

"PREVIEW COPY ONLY"

**FOR THE SUPPLY AND DELIVERY OF ABRASIVE WHEELS
FOR A PERIOD OF TWO (2) YEARS IN PRETORIA**

REQUEST FOR QUOTATION [RFQ]

RFQ NUMBER	ERACKT 0935 10857
ISSUE DATE:	02 DECEMBER 2013
CLOSING DATE:	17 DECEMBER 2013
CLOSING TIME:	10:00
BID VALIDITY PERIOD:	31 MARCH 2014

[Registration No. 1990/000900/30]

an Operating Division of **TRANSNET SOC LTD**

FREIGHT RAIL



SCHEDULE OF BID DOCUMENTS

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PREVIEW COPY ONLY

B-BBEE	Broad-Based Black Economic Empowerment
CD	Compact/computer disc
HOAC	Head Office Acquisition Council
EME	Exempted Micro Enterprise
GBC	General Bid Conditions
ID	Identity Document
JV	Joint Venture
LOI	Letter of Intent
NDA	Non-Disclosure Agreement
OD	Transnet Operating Division
PPFA	Preferential Procurement Policy Framework Act
PTN	Post-Tender Negotiations
QSE	Qualifying Small Enterprise
RFQ	Request for Quotation
SD	Supplier Development
SME	Small Medium Enterprise
SOC	State Owned Company
TAC	Transnet Acquisition Council
TCO	Total Cost of Ownership
VAT	Value-Added Tax
ZAR	South African Rand

LIST OF ACRONYMS

**RFQ FOR THE SUPPLY AND DELIVERY OF ABRASIVE WHEELS
FOR A PERIOD OF TWO (2) YEARS IN PRETORIA.**

Section 1: NOTICE TO BIDDERS

1 QUOTATION REQUEST

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

On or after 03 December 2013 the RFQ documents may be inspected at, and are obtainable from the office of Transnet Freight Rail Advice Centre, Inyanda House 1, Ground Floor, 21 Wellington road, Parktown, Johannesburg, for free of charge.

RFQ documents will only be available until 15h00 on Friday on 13 December 2013.

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

2 FORMAL BRIEFING

A formal briefing session **will not be held** but should Respondents have specific queries they should email these to the Transnet employee(s) indicated in paragraph 6 [Communication] below:

3 QUOTATION SUBMISSION

Quotations **in duplicate [1 original and 1 copy]** must reach the Secretariat, Transnet Acquisition Council before the closing hour on the date shown below, and must be enclosed in a sealed envelope which must have inscribed on the outside:

RFQ No: ERACKT 0935 - 10857

Description: For the Supply of Abrasive Wheels for A Period of Two (2) Years in Pretoria.

Closing date and time: 17 December 2013 10h00

Closing address: [Refer options in paragraph 4 below]

All envelopes must reflect the return address of the Respondent on the reverse side.

4.1 Delivery by hand

If delivered by hand, the envelope is to be deposited in the Transnet tender box which is located in the foyer on the ground floor, Inyanda House 1, 21 Wellington road, Parktown, Johannesburg, and should be addressed as follows:

THE SECRETARIAT
 TRANSNET ACQUISITION COUNCIL
 GROUND FLOOR
 TENDER BOX
 INYANDA HOUSE 1
 21 WELLINGTON ROAD
 PARKTOWN
 JOHANNESBURG 2001

a) The measurements of the "tender slot" are 500mm wide x 100mm high, and Respondents must please ensure that response documents or files are no larger than the above dimensions. Responses which are too bulky [i.e. more than 100mm thick] must be split into two or more files, and placed in separate envelopes, each such envelope to be addressed as required in paragraph 3 above.

b) It should also be noted that the above tender box is located at the main entrance and is accessible to the public 24 hours a day, 7 days a week.

4.2 Dispatch by courier

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

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

4.3 Please note that this RFQ closes punctually at 10:00 on Tuesday 17 December 2013.

4.4 If responses are not delivered as stipulated herein, such responses will not be considered and will be treated as "NON-RESPONSIVE" and will be disqualified.

4.5 No email or facsimile responses will be considered, unless otherwise stated herein.

4.6 The responses to this RFQ will be opened as soon as practicable after the expiry of the time advertised for receiving them.

4.7 Transnet shall not, at the opening of responses, disclose to any other company any confidential details pertaining to the Quotations / information received, i.e. pricing, delivery, etc. The names and locations of the Respondents will be divulged to other Respondents upon request.

4.8 Envelopes must not contain documents relating to any RFQ other than that shown on the envelope.

4.9 No slips are to be attached to the response documents. Any additional conditions must be embodied in an accompanying letter. Subject only to clause 15 [Alterations made by the Respondent to Bid

Enterprises will be rated by Verification Agencies or Registered Auditors based on the following:

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

Industry.

b) Registered Auditors approved by the Independent Regulatory Board of Auditors [IRBA], in accordance with the approval granted by the Department of Trade and [SANAS]; or

a) Verification Agencies accredited by the South African National Accreditation System

September 2011. Valid B-BBEE Verification Certificates must be issued by:

BBEE status verified in compliance with the Government Gazette No 34612, Notice No. 754 dated 23 September 2011. When Transnet invites prospective suppliers to submit Quotations for its various expenditure programmes, it requires Respondents [Large Enterprises and QSEs - see below] to have their B-BBEE status verified in compliance with the Government Gazette No 34612, Notice No. 754 dated 23

preference point system, this will require the RFQ to be cancelled.

The 90/10 preference point system applies where the acquisition of the Goods will exceed R1 000 000.00. However, should it happen that all bids received are below the 90/10

The 90/10 preference point system is applicable to this RFQ.

Quotations will be evaluated on price which will be allocated 90 points and preference which

Phase 1 is included at a pre-qualification stage with a prescribed percentage threshold.

and its Regulations, Respondents are to note the following:

As prescribed in terms of the Preferential Procurement Policy Framework Act (PPFA), Act 5 of 2000

5.1 B-BBEE Scorecard and Rating

the issue date of this RFQ.

thresholds and evaluation processes to be aligned with such changes which may be issued by the DTI after and/or amendments once they have come into effect. Transnet furthermore reserves the right to adjust the Good Practice [Code Series 000]. Transnet reserves the right to amend this RFQ in line with such reviews The Department of Trade and Industry [DTI] is currently in the process of reviewing the B-BBEE Codes of

Ventures] as part of their tendered responses. All procurement transactions will be evaluated accordingly.

Transnet would therefore prefer to do business with enterprises who share these same values and who are prepared to contribute to meaningful B-BBEE initiatives [including, but not limited to subcontracting and Joint

obligation to redress the imbalances of the past.

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

5 BROAD-BASED BLACK ECONOMIC EMPOWERMENT AND SOCIO-ECONOMIC OBLIGATIONS

Respondent to the actual RFQ documents.

Prices] of the General Bid Conditions, alterations, additions or deletions must not be made by the

¹ **Black** means South African Blacks, Coloureds and Indians, as defined in the B-BBEE Act, 53 of 2003

5.2 **B-BBEE Joint Ventures, Consortiums and/or Subcontractors**

In addition to the above, Respondents who would wish to enter into a Joint Venture [JV] or consortium with, or subcontract portions of the contract to, B-BBEE entities, must state in their RFQs the percentage of the total contract value that would be allocated to such B-BBEE entities, should they be successful in being awarded any business. A valid B-BBEE Verification Certificate in respect of such B-BBEE JV or consortium partners and/or subcontractor(s), as well as a breakdown of the distribution of the aforementioned percentage must also be furnished with the RFQ Bid to enable

All Respondents must complete and return the B-BBEE Preference Points Claim Form attached hereto as Section 14.

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

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

B-BBEE scorecard rating. [Refer Section 14 for further details].

(PPFA), Act 5 of 2000 and its Regulations to the Respondent's final score based on an entity's B-BBEE scorecard rating. [Refer Section 14 for further details].

In this tender, Transnet will accordingly allocate a maximum of **10 [ten] points** in accordance with the 90/10 preference point system prescribed in the Preferential Procurement Policy Framework Act stipulated above in respect of Large Enterprises and QSEs, or a certificate in respect of EMEs.

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

Sufficient evidence to qualify as an EME would be a certificate [which may be in the form of a letter] from an auditor, accounting officer or a Verification Agency accredited by SANAS. The certificate must confirm the company's turnover, Black ownership / Black female ownership and B-BBEE status level.

- a) **Large Enterprises** [i.e. annual turnover greater than R35 million]:
 - Rating level based on all seven elements of the B-BBEE scorecard
- b) **Qualifying Small Enterprises – QSE** [i.e. annual turnover between R5 million and R35 million]:
 - Rating based on any four of the elements of the B-BBEE scorecard
- c) **Exempted Micro Enterprises – EME** [i.e. annual turnover less than R5 million]:
 - Automatic rating of B-BBEE Level 4 irrespective of race or ownership
 - Black¹ ownership greater than 50% or Black Women ownership greater than 50% automatically qualify as B-BBEE Level 3

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

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

compliance.

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

in the form of an official B-BBEE Profile issued by the DTI.

National B-BBEE IT Portal and Opportunities Network and provide Transnet with proof of registration

B-BBEE compliance and supporting documentation on the Department of Trade and Industry's [DTI]

In addition to the Verification Certificate, Transnet recommends that Respondents register their

5.3 B-BBEE Registration

has the capability and ability to execute the subcontract.

status level than the person concerned, unless the contract is subcontracted to an EME that

the value of the contract to any other enterprise that does not have an equal or higher B-BBEE

A person awarded a contract may not subcontract more than 25% [twenty-five per cent] of

subcontractor is an EME with the capability to execute the contract.

for at least the same points that the Respondent qualifies for, unless the intended

than 25% [twenty-five per cent] of the value of the contract to an entity that does not qualify

B-BBEE if it is indicated in its Quotation that such Respondent intends subcontracting more

If contemplating subcontracting, please note that a Respondent will not be awarded points for

b) Subcontracting

Closing Date of this RFQ, will result in a score of zero being allocated for B-BBEE.

N.B. Failure to submit a B-BBEE certificate in respect of the JV or Consortium, which is valid as at the

structure and such scorecard must have been prepared for this RFQ in particular.

JV/consortium must submit a consolidated B-BBEE certificate as if it was a group

As part of an unincorporated JV/consortium's tendered response, the unincorporated

(ii) Unincorporated JVs/Consortiums

name.

JV/consortium must submit a valid B-BBEE Verification Certificate in its registered

As part of an incorporated JV/consortium's Bid response, the incorporated

(i) Incorporated JVs/Consortiums

once a signed copy of a JV or consortium agreement is submitted to Transnet.

and the responsibilities of each party. In such cases, award of business will only take place

process. This written confirmation must clearly indicate the percentage [%] split of business

JV or consortium agreement should they be awarded business by Transnet through this RFQ

unavailable, the partners must submit confirmation in writing of their intention to enter into a

and the associated responsibilities of each party. If such a JV or consortium agreement is

consortium agreement between the parties clearly stating the percentage [%] split of business

If contemplating a JV or consortium, Respondents should also submit a signed JV or

a) JVs or Consortiums

Form appended hereto as Section 14.

Transnet to evaluate in accordance with the processes outlined in the B-BBEE Preference Points Claim

6 COMMUNICATION

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

6.1 For specific queries relating to this RFQ, an RFQ Clarification Request Form should be submitted before **12:00 3 days prior to closing date** substantially in the form set out in Section 12 hereto. In the interest of fairness and transparency Transnet's response to such a query will then be made available to the other Respondents who have collected RFQ documents. For this purpose Transnet will communicate with Respondents using the contact details provided to the Secretariat on issue of the bid documentation to the Respondent. Kindly ensure that you provide the Secretariat with the **correct** contact details, as Transnet will not accept responsibility for being unable to contact a bidder who provided incorrect contact details.

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

Name: Kgalalelo *Kgalali* Tihabanelo

E-mail: kgalalelo.tihabanelo@transnet.net

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

Telephone: 011 544 9486

E-mail: prudence.nkabinde@transnet.net

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

7 INSTRUCTIONS FOR COMPLETING THE RFQ

7.1 Sign one set of original documents [sign, stamp and date the bottom of each page]. This set will serve as the legal and binding copy. A duplicate set of documents is required. This second set must be a copy of the original signed Quotation. All attached documents must also be submitted in duplicate.

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

7.3 *All returnable documents tabled in the Quotation Form [Section 4] must be returned with your Quotation.*

8 COMPLIANCE

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

- 10.10 make no award of an agreement.
 - 10.9 split the award of the agreement/order between more than one Supplier; or
 - 10.8 award an agreement for only a portion of the proposed Goods which are reflected in the scope of this RFQ;
 - 10.7 award an agreement/ place an order in connection with this Quotation at any time after the RFQ's closing date;
 - 10.6 withdraw the RFQ on good cause shown;
 - 10.5 reject all Quotations, if it so decides;
 - 10.4 not necessarily accept the lowest priced Quotation or an alternative bid;
 - 10.3 disqualify Quotations submitted after the stated submission deadline [closing date];
 - 10.2 reject any Quotation which does not conform to instructions and specifications which are detailed herein;
 - 10.1 modify the RFQ's Goods and request Respondents to re-bid on any such changes;
- 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 Quotations. In particular, please note that Transnet reserves the right to:

10 DISCLAIMERS

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

- 9.1 Changes by the Respondent to its submission will not be considered after the closing date.
- 9.2 The person or persons signing the Quotation must be legally authorised by the Respondent to do so [Refer Section 6 – Signing Power, Resolution of the Board of Directors]. A list of those person(s) authorised to negotiate on behalf of the Respondent [if not the authorised signatories] must also be submitted along with the Quotation together with their contact details.
- 9.3 Bidders who fail to submit a duly completed and signed RFQ Declaration Form [Section 10] will not be considered.
- 9.4 Transnet will not do business with companies involved in B-BBEE fronting practices.
- 9.5 Transnet may wish to visit the Respondent's place of manufacture and/or workshop and/or office premises during this RFQ process.
- 9.6 Transnet reserves the right to undertake post-tender negotiations [PTN] with selected Respondents or any number of short-listed Respondents, such PTN to include, at Transnet's option, any evaluation criteria listed in this RFQ document.
- 9.7 Unless otherwise expressly stated, all Quotations furnished pursuant to this RFQ shall be deemed to be offers. Any exceptions to this statement must be clearly and specifically indicated.

9 ADDITIONAL NOTES

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

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

11 LEGAL REVIEW

In addition, Transnet reserves the right to exclude any Respondent from the bidding process who has been convicted of a serious breach of law during the preceding 5 [five] years, including but not limited to breaches of the Competition Act 89 of 1998. Respondents are required to indicate in Section 11 [Breach of Law] whether or not they have been found guilty of a serious breach of law during the past 5 [five] years. Transnet reserves the right to award the business to the highest scoring bidder/s unless objective criteria justify the award to another bidder. Kindly note that Transnet will not reimburse any Respondent for any preparatory costs or other work performed in connection with its Quotation, whether or not the Respondent is awarded a contract.

10.11 preference will be given to locally based Service Providers

**RFQ FOR THE SUPPLY AND DELIVERY OF ABRASIVE WHEELS
FOR A PERIOD OF TWO (2) YEARS IN PRETORIA.**

Section 2: BACKGROUND, OVERVIEW AND SCOPE OF REQUIREMENTS

1 BACKGROUND

This RFQ covers the supply and delivery of ABRASIVE WHEELS in Pretoria, for a period of two (2) years, as decided by Transnet Freight Rail.

