

FREIGHT RAIL

An Operating Division of **TRANSNET SOC LTD**

[Registration No. 1990/000900/30]

An authorized Financial Services Provider – FSP 18828

REQUEST FOR QUOTATION [RFQ] No. ERACB 423-12808

**THE CHEMICAL CONTROL OF VEGETATION BY MEANS OF HERBICIDES
ON TFR PROPERTY IN VRYHEID FOR A PERIOD OF TWO YEARS**

ISSUE DATE: 07th January 2014
CLOSING DATE: 28th January 2014
CLOSING TIME: 10:00
BID VALIDITY PERIOD: 28th April 2014

"PREVIEW COPY ONLY"

SCHEDULE OF BID DOCUMENTS

SECTION	PAGE
1 NOTICE TO BIDDERS	4
1. PROPOSAL REQUEST	4
2. FORMAL BRIEFING	4
3. PROPOSAL SUBMISSION	4
4. DELIVERY INSTRUCTIONS FOR RFQ	5
5. BROAD BASED BLACK ECONOMIC EMPOWERMENT & SOCIO ECONOMIC OBLIGATIONS	6
6. COMMUNICATION	8
7. INSTRUCTIONS FOR COMPLETING THE RFQ	9
8. COMPLIANCE	9
9. ADDITIONAL NOTES	9
10. DISCLAIMERS	10
11. LEGAL REVIEW	10
2 SCOPE OF REQUIREMENTS	11
3 PRICING AND DELIVERY SCHEDULE	32
4 PROPOSAL FORM	39
5 SUPPLIER DECLARATION FORM	44
6 SIGNING POWER – RESOLUTION OF BOARD OF DIRECTORS	46
7 CERTIFICATE OF ACQUAINTANCE WITH RFQ DOCUMENTS	47
8 GENERAL BID CONDITIONS – SERVICE	48
9 STANDARD TERMS & CONDITIONS OF CONTRACT	49
10 RFQ DECLARATION FORM	50
11 BREACH OF LAW	53
12 BID CLARIFICATION REQUEST FORM	54
13 RESPONDENT CODE OF CONDUCT	55
14 CERTIFICATE OF ATTENDANCE OF RFQ BRIEFING	57
15 NON DISCLOSURE ACT	58
16 SCHEDULE OF PLANT, EQUIPMENT AND TEAMS	59
17 MINIMUM COMMUNAL HEALTH REQUIREMENTS	60
18 E4E – SAFETY ARRANGEMENTS AND PROCEDURAL COMPLIANCE	63
19 CLAUSE BY CLAUSE COMPLIANCE FORM	74



LIST OF ACRONYMS

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

THE CHEMICAL CONTROL OF VEGETATION BY MEANS OF HERBICIDE FOR A PERIOD OF TWO YEARS

Section 1: NOTICE TO BIDDERS

1 PROPOSAL 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 **07 January 2014**, the RFQ documents may be inspected and are obtainable from the office of the Secretariat, Tender Advice Centre, Inyanda House 1, Ground Floor, 21 Wellington Road, Parktown, Johannesburg, at no charge.

RFQ documents will only be available until **15h00 on Wednesday, 15th January 2014**.

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

2 FORMAL BRIEFING

A compulsory information RFQ briefing will be conducted at Transnet Freight Rail, Infrastructure Maintenance Boardroom, 227 Mark Street, Midrand on **21st January 2014 at 10h00** for a period of ± 45 minutes. [Respondents to provide own transportation and accommodation].

Contact person: Mr Sean Roberts Cell 083 9800 202

2.1 A Certificate of Attendance in the form set out in Section 14 hereto must be completed and submitted with your Quotation as proof of attendance for the compulsory RFQ briefing is required.

2.2 Respondents failing to attend the compulsory RFQ briefing will be disqualified.

2.3 Respondents without a valid RFQ document in their possession will not be allowed to attend the RFQ briefing.

2.4 The briefing session will start punctually at 10h00 and information will not be repeated for the benefit of Respondents arriving late.

