work being performed. Any infringement on this may result in the immediate termination of the contract.

12. SITE MEETINGS

The contractor will attend all site meetings arranged by the Technical Officer. Such meetings will be for the purpose of discussing progress, delays, materials, conditions, specifications, etc. The meeting will be held under the chairmanship of the Project Manager. Delays, if any, to the approved works program will be minuted or otherwise recorded as "Nil".

13. SITE BOOKS

The contractor will provide two triplicate A4 books namely a site instruction book and a daily diary on site for the duration of the contract.

The site instruction book will be used by the Technical Officer for issuing instructions to the contractor.

In the daily diary the contractor will record a detailed description of the work done on a daily basis including the work force and equipment involved.

These books will not be removed from the site without the permission of the Project Manager.

14. PROVISION OF COMMUNICATION

The Contractor will ensure that the supervisor on site has a reliable cellular phone for communication. The cell phone will be kept on at all times during the execution of the works. The phone battery will be charged at all times. The cellular phone number will be made available to the Project Manager prior to the commencement of the works. Any changes to the cell phone number will be communicated to the Project Manager in a written correspondence that will include the reason for the change.

15. PROTECTION OF WORKPLACES

Security for all of the Contractor's staff, vehicles, machinery, equipment and material shall remain the responsibility of the Contractor. The Contractor may use Transnet premises from time to time but the responsibility and cost to provide such

Respondent's Signature

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Date and Company Stamp



security, which may be required, shall be for the Contractor’s account. No separate payment shall be made and the cost thereof shall be deemed to be included in the rates tendered. Transnet in this regard shall entertain no claim whatsoever.

16. FINAL INSPECTION OF WORK

A final inspection of the work will be done within seven working days after the Contractor has notified the Project Manager of Transnet in writing that the work has been completed. If the work is found to be satisfactory and Transnet property left tidy, a Certificate of Completion will be issued and the Contract will be considered completed.

It is the duty of the contractor to send a copy of the hand over certificate that has been certified as correct by the Project Manager, together with the relevant pages of the site diary, to the office of the Depot Engineer for payment to be made.

17. HANDING OVER OF WORKPLACES

Handing over of workplaces will be done as soon as the work has been satisfactorily completed. Handing over inspections will be convened on an ad-hoc basis as agreed by the Project Manager and the contractor.

The hand over certificate that is included in this document will be completed by the Project Manager and certified by the contractor as correct and sent together with the relevant pages of the site diaries to the office of the Depot Engineer for payment.

**TRANSNET LIMITED
 (REGISTRATION NO. 90/00900/06)
 TRADING AS SPOORNE**

SCHEDULE OF QUANTITIES

SCHEDULE OF WORK AND PRICES					
ITEM	DESCRIPTION	UNIT	QUANTITY	RATE	AMOUNT
1	Opening of earthworks drainage channel				
	Kaserne yard	m	1000		R
2	Placing of concrete sleepers				
	Kaserne yard	Each	100		R

Respondent’s Signature

Date and Company Stamp



3	Mixing and placing of concrete between sleepers				
	Kaserne yard	m ³	5		R
	Delivery to be effected in.....weeks				

NOTE: The quantities given are provisional and are included for the sole purpose of evaluating the tender amount. These quantities may be altered, if necessary, on the sole discretion of the Engineer.

SECTION 3

RFQ NUMBER: CRAC-VEG-8329

OPEN EARTHWORKS DRAINAGE CHANNEL, REMOVE SPOILT VEGETATION AND PLACE SLEEPERS AT KARSENE YARD

16 .TENDER SITE MEETING:

A **COMPULSORY** site information meeting will be held at the following venue:

 Respondent's Signature

 Date and Company Stamp



Venue : No.:1 Anvil Road, Transnet Building, 7th Floor Boardroom, Isando.

Time : 09h30 a.m

Date : 6th March 2012

The site meeting is compulsory and companies not attending **will not be considered** during the tender awarding process.

16.1. ATTENDANCE CERTIFICATE

This is to certify that.....

Representative/s of

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

Site information requirements

.....

TRANSNET'S REPRESENTATIVE

TENDERER'S REPRESENTATIVE

DATE _____

VERY IMPORTANT

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

SECTION 4

RFQ NUMBER: CRAC-VEG-8329

OPEN EARTHWORKS DRAINAGE CHANNEL, REMOVE SPOILT VEGETATION AND PLACE SLEEPERS AT KARSENE YARD

Respondent's Signature

Date and Company Stamp



PROPOSAL FORM

I/We _____

(name of company, close corporation or partnership)

of (full address) _____

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

represented by _____

in my capacity as _____

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

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

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

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

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

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

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

Respondent's Signature

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Date and Company Stamp



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

Respondent to indicate *domicillium citandi et executandi* hereunder:

NOTIFICATION OF AWARD OF RFP

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

VALIDITY PERIOD

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

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

TAX (VAT) REGISTRATION NUMBER

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

TAX CLEARANCE CERTIFICATE

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

Indicate tax clearance certificate expiry date: _____

BANKING DETAILS

Respondent's Signature

Date and Company Stamp



BANK: _____

BRANCH NAME / CODE: _____

ACCOUNT HOLDER: _____

ACCOUNT NUMBER: _____

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

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

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

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REGISTRATION CERTIFICATE

Respondents must submit a certified copy of their company’s Registration Certificate with their Proposal.

NAME AND ADDRESS OF ACCREDITED AGENT

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

Name
Address

 Respondent’s Signature

 Date and Company Stamp



CONFIDENTIALITY

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

DISCLOSURE OF PRICES TENDERED

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

YES	
-----	--

NO	
----	--

DECLARATION

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

YES	
-----	--

NO	
----	--

If YES, please indicate below:

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

ADDRESS

Indicate nature of relationship (if any):

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

Respondent’s Signature

Date and Company Stamp



RETURNABLE DOCUMENTS

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

Notice to Bidders – Section 1	√
Background overview and schedule of requirements– Section 2	√
Certificate of Briefing Session Attendance – Section 3	√
Proposal Form – Section 4	√
Resolution of Board of Directors – Section 5	√
Certificate of Acquaintance with RFQ Documents – Section 6	√
General Tender Conditions, Form CSS5 –Section 7	√
Standard Terms and Conditions of Contract, Form US7 – Section 8	√
Non-Disclosure Agreement -Section 9	√
Suppliers Code of conduct-Section 10	√
Supplier’s Declarations Form (SDF)-Section-11	√

NOTE: Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 and , as indicated in the footer of each page, must be signed and dated

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

SIGNED at _____ on this _____ day of _____ 2012.

SIGNATURE OF WITNESSES:

ADDRESS OF WITNESSES:

SIGNATURE OF RESPONDENT’S AUTHORISED REPRESENTATIVE:

 Respondent’s Signature

 Date and Company Stamp



DESIGNATION

"Preview Copy Only"

Respondent's Signature

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Date and Company Stamp



SECTION 5

RFQ NUMBER: CRAC-VEG-8329

OPEN EARTHWORKS DRAINAGE CHANNEL, REMOVE SPOILT VEGETATION AND PLACE SLEEPERS AT KARSENE YARD

SIGNING POWER: RESOLUTION OF BOARD OF DIRECTORS

NAME OF COMPANY: _____

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

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

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

FULL NAME _____ SIGNATURE CHAIRMAN

FULL NAME _____ SIGNATURE SECRETARY

 Respondent's Signature

 Date and Company Stamp



SECTION 6

RFQ NUMBER: CRAC-VEG-8329

OPEN EARTHWORKS DRAINAGE CHANNEL, REMOVE SPOILT VEGETATION AND PLACE SLEEPERS AT KARSENE YARD

CERTIFICATE OF ACQUAINTANCE WITH RFQ DOCUMENTS

NAME OF COMPANY: _____

I/We _____ do

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

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

SIGNED at _____ on this _____ day of _____ 2012

WITNESS: _____

SIGNATURE OF RESPONDENT

Respondent's Signature

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Date and Company Stamp



SECTION 7

RFQ NUMBER: CRAC-VEG-8329

OPEN EARTHWORKS DRAINAGE CHANNEL, REMOVE SPOILT VEGETATION AND PLACE SLEEPERS AT KARSENE YARD

GENERAL TENDER CONDITIONS - GOODS

Refer Form CSS5 attached hereto

Respondent's Signature

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Date and Company Stamp



**GENERAL TENDER CONDITIONS
 FORM CSS5 (REVISED FEBRUARY 2007)**

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Respondent's Signature

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Date and Company Stamp



1. GENERAL

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

2. LODGING OF TENDER

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

3. USE OF TENDER FORMS

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

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

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

5. DEFAULTS BY TENDERERS

- 5.1 If the Tenderer, after he has been notified of the acceptance of his tender/quotation fails to:-