2 EXECUTIVE OVERVIEW

Most Transnet Operating Divisions currently procure their product requirements through a number of Suppliers. Our objective is to source all activity through a Preferred Supplier(s) capable of servicing all the Transnet Freight Rail business units in locations as indicated above.

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

2.1 Transnet must receive reduced cost of acquisition and improved service benefits resulting from the Supplier's economies of scale and streamlined service processes.

2.2 Transnet must achieve appropriate availability that meets user needs while reducing costs for both Transnet and the chosen Supplier(s).

2.3 Transnet must receive proactive improvements from the Supplier with respect to supply of Goods and related processes.

2.4 Transnet's overall competitive advantage must be strengthened by the chosen Supplier's leading edge technology and service delivery systems.

2.5 Transnet end users must be able to rely on the chosen Supplier's personnel for service enquiries, recommendations and substitutions.

2.6 Transnet must reduce costs by streamlining its acquisition of Goods, including managed service processes on a group basis.

3 SCOPE OF REQUIREMENTS

3.1 Transnet Freight Rail requires the supply and delivery of ABRASIVE WHEELS over a period of 24 months.

3.1.1 13 000 X WHEEL, ABRASIVE, TYPE F1 ABRASIVE MATERIAL SILICON CARBIDE;

WHEEL DIAMETER 350 MM; OVERALL THICKNESS 4 MM; BORE 25.4 MM SHAPE FLAT; (RAIL-CUTTING DISK); SPECIFICATION NUMBER PERMATOOL 355-G35-25/6000 PFERD 100EHT350-4A24SG TYPE "E" GRINDINGTECHNIQUES A24 Q B55 F2 WHEEL; ABRASIVE 350 X 4 X 25,4; TYPE 1; MOS 5 457 RPM; CUT-OFF CHROME MANGANESE RAIL STEEL CUMAR RA30-P5-BFH NORTON 23A24/4-P6B9NAIR-T82 SELCO ; 2NK-24/30QR3,4-B72 GRINDING TECHNIQUES A24 Q B55 F2 ANDORFLEX. (Transnet Freight Rail Item Number: 006014078)

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

5.2 The Supplier(s) must comply with the requirements stated in this RFQ.

5 GENERAL SUPPLIER OBLIGATIONS

Whereas Transnet cannot prescribe a Respondent's commitment to environmental issues, Transnet would wish to have an understanding of your company's position in this regard, including key environmental characteristics such as waste disposal, recycling and energy conservation. *Please submit details of your entity's policies in this regard.*

4 GREEN ECONOMY / CARBON FOOTPRINT

3.2 The successful supplier must be able to supply the required items/goods on a as and when required basis

3.3 The quantities as reflected in the schedule of quantities are only estimated quantities and are given to prospective respondents as a guideline of what Transnet anticipates to use during a two year period.

3.4 Transnet will not be bound in any way to purchase these quantities

3.5 The prices quoted are to be exclusive of VAT, but must include packaging and delivery charges direct to various delivery points in Pretoria

3.6 Transnet may request small quantities of low value of a particular item at any time. Should you enforce minimum ordering quantities for any of these items, Transnet reserves the right to procure these items from a supplier who is prepared to sell the required quantities.

3.7 Technical Data Sheets (where applicable) must be supplied for all products offered and failure to do so could render your bid as invalid for that specific item.

3.8 When a patented article is used as a sample or when the name of a manufacturer or a certain trade mark or brand is quoted, it shall only be to indicate the type or quality of the article required and not to limit competition to that article. Preference may be given to brand products.

3.9 It is a requirement that the successful respondent be able to guarantee delivery in the area specified within 7 days from receipt of any subsequent order.

3.1.3 **2400 X WHEEL, ABRASIVE, TYPE GRINDER ABRASIVE MATERIAL SILICON CARBIDE; WHEEL DIAMETER 250 MM; OVERALL THICKNESS 32 MM; BORE 25.4 MM; EQUIPMENT USED ON; STUMEC; GEISMAR-MC2 TRACK; GRINDING; 5 MOS; 3600 RPM; SPECIFICATION: 3NZA20-P5-B328 CUMAR, 5NZ 2021-SB29 NORTON (Transnet Freight Rail Item Number: 006007377)**

3.1.2 **2400 X WHEEL, ABRASIVE, TYPE GRINDER, ABRASIVE MATERIAL SILICON CARBIDE; WHEEL DIAMETER 150 MM; OVERALL THICKNESS 75 MM; BORE 5/8 IN; SHAPE CUP WHEEL; P/N: UNKNOWN NORTON; IN BSW X 25 X20; TYPE 6; MOS; 5350 RPM; SNAAGING WELDED RAIL; JOINTS; SPECIFICATION: 4977 5NZ 1624 SB29 UNKNOWN; DRAWING NO: 3NZA20-P5-B328 CUMAR REV 0 (Transnet Freight Rail Item Number: 006006991)**

goods: Respondents are required to indicate a reasonable timeframe during which Transnet may return any surplus

	NO		YES
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Respondents are required to indicate whether they have a return policy in place (if so attach a copy):

7 RETURN OF SURPLUS GOODS

6.7 Respondents are required to indicate below the action that the Respondent proposes to take to ensure continuity of supply during non-working days or holidays and periods occupied in stocktaking or in effecting repairs to plant or in overhaul of plant which would ordinarily occur within the stated delivery lead time/s:

6.6 The Respondent must state hereunder its annual holiday closedown period [if applicable] and whether this period has been included in the delivery lead time offered:

6.5 If the delivery period offered by the Respondents is subject to a maximum monthly production capacity, full particulars must be indicated in Section 3 [Pricing and Delivery Schedule]

6.4 Where scheduled deliveries are required, the delivery period(s) specified must be strictly complied with, unless otherwise requested by Transnet. Material supplied earlier than specified may not be paid for or may be returned by Transnet, with the Supplier being held liable for all expenses so incurred, e.g. handling and transport charges. Supplier.

6.3 Delivery requirements may be stipulated in purchase orders and scheduled deliveries may be called for. However, delivery periods and maximum monthly rates of delivery offered by the Respondents will be used as guidelines in establishing lead times and monthly delivery requirements with the under the same terms and conditions as agreed upon.

6.2 Transnet reserves the right to place purchase orders until the last day of the contract for deliveries to be effected, within the delivery period / lead time specified, beyond the expiry date of the contract.

6.1 Purchase orders will be placed on the Supplier(s) from time to time as and when Goods are required.

6 "AS AND WHEN REQUIRED" CONTRACTS

BUSINESS ADDRESS	NAME	RFQ ITEM NO.

9.2 Foreign Manufacturer(s):

BUSINESS ADDRESS	NAME	RFQ ITEM NO.

9.1 Local Manufacturer(s):

The Respondents must state hereunder the actual manufacturer(s) of the Goods tendered for:

9 MANUFACTURERS

a) Has/have a sample(s) been submitted?

b) How and to whom forwarded?

c) Date of dispatch

8.3 The Respondents must state the following:

8.2 Failure to submit the sample(s) in due time may result in a Quotation being rejected. Quotations must under no circumstances be included in the package containing a sample(s).

8.1 Only in cases when the Respondent submits a sample(s) of the Goods/products/material tendered for by it, the sample(s) must be forwarded on or before the deadline date to the addressee hereunder:

Nzasm Building
 2nd floor, Room 210
 Corner of Paul Kruger and Minnaar Street
 Pretoria Central

8 RESPONDENT'S SAMPLES



12.5 The Supplier must provide a telephone number for customer service calls.
 1.5% [one and a half per cent] rebate on quarterly sales payable in the next quarter
 If the Supplier does not achieve this level as an average over each quarter, Transnet will receive a
 b) On-time delivery
 a) Random checks on compliance with quality/quantity/specifications

measures:
 12.4 The Supplier guarantees that it will achieve a 95% [ninety-five per cent] service level on the following
 Transnet account be replaced if deemed not to be adding value for Transnet.

12.3 Transnet reserves the right to request that any member of the Supplier's team involved on the
 12.2 Transnet will have quarterly reviews with the Supplier's account representative on an on-going basis.

12.1 An experienced national account representative(s) is required to work with Transnet's procurement
 department. [No sales representatives are needed for individual department or locations].
 Additionally, there shall be a minimal number of people, fully informed and accountable for this
 agreement.

12 SERVICE LEVELS

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

Accepted:

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

11 NATIONAL RAILWAY SAFETY REGULATOR ACT

separately.

Note: Where more than one country is applicable to one item, the Respondents must furnish this information

RFQ ITEM NO / DESCRIPTION.	VALUE	% COST	COUNTRY OF ORIGIN

country of origin in respect of each item tendered for:

The Respondents must state hereunder the value and percentage of the imported content as well as the

10 IMPORTED CONTENT

13.1 **Quality and specification of Goods delivered:**

13.2 **Continuity of supply:**

13.3 **Compliance with the Occupational Health and Safety Act, 85 of 1993:**

13.4 **Compliance with the National Railway Safety Regulator Act, 16 of 2002:**

"PREVIEW COPY ONLY"

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

RISK 13

12.6 Failure of the Supplier to comply with stated service level requirements will give Transnet the right to cancel the contract in whole, without penalty to Transnet, giving 30 [thirty] days' notice to the Supplier of its intention to do so.

Acceptance of Service Levels:

<input type="checkbox"/>	<input type="checkbox"/>
NO	YES

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

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

- B-BBEE status of company

Where:
 Ps = Score for the Bid under consideration
 Pt = Price of Bid under consideration
 $Pmin$ = Price of lowest acceptable Bid

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

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

- Price and BBEE
- Weighted evaluation based on 90/10 preference point system:
- Pricing and price basis [firm] - whilst not the sole factor for consideration, competitive pricing and overall level of unconditional discounts² will be critical

14.2 PHASE 2:

- Technical data sheets of products offered
- A fully compliance statement to specification to all items

detailed below:

Phase 1 will be a disqualifying phase and those that comply will progress to be competitively evaluated in Phase 2. Mandatory minimum criteria for progressing from phase 1 to Phase 2 are

14.1 PHASE 1:

Transnet will utilise a 2 phase evaluation process to select the successful Supplier:

14 EVALUATION CRITERIA

**RFQ FOR THE SUPPLY AND DELIVERY OF ABRASIVE WHEELS
FOR A PERIOD OF TWO (2) YEARS IN PRETORIA.**

Section 3: PRICING AND DELIVERY SCHEDULE

Respondents are required to complete the table below:

Item No	Description of Item	Qty. per 2 Yrs.	Unit Price	TOTAL PRICE
1	WHEEL, ABRASIVE TYPE F1 ABRASIVE MATERIAL SILICON CARBIDE WHEEL DIAMETER 350 MM OVERALL THICKNESS 4 MM BORE 25.4 MM; SHAPE FLAT (RAIL-CUTTING DISK); SPECIFICATION NUMBER PERMATOOL 355-G35-25/6000 PFERD 100EHT350-4A24SG TYPE "E" GRINDING TECHNIQUES A24 Q B55 F2 WHEEL, ABRASIVE 350 X 4 X 25,4; TYPE 1; MOS 5 457 RPM; CUT-OFF CHROME MANGANESE RAIL STEEL CUMAR RA30-P5-BFH NORTON 23A24/4-P6B9MAIR-782 SELCO 2NK-24/30QR3,4-B72 GRINDING TECHNIQUES A24 Q B55 F2 ANDORFLEX	13000		
2	WHEEL, ABRASIVE TYPE GRINDER ABRASIVE MATERIAL SILICON CARBIDE WHEEL DIAMETER 150 MM OVERALL THICKNESS 75 MM BORE 5/8 IN SHAPE CUP WHEEL IN BSX X 25 X 20; TYPE 6; MOS; 5350 RPM; SNAGGING WELDED RAIL JOINTS SPECIFICATION: 4977 5NZ 1624 SB29 UNKNOWN DRAWING NO: 3NZA20-P5-B328 CUMAR REV 0	2400		
PLEASE STATE THE BRAND NAME FOR ITEM 1:				
PLEASE STATE THE BRAND NAME FOR ITEM 2:				

PROPOSED ADJUSTMENT FORMULA TO BE USED

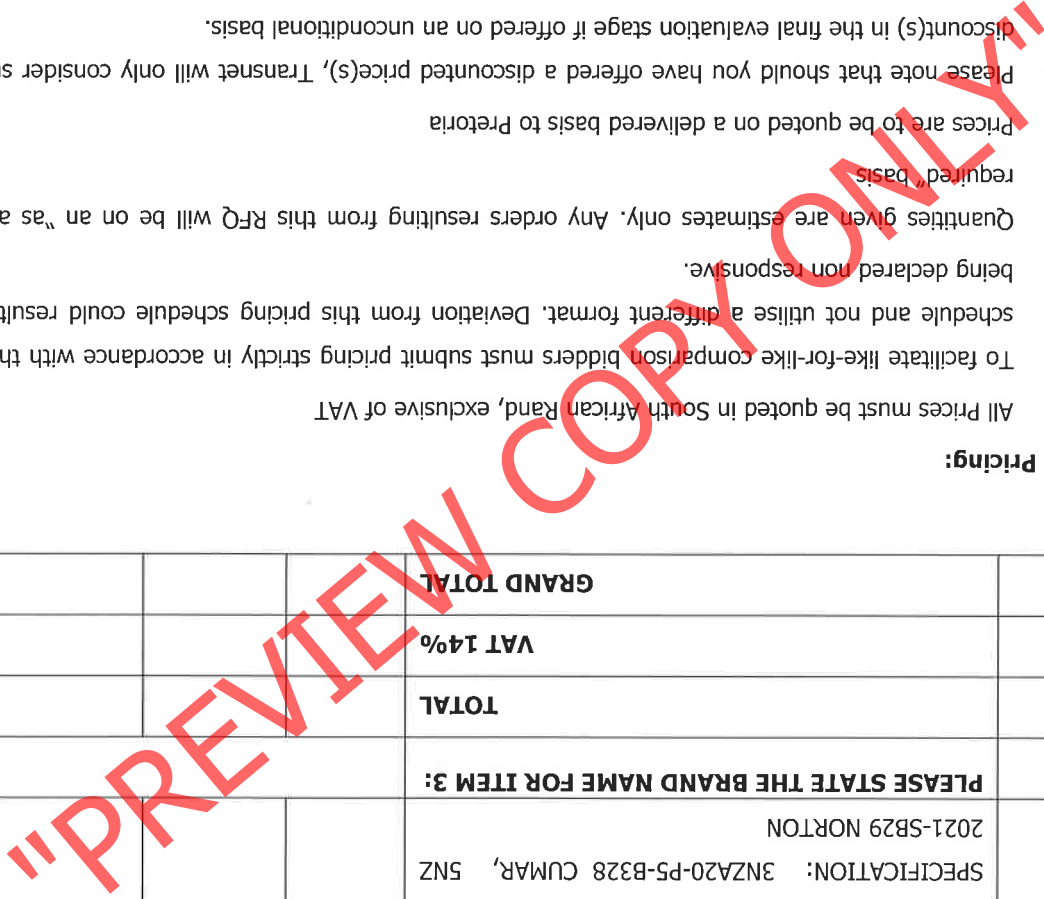
YES/NO

Subject to adjustment after 12 months

- a) All Prices must be quoted in South African Rand, exclusive of VAT
- b) To facilitate like-for-like comparison bidders must submit pricing strictly in accordance with this pricing schedule and not utilise a different format. Deviation from this pricing schedule could result in a bid being declared non responsive.
- c) Quantities given are estimates only. Any orders resulting from this RFQ will be on an "as and when required" basis
- d) Prices are to be quoted on a delivered basis to Pretoria
- e) Please note that should you have offered a discounted price(s), Transnet will only consider such price discount(s) in the final evaluation stage if offered on an unconditional basis.
- f) Respondents are to indicate whether prices quoted would be subject to adjustment after a period of 12 months, and if so which proposed adjustment formula would be utilised

Notes to Pricing:

Item No	Description of Item	Qty. per 2 Yrs.	Unit Price	TOTAL PRICE
3	WHEEL, ABRASIVE TYPE GRINDER (006007377)	2400		
	ABRASIVE MATERIAL SILICON CARBIDE WHEEL DIAMETER 250 MM OVERALL THICKNESS 32 MM BORE 25,4 MM EQUIPMENT USED ON; STUMEC; GEISMAR-MC2 TRACK; GRINDING; 5 MOS; 3600 RPM SPECIFICATION: 3NZA20-P5-B328 CUMAR, 5NZ 2021-SB29 NORTON			
	PLEASE STATE THE BRAND NAME FOR ITEM 3:			
	TOTAL			
	VAT 14%			
	GRAND TOTAL			



I/We accept that any contract resulting from this offer will be for a period of Two (2) Years only; and agree to a penalty clause to be negotiated with Transnet, which will allow Transnet to invoke a penalty against us should the delivery of the Goods be delayed due to non-performance by ourselves.