3 PROPOSAL SUBMISSION

Proposals (inclusive of attachments) **in duplicate** must reach the Secretary, Transnet Acquisition Council before the closing hour on the date shown below, and must be enclosed in a sealed envelope which must have inscribed on the outside:

Respondent's Signature

Transnet Integrated Supply Chain Management

Transnet REQUEST FOR QUOTATION No ERACBB423-12808

Date & Company Stamp

Template iSCM 11 [RFQ for Services]

Version March 2012

RFQ No: ERACBB423-12808
Description: The chemical control of vegetation by means of herbicides for a period of two years
Closing date and time: 28 January 2014 at 10h00
Closing address: [Refer options in paragraph 4 below]

4 DELIVERY INSTRUCTIONS FOR RFQ

4.1 Delivery by hand

If delivered by hand, the envelope is to be deposited in the Transnet tender box which is located at Transnet Acquisition Council, Ground Floor, Inyanda House, 21 Wellington Road, Parktown, Johannesburg, and should be addressed as follows:

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

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

4.2 Dispatch by courier

If dispatched by courier, the envelope must be addressed as follows and a signature obtained from that office.

THE SECRETARY
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, 28th January 2014**.

- 4.4 If responses are not delivered as stipulated herein, such responses will not be considered and will be treated as "UNRESPONSIVE."
- 4.5 No email or facsimile responses will be considered, unless otherwise stated herein.
- 4.6 The responses to this 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 Proposals / information received, i.e. pricing, delivery, etc. The names and locations of the Respondents will be divulged to other Respondents upon request.
- 4.8 Envelopes must not contain documents relating to any RFQ other than that shown on the envelope. All envelopes must reflect the return address of the Respondent on the reverse side.
- 4.9 No slips are to be attached to the response documents. Any additional conditions must be embodied in an accompanying letter. Subject only to clause 23 [*Alterations made by the Respondent to tendered Prices*] of the General Bid Conditions, alterations, additions or deletions must not be made by the Respondent to the actual RFQ documents.

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

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

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

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

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

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

5.1 B-BBEE Rating

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

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

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

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

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

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

R _____

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



5.2 Joint Ventures and Subcontractors

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

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

5.3 B-BBEE Registration

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

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

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

6 COMMUNICATION

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

6.2 For specific queries relating to this RFQ, a Bid Clarification Request Form should be submitted before **10:00 on 24th January 2014**, 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 all Respondents need to indicate by email their intention to respond to this RFQ by informing Transnet of their contact details as soon as possible but before **24th January 2014** to:

Barbara Bhengu on Tel: 035 906 7669 or via e-mail: Barbara.Bhengu@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 blacklisted from doing business with Transnet in the future.

7 INSTRUCTIONS FOR COMPLETING THE RFQ

- 7.1 Sign one set of documents [sign, stamp and date the bottom of each page]. This set will serve as the legal and binding copy. A duplicate set of documents is required. This second set can be a copy of the original signed Proposal. All attached documents must also be submitted in duplicate.
- 7.2 Both sets of documents to be submitted to the address specified in paragraph 4 above.
- 7.3 All returnable documents listed [N] in the Proposal Form [Section 4] must be returned with your Proposal.

8 COMPLIANCE

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

9 ADDITIONAL NOTES

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

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

10 DISCLAIMERS

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

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

Transnet reserves the right to lower the threshold for Technical by 10 % [ten percent] if no Respondents pass the predetermined minimum threshold or if only one bidder passes the threshold. This right will be exercised in Transnet's sole discretion.

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

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

11 LEGAL REVIEW

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

Transnet urges its clients, Respondents and the general public to report any fraud or corruption on the part of Transnet employees to TIP-OFFS ANONYMOUS: 0800 003 05