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

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

5.2 If any person or enterprise or firm which has submitted a tender/quotation, concluded a contract, or in the capacity of agent or subcontractor, has been associated with such tender or contract:

- 5.2.1 Has withdrawn such tender/quotation after the advertised date and hour for the receipt of tenders; or
- 5.2.2 has, after having been notified of the acceptance of his tender/quotation, failed or refused to sign a contract when called upon to do so in terms of any condition forming part of the tender documents; or
- 5.2.3 has carried out any contract resulting from such tender/quotation in an unsatisfactory manner or has breached any condition of such contract; or
- 5.2.4 has offered, promised or given a bribe in relation to the obtaining or the execution of such contract, or
- 5.2.5 has acted in a fraudulent or improper manner or in bad faith towards Transnet or any Government Department or towards any public body, company or person; or
- 5.2.5 has made any incorrect statement in the affidavit or certificate referred to in Clause 11 and is unable to prove to the satisfaction of Transnet that
 - (i) he made the statement in good faith honestly believing it to be correct; and
 - (ii) before making such statement he took all reasonable steps to satisfy himself of its correctness; or
- 5.2.6 caused Transnet damage, or to incur costs in order to meet the Contractor's requirements and which could not be recovered from the Contractor; then

a tender from any such person or enterprise shall be disqualified and the person, enterprise or firm including any directors shall subject to clause 5.3 be disqualified from tendering for any Transnet business ..

5.3 Any person, or enterprise, or firm against whom a decision has been given under the provisions of clauses 5.2.2 or 5.2.4 may make representations to the Group Chief Executive of Transnet, whose decision shall be final.



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

6. CURRENCY

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

7. EXCHANGE AND REMITTANCE

The Contractor should note that where the whole or a portion of the contract or order value is to be remitted overseas, Transnet shall, if requested to do so by the Contractor, effect payment overseas direct to the principal/supplier of such percentage of the contract or order value as may be stipulated by the Contractor in his tender documents and any variation in the amount to be so paid which may arise as a result of fluctuations in the rate of exchange involved, will be for the account of the Contractor.

7.1 The Contractor who desires to avail himself of the aforementioned facility must at the same time of tendering furnish the information called for in the clause "Exchange and Remittance" of the tender document and also furnish full details of the principals/suppliers to whom payment is to be made.

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

7.3 Should it be necessary for the Contractor to establish a letter of credit through a bank, where the whole or a portion of the contract or order value to be remitted overseas by him against a contract or order and where the Goods are to be collected by or delivered to Transnet's overseas forwarding agent, then such letter of credit must clearly stipulate that for payment purposes an "Original Ocean Bill of Lading" will be the only recognised document as proof that the Goods have been collected/delivered. Failure to comply with this requirement will result in delays in delivery and payment of the Goods.

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

8. ACCEPTANCE OF TENDER/QUOTATION

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

8.2 Upon the acceptance of a tender/quotation by Transnet, the parties shall be bound by the General Tender Conditions and the Standard Terms and Conditions of Contract (US7)

8.3 Where the acceptance of the Tenderer is delivered by letter, the SA Post Office shall be regarded as the agent of the Tenderer and delivery of such notice of acceptance to the SA Post Office shall be considered as delivery to the Tenderer.



8.4 Where the Tenderer has been informed per facsimile message of the acceptance of his tender/quotation, the acknowledgement of receipt transmitted by his facsimile machine shall be regarded as proof of delivery to the Tenderer.

9. LAW GOVERNING CONTRACT

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

10. IDENTIFICATION

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

11. FORMAL NOTIFICATION REGARDING NAME OF SUCCESSFUL TENDERER

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

12. UNAUTHORISED COMMUNICATION ABOUT TENDERS

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

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



13. TENDERER'S SAMPLES

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

14. CONTRACT DOCUMENTS

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

15. SECURITIES

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



- 15.4 The security shall be an amount which will not exceed 5 (five) percent of the value of the contract or order unless otherwise stipulated in the tender form.
- 15.5 Additional costs incurred by Transnet for visits or extensions to visits necessitated by reason of default on the part of the successful Tenderer will be for the account of the successful Tenderer.

16. DELIVERY BASIS

- 16.1 The prices quoted must be on a delivered price basis in accordance with the terms and at the delivery point or points specified in Transnet's tender forms. Tenders for supply on any other basis of delivery are liable to disqualification. The time for delivery stated by the Tenderer must be inclusive of all non-working days or holidays, and of periods occupied in stocktaking or in effecting repairs to or overhauling plant, which would ordinarily occur within the delivery period given by the Tenderer.
- 16.2 Tenderers must furnish their tender prices under the appropriate columns in the "Scope of Requirements" of the tender on the following basis :
 - 16.2.1 Local Supplies - column A i.e. Prices for Goods to be manufactured, produced or assembled in the RSA, or imported supplies held in South Africa. to be quoted on a Delivered RSA named Destination basis.
 - 16.2.2 Imported Supplies - column B i.e. Prices for Goods to be imported from all sources to be quoted on a DDU, delivered end destination RSA basis (Delivered, Duty Unpaid to named Destination, ICC Incoterms 2000)
- 16.3 The attention of Tenderers is drawn to the fact that should Transnet's departmental railage account numbers be used in respect of "Delivered Prices", Transnet reserves the right to cancel such contract/order with immediate effect and enforce the conditions of clause 15 headed "Rights on Cancellation" of form US7 (Revised February 2007).

17. SHIPMENT

- 17.1 Where shipping is arranged by the successful Tenderer :

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

To ensure prompt clearance at RSA port of entry.

 - 17.1.1 the first set of negotiable shipping documents shall be posted within a maximum period of three (3) days from date of shipment to Transnet or a designated official; and
 - 17.1.2 within twenty-four (24) hours of mailing the first set of documents, the second set of negotiable documents shall be posted to Transnet or designated official.

The successful Tenderer shall be liable for all costs, including harbour storage charges, incurred in consequence of breach of any of the abovementioned provisions.
- 17.2. Where shipping is arranged by the forwarding agent appointed by Transnet:



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

17.2.1 It should be noted that when Goods are offered on a free on board an ex manufacturer's/supplier's works basis, Transnet reserves the right to nominate its own forwarding agent on condition that the successful Tenderer will not recover any additional costs from Transnet.

17.2.2 It will be a condition that all Goods collected by or delivered to Transnet's forwarding agent against any resulting contract/order must be accompanied by the overseas manufacturer's/supplier's commercial invoices (which must clearly reflect Transnet's contract / order number) and packing lists/specifications or be handed to Transnet's forwarding agent not later than 3 (three) days prior to the vessel's scheduled date of departure.

17.2.3 In respect of airfreight shipments the Executive Manager, South African Airways, Johannesburg International Airport must be reflected in the column "Sold to" appearing on the overseas supplier's/manufacturer's commercial invoices.

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

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

18. EXPORT LICENCE

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

19. QUALITY OF MATERIAL

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

20. PRICES SUBJECT TO CONFIRMATION

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

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

21. DELETION OF ITEMS NOT TENDERED FOR

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

22. ALTERATIONS MADE BY THE TENDERER TO TENDER PRICES

All alterations made by the Tenderer to his tendered price(s) prior to the submission of his tender documents must be done by deleting the incorrect figures and words where required and by inserting the correct figures and words against the items concerned. All such alterations must be initialled by the person who signs the tender documents.



Failure to observe this requirement may result in the particular item(s) concerned being overlooked in the matter of the award of the business.

23. VALUE ADDED TAX

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

24. TERMS AND CONDITIONS OF TENDER

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

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

25. IMPORTANT NOTICE TO TENDERERS REGARDING PAYMENT

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



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

25.2 Conditional Discount:

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

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

26. QUANTITIES (PERIOD CONTRACTS ONLY)

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

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

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

26.1 DELIVERY PERIOD:

26.1.1 FIXED QUANTITY REQUIREMENTS

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

26.1.2 PERIOD CONTRACTS

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

26.1.3 PROGRESS REPORT

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

26.1.4 EMERGENCY DEMANDS: AS AND WHEN REQUIRED

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



outside the contract if immediate delivery can be offered from any other source.