I/We further agree that if, after I/We have been notified of the acceptance of my/our Quotation, I/We fail to enter into a formal contract if called upon to do so, or fail to commence the supply of Goods within 1 [One] week thereafter, Transnet may, without prejudice to any other legal remedy which it may have, recover from me/us any expense to which it may have been put in calling for Quotations afresh and/or having to accept any less favourable Quotation.

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

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

- (i) Terms and Conditions of Contract - Goods;
 - (ii) General Bid Conditions – Goods; and
 - (iii) any other standard or special conditions mentioned and/or embodied in this Request for Quotation.
- I/We agree to be bound by those conditions in Transnet's:

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

_____ in my capacity as _____ represented by _____ carrying on business trading/operating as _____

_____ of [full address] [name of entity, company, close corporation or partnership]

_____ I/We

RFQ FOR THE SUPPLY AND DELIVERY OF ABRASIVE WHEELS FOR A PERIOD OF TWO (2) YEARS IN PRETORIA. Section 4: QUOTATION FORM

All information related to this RFQ is to be treated with strict confidence. In this regard Respondents are required to complete and return a signed copy of the Non-Disclosure Agreement appended hereto as **Section 16**. All information related to a subsequent contract, both during and after completion thereof, will 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 must be obtained from Transnet.

CONFIDENTIALITY

- (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) _____

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

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

Transnet requires a validity period of 90 [ninety] days [from closing date] 31 March 2014 against this RFQ.

VALIDITY PERIOD

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

NOTIFICATION OF AWARD OF RFQ

Name of Entity: _____
Facsimile: _____
Address: _____

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

ADDRESS FOR NOTICES

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

Failure to provide all essential Returnable Documents may result in a Respondent's disqualification at Transnet's sole discretion. Bidders are therefore urged to ensure that all these documents are returned with their Quotations.

MANDATORY RETURNABLE DOCUMENTS	SUBMITTED [Yes/No]
SECTION 2 : Background, Overview and Scope of Requirements	
SECTION 3 : Pricing and Delivery Schedule	
SECTION 17: Clause by Clause compliance to Project Specification.	
Technical Data Sheets of Product Offered	

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

Failure to provide all mandatory Returnable Documents at the closing date and time of this tender will result in a Respondent's disqualification. Bidders are therefore urged to ensure that all these Documents are returned with their Quotations.

Please confirm submission of these mandatory Returnable Documents by so indicating [Yes or No] in the table below:

RETURNABLE DOCUMENTS

YES	NO
-----	----

DISCLOSURE OF PRICES TENDERED

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

SUBMITTED [Yes or No]	ESSENTIAL RETURNABLE DOCUMENTS & SCHEDULES
	SECTION 1 : Notice to Bidders
	Receipt for payment of RFQ documents [paragraph 1]
	SECTION 4 : Quotation Form
	SECTION 5 : Vendor Application Form
	- Original cancelled cheque or bank verification of banking details
	- Certified copies of IDs of shareholder/directors/members [as applicable]
	- Certified copy of Certificate of Incorporation [CM29/CM9 name change]
	- Certified copy of share certificates [CK1/CK2 if CC]
	- Entity's letterhead
	- Certified copy of valid VAT Registration Certificate
	- Valid B-BBEE Verification Certificate [Large Enterprises and QSEs] Note: failure to provide a valid B-BBEE Verification Certificate at the closing date and time of the tender will result in an automatic score of zero being allocated for B-BBEE scorecard
	- Original valid Tax Clearance Certificate [Consortium/Joint Venture must submit a separate valid Tax Clearance Certificate for each party]
	- Valid B-BBEE certificate from auditor, accounting officer or SANAS accredited Verification Agency (EMES) Note: failure to provide a valid B-BBEE Verification Certificate at the closing date and time of the tender will result in an automatic score of zero being allocated for B-BBEE scorecard
	- In the case of Joint Ventures, a copy of the Joint Venture Agreement or written confirmation of the intention to enter into a Joint Venture Agreement
	- Certified copy of valid VAT Registration Certificate
	- Audited Financial Statements for previous 3 years
	SECTION 6 : Signing Power - Resolution of Board of Directors
	SECTION 7 : Certificate of Acquaintance with RFQ Documents
	SECTION 8 : Certificate of Acquaintance with General Bid Conditions – Goods
	SECTION 9 : Certificate of Acquaintance with Terms and Conditions of Contract
	SECTION 10 : RFQ Declaration Form
	SECTION 11 : Breach of Law Form
	SECTION 13 : Supplier Code of Conduct
	SECTION 14 : B-BBEE Preference Points Claim Form
	SECTION 16 : Non-Disclosure Agreement
	SECTION 17: Clause By Clause Compliance Form

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

"PREVIEW COPY ONLY"

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

CONTINUED VALIDITY OF RETURNABLE DOCUMENTS

DESIGNATION: _____

NAME: _____

SIGNATURE OF RESPONDENT'S AUTHORIZED REPRESENTATIVE:

Name _____

2

Name _____

1

ADDRESS OF WITNESSES

SIGNATURE OF WITNESSES

SIGNED at _____ on this _____ day of _____ 20

By signing these 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 SOC Ltd will recognise no claim for relief based on an allegation that the Respondent overlooked any such condition or failed properly to take it into account for the purpose of calculating tendered prices or otherwise.



**RFQ FOR THE SUPPLY AND DELIVERY OF ABRASIVE WHEELS
FOR A PERIOD OF TWO (2) YEARS IN PRETORIA.**

Section 5: SUPPLIER DECLARATION FORM

Respondents are to furnish the following documentation and complete the Supplier Declaration Form below:

1. **Original or certified** cancelled cheque **OR** letter from the Respondent's bank verifying banking details [with bank stamp]

2. **Certified copy** of Identity Document(s) of Shareholders/Directors/Members [where applicable]

3. **Certified copy** of Certificate of Incorporation, CM29 / CM9 [name change]

4. **Certified copy** of Share Certificates [CK1/CK2 if CC]

5. Original or certified letterhead confirm physical and postal addresses

6. **Original or certified** valid SARS Tax Clearance Certificate [RSA entities only]

7. **Certified copy** of VAT Registration Certificate [RSA entities only]

8. A signed letter from your entity's auditor or accountant confirming most recent annual turnover figures or certified BBBEE certificate

9. **Certified copy** of valid Company Registration Certificate [if applicable]

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

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

Company Trading Name		Company Registered Name		Company Registration Number Or ID Number If A Sole Proprietor		Form of entity		VAT number (if registered)		Company Telephone Number		Company Fax Number		Company E-Mail Address		Company Website Address	
						CC											
						Trust											
						Pty Ltd											
						Limited											
						Partnership											
						Sole Proprietor											
Bank Name		Bank Account Number															

Date & Company Stamp

Respondent's Signature

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

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

Transnet Contact Person	
Contact number	
Transnet operating division	

BEE Ownership Details	
% Black	
% Black women ownership	
% Disabled persons/ownership	
Does your company have a BEE certificate	Yes No
What is your broad based BEE status (Level 1 to 9 / Unknown)	
How many personnel does the firm employ	Permanent Part time

Postal Address		Code	
Physical Address		Code	
Address			
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)			

SIGNATURE SECRETARY

FULL NAME

SIGNATURE CHAIRMAN

FULL NAME

in his/her capacity as indicated above is/are hereby authorised to enter into, sign, execute and complete any documents relating to this Quotation and any subsequent Agreement for the supply of Goods.

_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

SIGNATURE

CAPACITY

FULL NAME(S)

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

NAME OF ENTITY: _____

Section 6: SIGNING POWER – RESOLUTION OF BOARD OF DIRECTORS

RFQ FOR THE SUPPLY AND DELIVERY OF ABRASIVE WHEELS FOR A PERIOD OF TWO (2) YEARS IN PRETORIA.



- a) prices;
- b) geographical area where Goods or Services will be rendered [market allocation]
- c) methods, factors or formulas used to calculate prices;
- d) the intention or decision to submit or not to submit, a Bid;

6. In particular, without limiting the generality of paragraph 5 above, there has been no consultation, communication, agreement or arrangement with any competitor regarding:

5. The Bidder has arrived at the accompanying Bid independently from, and without consultation, communication, agreement or arrangement with any competitor. However communication between partners in a joint venture or consortium will not be construed as collusive bidding.

- a) has been requested to submit a Bid in response to this Bid invitation;
- b) could potentially submit a Bid in response to this Bid invitation, based on their qualifications, abilities or experience; and
- c) provides the same Goods and Services as the Bidder and/or is in the same line of business as the Bidder

4. For the purposes of this Certificate and the accompanying Bid, I/we understand that the word "competitor" shall include any individual or organisation, other than the Bidder, whether or not affiliated with the Bidder, who:

3. I/we understand that the accompanying Bid will be disqualified if this Certificate is found not to be true and complete in every respect.

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

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

1. I/we

NAME OF ENTITY:

Section 7: CERTIFICATE OF ACQUAINTANCE WITH RFQ DOCUMENTS

RFQ FOR THE SUPPLY AND DELIVERY OF ABRASIVE WHEELS FOR A PERIOD OF TWO (2) YEARS IN PRETORIA.

SIGNATURE OF RESPONDENT

SIGNATURE OF WITNESS

SIGNED at _____ on this _____ day of _____ 20__

- e) the submission of a Bid which does not meet the specifications and conditions of the RFQ;
 - f) bidding with the intention not winning the Bid.
7. In addition, there have been no consultations, communications, agreements or arrangements with any competitor regarding the quality, quantity, specifications and conditions or delivery particulars of the Goods or Services to which this RFQ relates.
8. The terms of the accompanying Bid have not been, and will not be, disclosed by the Bidder, directly or indirectly, to any competitor, prior to the date and time of the official Bid opening or of the awarding of the contract.
9. I/We am/are aware that, in addition and without prejudice to any other remedy provided to combat any restrictive practices related to bids and contracts, Bids that are suspicious will be reported to the Competition Commission for investigation and possible imposition of administrative penalties in terms of section 59 of the Competition Act No 89 of 1998 and/or may be reported to the National Prosecuting Authority [NPA] for criminal investigation and/or may be restricted from conducting business with the public sector for a period not exceeding 10 [ten] years in terms of the Prevention and Combating of Corrupt Activities Act No 12 of 2004 or any other applicable legislation.



SIGNATURE OF RESPONDENT

SIGNATURE OF WITNESS

SIGNED at _____ on this _____ day of _____ 20__

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

I/We confirm having been advised that a signed copy of this Schedule can be submitted in lieu of the entire General Bid Conditions as confirmation in terms of the Returnable Schedule.

do _____ hereby certify that I/we acquainted myself/ourselves with all the documentation comprising the General Bid Conditions - Goods as received on _____ [insert date] from Transnet SOC Ltd for the carrying out of the proposed supply for which I/we submitted my/our Quotation.

I/We

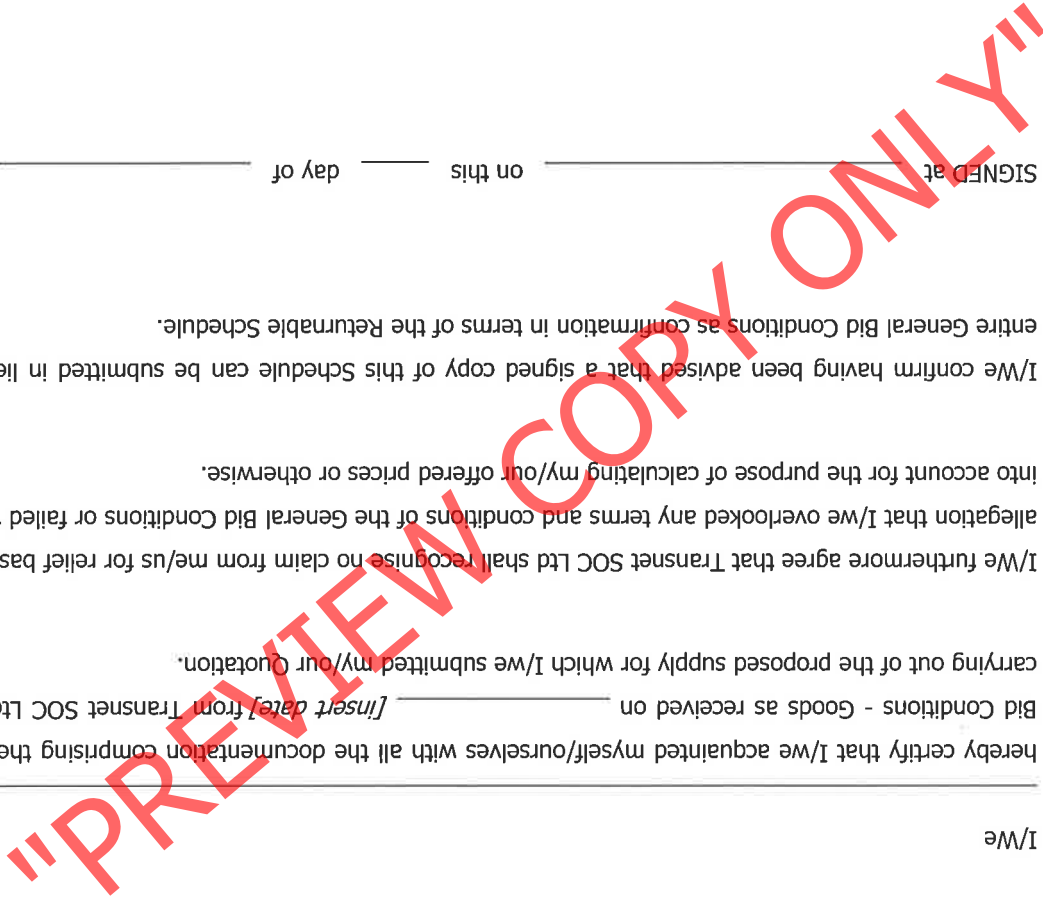
NAME OF ENTITY:

[appended hereto as Appendix (i)]

GOODS

Section 8: CERTIFICATE OF ACQUAINTANCE WITH THE GENERAL BID CONDITIONS -

RFQ FOR THE SUPPLY AND DELIVERY OF ABRASIVE WHEELS FOR A PERIOD OF TWO (2) YEARS IN PRETORIA.