THE CHEMICAL CONTROL OF VEGETATION BY MEANS OF HERBICIDE FOR A PERIOD OF TWO YEARS

Section 2: SCOPE OF REQUIREMENTS

1. DESCRIPTION OF WORKS:

1.1. EMPLOYERS OBJECTIVE

- 1.1.1 This agreement requires the control of living vegetation and the management of dead remains of previously living vegetation to the extent that areas treated in terms of the Agreement are free from any form of vegetation (dead or otherwise) which may obstruct, hinder or interfere with operational activities, or have the potential to damage equipment or facilities, or tracks or other areas included in the Agreement.
- 1.1.2 The ways and means by which the above-mentioned results are obtained are the responsibility of the Service Provider. Transnet Freight Rail, however, shall have the right to monitor the materials and activities of the Service Provider to ascertain that all procedures and herbicidal applications are in accordance with the tender, the relevant legislation and are conducive to the achievement of long-term control of vegetation. Such right of monitoring shall be entirely without prejudice to Transnet Freight Rail and shall in no way relieve the Service Provider of his/her responsibility for satisfactory control of vegetation.
- 1.1.3 Failure to comply with the minimum performance proposed by the Service Provider in his/her tender may form the basis for non payment for work done, pending the achievement of control as defined and/or termination or cancellation of the Agreement.
- 1.1.4 The Service Provider must obtain his/her own information regarding the extent, occurrence and the species of the vegetation over the work area. He/she must also determine the best method to control the vegetation.
- 1.1.5 The Agreement will only be awarded to a Service Provider who has the required experience in the application of herbicides in Southern Africa as stipulated in terms of the Fertilizers, Farm Feeds, Agricultural Remedies and Stock Remedies Act, Act 36 of 1947.

1.2. OVERVIEW OF THE WORKS

The Agreement covers the control of vegetation in mainly yards including declared weeds and declared invader plants, by means of chemical herbicides on Transnet property, to the extent that areas treated chemically or otherwise in terms of this Agreement are rendered and maintained free from obstructing vegetation as defined for the periods specified herein.

1.3. PERFORMANCE BOND:

- 1.3.1. Transnet Freight Rail requires a Performance Bond of 10% of the total value of the Agreement as security for the due and faithful performance by the Service Provider of all the duties and obligations resting upon and assumed

by him/her in terms of the Agreement.

- 1.3.2. The Performance Bond is to be returned to the Service Provider upon completion of the Agreement after certification from the Project Manager that all Agreement requirements have been met.

1.4. EXTENT OF THE WORKS

- 1.4.1. The service information briefly consists of the following:

- 1.4.1.1. The control of vegetation, including declared weeds and declared indicator plants by means of chemical herbicides of mainly yards as indicated in the Schedule of Requirements.
- 1.4.1.2. The execution and performance of the works shall include any work arising from or incidental to the service information or required of the Service Provider for the proper completion of the Agreement in accordance with the true meaning and intent of the Agreement documents.
- 1.4.1.3. The Service Provider shall obtain his/her own information regarding species occurrence and extent of vegetation to be controlled in order to comply with the required standards.

1.5. LOCATION OF THE WORKS

- 1.5.1. The location of the works is as indicated in the Schedule of Requirements and is in the geographical area controlled by the Depot Engineer Vryheid District.
- 1.5.2. Transnet Freight Rail's representative will provide one-copy schematic diagrams to the successful Service Provider, indicating the areas to be treated.

1.6. DURATION OF AGREEMENT

This service is required for the period of **24 months** and shall commence as indicated in the letter of acceptance.

2. GENERAL MAINTENANCE ASPECTS

2.1. WORK SPECIFICATIONS

- 2.1.1. Standard Specifications.

The following standard Specifications will be applicable to this Agreement:

- 2.1.1.1. SANS 1200A – General
- 2.1.1.2. SABS Code of Practices no 0206-1983 "Safety procedures for the disposal of surplus pesticides and associated toxic waste."

- 2.1.2. Generic Specifications:

The following Generic Specifications will be applicable to this Agreement:

- 2.1.2.1. Transnet generic specifications.
- 2.1.2.2. E4E (August 2006): Safety arrangements and procedural compliance with the Occupational Health and Safety Act, Act 85 of 1993 and regulations.

2.1.2.3. E7/1 (July 1998); Specifications for works on, over, under or adjacent to railway lines and near high voltage equipment.

2.2. PLANT AND MATERIAL

2.2.1. Any plant and/or equipment provided to the Service Provider at the beginning of the Agreement shall be returned to Transnet Freight Rail in the same condition, normal wear and tear accepted. Any loss or damage shall be made good by the Service Provider, or the value thereof will be deducted from moneys falling due to him/her.

2.2.2. The Service Provider shall provide written certification of compliance with specification of any materials (chemical) or equipment supplied by him / her.

2.3. CONSTRUCTION EQUIPMENT

All equipment necessary to execute the works shall be supplied by the Service Provider.

2.4. EXISTING SERVICES

2.4.1. Reinstatement of services and property damaged during execution of the work.

2.4.2. Any damages caused by the Service Provider to Transnet property and services shall be rectified by the Service Provider at his/her own cost and to the full satisfaction of the Transnet Freight Rail's representative.