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

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

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

27. PACKING AND MARKING

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

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

27.2 PRINTING ON CONTAINERS AND PACKINGS

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

27.3 USE OF MOBILE CONTAINERS AND SARTAINERS

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

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

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

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

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

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

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



30. TENDERS BY FOREIGN TENDERERS OR ON THEIR BEHALF

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

Such Powers of Attorney must comply with Government Notice No. 1160 of 27 June 1930 (and any amendments thereto) - "Rules of the Supreme Court of South Africa for the authentication of documents executed outside the Republic for use within the Republic.

The Powers of Attorney must be signed by Principals under the same title as used in the tender documents.

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

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

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

- 30.4 If payment is to be made in South Africa, the Contractor (i.e. the Principals, or the South African agents or representatives), must notify Transnet in writing whether:
 - 30.4.1 Cheques are to be drawn for payment to the credit of the Contractor's account at a bank in South Africa, in which case the name and branch of such bank shall be furnished; or
 - 30.4.2 Cheques are to be made out in favour of the Contractors and forwarded to their South African agent or representative, in which case such agent or representative, must be duly authorised to sign the receipt on the cheque and discharge it on behalf of his Principals.
- 30.5 The attention of the Tenderer is invited to Clause 15 regarding the provision of security for the fulfilment of contracts and orders and the manner and form in which such security is to be furnished.



31. PREPRODUCTION SAMPLES

Should it be necessary to submit a pre-production sample for approval by Transnet prior to the commencement of delivery of the Goods against any resulting contract, Tenderers are to note that for the purpose of calculating penalties for late delivery (if applicable) in terms of Clause 30 of form US7 (Revised October 2005) the actual contractual delivery date will be considered to be;

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

PLUS

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

PLUS

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

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

32. RAILAGE FREIGHT AND OTHER CHARGES

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

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

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

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

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SECTION 8

RFQ NUMBER: CRAC-VEG-8329

OPEN EARTHWORKS DRAINAGE CHANNEL, REMOVE SPOILT VEGETATION AND PLACE SLEEPERS AT KARSENE YARD

STANDARD TERMS AND CONDITIONS OF CONTRACT

FOR THE SUPPLY OF GOODS TO TRANSNET

Refer Form US7 attached hereto.

Respondents should note the obligations as set out in Clause 24 of the General Tender Conditions (Section 7) which reads as follows:

"The Supplier shall adhere to the Standard Terms and Conditions of Contract as set out in Form US7 – Goods, a copy of which is attached hereto.

Should the Respondent find any conditions unacceptable, it should indicate which conditions are unacceptable and offer an alternative. Please note that any alternative offered shall be compared with acceptance of the Form US7 conditions or alternatives offered by other Respondents, except penalties for late deliveries, the exclusion of which may disqualify the RFP, save where indicated otherwise by Transnet."

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"Preview Copy Only"

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1. INTRODUCTION

When an Agreement is entered into between Transnet and the Supplier of Services to Transnet, these Standard Terms and Conditions, the Scope of Requirements for the Services to be rendered, the General Tenders Conditions and any terms and / or special conditions in the associated tender documents, exclusively govern the provision of Services by the Supplier to Transnet.

2. DEFINITIONS

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

- 2.1. **"AFSA"** means the Arbitration Foundation of South Africa;
- 2.2. **"Agreement"** means the Agreement together with any schedules or annexures, signed by both Parties and attached thereto from time to time;
- 2.3. **"Business Day/s"** means Mondays to Fridays between 07:30 and 16:00, excluding public holidays;
- 2.4. **"Confidential Information"** means any information or other data, whether in written, oral, graphic or in any other form, which a Party discloses or provides to the other Party, 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 -
 - 2.4.1. information relating to methods of operation, data and plans of the disclosing Party;
 - 2.4.2. the contents of the Agreement;
 - 2.4.3. private and personal details of employees or clients of the disclosing party or any other person where an onus rests on the disclosing Party to maintain the confidentiality of such information;
 - 2.4.4. any information disclosed by either Party and which is clearly marked as being confidential or secret;



- 2.4.5. information relating to the strategic objectives and planning of the disclosing Party relating to its existing and planned future business activities;
- 2.4.6. information relating to the past, present and future research and development of the disclosing Party;
- 2.4.7. information relating to the business activities, business relationships, products, services, customers, clients and sub-suppliers of the disclosing Party where an onus rests on the disclosing Party to maintain the confidentiality of such information;
- 2.4.8. information contained in the software and associated material and documentation belonging to the disclosing Party;
- 2.4.9. technical, scientific, commercial, financial and market information, know-how and trade secrets of a disclosing Party;
- 2.4.10. data concerning architecture, demonstrations, tools and techniques, processes, machinery and equipment of the disclosing Party;
- 2.4.11. plans, designs, concepts, drawings, functional and technical requirements and specifications of the disclosing Party;
- 2.4.12. information concerning faults or defects in goods, equipment, hardware or software or the incidence of such faults or defects; and
- 2.4.13. information concerning the charges, fees and / or costs of the disclosing Party or its authorised sub-suppliers, or their methods, practices or service performance levels actually achieved;

2.5. **"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 sub-suppliers in connection with or in relation to the subject of the Agreement and in respect of which such Party is liable to the other;

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- 2.6. **“Deliverable(s)”** means any and all works of authorship, products and materials developed, written, prepared, assembled, integrated, modified or provided by the Supplier in relation to the Services;
- 2.7. **“Fee(s)”** shall mean the agreed fees for the Services to be procured from the Supplier by Transnet, as detailed in the Schedule of Requirements or Work Order(s), issued in accordance with the Agreement, as amended by mutual agreement between the Parties and in accordance with the terms and conditions in the Agreement from time to time;
- 2.8. **“Intellectual Property”** means all rights to and ownership of any idea, discovery, design, concept, technique or improvement, know-how, or invention (whether or not patented), trademark, or copyright material;
- 2.9. **“Intellectual Property Rights”** include any patents or patent applications, trade and service marks whether registered or unregistered, registered design, design rights, copyright, rights in databases, domain names, trade or business names and any other similar protected rights in any country (together with the right to apply for any of the above, if applicable);
- 2.10. **“Materials”** means the Deliverables, the Supplier Materials and the Third Party Material;
- 2.11. **“Parties”** means the Parties to the Agreement, together with their subsidiaries, divisions, business units, successors-in-title and their assigns;
- 2.12. **“Party”** means either one of these Parties;
- 2.13. **“Personnel”** means any partner, employee, agent, consultant, independent associate or supplier, sub-supplier and the staff of such sub-supplier, or other authorised representative of the Supplier;
- 2.14. **“Purchase Order(s)”** means an official order(s) issued by an operational division of Transnet to the Supplier for the provision of Services;
- 2.15. **“Rate(s)”** shall mean the agreed Rate(s) for the Services to be procured from the Supplier by Transnet, as detailed in the Schedule of Requirements or Work Order(s), issued in accordance with the Agreement, as amended by mutual agreement between the Parties and in accordance with the terms and conditions in the Agreement from time to time;

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- 2.16. **“Schedule of Requirements”** means Schedule 1 hereto, unless substituted by a Work Order or Work Orders, as defined;
- 2.17. **“Service(s)”** means the Service(s) provided to Transnet by the Supplier, pursuant to the Schedule of Requirements or Work Order(s) in terms of the Agreement;
- 2.18. **“Service Level Agreement”** or **“SLA”** means the processes, deliverables, key performance indicators and performance standards relating to the Services to be rendered by the Supplier;
- 2.19. **“Subcontract”** means any contract or agreement or proposed contract or agreement between the Supplier and any third party whereby that third party agrees to provide to the Supplier the Services or any part thereof;
- 2.20. **“Supplier Materials”** means all works of authorship, products and materials (including, but not limited to, data, diagrams, charts, reports, specifications, studies, inventions, software, software development tools, methodologies, ideas, methods, processes, concepts and techniques) owned by, or licensed to the Supplier prior to the commencement date or independently developed by the Supplier outside the scope of the Agreement at no expense to Transnet, and used by the Supplier in the performance of the Services;
- 2.21. **“Third Party Material”** means software, software development tools, methodologies, ideas, methods, processes, concepts and techniques owned by, or licensed to a third party and used by the Supplier in the performance of the Services;
- 2.22. **“VAT”** means Value-Added Tax in terms of the Value-Added Tax Act, No 89 of 1991; and
- 2.23. **“Work Order(s)”** means a detailed scope of work for a Service required by Transnet, including timeframes, deliverables, fees and costs for the supply of the Service to Transnet, which may be appended to the Agreement from time to time.