SIGNATURE OF RESPONDENT

SIGNATURE OF WITNESS

SIGNED at _____ on this _____ day of _____ 20____

I/We do hereby certify that I/we acquainted myself/ourselves with all the documentation comprising the Terms and Conditions of Contract as received on _____ [insert date] from Transnet SOC Ltd for the carrying out of the proposed supply for which I/we submitted my/our Quotation.

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

I/We confirm having been advised that a signed copy of this Schedule can be submitted in lieu of the entire Terms and Conditions of Contract as confirmation in terms of the Returnable Schedule.

I/We

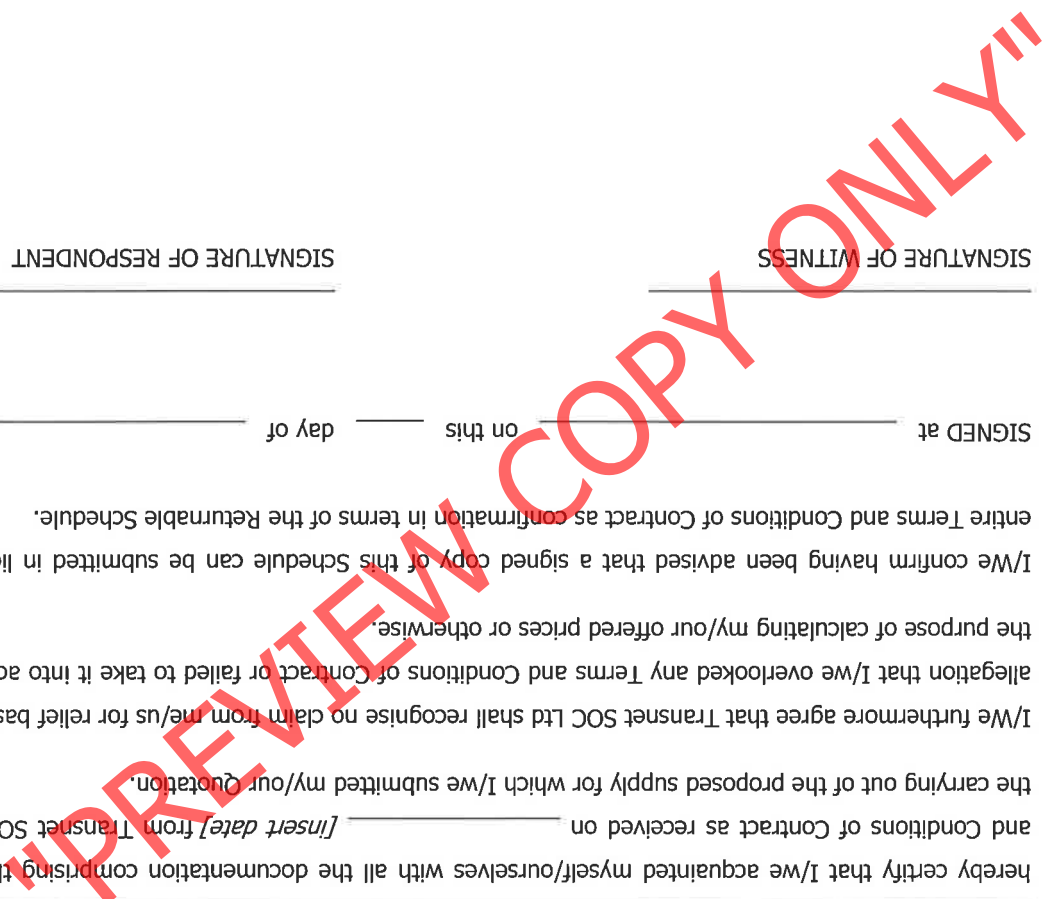
NAME OF ENTITY:

[appended hereto as Appendix (ii)]

CONTRACT FOR THE SUPPLY OF GOODS TO TRANSNET

Section 9: CERTIFICATE OF ACQUAINTANCE WITH THE TERMS AND CONDITIONS OF

RFQ FOR THE SUPPLY AND DELIVERY OF ABRASIVE WHEELS FOR A PERIOD OF TWO (2) YEARS IN PRETORIA.



"PREVIEW COPY ONLY"

- 19.1 The Supplier shall adhere to the Terms and Conditions of Contract issued with the Bid Documents, together with any schedule of "Special Conditions" or otherwise which form part of the Bid Documents.
- 19.2 Should the Respondent find any conditions unacceptable, it should indicate which conditions are unacceptable and offer alternatives by written submission on its company letterhead. Any such submission shall be subject to review by Transnet's Legal Counsel who shall determine whether the proposed alternative(s) are acceptable or otherwise, as the case may be.

Respondents should also note the obligations as set out in
clause 19 [Terms and Conditions of Contract]
of the General Bid Conditions [Appendix (f)] which reads as follows:

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

Indicate nature of relationship with Transnet:

ADDRESS:

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

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

We _____ do hereby certify that:

NAME OF ENTITY: _____

Section 10: RFQ DECLARATION FORM

**RFQ FOR THE SUPPLY AND DELIVERY OF ABRASIVE WHEELS
FOR A PERIOD OF TWO (2) YEARS IN PRETORIA.**

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

"PREVIEW COPY ONLY"

SIGNED at _____ on this _____ day of _____ 20

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

"PREVIEW COPY ONLY"

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

IMPORTANT NOTICE TO RESPONDENTS

SIGNATURE OF RESPONDENT

SIGNATURE OF WITNESS

SIGNED at _____ on this _____ day of _____ 20____

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

DATE OF BREACH: _____

NATURE OF BREACH: _____

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

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

I/We _____

NAME OF ENTITY: _____

Section 11: BREACH OF LAW FORM

**RFQ FOR THE SUPPLY AND DELIVERY OF ABRASIVE WHEELS
FOR A PERIOD OF TWO (2) YEARS IN PRETORIA.**



"PREVIEW COPY ONLY"

REQUEST FOR RFQ CLARIFICATION

RFQ Clarification No [to be inserted by Transnet]

FROM:

DATE:

EMAIL

prudence.nkabinde@transnet.net
The Secretariat, Transnet Acquisition Council [TAC]

ATTENTION:

Transnet SOC Ltd

TO:

RFQ No: ERACKT 0935 10857
RFQ deadline for questions / RFQ Clarifications: Before 12:00 3 days prior to closing date

Section 12: RFQ CLARIFICATION REQUEST FORM

**RFQ FOR THE SUPPLY AND DELIVERY OF ABRASIVE WHEELS
FOR A PERIOD OF TWO (2) YEARS IN PRETORIA.**

RFQ FOR THE SUPPLY AND DELIVERY OF ABRASIVE WHEELS FOR A PERIOD OF TWO (2) YEARS IN PRETORIA.

Section 13: SUPPLIER 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:

- The Transnet Supply Chain Policy
- Section 217 of the Constitution - the five pillars of Public PSCM [Procurement and Supply Chain Management]: fairness, equity, transparency, competitiveness and cost effectiveness;
- The Public Finance Management Act [PFMA];
- The Preferential Procurement Policy Framework Act [PPFA];
- The Broad-Based Black Economic Empowerment Act [B-BBEE]; and
- The Prevention and Combating of Corrupt Activities Act.

This Code of Conduct has been included in this RFQ to formally apprise prospective Transnet Suppliers of Transnet's expectations regarding the behaviour and conduct of its Suppliers.

Prohibition of bribes, kickbacks, unlawful payments, and other corrupt practices

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

a) Transnet will not participate in corrupt practices and therefore expects its Suppliers to act in a similar manner.

- Transnet and its employees will follow the laws of this country and keep accurate business records that reflect actual transactions and payments to our Suppliers.
- Employees must not accept or request money or anything of value, directly or indirectly, to:

- illegally influence their judgement or conduct or to ensure the desired outcome of a sourcing activity;
 - win or retain business or to influence any act or decision of any decision stakeholders involved in sourcing decisions; or
 - gain an improper advantage.
- There may be an occasion when a Supplier is confronted with fraudulent or corrupt behaviour by a Transnet employee. We expect our Suppliers to use our "Tip-offs Anonymous" Hot line to report these acts [0800 003 056].

Bidding entities are required to disclose any interest/s which exist between themselves and any employee and/or Transnet Board member.

- Transnet employees having a financial interest in a bidding entity
 - Transnet employees awarding business to entities in which their family members or business associates have an 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 include, but are not limited to:

Conflicts of interest

- Suppliers must be evaluated and approved before any materials, components, products or services are purchased from them. Rigorous due diligence is conducted and the Supplier is expected to participate in an honest and straight forward manner.
- Suppliers must record and report facts accurately, honestly and objectively. Financial records must be accurate in all material respects.
- harassment, intimidation or other aggressive actions towards Transnet employees.
- corrupt activities listed above; and
- ownership, financial situation, B-BBEE status];
- failure to disclose accurate information required during the sourcing activity [e.g. collusion;
- intellectual property rights];
- misrepresentation of their product [e.g. origin of manufacture, specifications, activities. These include, but are not limited to:

• Generally, Suppliers have their own business standards and regulations. Although Transnet cannot control the actions of our Suppliers, we will not tolerate any illegal information and share mutual benefits.

c) *Transnet's relationship with Suppliers requires us to clearly define requirements, exchange*

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

b) *Transnet is firmly committed to the ideas of free and competitive enterprise.*

**RFQ FOR THE SUPPLY AND DELIVERY OF ABRASIVE WHEELS
FOR A PERIOD OF TWO (2) YEARS IN PRETORIA.**

Section 14: B-BBEE PREFERENCE POINTS CLAIM FORM

This preference form contains general information and serves as a claim for preference points for Broad-Based Black Economic Empowerment [B-BBEE] Status Level of Contribution.

1.

INTRODUCTION

1.1 A total of 10 preference points shall be awarded for B-BBEE Status Level of Contribution.

1.2 Failure on the part of a Bidder to fill in and/or to sign this form and submit a B-BBEE Verification Certificate from a Verification Agency accredited by the South African Accreditation System [SANAS] or a Registered Auditor approved by the Independent Regulatory Board of Auditors [IRBA] or an Accounting Officer as contemplated in the Close Corporation Act [CCA] together with the bid will be interpreted to mean that preference points for B-BBEE Status Level of Contribution are not claimed.

1.3 Transnet reserves the right to require of a Bidder, either before a Bid is adjudicated or at any time subsequently, to substantiate any claim in regard to preferences, in any manner required by Transnet.

2.

GENERAL DEFINITIONS

2.1 "all applicable taxes" include value added tax, pay as you earn, income tax, unemployment insurance fund contributions and skills development levies;

2.2 "B-BBEE" means broad-based black economic empowerment as defined in section 1 of the Broad-Based Black Economic Empowerment Act;

2.3 "B-BBEE status of contributor" means the B-BBEE status received by a measured entity based on its overall performance using the relevant scorecard contained in the Codes of Good Practice on Black Economic Empowerment, issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act;

2.4 "Bid" means a written offer in a prescribed or stipulated form in response to an invitation by Transnet for the supply of goods, works or services;

Black Economic Empowerment Act means the Broad-Based Black Economic Empowerment Act, 53 of 2003;

the price after the factors of a non-firm price and all unconditional factors have been taken into consideration;

Joint Venture means an association of persons for the purpose of combining their efforts, skills and knowledge in an activity for the execution of a

contract that results from the acceptance of a bid by Transnet;

- 2.9 "EME" means any enterprise with an annual total revenue of R5 [five] million or less;
- 2.10 "firm price" means the price that is only subject to adjustments in accordance with the actual increase or decrease resulting from the change, imposition, or abolition of customs and excise duty and any other duty, levy, or tax, which, in terms of the law or regulation, is binding on the contractor and demonstrably has an influence on the price of any supplies, or the rendering costs of any service, for the execution of the contract;
- 2.11 "functionality" means the measurement according to predetermined norms, as set out in the bid documents, of a service or commodity that is designed to be practical and useful, working or operating, taking into account, among other factors, the quality, reliability, viability and durability of a service and the technical capacity and ability of a bidder;
- 2.12 "non-firm prices" means all prices other than "firm" prices;
- 2.13 "person" includes reference to a juristic person;
- 2.14 "rand value" means the total estimated value of a contract in South African currency, calculated at the time of bid invitations, and includes all applicable taxes and excise duties;
- 2.15 "subcontract" means the primary contractor's assigning or leasing or making out work to, or employing another person to support such primary contractor in the execution of part of a project in terms of the contract;
- 2.16 "total revenue" bears the same meaning assigned to this expression in the Codes of Good Practice on Black Economic Empowerment, issued in terms of section 9(1) of the Broad-Based Black Empowerment Act and promulgated in the Government Gazette on 9 February 2007;
- 2.17 "trust" means the arrangement through which the property of one person is made over or bequeathed to a trustee to administer such property for the benefit of another person; and
- 2.18 "trustee" means any person, including the founder of a trust, to whom property is bequeathed in order for such property to be administered for the benefit of another person.
3. **ADJUDICATION USING A POINT SYSTEM**
- 3.1 The Bidder obtaining the highest number of total points for the evaluation criteria as enumerated in Section 2 of the RFQ will be awarded the contract, unless objective criteria justifies the award to another bidder.
- 3.2 Preference points shall be calculated after prices have been brought to a comparative basis taking into account all factors of non-firm prices and all unconditional discounts.
- 3.3 Points scored will be rounded off to 2 [two] decimal places.
- 3.4 In the event of equal points scored, the Bid will be awarded to the Bidder scoring the highest number of preference points for B-BBEE.
- 3.5 However, when functionality is part of the evaluation process and two or more Bids have scored equal points including preference points for B-BBEE, the successful Bid will be the one scoring the highest score for functionality.
- 3.6 Should two or more Bids be equal in all respect, the award shall be decided by the drawing of lots.

4. POINTS AWARDED FOR B-BBEE STATUS LEVEL OF CONTRIBUTION

4.1 In terms of Regulation 5(2) and 6(2) of the Preferential Procurement Regulations, 2011, preference points shall be awarded to a Bidder for attaining the B-BBEE status level of contribution in accordance with the table below:

B-BBEE Status Level of Contributor	Number of Points [Maximum 10]
1	10
2	9
3	8
4	5
5	4
6	3
7	2
8	1
Non-compliant contributor	0

Note: Refer to Section 1 of the RFQ document for further information in terms of B-BBEE ratings.

- 4.2 Bidders who qualify as EMEs in terms of the B-BBEE Act must submit a certificate issued by an Accounting Officer as contemplated in the CCA or a Verification Agency accredited by SANAS or a Registered Auditor. Registered auditors do not need to meet the prerequisite for IRBA's approval for the purpose of conducting verification and issuing EME's with B-BBEE Status Level Certificates. Bidders other than EMEs must submit their original and valid B-BBEE status level verification certificate or a certified copy thereof, substantiating their B-BBEE rating issued by a Registered Auditor approved by IRBA or a Verification Agency accredited by SANAS.
- 4.4 A trust, consortium or joint venture will qualify for points for its B-BBEE status level as a legal entity, provided that the entity submits its B-BBEE status level certificate.
- 4.5 A trust, consortium or joint venture will qualify for points for their B-BBEE status level as an unincorporated entity, provided that the entity submits their consolidated B-BBEE scorecard as if they were a group structure and that such a consolidated B-BBEE scorecard is prepared for every separate bid.
- 4.6 Tertiary institutions and public entities will be required to submit their B-BBEE status level certificates in terms of the specialised scorecard contained in the B-BBEE Codes of Good Practice.
- 4.7 A person will not be awarded points for B-BBEE status level if it is indicated in the Bid documents that such a Bidder intends subcontracting more than 25% [twenty-five per cent] of the value of the contract to any other enterprise that does not qualify for at least the same number of points that such a Bidder qualifies for, unless the intended subcontractor is an EME that has the capability and ability to execute the subcontract.
- 4.8 A person awarded a contract may not subcontract more than 25% [twenty-five per cent] of the value of the contract to any other enterprise that does not have an equal or higher B-BBEE status level than the person concerned, unless the contract is subcontracted to an EME that has the capability and ability to execute the subcontract.

5. B-BEE STATUS AND SUBCONTRACTING

5.1 Bidders who claim points in respect of B-BEE Status Level of Contribution must complete the following:

B-BEE Status Level of Contributor _____ = _____ [maximum of 10 points]

Note: Points claimed in respect of this paragraph 5.1 must be in accordance with the table reflected in paragraph 4.1 above and must be substantiated by means of a B-BEE certificate issued by a Verification Agency accredited by SANAS or a Registered Auditor approved by IRBA or an Accounting Officer as contemplated in the Close Corporation Act.

5.2 Subcontracting:

Will any portion of the contract be subcontracted? YES/NO [delete which is not applicable]

If YES, indicate:

- (i) What percentage of the contract will be subcontracted?
- (ii) The name of the subcontractor
- (iii) The B-BEE status level of the subcontractor
- (iv) Is the subcontractor an EME?

YES/NO

5.3

Declaration with regard to Company/Firm

(i) Name of Company/Firm.....

(ii) VAT registration number.....

(iii) Company registration number.....

(iv) Type of Company / Firm

- Partnership/Joint Venture/Consortium
- One person business/sole property
- Close Corporations
- Company (Pty) Ltd

[TICK APPLICABLE BOX]

(v) Describe Principal Business Activities

.....
.....
.....
.....



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(vii) Total number of years the company/firm has been in business.....

[TICK APPLICABLE BOX]

Other Service Providers, e.g. Transporter, etc.

Professional Service Provider

Supplier

Manufacturer

(vi) Company Classification

.....

 ADDRESS:.....

 COMPANY NAME:

DATE:

SIGNATURE OF BIDDER

.....
 2.

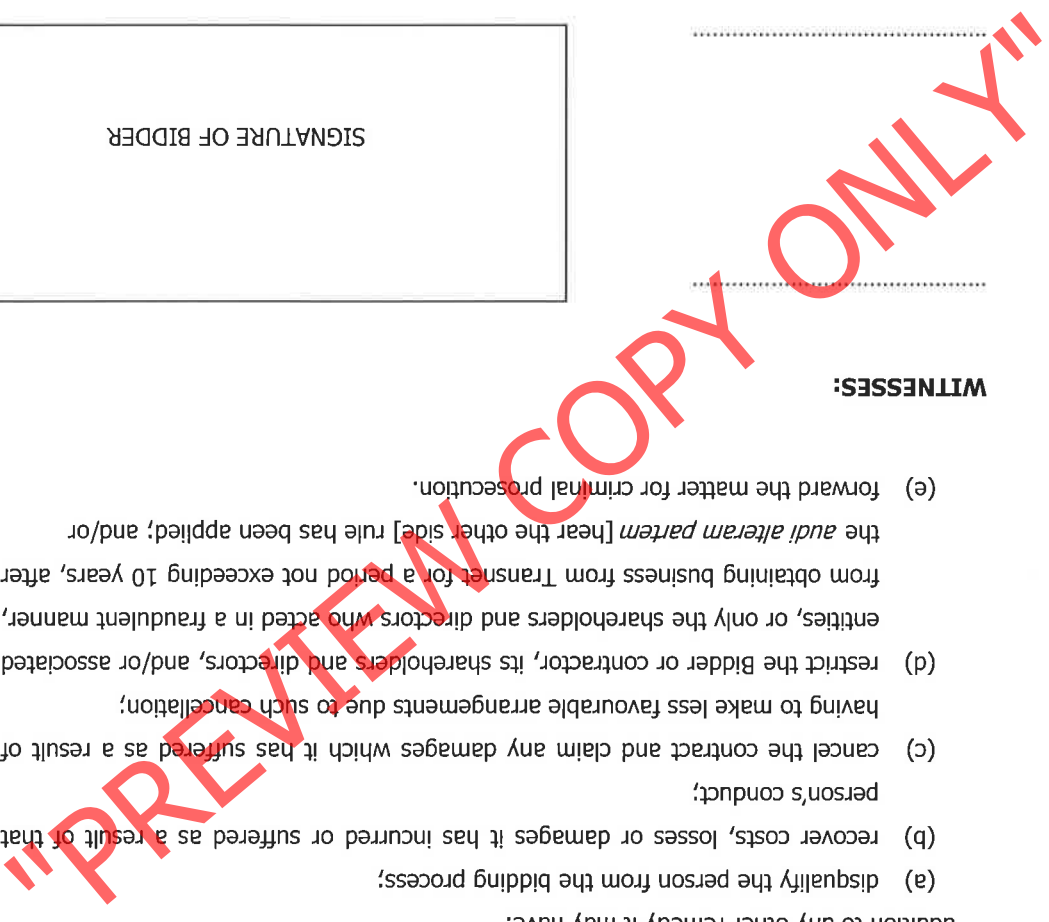
 1.

WITNESSES:

- (e) forward the matter for criminal prosecution.
 - the *audi alteram partem* [hear the other side] rule has been applied; and/or
 - from obtaining business from Transnet for a period not exceeding 10 years, after
 - entities, or only the shareholders and directors who acted in a fraudulent manner,
 - (d) restrict the Bidder or contractor, its shareholders and directors, and/or associated
 - having to make less favourable arrangements due to such cancellation;
 - (c) cancel the contract and claim any damages which it has suffered as a result of
 - person's conduct;
 - (b) recover costs, losses or damages it has incurred or suffered as a result of that
 - (a) disqualify the person from the bidding process;
- addition to any other remedy it may have:
- (ii) In the event of a contract being awarded as a result of points claimed as shown in
 - paragraph 6 above, the contractor may be required to furnish documentary proof to the
 - satisfaction of Transnet that the claims are correct.
 - (iii) If the B-BBEE status level of contribution has been claimed or obtained on a fraudulent
 - basis or any of the conditions of contract have not been fulfilled, Transnet may, in

I/we, the undersigned, who warrants that he/she is duly authorised to do so on behalf of the company/firm, certify that points claimed, based on the B-BBEE status level of contribution indicated in paragraph 4 above, qualifies the company/firm for the preference(s) shown and I / we acknowledge that:

BID DECLARATION



SIGNATURE OF RESPONDENT

SIGNATURE OF WITNESS

SIGNED at _____ on this _____ day of _____ 20

I/We do hereby certify that I/we acquainted myself/ourselves with all the documentation comprising the Specifications for the carrying out of the proposed supply for which I/we submitted my/our Quotation. I/We furthermore agree that Transnet SOC Ltd shall recognise no claim from me/us for relief based on an allegation that I/we overlooked any provisions of the Specifications or failed to take it into account for the purpose of calculating my/our offered prices or otherwise. I/We confirm having been advised that a signed copy of this Schedule can be submitted in lieu of the Specifications as confirmation in terms of the Returnable Schedule.



[if applicable]

[appended hereto as Appendix (iii)]

Section 15: CERTIFICATE OF ACQUAINTANCE WITH SPECIFICATIONS

RFQ FOR THE SUPPLY AND DELIVERY OF ABRASIVE WHEELS FOR A PERIOD OF TWO (2) YEARS IN PRETORIA.

"PREVIEW COPY ONLY"

RFQ Number ERAC KT 0935 10857

Registration Number

and

Registration Number 1990/000900/30

TRANSNET SOC LTD

Entered into by and between

Section 16: NON DISCLOSURE AGREEMENT

**RFQ FOR THE SUPPLY AND DELIVERY OF ABRASIVE WHEELS
FOR A PERIOD OF TWO (2) YEARS IN PRETORIA.**

THIS AGREEMENT is made between

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

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

and

_____ [the Company] [Registration No _____] whose registered office is at _____

WHEREAS

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

IT IS HEREBY AGREED

1. INTERPRETATION

In this Agreement:

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

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

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

1.3.1 is publicly available at the time of its disclosure or becomes publicly available [other than as a result of disclosure by the Receiving Party or any of its Agents contrary to the terms of this Agreement]; or

1.3.2 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

1.3.3 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;

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

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

2. CONFIDENTIAL INFORMATION

2.1 All Confidential Information given by one party to this Agreement [the **Disclosing Party**] to the other party [the **Receiving Party**] will be treated by the Receiving Party as secret and confidential and 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 Bid or for the subsequent performance of any contract between the parties in relation to the Bid.

2.3 Notwithstanding clause 2.1 above, the Receiving Party may disclose Confidential Information:

2.3.1 to those of its Agents who strictly need to know the Confidential Information for the sole purpose set out in clause 2.2 above, provided that the Receiving Party shall ensure that such Agents are made aware prior to the disclosure of any part of the Confidential Information that the same is confidential and that they owe a duty of confidence to the Disclosing Party. The Receiving Party shall at all times remain liable for any actions of such Agents that would constitute a breach of this Agreement; or

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

2.4 In the event that the Receiving Party is required to disclose any Confidential Information in accordance with clause 2.3.2 above, it shall promptly notify the Disclosing Party and cooperate with the Disclosing Party regarding the form, nature, content and purpose of such disclosure or any action which the Disclosing Party may reasonably take to challenge the validity of such requirement.

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.

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

8. PRIVACY AND DATA PROTECTION

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

7. ADEQUACY OF DAMAGES

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

6. PRINCIPAL

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

5. DURATION

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.

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

4. ANNOUNCEMENTS

3.4 The Company shall on request supply a certificate signed by a director as to its full compliance with the requirements of clause 3.3.2 above.

3.3.2 expunge or destroy any Confidential Information from any computer, word processor or other device whatsoever into which it was copied, read or programmed by the Company or on its behalf.

3.3.1 return all written Confidential Information [including all copies]; and

3.3 The Company shall, within 7 [seven] days of receipt of a written demand from Transnet:

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.

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

3. RECORDS AND RETURN OF INFORMATION

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

9. GENERAL

9.1 Neither party may assign the benefit of this Agreement, or any interest hereunder, except with the prior written consent of the other, save that Transnet may assign this Agreement at any time to any member of the Transnet Group.

9.2 No failure or delay in exercising any right, power or privilege under this Agreement will operate as a waiver of it, nor will any single or partial exercise of it preclude any further exercise or the exercise of any right, power or privilege under this Agreement or otherwise.

9.3 The provisions of this Agreement shall be severable in the event that any of its provisions are held by a court of competent jurisdiction or other applicable authority to be invalid, void or otherwise unenforceable, and the remaining provisions shall remain enforceable to the fullest extent permitted by law.

9.4 This Agreement may only be modified by a written agreement duly signed by persons authorised on behalf of each party.

9.5 Nothing in this Agreement shall constitute the creation of a partnership, joint venture or agency between the parties.

9.6 This Agreement will be governed by and construed in accordance with South African law and the parties irrevocably submit to the exclusive jurisdiction of the South African courts.

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Clause	Nr	Comply	Does Not Comply	Comments
	3.1.1			
	3.1.2			
	3.1.3			
	3.2			
	3.4			
	3.5			
	3.6			
	3.7			
	3.8			
	3.9			

Section 17: CLAUSE BY CLAUSE COMPLIANCE TO PROJECT SPECIFICATION

**RFQ FOR THE SUPPLY AND DELIVERY OF ABRASIVE WHEELS
FOR A PERIOD OF TWO (2) YEARS IN PRETORIA.**

"PREVIEW COPY ONLY"

[April 2013]

GENERAL BID CONDITIONS - GOODS

Appendix (I)



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1 DEFINITIONS

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

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

2

GENERAL

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

3

SUBMITTING OF BID DOCUMENTS

- 3.1 A Bid, which shall hereinafter include reference to an RFP or RFQ, shall be submitted to Transnet no later than the closing date and time specified in accordance with the directions issued in the Bid Documents. Late Bids will not be considered.
- 3.2 Bids shall be delivered in a sealed envelope in accordance with the instructions indicated in the Bid Documents with the Bid number and subject marked on the front of the envelope.
- 3.3 The Respondent's return address must be stated on the reverse side of the sealed envelope.

4

USE OF BID FORMS

- 4.1 Where special forms and/or formats are issued by Transnet for the submission of Bids, Respondents are required to submit their Bids by completion of the appropriate sections on such official forms and/or formats and not in other forms and/or formats or documents bearing their own terms and conditions of contract. Non-compliance with this condition may result in the rejection of a Bid.
- 4.2 Respondents must note that the original Bid forms and/or formats must be completed for submission and not a reprocessed copy or other format thereof.
- 4.3 Only if insufficient space has been allocated to a particular response may a Respondent submit additional information under separate cover using the Company's letterhead. This must be duly cross-referenced in the RFX.

5	BID FEES	<p>5.1 A non-refundable fee may be charged for Bid Documents, depending on the administrative cost of preparing and issuing the Bid Document.</p> <p>5.2 Where necessary, only Respondents that have paid the Bid fee and provided proof of payment when submitting their proposal will be considered.</p>
6	VALIDITY PERIOD	<p>6.1 The Respondents must hold their Bid valid for acceptance by Transnet at any time within the requested validity period after the closing date of the bid.</p> <p>6.2 Respondents may be requested to extend their validity period for a specified additional period. In such instances, Respondents will not be allowed to change any aspect of their Bid, unless they are able to demonstrate that the proposed change/s is as a direct and unavoidable consequence of Transnet's extension of the validity period.</p>
7	SITE VISITS / BRIEFING SESSIONS	<p>Respondents may be requested to attend a site visit or briefing session where it is necessary to view the site in order to prepare their Bids, or where Transnet deems it necessary to provide Respondents with further information to allow them to complete their Bids properly. Where such visits or sessions are indicated as compulsory in the RFX Document, Respondents are obliged to attend these meetings as failure to do so will result in their disqualification.</p>
8	CLARIFICATION BEFORE THE CLOSING DATE	<p>Should clarification be required on any aspect of the Bid before the closing date, the Respondent must direct such queries to the contact person listed in the RFX Document in the stipulated manner.</p>
9	COMMUNICATION AFTER THE CLOSING DATE	<p>After the closing date of a Bid (i.e. during the evaluation period) the Respondent may only communicate with the Chairperson or the Secretary of the relevant Acquisition Council.</p>
10	UNAUTHORISED COMMUNICATION ABOUT BIDS	<p>After Bids are submitted, Respondents may at any time communicate with the Secretary on any matter relating to its Bid but, in the absence of written authority from the Secretary, no communication on a question affecting the subject of a Bid shall take place between Respondents or other potential suppliers or any member of the Acquisition Council or official of Transnet during the period between the closing date for the receipt of the Bid and the date of the notification of the successful Respondent(s). A Bid, in respect of which any such unauthorised communication has occurred, may be disqualified.</p>
11	RETURNABLE DOCUMENTS	<p>All returnable documents listed in the RFX Documents must be submitted with Respondent's Bid. Failure to submit mandatory returnable schedules / documents will result in disqualification. Failure to submit other schedules / documents may result in disqualification.</p>
12	DEFAULTS BY RESPONDENTS	<p>12.1 If the Respondent, after it has been notified of the acceptance of its Bid fails to:</p>

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

b) accept an order in terms of the Bid;

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

d) comply with any condition imposed by Transnet.