3. INTERPRETATION

- 3.1. Clause headings in the Agreement are included for ease of reference only and do not form part of the Agreement for the purposes of interpretation or for any other purpose. No provision shall be construed against or interpreted to the disadvantage of any Party hereto by reason of such Party having or being deemed to have structured or drafted such provision.



- 3.2. Any term, word, acronym or phrase used in the Agreement, other than those defined under the clause heading "DEFINITIONS" shall be given its plain English meaning, and those terms, words, acronyms, and phrases used in the Agreement will be interpreted in accordance with the generally accepted meanings accorded thereto.
- 3.3. A reference to the singular incorporates a reference to the plural and vice versa.
- 3.4. A reference to natural persons incorporates a reference to legal persons and vice versa.
- 3.5. A reference to a particular gender incorporates a reference to the other genders.

4. NATURE AND SCOPE

- 4.1. The Agreement is an agreement under the terms and conditions of which the Supplier will arrange for the provision to Transnet of the Service which meets the requirements and specifications of Transnet, the delivery of which is controlled by means of a Purchase Order(s) to be issued by Transnet and executed by the Supplier, in accordance with the Agreement.
- 4.2. Such Purchase Order(s) shall be agreed between the Parties from time to time and shall be subject to the terms of the Schedule of Requirement(s) and / or relevant Work Order(s).
- 4.3. Each properly executed Purchase Order forms an inseparable part of the Agreement as if it were fully incorporated into the body of the Agreement.
- 4.4. During the period of the Agreement, both Parties can make written suggestions for amendments to the Schedule of Requirements or Work Orders, in accordance with procedures set out in clause 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 Schedule of Requirements and / or Work Order(s) conflicts with a like term, provision or condition in the Agreement and / or a Purchase Order, or where the Agreement is silent on the matter, the term, provision or condition in the Schedule of Requirements and / or Work Order(s) shall prevail.
- 4.6. Time will be of the essence and the Supplier will perform its obligations under the Agreement in accordance with the timeframe(s) (if any) set out in the relevant schedule, save that the Supplier will not be liable under this clause if it is unable to meet such obligation within the time required

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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 -
 - 5.2.1. enter into an agreement in the name of the other; or
 - 5.2.2. give any warranty, representation or undertaking on the other's behalf; or
 - 5.2.3. create any liability against the other or bind the other's credit in any way or for any purpose whatsoever.

6. WARRANTIES

- 6.1. The Supplier warrants to Transnet that:
 - 6.1.1. it has full capacity and authority to enter into and to perform the Agreement and that the Agreement is executed by a duly authorised representative of the Supplier;
 - 6.1.2. it will discharge its obligations under the Agreement and any schedule or Work Order with all due skill, care and diligence;
 - 6.1.3. it will be solely responsible for the payment of remuneration and associated benefits, if any, and for withholding and remitting income tax for its Personnel in conformance with any applicable laws and regulations;
 - 6.1.4. it will license to Transnet or procure licences for Transnet in respect of all Supplier and / or Third Party Material detailed in the schedules or Work Order(s), and will grant to Transnet or procure the right for Transnet to take such copies (in whole or in part) of such Supplier and / or Third Party Material as it may reasonably require for the purposes of back-up for archiving and disaster recovery; and



- 6.1.5. the use or possession by Transnet of any Materials will not subject Transnet to any claim for infringement of any Intellectual Property Rights of any third party.
- 6.2. The Supplier warrants that it will perform its obligations under the Agreement in accordance with the Service Level Agreement 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 Supplier fails to meet the Service levels, Transnet may claim appropriate service credits or invoke a retention of Fees as detailed in the relevant schedule or Work Order.
- 6.3. The Supplier warrants that for a period of 90 (ninety) days from acceptance of the Deliverables they will, if properly used, conform in all materials respects with the requirements set out in the relevant schedule or Work Order. The Supplier will at its expense remedy any such non-conformance as soon as possible but in any event within 30 (thirty) days of notification by Transnet. In the event that the Supplier fails or is unable to remedy such non-conformance within such time-scale, Transnet will be entitled to employ a third party to do so in place of the Supplier and any excess charges or costs incurred by Transnet as a result shall be paid by the Supplier.
- 6.4. The Supplier will remedy any defect within 14 (fourteen) days of being notified of that defect by Transnet in writing.
- 6.5. The Supplier will not be liable to remedy any problem arising from or caused by any modification made by Transnet to the Deliverables, or any part thereof, without the prior approval of the Supplier.
- 6.6. The Supplier warrants that:
- 6.6.1. it has, using the most up-to-date software available, tested for (and deleted) all commonly known viruses in the Materials and for all viruses known by the Supplier at the date of the relevant schedule or Work Order; and
- 6.6.2. at the time of delivery to Transnet, the Materials do not contain any trojan horse, worm, logic bomb, time bomb, back door, trap door, keys or other harmful components.

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- 6.6.3. The Supplier agrees that, in the event that a virus is found, it will at its own expense use its best endeavours to assist Transnet in reducing the effect of the virus and, particularly in the event that a virus causes loss of operational efficiency or loss of data, to assist Transnet to the same extent to mitigate such losses and to restore Transnet to its original operating efficiency.
- 6.7. The Supplier 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).
- 6.8. The Supplier undertakes to comply with South Africa's general privacy protection in terms of the Bill of Rights (Section 14) in connection with the Agreement and shall procure that its Personnel shall observe the provisions of such Act (as applicable) or any amendments and re-enactments thereof and any regulations made pursuant thereto.
- 6.9. The Supplier warrants that it has taken all reasonable precautions to ensure that, in the event of a disaster, the impact of such disaster on the ability of the Supplier to comply with its obligations under the Agreement will be reduced to the greatest extent possible, and that the Supplier shall ensure that it has appropriate, tested and documented recovery arrangements in place.

TRANSNET'S OBLIGATIONS

- 7.1. Transnet undertakes to promptly comply with any reasonable request by the Supplier for information, including information concerning Transnet's operations and activities, that relate to the Services as may be necessary for the Supplier to perform the Services, but for no other purpose. However, Transnet's compliance with any request for information is subject to any internal security rules and requirements and subject to the observance by the Supplier of its confidentiality obligations under the Agreement.
- 7.2. The Supplier shall give Transnet reasonable notice of any information it requires in accordance with clause 7.1 above.
- 7.3. Subject to clause 14 (SUPPLIER'S PERSONNEL), Transnet agrees to provide the Supplier or its Personnel such access to and use of its facilities as is necessary to allow the Supplier to perform its obligations under the Agreement.



8. GENERAL OBLIGATIONS OF THE SUPPLIER

8.1. The Supplier shall –

- 8.1.1. respond promptly to all complaints and enquiries from Transnet;
- 8.1.2. conduct its business in a professional manner that will reflect positively upon the Supplier and the Supplier's Services;
- 8.1.3. keep full records clearly indicating all transactions concluded by the Supplier relating to the delivery of the Services and keep such records for at least 5 (five) years from the date of each such transaction;
- 8.1.4. obtain, and at all times maintain in full force and effect, any and all licenses, permits and the like required under applicable laws for the provision of the Services and the conduct of the business and activities of the Supplier;
- 8.1.5. demonstrate sound environmental performance and have an environmental management policy; and
- 8.1.6. inform Transnet immediately of any dispute or complaint arising in relation to the delivery of the Service.

8.2. The Supplier acknowledges and agrees that it shall at all times -

- 8.2.1. render the Service(s) and perform all its duties with honesty and integrity;
- 8.2.2. communicate openly and honestly with Transnet and demonstrate a commitment to performing the Services timeously, efficiently and to the required standards;
- 8.2.3. endeavour to provide the highest possible standards of Service and professionalism, with a reasonable degree of care and diligence;
- 8.2.4. use its best endeavours and make every diligent effort to meet agreed deadlines;
- 8.2.5. treat its own Personnel, as well as all Transnet's officers, employees, agents and consultants, with fairness and courtesy and respect for their human rights;



- 8.2.6. practice and promote its own internal policies aimed at prohibiting and preventing unfair discrimination (clause 23 refers – EQUALITY AND DIVERSITY);
- 8.2.7. treat all enquiries from Transnet in connection with the supply of the Services with courtesy and respond to all enquiries promptly and efficiently. Where the Supplier is unable to comply with the provisions of this clause, the Supplier will advise Transnet of the delay and the reasons therefore and will keep Transnet informed of progress made regarding the enquiry;
- 8.2.8. when requested by Transnet, provide clear and accurate information regarding the Supplier's own policies and procedures, excluding trade secrets and other Confidential Information;
- 8.2.9. not allow a conflict of interest to develop between its own interests (or the interests of any of its other customers) and the interests of Transnet;
- 8.2.10. not accept or offer, nor allow, induce or promote the acceptance or offering of any gratuity, enticement, incentive or gift that could reasonably be regarded as bribery or an attempt to otherwise exert undue influence over the recipient;
- 8.2.11. not mislead Transnet or its officers, employees and stakeholders, whether by act or omission;
- 8.2.12. not otherwise act in an unethical manner or do anything which could reasonably be expected to damage or tarnish Transnet's reputation or business image; and
- 8.2.13. immediately report to Transnet any unethical, fraudulent or otherwise unlawful conduct of which it becomes aware in connection with Transnet or the provision of the Services.