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

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

- a) has withdrawn such Bid after the advertised date and hour for the receipt of Bids; or
- b) has, after having been notified of the acceptance of its Bid, failed or refused to sign a contract when called upon to do so in terms of any condition forming part of the Bid Documents; or
- c) has carried out any contract resulting from such Bid in an unsatisfactory manner or has breached any condition of such contract; or
- d) has offered, promised or given a bribe in relation to the obtaining or the execution of such contract; or
- e) has acted in a fraudulent or improper manner or in bad faith towards Transnet or any government department or towards any public body, company or person; or
- f) has made any misleading or incorrect statement either:
 - (i) in the affidavit or certificate referred to in clause 18 [Notice to Unsuccessful Respondents]; or
 - (ii) in any other document submitted as part of its bid submission and is unable to prove to the satisfaction of Transnet that:
 - it made the statement in good faith, honestly believing it to be correct; and
 - before making such statement, it took all reasonable steps to satisfy itself of its correctness.
- g) caused Transnet damage, or to incur costs in order to meet the Supplier's requirements which could not be recovered from the Supplier;
- h) has litigated against Transnet in bad faith;
- i) has been found guilty by a court of law, tribunal or other administrative body of a serious breach of any law, during the preceding 5 [five] years;
- j) has been included as a company or person prohibited from doing business with the public sector on National Treasury's database of Restricted Suppliers or Register of Bid Defaulters; then a Bid from any such Respondent shall be disqualified and the person, enterprise or company [including any directors] shall, subject to clause 12.3 below, be disqualified from bidding for any Transnet business through its "blacklisting" process.

12.3 Any person or enterprise or company against whom a decision to blacklist has been taken, may make representations to the person with delegated authority within Transnet SOC Ltd Group, whose decision shall be final.

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

13 CURRENCY

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

14 PRICES SUBJECT TO CONFIRMATION

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

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

15 ALTERATIONS MADE BY THE RESPONDENT TO BID PRICES

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

16 EXCHANGE AND REMITTANCE

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

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

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

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

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

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

17 ACCEPTANCE OF BID

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

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

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

17.4 Where the Respondent has been informed by Transnet of the acceptance of its Bid, the acknowledgment of receipt transmitted shall be regarded as proof of delivery to the Respondent.

18 NOTICE TO UNSUCCESSFUL RESPONDENTS

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

19 TERMS AND CONDITIONS OF CONTRACT

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

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

20 CONTRACT DOCUMENTS

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

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

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

21 LAW GOVERNING CONTRACT

The law of the Republic of South Africa shall govern the contract created by the acceptance of a Bid. The *domicilium citandi et executandi* shall be a place in the Republic of South Africa to be specified by the Respondent in its Bid at which all legal documents may be served on the Respondent who shall agree to submit to the jurisdiction of the courts of the Republic of South Africa. A foreign Respondent shall,

therefore, state in its Bid the name of its authorised representative in the Republic of South Africa who is empowered to sign any contract which may be entered into in the event of its Bid being accepted and to act on its behalf in all matters relating to the contract.

22 IDENTIFICATION

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

23 RESPONDENT'S SAMPLES

23.1 If samples are required from Respondents, such samples shall be suitably marked with the Respondent's name and address, the Bid number and the Bid item number and must be despatched in time to reach the addressee as stipulated in the Bid Documents on or before the closing date of the Bid. Failure to submit samples by the due date may result in the rejection of a Bid.

23.2 Transnet reserves the right to retain samples furnished by Respondents in compliance with Bid conditions.

23.3 Payment will not be made for a successful Respondent's samples that may be retained by Transnet for the purpose of checking the quality and workmanship of Goods delivered in execution of a contract.

23.4 If Transnet does not wish to retain unsuccessful Respondents' samples and the Respondents require their return, such samples may be collected by the Respondents at their own risk and cost.

24 SECURITIES

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

24.2 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.

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

24.4 For the purpose of clause 24.1 above, Transnet will supply a Deed of Suretyship form to the successful Respondent for completion and no guarantee in any other form will be accepted. A copy of such form will be supplied to Respondents on request. For this purpose a Deed of Suretyship form will be provided which shall be completed and returned to Transnet or a designated official by the successful Respondent within 30 [thirty] days from the date of the letter of acceptance. No payment

will be made until the form, duly completed, is delivered to Transnet. Failure to return the Deed of Suretyship within the prescribed time shall, save where prior extension has been granted, entitle Transnet without notice to cancel the contract with immediate effect.

24.5 Additional costs incurred by Transnet necessitated by reason of default on the part of the Supplier in relation to the conditions of this clause 24 will be for the account of the Supplier.

25 PRICE AND DELIVERY BASIS FOR GOODS

25.1 Unless otherwise specified in the Bid Documents, the prices quoted for Goods must be on a Delivered Duty Paid [ICC Incoterms 2010] price basis in accordance with the terms and at the delivery point or points specified in Transnet's Bid Documents. Bids for supply on any other basis of delivery are liable to disqualification. The lead time for delivery stated by the Respondent 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 Respondent.

25.2 Respondents must furnish their Bid prices in the Price Schedule of the Bid Documents on the following basis:

- a) Local Supplies - Prices for Goods to be manufactured, produced or assembled in the Republic of South Africa, or imported supplies held in South Africa, to be quoted on a Delivered RSA named destination basis.
- b) Imported Supplies - Prices for Goods to be imported from all sources to be quoted on a Delivered Duty Paid [ICC Incoterms 2010] basis, to end destination in South Africa, unless otherwise specified in the Bid Price Schedule.

26 EXPORT LICENCE

The award of a Bid for Goods to be imported may be subject to the issue of an export licence in the country of origin or supply. If required, the Supplier's manufacturer or forwarding agent shall be required to apply for such licence.

27 QUALITY OF MATERIAL

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

28 DELETION OF ITEMS EXCLUDED FROM BID

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

29 VALUE-ADDED TAX

In respect of local supplies, i.e. Goods to be manufactured, produced or assembled in the Republic of South Africa, or imported supplies held or already in transit to South Africa, the prices quoted by the Respondent are to be exclusive of VAT which must be shown separately at the standard rate on the Tax Invoice.

30 IMPORTANT NOTICE TO RESPONDENTS REGARDING PAYMENT

30.1 Method of Payment

- a) The attention of the Respondent is directed to the Terms and Conditions of Contract which set out the conditions of payment on which Bid price(s) shall be based.
- b) However, in addition to the foregoing the Respondent is invited to submit offers based on alternative methods of payment and/or financing proposals.
- c) The Respondent is required to give full particulars of the terms that will be applicable to its alternative offer(s) and the financial merits thereof will be evaluated and taken into consideration when the Bid is adjudicated.

d) The Respondent must, therefore, in the first instance, tender strictly in accordance with clause 30.1a) above. Failure to comply with clause 30.1a) above may preclude a Bid from further consideration.

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

30.2 **Conditional Discount**

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

31 **CONTRACT QUANTITIES AND DELIVERY REQUIREMENTS**

31.1 **Contract Quantities**

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

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

c) The estimated planned quantities likely to be ordered by Transnet per annum are furnished in relevant section of the Bid Documents. For avoidance of doubt the estimated quantities are estimates and Transnet reserves the right to order only those quantities sufficient for its operational requirements.

31.2 **Delivery Period**

a) **Period Contracts and 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 the Terms and Conditions of Contract.

b) **Progress Reports**

The Supplier may be required to submit periodical progress reports with regard to the delivery of the Goods.

c) **Emergency Demands as and when required**

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

Perform the Scope of Supply section in the Terms and Conditions of Contract will not be applicable in these circumstances.

32 PLANS, DRAWINGS, DIAGRAMS, SPECIFICATIONS AND DOCUMENTS

32.1 Copyright

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

32.2 Drawings and specifications

In addition to what may be stated in any Bid Document, the Respondent should note that, unless notified to the contrary by Transnet or a designated official by means of an official amendment to the Bid Documents, it is required to tender for Goods strictly in accordance with the drawings and/or specifications supplied by Transnet, notwithstanding that it may be aware that alterations or amendments to such drawings or specifications are contemplated by Transnet.

32.3 Respondent's drawings

Drawings required to be submitted by the Respondent must be furnished before the closing time and date of the Bid. The non-receipt of such drawings by the appointed time may disqualify the Bid.

32.4 Foreign specifications

The Respondent quoting for Goods in accordance with foreign specifications, other than British and American standards, is to submit translated copies of such specifications with the Bid. In the event of any departures or variations between the foreign specification(s) quoted in the Bid Documents, full details regarding such departures or variations must be furnished by the Respondent in a covering letter attached to the Bid. Non-compliance with this condition may result in disqualification.

33 BIDS BY OR ON BEHALF OF FOREIGN RESPONDENTS

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

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

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

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

a) Such Power of Attorney must comply with Rule 63 (Authentication of documents executed outside the Republic for use within the Republic) of the Uniform Rules of Court: Rules

regulating the conduct of the proceedings of the several provincial and local divisions of the Supreme Court of South Africa.

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

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

d) The Power of Attorney must authorise the South African representative or agent to choose the *domicilium citandi et executandi*.

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

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

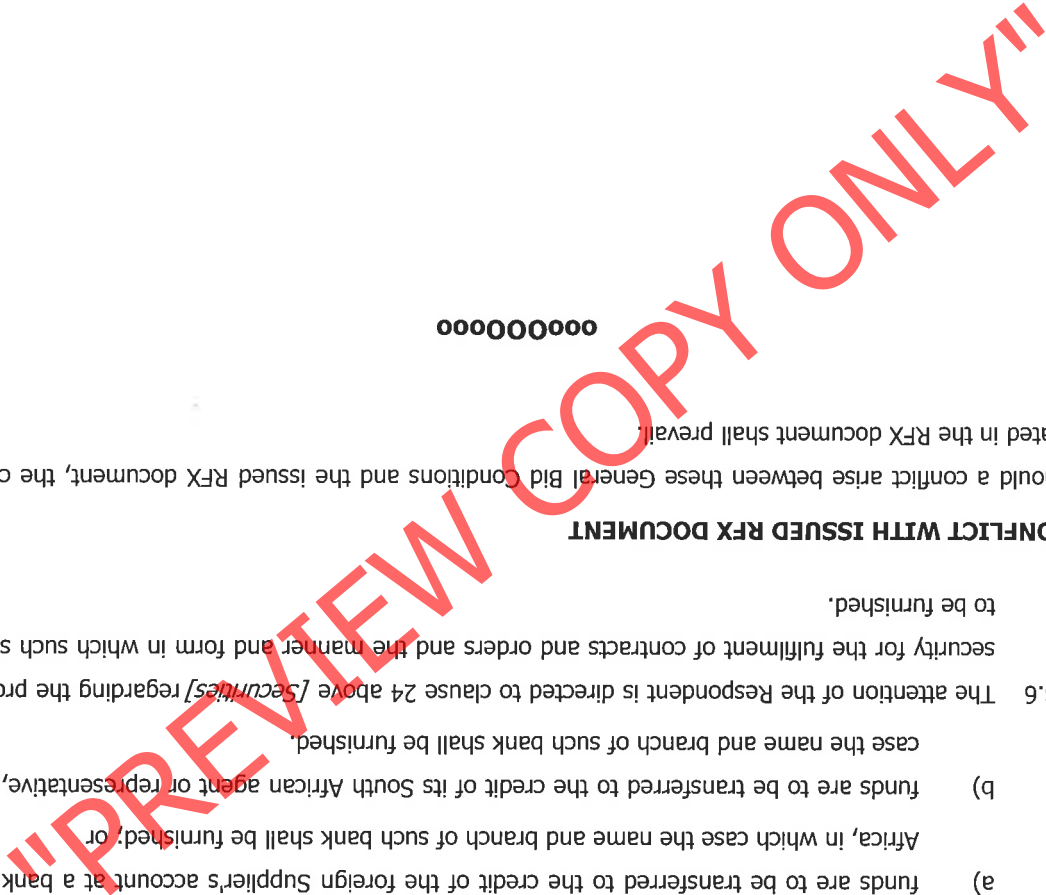
b) funds are to be transferred to the credit of its South African agent or representative, in which case the name and branch of such bank shall be furnished.

33.6 The attention of the Respondent is directed to clause 24 above [Securities] regarding the provision of security for the fulfillment of contracts and orders and the manner and form in which such security is to be furnished.

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

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34 CONFLICT WITH ISSUED RFX DOCUMENT



"PREVIEW COPY ONLY"

**TERMS AND CONDITIONS OF CONTRACT
FOR THE SUPPLY OF GOODS TO TRANSNET
[April 2013]**

Appendix (ii)



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1 INTRODUCTION

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

2 DEFINITIONS

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

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

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

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

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

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

j) Copyright works;

k) commercial, financial and marketing information;

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

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

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

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

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

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

2.9 **Expiry Date** means [●];

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

2.11 **Goods** means [●], the material / products specified in the Schedule of Requirements appended as Schedule 1 hereto;

2.12 **ICC Incoterms 2010** means the set of commercial trade terms as published by the International Chamber of Commerce, Paris [ICC], which are otherwise referred to as purchase terms and which define precisely the responsibilities, costs and risks of the buyer [Transnet] and the seller [the Supplier]. Incoterms are only applicable to contracts involving the import or export of Goods from one country to another and for the purpose of the Agreement, if applicable, shall mean the designated Incoterm as stipulated in Schedule 1 hereto. Further details of the Incoterm [purchase terms] for the Agreement, if applicable, can be viewed at the International Business Training website - <http://www.i-b-t.net/incoterms.html>;

- 2.13 **Intellectual Property** means Patents, Designs, Know-How, Copyright and Trade Marks and all rights having equivalent or similar effect which may exist anywhere in the world and includes all future additions and improvements to the Intellectual Property;
- 2.14 **Know-How** means all Confidential Information of whatever nature relating to the Intellectual Property and its exploitation as well as all other Confidential Information generally relating to Transnet's field of technology, including technical information, processing or manufacturing techniques, Designs, specifications, formulae, systems, processes, information concerning materials and marketing and business information in general;
- 2.15 **Parties** mean the Parties to the Agreement together with their subsidiaries, divisions, business units, successors-in-title and assigns;
- 2.16 **Party** means either one of these Parties;
- 2.17 **Patents** mean registered Patents and Patent applications, once the latter have proceeded to grant, and includes a right granted for any inventions, products or processes in all fields of technology;
- 2.18 **Permitted Purpose** means any activity or process to be undertaken or supervised by a Staff member of one Party during the term of the Agreement, for which purpose authorised disclosure of the other Party's Confidential Information or Intellectual Property is a prerequisite in order to enable such activity or process to be accomplished;
- 2.19 **Price(s)** means the agreed Price(s) for the Goods to be purchased from the Supplier by Transnet, as detailed in the Schedule of Requirements, 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;
- 2.20 **Purchase Order(s)** means official orders issued by an operating division of Transnet to the Supplier for the supply of Goods or ancillary Services;
- 2.21 **Services** means Services provided to Transnet including activities such as consultation, advisory services, implementation services and day-to-day assistance provided by the Supplier, pursuant to the Schedule of Requirements in terms of the Agreement;
- 2.22 **Staff** means any partner, employee, agent, consultant, independent associate or contractor, Subcontractor and the staff of such Subcontractor, or other authorised representative of either Party;
- 2.23 **Schedule of Requirements** means Schedule 1 hereto;
- 2.24 **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 Goods or related Services or any part thereof or material used in the manufacture of the Goods or any part thereof;
- 2.25 **Subcontractor** means the third party with whom the Supplier enters into a Subcontract;
- 2.26 **Tax Invoice** means the document as required by Section 20 of the Value-Added Tax Act, 89 of 1991, as may be amended from time to time;
- 2.27 **Trade Marks** mean registered Trade Marks and Trade Mark applications and include any sign or logo, or combination of signs and/or logos capable of distinguishing the goods or services of one undertaking from those of another undertaking; and
- 2.28 **VAT** means Value-Added Tax chargeable in terms of the Value-Added Tax Act, 89 of 1991, as may be amended from time to time.

3 INTERPRETATION

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

3.2 Any term, word or phrase used in the Agreement, other than those defined under the clause heading "Definitions" shall be given its plain English meaning, and those terms, words, acronyms, and phrases used in the Agreement will be interpreted in accordance with the generally accepted meanings accorded thereto.

3.3 A reference to the singular incorporates a reference to the plural and *vice versa*.

3.4 A reference to natural persons incorporates a reference to legal persons and *vice versa*.

3.5 A reference to a particular gender incorporates a reference to the other gender.

4 NATURE AND SCOPE

4.1 The Agreement is an agreement under the terms and conditions of which the Supplier will arrange for the supply to Transnet of the Goods which meet the requirements and specifications of Transnet, the delivery of which is controlled by means of Purchase Orders to be issued by Transnet and executed by the Supplier in accordance with the Agreement.

4.2 Such Purchase Orders and deliveries to Transnet shall be agreed between the Parties from time to time, subject to the terms of the Schedule of Requirements.

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 in accordance with procedures set out in clause 28 [Amendment and Change Control]. 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 conflicts with a like term, provision or condition in the Agreement and/or a Purchase Order, the term or provision or condition in this Master Agreement shall prevail, unless such term or provision or condition in this Master Agreement has been specifically revoked or amended by mutual written agreement between the Parties.

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:

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

6 DURATION AND CANCELLATION

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

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

6.2 Notwithstanding clause 16 [Breach and Termination], either Party may cancel the Agreement without cause by giving 30 [thirty] days prior written notice thereof to the other Party, provided that in such instance, the Agreement will nevertheless be applicable in respect of all Purchase Orders which have been placed prior to the date of such cancellation.

7 GENERAL OBLIGATIONS OF THE SUPPLIER

7.1 The Supplier shall:

- a) respond promptly to all complaints and enquires from Transnet;
- b) inform Transnet immediately of any dispute or complaint arising in relation to the storage or delivery of the Goods;
- c) conduct its business in a professional manner which will reflect positively upon the Supplier and the Supplier's products;
- d) keep full records clearly indicating all transactions concluded by the Supplier relating to the delivery of the Goods and keep such records for at least 5 [five] years from the date of each such transaction;
- e) obtain, and at all times maintain in full force and effect, any and all licences, permits and the like required under applicable laws for the provision of the Goods and ancillary Services and the conduct of the business and activities of the Supplier;
- f) observe and ensure compliance with all requirements and obligations as set out in the labour and related legislation of South Africa, including the Occupational Health and Safety Act, 85 of 1993, as may be amended from time to time;
- g) comply with all applicable environmental legislation and regulations, demonstrate sound environmental performance and have an environmental management policy which ensures that its products, including the Goods or ancillary Services are produced, packaged, delivered and are capable of being used and ultimately disposed of in a way that is environmentally appropriate; and
- h) ensure the validity of all renewable certifications, including but not limited to its Tax Clearance Certificate and B-BBEE Verification Certificate, throughout the entire term of the Agreement. Should the Supplier fail to present Transnet with such renewals as they become due, Transnet shall be entitled, in addition to any other rights and remedies that it may have in terms of the Agreement, to terminate the Agreement forthwith without any liability and without prejudice to any claims which Transnet may have for damages against the Supplier.

7.2 The Supplier acknowledges and agrees that it shall at all times:

a) render the supply of the Goods and ancillary Services and perform all its duties with honesty and integrity;

b) communicate openly and honestly with Transnet regarding the supply and performance of the Goods and demonstrate a commitment to effecting the supply and performing ancillary Services timely, efficiently and at least to the required standards;

c) endeavour to provide the highest possible standards of service and workmanship, with a reasonable degree of care and diligence;

d) use its best endeavours and make every diligent effort to meet agreed deadlines;

e) treat its own Staff, as well as all Transnet's Staff, with fairness and courtesy and respect for their human rights;

f) practice and promote its own internal policies aimed at prohibiting and preventing unfair discrimination;

g) treat all enquiries from Transnet in connection with the supply of the Goods and/or ancillary 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 therefor and will keep Transnet informed of progress made regarding the enquiry;

h) when requested by Transnet, provide clear and accurate information regarding the Supplier's own policies and procedures, excluding Know-How and other Confidential Information, except where a non-disclosure undertaking has been entered into between the Parties;

i) not allow a conflict of interest to develop between its own interests [or the interests of any of its other customers] and the interests of Transnet;

j) not accept or offer, nor allow, induce or promote the acceptance or offering of any gratuity, entitlement, incentive or gift that could reasonably be regarded as bribery or an attempt to otherwise exert undue influence over the recipient;

k) not mislead Transnet or its officers, employees and stakeholders, whether by act or omission;

l) not otherwise act in an unethical manner or do anything which could reasonably be expected to damage or tarnish Transnet's reputation or business image; and

m) immediately report to Transnet any unethical, fraudulent or otherwise unlawful conduct of which it becomes aware in connection with Transnet or the supply of Goods or ancillary Services to Transnet.

7.3 In compliance with the National Railway Safety Regulator Act, 16 of 2002, as may be amended from time to time, the Supplier shall ensure that the Goods and ancillary Services, to be supplied to Transnet under the terms and conditions of the Agreement, comply fully with the Specifications as set forth in Schedule 1 hereto, and shall thereby adhere [as applicable] to railway safety requirements and/or regulations. Permission for the engagement of a Subcontractor by the Supplier, as applicable, shall be subject to a review of the capability of the proposed Subcontractor to comply with the specified railway safety requirements and/or regulations. The Supplier and/or its Subcontractor shall grant Transnet access, during the term of the Agreement,

to review any safety-related activities, including the coordination of such activities across all parts of its organisation.

8 INVOICES AND PAYMENT

8.1 Transnet shall pay the Supplier the amounts stipulated in each Purchase Order, subject to the terms and conditions of the Agreement.

8.2 Transnet shall pay such amounts to the Supplier upon receipt of a valid and undisputed Tax Invoice together with the supporting documentation, as specified in the Schedule of Requirements appended hereto, once the valid and undisputed Tax Invoices or such portions of the Tax Invoices which are valid and undisputed become due and payable to the Supplier for the delivery of the Goods ordered, in terms of clause 8.4 below.

8.3 All Prices set out in the Agreement and the Schedule of Requirements hereto are exclusive of VAT. Unless otherwise provided for in the Schedule of Requirements appended to the Agreement, Tax Invoices shall be submitted together with a month-end statement. Payment against such month-end statement shall be made by Transnet within 30 [thirty] days after date of receipt by Transnet of the Supplier's statement together with the relevant valid and undisputed Tax Invoice(s) and supporting documentation.

8.5 Where the payment of any Tax Invoice, or any part of a Tax Invoice which is not in dispute, is not made in accordance with this clause 8, the Supplier shall be entitled to charge interest on the outstanding amount, at The Standard Bank of South Africa's prime rate of interest in force, for the period from the due date of payment until the outstanding amount is paid.

8.6 The Supplier shall remain the owner of all plant, material, machinery, equipment and the like [collectively, **the Supplier's Goods**] provided to Transnet until Transnet has paid in full for the Supplier's Goods, it being specifically agreed that Transnet shall acquire no rights [including liens] of whatsoever nature in such Supplier's Goods until date of final payment by Transnet. Subject to the foregoing, all risk and benefit to the Supplier's Goods shall pass from the Supplier to Transnet on delivery of the Supplier's Goods by the Supplier to Transnet.

9 PRICE ADJUSTMENTS

9.1 Prices for Goods supplied in terms of the Agreement shall be subject to review as indicated in the Schedule of Requirements annexed hereto.

9.2 No less than 2 [two] months prior to any proposed Price adjustment, the Parties shall commence negotiations for Prices for the next period or as otherwise indicated in Schedule 1 hereto. The Parties shall have regard for market-related pricing of equivalent goods, continuous improvement initiatives, costs [including labour, raw materials and transport/delivery], order size and frequency and changes to the specification of the Goods.

9.3 Pursuant to clause 9.2 above, the Supplier shall keep full and accurate records of all costs associated with the supply of the Goods to Transnet, in a form to be approved in writing by Transnet. The Supplier shall produce such records to Transnet for inspection at all reasonable times on request and such records may, at Transnet's option, be audited by Transnet or its designated representatives.

9.4 Should Transnet and the Supplier fail to reach an agreement on Price for the successive period, either Party shall be entitled to submit this matter to dispute resolution in accordance with clause 25 of the Master Agreement [*Dispute Resolution*].

9.5 If during the period of the Agreement Transnet can purchase similar Goods of a like quality from another supplier at a total delivered cost to a Transnet facility that is lower than the total delivered cost of the Goods purchased hereunder from the Supplier, Transnet may notify the Supplier of such total delivered cost and the Supplier shall have an opportunity to adjust the Price of the Goods purchased hereunder, on such a basis as to result in the same total delivered cost to Transnet, within 30 [thirty] calendar days of such notice. If the Supplier fails to do so or cannot legally do so, Transnet may (i) purchase the Goods from such other supplier in which case the obligations, including, but not limited to, any purchase and sale requirements and/or commitments, if any, of Transnet and the Supplier hereunder shall be reduced accordingly; (ii) terminate the Agreement without any penalty, liability or further obligation; or (iii) continue purchases under the Agreement.

9.6 If during the period of the Agreement the Supplier sells any materials which are the same as, equivalent to, or substantially similar to the Goods herein, at a total delivered cost to a third party lower than the total delivered cost to a Transnet facility, then the Supplier has an opportunity to adjust its Price for the Goods purchased hereunder within 30 [thirty] calendar days so that the Price is the same or lower than the total delivered cost of such third party. If the Supplier fails to do so or cannot legally do so, Transnet may (i) purchase the Goods from any other such supplier, in which case the obligations, including, but not limited to, any purchase and sale requirements and/or commitments, if any, of Transnet and the Supplier hereunder shall be reduced accordingly; or (ii) terminate the Agreement without any penalty, liability or further obligation. Within 30 [thirty] calendar days of the Commencement Date of the Agreement or at any time Transnet so requests, the Supplier shall certify in writing to Transnet that it is in compliance with this clause and shall provide all information that Transnet reasonably requests in order to verify such compliance.

10 WARRANTIES

The Supplier warrants that:
10.1 pursuant to clause 7.3 [General Obligations of the Supplier], the Goods will be manufactured in accordance with the specifications appended hereto at Schedule 1, or the manufacturer's specifications, as agreed in writing by both Parties;

10.2 the execution and performance of the Agreement by the Supplier does not infringe any rights of a third party or breach any obligation of the Supplier to any third party; and

10.3 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.

11 THIRD PARTY INDEMNITY

The Supplier hereby indemnifies and shall hold Transnet harmless against any direct damages suffered by or claims arising against Transnet in respect of clause 10.2 above.

12 INSPECTION

12.1 Transnet reserves the right to arrange for the inspection of all Goods forming the subject of any Purchase Order, at any stage before final acceptance and by any means it may think fit, and when such inspection is to be carried out, the relevant Purchase Order(s) shall be endorsed accordingly.

- 12.2 When inspection at the Supplier's works or warehouse is specified, Transnet's authorised inspector shall have free access to the premises of the Supplier at all times during working hours on a Business Day; shall have liberty to inspect work which is the subject of the Purchase Order at any stage of manufacture, and may reject any Goods which are found to be incomplete, defective or in any way not in conformity with the terms and specifications of the Agreement; and the Supplier shall afford all reasonable facilities for such access and inspection.
- 12.3 The Supplier shall provide inspection gauges, measuring and test equipment to ensure that the requirements of the Agreement are satisfied. All gauges, templates, tools and other equipment required to check the accuracy of the work shall be calibrated at regular and reasonable intervals by a laboratory which has been approved in writing by Transnet. This certificate shall not be more than 12 [twelve] months old.
- 12.4 The Supplier shall prepare and supply, without charge to Transnet, all test pieces, samples and specimens; shall provide all labour and apparatus for carrying out tests and analyses in accordance with the terms of the Agreement or Purchase Order, and render all reasonable assistance in making such tests and analyses.
- 12.5 All special rules governing gauging, testing, analysis and other inspection procedures shall be adhered to strictly in accordance with the terms of the Agreement or Purchase Order and the conditions of any specifications and drawings quoted therein.
- 12.6 Inspection will be arranged by the Staff of Transnet as indicated in the Purchase Order(s).
- 12.7 When Goods are ready for inspection, the Supplier shall apply promptly to the appropriate authority for instructions regarding such inspection. All applications for inspection shall quote Transnet's Agreement or Purchase Order number. 7 [seven] Business Days' notice of readiness from the Supplier shall be given to the authorised inspector appointed by Transnet to carry out such inspection.
- 12.8 Transnet shall have the right to recover from the Supplier the cost of inspection of any Goods that have been rejected by its authorised inspector in terms of this clause 12.
- 13 DEFECTIVE GOODS**
- 13.1 Notwithstanding any certificate and/or receipt that may have been issued by or on behalf of Transnet either in South Africa or overseas, Goods will be accepted at the place of delivery or at the port of shipment, as specified in the Agreement, only as regards outward condition of packages and Transnet retains the right to reject the Goods supplied, on or after arrival at the place to which they are consigned, or after they have been placed in use in South Africa, should they be found defective.
- 13.2 If Goods are rejected owing to latent defects becoming apparent during machining operations or other preparation necessary on the part of Transnet before they can be put into use, the Supplier shall bear all expenses incurred by Transnet in carrying out such necessary operations.
- 13.3 If such Goods are rejected, the Supplier will pay the following costs:
- a) for Goods purchased in South Africa on an ex works basis, the cost of transport from the Supplier's works in South Africa to the named destination where the Goods have been rejected by Transnet, plus handling charges and storage, if leviable; or
 - b) for Goods manufactured overseas, the Supplier shall pay all replacement costs including the overseas inland transport cost, freight and insurance charges incurred plus railage or other inland transport costs from the South African port to the place where the Goods have

been rejected by Transnet, including handling charges, storage, landing charges, customs duty and surcharges, if leviable.