9. RATES, FEES AND EXPENSES

- 9.1. In consideration of the provision of the Services, Transnet will pay to the Supplier the Rates and /or Fees as detailed in the relevant schedule or Work Order.
- 9.2. Transnet will not be invoiced for materials used in the provision of the Services save for those materials (if any) set out in a schedule or Work Order and accepted by Transnet, which will be invoiced to Transnet at cost.

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9.3. Unless otherwise agreed in a Work Order, Transnet will reimburse to the Supplier all reasonable and proper expenses incurred directly and solely in connection with the provision of the Services, provided that all such expenses:

9.3.1. are agreed by Transnet in advance;

9.3.2. are incurred in accordance with Transnet's standard travel and expenses policies;

9.3.3. are passed on to Transnet at cost with no administration fee; and

9.3.4. will only be reimbursed if supported by relevant receipts.

9.4. All invoices relating to Fees, out of pocket expenses and, if applicable, travel and accommodation costs, will provide the detail for each of the Personnel carrying out the Service and incurring the expenses, and the invoice will, where appropriate, include VAT as a separate item.

10. INVOICING AND PAYMENT

10.1. Transnet shall pay the Supplier the amounts stipulated in the relevant schedule or Work Order, subject to the terms and conditions of the Agreement.

10.2. Transnet shall pay such amounts to the Supplier (upon receipt of a correct and undisputed invoice together with the supporting documentation as specified in the Schedule of Requirements or Work Orders appended hereto) once the undisputed invoices or such portion of the invoice which is undisputed become due and payable to the Supplier in terms of clause 10.4 below.

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

10.4. Unless otherwise provided for the Schedule of Requirements or Work Orders appended hereto, invoices shall be submitted at month end together with a monthly statement. Payment against such monthly statement shall be made by Transnet within 30 (thirty) days after date of receipt by Transnet of the statement together with all invoices and relevant supporting documentation.

10.5. Where the payment of any invoice or any part of an invoice is not made in accordance with this clause 10, the Supplier shall be entitled to charge interest on the outstanding amount at the rate



of 1½% per annum above Transnet's bankers base rate in force for the time from the due date until the outstanding amount is paid.

11. ADJUSTMENT OF FEES OR RATES

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

12. INTELLECTUAL PROPERTY

- 12.1. Subject to clauses 12.2 and 12.3, the Deliverables and all Intellectual Property Rights therein shall be and remain the exclusive property of Transnet.
- 12.2. All Intellectual Property Rights in the Supplier Materials and Third Party Material vest in the Supplier or the third party as appropriate. The Supplier hereby grants or will procure a grant to Transnet of an irrevocable, royalty-free, non-transferable licence to use such Supplier Materials and/or Third Party Material for its own business purposes
- 12.3. Where there are modifications to pre-existing Material, which are inseparable from the pre-existing Material, the owner of the pre-existing Material will own the modifications. However, the Supplier will use its best endeavours to procure from the owner for Transnet the grant of an irrevocable, royalty free, fully transferable licence to use such modifications as Transnet in its absolute discretion thinks fit.
- 12.4. All rights in the Transnet name and logo remain the absolute property of Transnet.

13. INTELLECTUAL PROPERTY RIGHTS INDEMNITY

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Date and Company Stamp



- 13.1. The Supplier shall promptly notify Transnet of any infringement or apparent or threatened infringement (or any circumstances which may potentially give rise to an infringement) of, or any actions, claims or demands in relation to any Intellectual Property Rights (whether occurring during or after the termination of the Agreement) and shall provide to Transnet all assistance which Transnet may reasonably require in connection herewith including, but not limited to, the prosecution of any rights in relation to such Intellectual Property Rights.
- 13.2. The Supplier shall at all times, whether during or after termination or expiry of the Agreement, indemnify and keep Transnet indemnified against all losses, claims, damages and expenses (including all reasonable legal fees) in relation to any infringement or alleged infringement of any Intellectual Property Rights suffered by Transnet as a result of Transnet's use or possession of the Materials or any part thereof.
- 13.3. The Supplier shall be entitled to conduct all negotiations and proceedings in relation to any such claims brought against Transnet, but shall not be entitled to settle or compromise any claim without Transnet's prior written consent (not to be unreasonably withheld).
- 13.4. If at any time an allegation of infringement of Intellectual Property Rights is made, the Supplier may, at its own expense and sole option, either:
- 13.4.1. procure for Transnet the right to continue using the relevant Materials; or
 - 13.4.2. replace or modify the Materials with non-infringing substitutes, provided that any substitute shall not materially prejudice Transnet's beneficial use of the Materials or the Services, or cause the Supplier no longer to comply with the Work Order, and that such substitution will be carried out so as to avoid or reduce insofar as possible any interruption to Transnet's business operations; or
 - 13.4.3. failing 13.4.1 or 13.4.2 above, without prejudice to the indemnity in clause 13.2, refund in full all Fees paid by Transnet under the Agreement in relation to such Materials, and Transnet will return such Materials to the Supplier.

Respondent's Signature

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14. SUPPLIER'S PERSONNEL

- 14.1. The Personnel shall be regarded at all times as employees, agents or sub-contractors of the Supplier and no relationship of employer and employee shall arise between Transnet and any Personnel under any circumstances regardless of the degree of supervision that may be exercised over the Personnel by Transnet.
- 14.2. The Supplier warrants that all Personnel will be entitled to work in South Africa or any other country in which the Services are performed.
- 14.3. The Supplier will ensure that its Personnel comply with all reasonable requirements made known to the Supplier by Transnet concerning conduct at any Transnet Premises or any other premises upon which the Services are to be performed (including but not limited to security regulations, policy standards and codes of practice and health and safety requirements). The Supplier will ensure that such Personnel at all times act in a lawful and proper manner in accordance with these requirements.
- 14.4. Transnet reserves the right to refuse to admit or to remove from any premises occupied by or on behalf of it, any 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 own staff, provided that Transnet notifies the Supplier of any such refusal (with reasons why). The reasonable exclusion of any such individual from such premises shall not relieve the Supplier from the performance of its obligations under the Agreement.
- 14.5. The Supplier agrees to use all reasonable endeavours to ensure the continuity of the Personnel assigned to perform the Services. If any re-assignment by the Supplier of those Personnel is necessary, or if Transnet advises that any Personnel assigned are in any respect unsatisfactory, including where any such personnel are, or are expected to be or have been absent for any period, then the Supplier will promptly supply a replacement of equivalent calibre and experience, and any such replacement shall be approved by Transnet prior to commencing provision of the Services, such approval not to be unreasonably withheld.

15. LIABILITY

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



- 15.1.1. death or personal injury due to negligence; or
- 15.1.2. fraud.
- 15.2. The Supplier shall indemnify and keep Transnet indemnified from and against liability for damage to any Transnet property (whether tangible or intangible) or any other loss, costs or damage suffered by Transnet to the extent that it results from any act of or omission by the Supplier or its Personnel in connection with the Agreement. The Supplier's liability arising out of this 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, the liability of either the Supplier or Transnet under or in connection with the Agreement, whether for negligence, misrepresentation, breach of contract or otherwise, for direct loss or damage arising out of each Default or series of related Defaults shall not exceed 100% (one hundred percent) of the fees paid under the schedule or Work Order to which the Default(s) relates.
- 15.4. Subject to clause 15.1 above, and except as provided in clauses 15.2 and 15.3, 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.
- 15.6. Nothing in this clause 15 shall be taken as limiting the liability of the Supplier in respect of clause 13 (INTELLECTUAL PROPERTY RIGHTS INDEMNITY), or clause 17 (CONFIDENTIALITY).

16. INSURANCES

- 16.1. Without limiting the liability of the Supplier under the Agreement, the Supplier shall take out insurance in respect of all risks for which it is prudent for the Supplier to insure against, including any liability it may have as a result of its activities under the Agreement for theft, destruction, death or injury to any person and damage to property. The level of insurance will be kept under review by Transnet, on an annual basis, to ensure its adequacy, provided that any variation to the level of such insurance shall be entirely at the discretion of the Supplier.



- 16.2. The Supplier shall arrange insurance with reputable insurers and will produce to Transnet evidence of the existence of the policies and the receipts for payment of the current premiums, on an annual basis within 30 (thirty) days after date of policy renewals.
- 16.3. Subject to clause 16.4, if the Supplier 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 Supplier shall promptly reimburse Transnet for any premiums paid provided such insurance protects the Supplier's liability. Transnet assumes no responsibility for such insurance being adequate to protect all of the Supplier's liabilities.
- 16.4. In the event that the Supplier receives written notice from its insurers advising of the termination of its insurance cover referred to in clause 16.1 or if the insurance ceases to be available upon commercially reasonable terms, the Supplier shall immediately notify Transnet in writing of such termination and / or unavailability, whereafter the Supplier or Transnet may terminate the Agreement on giving the other Party not less than 30 (thirty) days prior written notice to that effect.

17. CONFIDENTIALITY

17.1. The Parties hereby undertake the following, with regard to Confidential Information -

- 17.1.1. not to divulge or disclose to any person whomsoever in any form or manner whatsoever, either directly or indirectly, any Confidential Information of the other, without the prior written consent of such other Party, other than when called upon to do so in accordance with a statute, or by a court having jurisdiction, or by any other duly authorised and empowered authority or official, in which event the Party 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;
- 17.1.2. not to use, exploit, permit the use of, directly or indirectly, or in any other manner whatsoever apply the Confidential Information, disclosed to it as a result of the Agreement, for any purpose whatsoever other than for the purpose for which it is disclosed or otherwise than in strict compliance with the provisions in the Agreement;



- 17.1.3. 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;
- 17.1.4. the Parties shall not make or permit to be made by any other person subject to their control, any public statements or issue press releases or disclose Confidential Information with regard to any matter related to the Agreement, unless written authorisation to do so has first been obtained from the Party first disclosing such information; and
- 17.1.5. each Party shall ensure that Confidential Information is disclosed to its Personnel or staff or to any other person, on a strictly need to know basis, and that, when such disclosure is made, the Personnel or staff or person to whom such disclosure is made is admonished and formally undertakes to comply with the terms and conditions of confidentiality stipulated herein.
- 17.2. The duties and obligations with regard to Confidential Information in this clause 17 shall not apply where -
- 17.2.1. a Party can demonstrate that such information is already in the public domain or becomes available to the public through no breach of the Agreement by that Party, or its Personnel or staff; or
- 17.2.2. was rightfully in a Party's possession prior to receipt from the other Party, as proven by the first mentioned Party's written records, without an infringement of an obligation or duty of confidentiality; or
- 17.2.3. can be proved to have been rightfully received by a Party from a third party without a breach of a duty or obligation of confidentiality; or
- 17.2.4. 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 for 5 (five) years after the termination of the Agreement.



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

Should the Supplier fail or neglect to execute the work or to deliver any portion of the Service, as required by the terms of the Agreement, Schedule or Requirements or Work Order(s), Transnet may cancel the Agreement or Schedule or Requirements 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.

19. TERM AND TERMINATION

- 19.1. The Agreement shall commence on the commencement date, as specified in the schedules hereto, and shall continue subject to termination in accordance with the provisions of the Agreement or otherwise in accordance with law or equity.
- 19.2. Transnet may terminate the Agreement without cause by giving the Supplier 30 (thirty) days notice in writing.
- 19.3. If either Party (the "Defaulting Party") commits a material breach of the Agreement and fails to remedy such breach within 10 (ten) Business Days of written notice thereof, the other Party (hereinafter the "Aggrieved Party"), shall be entitled, in addition to any other rights and remedies that it may have in terms of the Agreement, to terminate the Agreement forthwith without any liability and without prejudice to any claims which the Aggrieved Party may have for damages against the Defaulting Party.
- 19.4. Either Party may terminate the Agreement forthwith by notice in writing to the other Party when the other Party is unable to pay its debts as they fall due or commits any act or omission which would be an act of insolvency in terms of the Insolvency Act, 1936 (as amended), or if any actions, application or proceeding are made in this regard for -
 - 19.4.1. a voluntary arrangement or composition or reconstructions of its debts;
 - 19.4.2. the presentation of an administrative petition;
 - 19.4.3. its winding-up or dissolution;
 - 19.4.4. the appointment of a liquidator, trustee, receiver, administrative receiver or similar officer; or
 - 19.4.5. any similar action, application or proceeding in any jurisdiction to which it is subject.



19.5. Transnet may terminate the Agreement at any time within 2 (two) months of becoming aware of a change of control of the Supplier, by notice in writing to the Supplier. For the purpose 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.

19.6. Transnet may cancel any schedule or Work Order hereto at any time on giving the Supplier 30 (thirty) days notice to this effect.

20. CONSEQUENCE OF TERMINATION

20.1. Termination in accordance with clause 19 above 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 schedule or Work Order, the Supplier will immediately deliver up, and procure that its Personnel will immediately deliver up to Transnet, all Deliverables and property belonging to Transnet (or, in the event of termination of a Work Order, such as is relevant to that Work Order) which may be in the possession of, or under the control of the Supplier, and certify to Transnet in writing that this has been done.

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 Supplier will provide 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 Supplier under clause 19.3 (material breach), or in the event that a Work Order is terminated by Transnet under clause 19.6 (cancellation at any time), Transnet will pay to the Supplier all outstanding Fees (apportioned on a daily basis if appropriate) or Rates relating to the work undertaken by the Supplier up until the date of such termination. Transnet will also pay the costs of any materials ordered by the Supplier in relation to the such work for which the Supplier has paid or is legally obliged to pay, in which case, on delivery of such goods or materials, the Supplier will promptly deliver such materials to Transnet or as it may direct.

20.5. The provisions of Clauses 2 (DEFINITIONS), 6,(WARRANTIES), 12 (INTELLECTUAL PROPERTY), 13 (INTELLECTUAL PROPERTY RIGHTS INDEMNITY), 15 (LIABILITY), 17 (CONFIDENTIALITY), 20 (CONSEQUENCE OF TERMINATION), 26 (DISPUTE RESOLUTION) and 30 (GOVERNING LAW) shall survive termination or expiry of the Agreement.

Respondent's Signature

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Date and Company Stamp



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 Supplier agrees that it shall not unreasonably withhold or delay its consent to such assignment or novation and that it shall only be entitled to recover from Transnet any reasonable legal costs incurred by it as a direct result of such assignment or novation.

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, strike, lockout, industrial dispute, government action, laws or regulations, riots, terrorism or civil disturbance, defaults, delays or discontinuance on the part of independent contractors, or other circumstances or factors beyond the reasonable control of either Party, and to the extent that the performance of obligations of either Party hereunder is delayed by virtue of the foregoing, any period stipulated for any such performance shall be reasonably extended.

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 the Parties fail to agree within 30 (thirty) 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 Supplier will not victimise, harass or discriminate against any employee of either Party to the Agreement or any applicant for employment with either Party to the Agreement due to their gender, race, disability, age, religious belief, sexual orientation or part time status. This provision applies, but is not limited to employment, upgrading, work environment, demotion, transfer, recruitment, recruitment advertising, termination of employment, rates of pay or other forms of compensation including selection for training.

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

Respondent's Signature

Date and Company Stamp



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.
- 26.3. If a dispute has been referred to AFSA as envisaged in clause 26.2, such dispute shall be finally resolved in accordance with the rules of AFSA by an arbitrator or arbitrators appointed by AFSA.
- 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 (“fax”) numbers, detailed in Schedule 2 hereto, as their respective addresses for giving or sending any notice provided for or required in terms of the Agreement, provided that either Party shall be entitled to substitute such other address or fax number, as may be, by written notice to the other.

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

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

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

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

27.3.3. if sent by fax, 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.

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, any annexures appended hereto, and the Schedule of Requirements.

29. AMENDMENT AND CHANGE CONTROL

Any amendment or change of any nature made to the Agreement, and / or the Schedule of Requirements and / or Work Order(s) appended hereto, shall only be valid if it is in writing, signed



by both Parties and added to the Agreement as an addendum hereto.

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.