13.4 If Transnet requires rejected Goods to be replaced, the Supplier shall, when called upon to do so, arrange prompt replacement of the Goods within the prescribed manufacturing lead times for such Goods, as indicated in Schedule 1.

13.5 If Goods are found to be defective but the defects are, in the opinion of Transnet, not of so serious a nature as to warrant total rejection of the Goods, the Supplier shall, when called upon to do so, remedy or make good such defects at its own cost, or Transnet may remedy or make good such defects at the request of the Supplier and recover from the Supplier all costs or expenses reasonably incurred by it in doing so.

13.6 Should the Supplier fail, when called upon to remedy or make good such defects within a reasonable time or to request Transnet to do so, Transnet may proceed to remedy or make good such defects and thereafter recover from the Supplier all such costs and expenses as aforementioned.

13.7 Any amount recoverable from the Supplier in terms of this clause may, without prejudice to any other legal remedies available to Transnet, be deducted in whole or in part from any monies in the hands of Transnet which are due for payment to the Supplier.

14 TOTAL OR PARTIAL FAILURE TO PERFORM THE SCOPE OF SUPPLY

14.1 In the case of Goods to be specially manufactured for it, if Transnet at any time ascertains that:

- a) no manufacturing of the Goods specified in a Purchase Order has commenced and there is little or no prospect, in Transnet's opinion, that manufacturing will commence within a reasonable time; or
- b) delivery of any of the Goods is being or is likely to be delayed beyond the promised delivery date(s), and there is little or no prospect of the Purchase Order(s) being carried out within reasonable adherence to the promised delivery rate(s) or time(s),

then Transnet may, irrespective of the cause of the delay, by notice to the Supplier, cancel as from a future date specified in such notice the whole or any part of the Agreement or Purchase Order in respect of which the Goods to be supplied have not been completed by that date, without incurring any liability by reason of such cancellation except as provided in this clause.

14.2 The Supplier shall thereupon, as soon as possible after such date, deliver to Transnet the Goods [if any] already completed, and payment for the part performance shall be made on a *pro rata* basis, provided the uncompleted part is not an integral or essential part of the completed Goods. Where an integral or essential part of the work has not been completed, the amount to be paid to the Supplier will be calculated on the basis of Transnet's enrichment. The Supplier shall, wherever practicable, supply Transnet with the necessary drawings and/or specifications to enable it to complete the work.

14.3 Whenever, in any case not covered by clause 14.1 above, the Supplier fails or neglects to execute the work or to deliver any portion of the Goods as required by the terms of the Agreement or Purchase Order, or if any Goods are rejected on any of the grounds mentioned in clause 13 [Defective Goods], Transnet may cancel the Agreement or Purchase Order in so far as it relates to the unexecuted work or the undelivered or rejected portion of the Goods, and in such event, the supply of the remaining portion shall remain subject in all respects to these conditions.

15 RIGHTS ON CANCELLATION

15.1 If the Agreement or Purchase Order is cancelled in whole or in part in terms of clause 14 [Total or Partial Failure to Perform the Scope of Supply], Transnet may execute or complete the Agreement with any other entity and do so on such terms as it may deem proper, or may procure other comparable Goods in substitution for those neglected to be manufactured or supplied or rejected as aforesaid, and may recover from the Supplier the difference between the cost of such Goods and the Price [if the latter was lower] as well as any costs and expenses [including any additional transport costs] which Transnet may have had to incur in consequence of the Supplier's default.

15.2 Any amount which may be recoverable from the Supplier in terms of clause 15.1 above, without prejudice to any other legal remedies available to Transnet, may be deducted in whole or in part from any monies in the hands of Transnet and due for payment to the Supplier.

16 BREACH AND TERMINATION

16.1 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.

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

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

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

16.4 Notwithstanding this clause 16, Transnet may cancel this Agreement without cause by giving 30 [thirty] days prior written notice thereof to the Service Provider.

16.5 The provisions of clauses 2 [Definitions], 10 [Warranties], 15 [Rights on Cancellation], 19 [Confidentiality], 21 [Limitation of Liability], 22 [Intellectual Property Rights], 25 [Dispute Resolution] and 29.1 [Governing Law] shall survive termination or expiry of the Agreement.

17 CESSION

17.1 Upon written notice to the Supplier, Transnet shall be entitled:

- a) to appoint Transnet's financier of the Goods as first payer under the Agreement, without transferring the ultimate responsibility for payment which will remain with Transnet; and

b) to cede, assign and transfer its right, title and interest in the Goods to such financier as

part of the funding consideration for the Goods.

17.2 The Supplier is not entitled to cede, delegate, assign, subcontract or in any other manner dispose of any of its rights or obligations in terms of the Agreement without the prior written consent of Transnet, which consent shall not be withheld or delayed unreasonably.

18 FORCE MAJEURE

18.1 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.

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

19 CONFIDENTIALITY

19.1 The Parties hereby undertake the following with regard to Confidential Information:

a) not to divulge or disclose to any person whomsoever in any form or manner whatsoever, either directly or indirectly, any Confidential Information of the other without the prior written consent of such other Party, other than when called upon to do so in accordance with a statute, or by a court having jurisdiction, or by any other duly authorised and empowered authority or official, in which event the Party concerned shall do what is reasonably possible to inform the other of such a demand and each shall assist the other in seeking appropriate relief or the instituting of a defensive action to protect the Confidential Information concerned;

b) not to use, exploit, permit the use of, directly or indirectly, or in any other manner whatsoever apply the Confidential Information disclosed to it as a result of the Agreement, for any purpose whatsoever other than for the purpose for which it is disclosed or otherwise than in strict compliance with the provisions in the Agreement;

c) not to make any notes, sketches, drawings, photographs or copies of any kind of any part of the disclosed Confidential Information without the prior written consent of such other Party, except when reasonably necessary for the purpose of the Agreement, in which case such copies shall be regarded as Confidential Information;

d) not to de-compile, disassemble or reverse engineer any composition, compilation, concept application, item, component de-compilation, including software or hardware disclosed and shall not analyse any sample provided by Transnet, or otherwise determine the

composition or structure or cause to permit these tasks to be carried out except in the performance of its obligations pursuant to the Agreement;

e) not to exercise less care to safeguard Transnet Confidential Information than the Party exercises in safeguarding its own competitive, sensitive or Confidential Information;

f) Confidential Information disclosed by either Party to the other or by either Party to any other party used by such party in the performance of the Agreement, shall be dealt with as "restricted" or shall be dealt with according to any other appropriate level of confidentiality relevant to the nature of the information concerned, agreed between the Parties concerned and stipulated in writing for such information in such cases;

g) the Parties shall not make or permit to be made by any other person subject to their control, any public statements or issue press releases or disclose Confidential Information with regard to any matter related to the Agreement, unless written authorisation to do so has first been obtained from the Party first disclosing such information;

h) each Party shall be entitled to disclose such aspects of Confidential Information as may be relevant to one or more technically qualified employees or consultants of the Party who are required in the course of their duties to receive the Confidential Information for the Permitted Purpose provided that the employee or consultant concerned has a legitimate interest therein, and then only to the extent necessary for the Permitted Purpose, and is informed by the Party of the confidential nature of the Confidential Information and the obligations of the confidentiality to which such disclosure is subject and the Party shall ensure such employees or consultants honour such obligations;

i) each Party shall notify the other Party of the name of each person or entity to whom any Confidential Information has been disclosed as soon as practicable after such disclosure;

j) each Party shall ensure that any person or entity to which it discloses Confidential Information shall observe and perform all of the covenants the Party has accepted in the Agreement as if such person or entity has signed the Agreement. The Party disclosing the Confidential Information shall be responsible for any breach of the provisions of the Agreement by such person or entity; and

k) each Party may by written notice to the other Party specify which of the Party's employees, officers or agents are required to sign a non-disclosure undertaking.

19.2 The duties and obligations with regard to Confidential Information in this clause 19 shall not apply where:

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

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

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

19.3 This clause 19 shall survive termination for any reason of the Agreement and shall remain in force and effect from the Commencement Date of the Agreement and 5 [five] years after the termination of the Agreement. Upon termination of the Agreement, all documentation furnished to

the Supplier by Transnet pursuant to the Agreement shall be returned to Transnet including, without limitation, all corporate identity equipment including dyes, blocks, labels, advertising matter, printing matter and the like.

20 INSURANCES

20.1 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, loss or damage to Goods, 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.

20.2 The Supplier shall arrange insurance with reputable insurers and will produce to Transnet evidence of the existence of the policies on an annual basis within 30 [thirty] days after date of policy renewals.

20.3 Subject to clause 20.4 below, if the Supplier fails to effect adequate insurance under this clause 20, it shall notify Transnet in writing as soon as it becomes aware of the reduction or inadequate cover and Transnet may arrange or purchase such insurance. The Supplier shall promptly reimburse Transnet for any premiums paid provided such insurance protects the Supplier's liability. Transnet assumes no responsibility for such insurance being adequate to protect all of the Supplier's liability.

20.4 In the event that the Supplier receives written notice from its insurers advising of the termination of its insurance cover referred to in clause 20.1 above or if the insurance ceases to be available upon commercially reasonable terms, the Supplier shall immediately notify Transnet in writing of such termination and/or unavailability, where after either the Supplier or Transnet may terminate the Agreement on giving the other Party not less than 30 [thirty] days prior written notice to that effect.

21 LIMITATION OF LIABILITY

21.1 The Supplier's liability under this clause 21 shall be in addition to any warranty or condition of any kind, express or implied by law or otherwise, relating to the Goods or ancillary Services, including the quality of the Goods or ancillary Services or any materials delivered pursuant to the Agreement.

21.2 Neither Party excludes or limits liability to the other Party for:
a) death or personal injury caused by its negligence, [including its employees', agents' or subcontractors' negligence]; or

b) fraud.
21.3 Neither Party accepts liability for damages and claims of a special, indirect or consequential nature arising as a result of the performance or non-performance of the Agreement, provided that such loss, damages or claims are not the direct result of the willful acts or omissions and/or negligence or of any event which could reasonably have been foreseen and avoided on the part of the other Party. The phrase, "special, indirect or consequential" is deemed to include economic loss, loss of opportunity, loss of profit or revenue, and loss or damage in connection with claims against the principal by third parties.

21.4 Nothing in this clause 21 shall be taken as limiting the liability of the Parties in respect of clauses 19 [Confidentiality] and 22 [Intellectual Property Rights].

22 INTELLECTUAL PROPERTY RIGHTS

22.1 Title to Confidential Information

a) Transnet will retain all right, title and interest in and to its Confidential Information and Background Intellectual Property and the Supplier acknowledges that it has no claim of any nature in and to the Confidential Information and Background Intellectual Property that is proprietary to Transnet. For the avoidance of doubt all the Supplier's Background Intellectual Property shall remain vested in the Supplier.

b) Transnet shall grant to the Supplier an irrevocable, royalty free, non-exclusive licence to use Transnet's Background Intellectual Property only for the Permitted Purpose. This licence shall not permit the Supplier to sub-license to other parties.

c) The Supplier shall grant to Transnet an irrevocable, royalty free, non-exclusive licence to use the Supplier's Background Intellectual Property for the Permitted Purpose. This licence shall not permit Transnet to sub-license to other parties.

d) The Supplier shall grant Transnet access to the Supplier's Background Intellectual Property on terms which shall be *bona fide* negotiated between the Parties for the purpose of commercially exploiting the Background Intellectual Property, to the extent that such access is required.

22.2 Title to Intellectual Property

a) All right, title and interest in and to Background Intellectual Property prepared, conceived or developed by the Supplier, its researchers, agents and employees shall vest in Transnet and the Supplier acknowledges that it has no claim of any nature in and to the Background Intellectual Property. The Supplier shall not at any time during or after the termination or cancellation of the Agreement dispute the validity or enforceability of such Background Intellectual Property, or cause to be done any act or anything contesting or in any way impairing or tending to impair any part of that right, title and interest to any of the Background Intellectual Property and shall not counsel or assist any person to do so.

b) Transnet shall be entitled to seek protection in respect of the Background Intellectual Property anywhere in the world as it shall decide in its own absolute discretion and the Supplier shall reasonably assist Transnet in attaining and maintaining protection of the Background Intellectual Property.

c) Where the Background Intellectual Property was created by the Supplier or its researchers, agents and employees and where Transnet elects not to exercise its option to seek protection or decides to discontinue the financial support of the prosecution or maintenance of any such protection, Transnet shall notify the Supplier who shall have the right of first refusal to file or continue prosecution or maintain any such applications and to maintain any protection issuing on the Background Intellectual Property.

d) No consideration shall be paid by Transnet to the Supplier for the assignment of any Background Intellectual Property from the Supplier to Transnet, over and above the sums payable in terms of the Agreement. The Supplier undertakes to sign all documents and do all things as may be necessary to effect, record and perfect the assignment of the Background Intellectual Property to Transnet.

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

22.3 Title to Improvements

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

22.4 Unauthorised Use of Confidential Information

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

22.5 Unauthorised Use of Intellectual Property

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

23 NON-WAIVER

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

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

24 PARTIAL INVALIDITY

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

25 DISPUTE RESOLUTION

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

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

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

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

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

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

26 ADDRESSES FOR NOTICES

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

a) Transnet

(i) For legal notices: [●]

Fax No. [●]

Attention: Legal Department

(ii) For commercial notices: [●]

Fax No. [●]

Attention: [●]

b) The Supplier

(i) For legal notices: [●]

Fax No. [●]

Attention: [●]

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

29.2 Change of Law

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

29.1 Governing Law

29 GENERAL

Any amendment or change of any nature made to the Agreement and the Schedule of Requirements thereof shall only be valid if it is in writing, signed by both Parties and added to the Agreement as an addendum hereto.

28 AMENDMENT AND CHANGE CONTROL

The Parties hereby confirm that the Agreement replaces all other agreements which exist or may have existed in any form whatsoever between them, with regard to the subject matter dealt with in the Agreement, any annexures appended hereto and the Schedule of Requirements.

27 WHOLE AND ONLY AGREEMENT

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

27.2 The Parties hereby confirm that the Agreement replaces all other agreements which exist or may have existed in any form whatsoever between them, with regard to the subject matter dealt with in the Agreement, any annexures appended hereto and the Schedule of Requirements.

26.2 Any notice shall be addressed to a Party at its physical address, or delivered by hand, or sent by facsimile, if sent by facsimile, on the date and time of sending of such facsimile, as evidenced by a registered post on the date of dispatch of such facsimile, or, should no postal facilities be available on that date, on the next Business Day.

26.3 Any notice shall be deemed to have been given:

a) if hand delivered, on the day of delivery; or

b) if sent by facsimile, on the date and time of sending of such facsimile, as evidenced by a registered post on the date of dispatch of such facsimile, or, should no postal facilities be available on that date, on the next Business Day.

26.2 Any notice shall be addressed to a Party at its physical address, or delivered by hand, or sent by facsimile, if sent by facsimile, on the date and time of sending of such facsimile, as evidenced by a registered post on the date of dispatch of such facsimile, or, should no postal facilities be available on that date, on the next Business Day.

Attention: [●]

Fax No. [●]

(ii) For commercial notices: [●]

"PREVIEW COPY ONLY"

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

29.3 Counterparts