31. COUNTERPARTS

The Agreement 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 the Agreement by signing any such counterpart.

Respondent's Signature

Date and Company Stamp



SECTION 9

RFQ NUMBER: CRAC-VEG-8329

OPEN EARTHWORKS DRAINAGE CHANNEL, REMOVE SPOILT VEGETATION AND PLACE SLEEPERS AT KARSENE YARD

NON-DISCLOSURE AGREEMENT (“NDA”)

Complete and sign NDA attached hereto

Respondent's Signature

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Date and Company Stamp



NON-DISCLOSURE AGREEMENT

THIS AGREEMENT is made the day of 2012

BETWEEN:

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

WHEREAS

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

IT IS HEREBY AGREED

1. Interpretation

1.1 In this Agreement:-

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

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

Respondent's Signature

Date and Company Stamp



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

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

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

“Proposal” means the aggregation of Transnet’s Request for Information (RFI) and Request for Proposal (RFP).

2. Confidential Information

- 2.1 The Receiving Party will treat and keep all Confidential Information as secret and confidential and will not, without the Disclosing Party’s written consent, directly or indirectly communicate or disclose (whether in writing or orally or in any other manner) Confidential Information to any other person other than in accordance with the terms of this Agreement.
- 2.2 The Receiving Party will only use the Confidential Information for the sole purpose of technical and commercial discussions between the parties in relation to the Proposal or for the subsequent performance of any contract between the parties in relation to the Proposal.
- 2.3 Notwithstanding clause 2.1, the Receiving Party may disclose Confidential Information:
 - (i) To those of its Agents who strictly need to know the Confidential Information for the sole purpose set out in clause 2.2 provided that the Receiving Party shall ensure that such Agents are made aware prior to the disclosure of any part of the Confidential Information that the same is confidential and that they owe a duty of confidence to the Disclosing Party. The Receiving Party shall at all times remain liable for any actions of such Agents that would constitute a breach of this Agreement; or
 - (ii) to the extent required by law or the rules of any applicable regulatory authority, subject to clause 2.4 below.

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- 2.4 In the event that the Receiving Party is required to disclose any Confidential Information in accordance with clause 2.3 (ii) above, it shall promptly notify the Disclosing Party and co-operate with the Disclosing Party regarding the form, nature, content and purpose of such disclosure or any action which the Disclosing Party may reasonably take to challenge the validity of such requirement.
- 2.5 In the event that any Confidential Information shall be copied, disclosed or used otherwise than as permitted under this Agreement then, upon becoming aware of the same, without prejudice to any rights or remedies of the Disclosing Party, the Receiving Party shall as soon as practicable notify the Disclosing Party of such event and if requested take such steps (including the institution of legal proceedings) as shall be necessary to remedy (if capable of remedy) the default and/or to prevent further unauthorised copying, disclosure or use.
- 2.6 All Confidential Information shall remain the property of the Disclosing Party and its disclosure shall not confer on the Receiving Party any rights, including intellectual property rights, over the Confidential Information whatsoever beyond those contained in this Agreement.

3. Records and return of Information

- 3.1 The Receiving Party agrees to ensure proper and secure storage of all Information and any copies thereof to at least the same standard as the Receiving Party keeps its own Confidential Information. The Receiving Party shall not make any copies or reproduce in any form any Confidential Information except for the purpose of disclosure as permitted in accordance with this Agreement.
- 3.2 The Receiving Party shall keep a written record, to be supplied to the Disclosing Party upon request, of the Confidential Information provided and any copies made thereof and, so far as is reasonably practicable, of the location of such Confidential Information and any copies thereof.
- 3.3 The Receiving Party shall, within seven days of receipt of a written demand from the Disclosing Party or of its ceasing to be interested in the Proposal:
- (i) Return all written Confidential Information (including all copies); and
 - (ii) expunge or destroy any Confidential Information from any computer, word processor or other device whatsoever into which it was copied, read or programmed by the Receiving Party or on its behalf (including by any person to whom disclosure has been made as permitted under clause 2.3(i) above).

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

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

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4. Announcements

- 4.1 Neither party will make or permit to be made any announcement or disclosure of its prospective interest in the Proposal without the prior written consent of the other party.
- 4.2 Neither party shall make use of the other party's name or any information acquired through its dealings with the other party for publicity or marketing purposes without the prior written consent of the other party.

5. Duration

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

6. Principal

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

7. Representations

- 7.1 Each party agrees that any Information made available to the Receiving Party or its Agents for the purpose of negotiations or discussions in relation to the Proposal will not form the basis of, or any representation in relation to, any contract, nor constitute an offer or invitation by the Disclosing Party.
- 7.2 Except in the case of fraudulent misrepresentation, the Disclosing Party accepts no responsibility for nor makes any representation or warranty, express or implied, with respect to the accuracy, reliability or completeness of any Information made available to the Receiving Party or its Agents.

8. Adequacy of damages

- 8.1 Without prejudice to any other rights or remedies of the Disclosing Party, the Receiving Party acknowledges and agrees that damages would not be an adequate remedy for any breach by it of the provisions of this Agreement and that the Disclosing Party shall be entitled to seek the remedies of injunction, specific performance and other equitable relief for any threatened or actual breach of any such provision by the Receiving Party or its Agents, and no proof of special damages shall be necessary for the enforcement of the rights under this Agreement.
- 8.2 Nothing contained in this Agreement shall be construed as prohibiting the Disclosing Party from pursuing any other remedies available by it, either at law or in equity, for any such threatened or actual breach of this Agreement including specific performance, recovery of damages or otherwise.

Respondent's Signature

Date and Company Stamp



9. Data Protection

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

10. General

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

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

TRANSNET LIMITED:

By:
(Signature)

Respondent's Signature

Date and Company Stamp



Print name: _____
Title: _____
Date: _____

[*Insert company name*]:

By:
(Signature)

Print name: _____
Title: _____
Date: _____

"Preview Copy Only"

Respondent's Signature

Date and Company Stamp



SECTION 10

RFQ NUMBER: CRAC-VEG-8329

OPEN EARTHWORKS DRAINAGE CHANNEL, REMOVE SPOILT VEGETATION AND PLACE SLEEPERS AT KARSENE YARD

SUPPLIERS CODE OF CONDUCT

Respondent's Signature

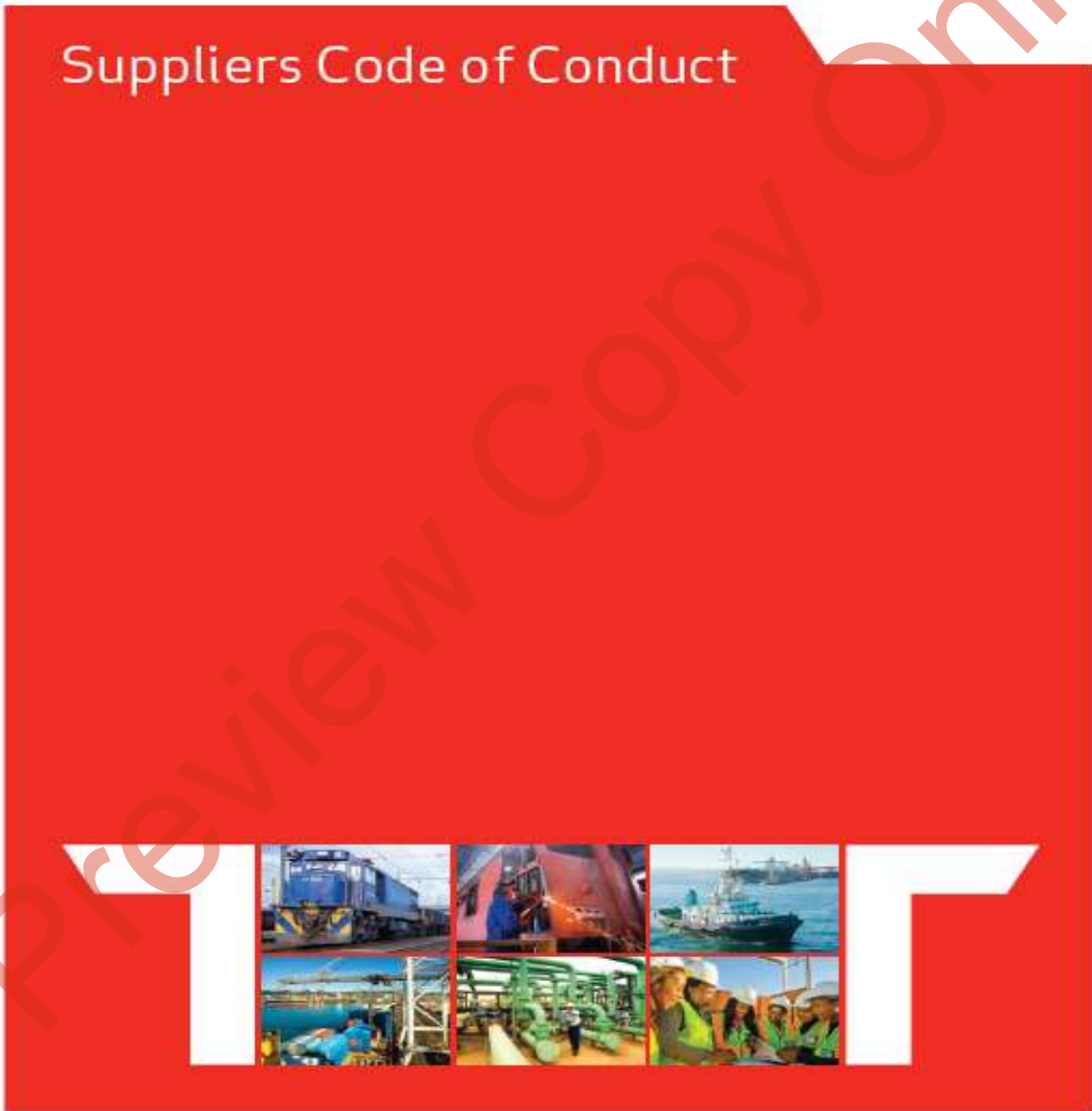
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delivering on our commitment to you

Suppliers Code of Conduct



Respondent's Signature

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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 receive anything that is calculated to:

- Illegally influence their judgement or conduct or to influence the outcome of a sourcing activity;
 - Win or retain business or to influence any act or decision of any person involved in sourcing decisions; gain an improper advantage.
- » There may be times when a supplier is confronted with fraudulent or corrupt behaviour of Transnet employees. We expect our suppliers to use our "Tip-offs Anonymous" Hotline to report these acts - 0800 003 056.

Transnet is firmly committed to free and competitive enterprise.

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

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

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



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These include, but are not limited to:

- Misrepresentation of their product (origin of manufacture, specifications, intellectual property rights, etc);
 - Collusion;
 - Failure to disclose accurate information required during the sourcing activity (ownership financial situation, BBBEE status, etc);
 - Corrupt activities listed above; and harassment, intimidation or other aggressive actions towards Transnet employees.
- » Suppliers must be evaluated and approved before any materials, components, products or services are purchased from them. Rigorous due diligence must be conducted and the supplier is expected to participate in an honest and straight forward manner.
- » Suppliers must record and report facts accurately, honestly and objectively. Financial records must be accurate in all material respects.



Conflict of Interest

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

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

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

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

TIP-OFFS ANONYMOUS HOTLINE
0800 003 056

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SECTION 11

RFQ NUMBER: CRAC-VEG-8329

OPEN EARTHWORKS DRAINAGE CHANNEL, REMOVE SPOILT VEGETATION AND PLACE SLEEPERS AT KARSENE YARD

SUPPLIERS DECLARATIONS FORM ("SDF")

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Transnet Supplier Declaration/Application

The Financial Director or Company Secretary

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

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

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

IMPORTANT NOTES:

- a) **If your annual turnover is less than R5 million**, then in terms of the DTI codes, you are classified as an Exempted Micro Enterprise (EME). If your company is classified as an EME, please include in your submission, a signed letter from your Auditor / Accountant confirming your company's most recent annual turnover is less than R5 million and percentage of black ownership and black female ownership in the company **AND/OR** BBBEE certificate and detailed scorecard from an accredited rating agency (e.g. permanent ABVA Member), should you feel you will be able to attain a better BBBEE score.
- b) **If your annual turnover is between R5 million and R35million**, then in terms of the DTI codes, you are classified as a Qualifying Small Enterprise (QSE) and you claim a specific BBBEE level based on any 4 of the 7 elements of the BBBEE score-card, please include your BEE certificate in your submission as confirmation of your status.
NB: BBBEE certificate and detailed scorecard should be obtained from an accredited rating agency (e.g. permanent ABVA Member).
- c) **If your annual turnover is in excess of R35million**, then in terms of the DTI codes, you are classified as a Large Enterprise and you claim a specific BEE level based on all seven elements of the BBBEE generic score-card. Please include your BEE certificate in your submission as confirmation of your status.
NB: BBBEE certificate and detailed scorecard should be obtained from an accredited rating agency (permanent ABVA Member).
- d) **To avoid PAYE tax being automatically deducted from any invoices received from you**, you must also contact the Transnet person who lodged this request on your behalf, so as to be correctly classified in terms of Tax legislation.
- e) Unfortunately, **No payments can be made to a vendor** until the vendor has been registered, and no vendor can be registered until the vendor application form, together with its supporting documentation, has been received and processed.

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- f) Please return the completed Supplier Declaration Form (SDF) together with the required supporting documents mentioned above to the Transnet Official who is intending to procure your company's services/products in order that he/she should complete and Internal Transnet Departmental Questionnaire before referring the matter to the appropriate Transnet Vendor Master Office.

Supplier Declaration Form

Company Trading Name							
Company Registered Name							
Company Registration Number Or ID Number If A Sole Proprietor							
Form of entity	CC	Trust	Pty Ltd	Limited	Partnership	Sole Proprietor	
VAT number (if registered)							
Company Telephone Number							
Company Fax Number							
Company E-Mail Address							
Company Website Address							
Postal Address						Code	
Physical Address						Code	
Contact Person							
Designation							
Telephone							
Email							
Annual Turnover Range (Last Financial Year)		< R5 Million		R5-35 million		> R35 million	
Does Your Company Provide		Products		Services		Both	
Area Of Delivery		National		Provincial		Local	
Is Your Company A Public Or Private Entity				Public		Private	
Does Your Company Have A Tax Directive Or IRP30 Certificate		Yes		No			
Main Product Or Service Supplied (E.G.: Stationery/Consulting)							
BEE Ownership Details							
% Black Ownership		% Black women ownership		% Disabled person/s ownership			
Does your company have a BEE certificate			Yes	No			
What is your broad based BEE status (Level 1 to 8 / Unknown)							
How many personnel does the firm employ			Permanent	Part time			
Name of person procuring your services/products							
Contact number							
Transnet operating division							

Respondent's Signature

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Duly Authorised To Sign For And On Behalf Of Firm / Organisation			
Name		Designation	
Signature		Date	

Stamp And Signature Of Commissioner Of Oath			
Name		Date	
Signature		Telephone No.	

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

Internal Transnet Departmental Questionnaire (for office use only)

NB: "Once-off vendor" will only be created for extraordinary circumstances, i.e. derailments and other emergency situations. Note that only one (1) purchase order must be created against a "once-off vendor". Should the need arise to use a "once-off vendor" again, then an updated SDF together with the required documentation, is required for a "trade vendor" to be created

Section 1: To be completed by the Transnet Requesting / Sourcing Department												
Vendor Name												
										Vendor Number		
TFR		TRE		TPT		TPL		TNPA		TCP		TRN
Create		Unblock		Amend		Extend		Once-Off / Emergency				
Supplier's trading name												
Supplier's registered												
Please indicate if the Supplier has a contract with sourcing Transnet OD										Yes		No
If yes please submit / furnish details of such a contract (together with the SDF)												

a) What is being procured from the supplier?				
i. Products only	Yes		No	
ii. Services only	Yes		No	
iii. Labour only	Yes		No	
iv. Mix of services and	Yes		No	
v. Mix of services and labour	Yes		No	

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

Yes		No	
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c) If your reply to (b) is "NO", please furnish

d) Advise on the Detailed Procurement Process (DPP) / Procurement Mechanism that was followed (Please also take into consideration the revised P2P value/strategy as set out in the Weekly News Bulletin dated 6 October 2008 on the Intranet)

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

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

NARROW BASED (NB)				BROADBASED (BBEE)				
BEE O/S	BWBE	DPBE	MR	CONTB. LEVEL	EME: <R5m	QSE: >R5m <R35m	LARGE: >R35m	VALIDITY DATE

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

Section 3: To be completed by Supplier Management

I hereby approve disapprove this application

Name	Grade	Date	Signature
		Y Y Y Y M M D D	
Vendor Number		Date captured on SAP	Recon Account

Respondent's Signature

Date and Company Stamp