2.5. SITE ESTABLISHMENT

2.5.1. SERVICES AND FACILITIES PROVIDED BY THE EMPLOYER:

In the case of vegetation control the following will be provided free of charge:

2.5.1.1. Water as required from Transnet Freight Rail's existing points of supply. Such water may be untreated, chemically treated or borehole water. The Service Provider shall be responsible for all work and equipment needed to fill the water trucks or spray units from the water point provided and to ensure that the water is suitable for its intended use. These water points may be up to 200km apart.

2.5.1.2. Road vehicle accessibility via service roads to the work site is not always possible.

2.5.1.3. Inspections of the areas of work by motor trolley may be arranged with the Project Manager's Deputy, but will have to coincide with normal track inspections carried out by the inspection /technical staff of the Depot. The Project Manager's Deputy shall be given timeous notice (4 calendar weeks) of the Service Provider's intention to inspect.

2.5.1.4. Any plant and/or equipment provided to the Service Provider at the beginning of the Agreement shall be returned to Transnet Freight Rail in the same condition, normal wear and tear accepted. Any loss or damage shall be made good by the Service Provider, or the value thereof will be deducted from moneys falling due to him/her.

2.6. TO BE PROVIDED BY THE SERVICE PROVIDER

- 2.6.1. In addition to all labour materials, plant, equipment and incidentals needed to complete the work, the Service Provider shall provide all accommodation and toilet facilities for his/her employees.
- 2.6.2. The Service Provider shall provide safe and secure storage facilities for all herbicides or chemicals brought onto and in use on the site. Such facilities shall be capable of ensuring that unauthorised persons or animals cannot gain access to such chemicals.
- 2.6.3. The Service Provider shall provide at his/her own cost any security measures he/she may deem necessary for safe and effective execution of the work within the Agreement area.
- 2.6.4. The personnel of the Service Provider shall at all times whilst on Transnet Freight Rail property and during vegetation control operations, wear reflective safety jackets. These jackets must either be yellow or light blue and preferably bear the name of the Service Provider's company. Should the Service Provider wish to use another colour then this must first be discussed with the Project Manager's Deputy or his/her deputy.
- 2.6.5. An effective safety procedure to be followed by all personnel on any Transnet Freight Rail work site shall be compiled by the Service Provider and implemented before any work commences. The procedure shall be updated whenever the need arises and any changes shall be communicated to all employees on a work site before work proceeds.

3. MANAGEMENT OF THE WORKS

3.1. SITE MEETINGS

The Service Provider shall attend site meetings when required. These meetings will be held under the chairmanship of Transnet's representative. These meetings will be conducted to monitor progress and discuss agreed issues when required. A register will be kept of attendance and a minute of the proceedings will be recorded and distributed afterwards. When sub-contractors are required to attend, the Service Provider shall ensure their attendance.

3.2. SITE BOOKS

- 3.2.1. A Site Instruction Book, A4 size, with triplicate pages shall be provided by the Service Provider. The format for written communication on site shall be the Site Instruction Book. The site instruction shall have numbered sheet for receiving and recording instructions by the Project Manager's Deputy or his/her deputy and shall be clearly marked "Site Instruction Book".
- 3.2.2. A Daily Diary Book with triplicate pages shall be provided by the Service Provider and be available on site at all times. The number of staff and plant on site for every day shall be recorded. The hours of actual work and the accurate amount of work measured per item as in the Schedule of Requirements completed for each day shall also be recorded and signed off by both the Project Manager's Deputy or his/her deputy and the Service Provider at the end of each day. This site diary shall also serve as a daily record of all relevant information concerning herbicide application and site conditions prevailing on site and as required in terms of section 16 of Act 36 of 1947.

3.2.3. Only persons authorised in writing by the Project Manager or Service Provider may make entries in the site books.

3.3. PROGRAMME OF WORK

3.3.1. The Service Provider shall undertake the planning and programming of the entire vegetation control operation and shall submit to the Project Manager's Deputy for approval full particulars thereof with the tender document.

3.3.2. The particulars to be provided in respect of the Service Provider's vegetation control programme shall include but not be limited to the following:

3.3.2.1. An assessment, based on a proper site investigation of the nature and types of vegetation to be controlled in the Agreement area,

3.3.2.2. The appropriate methods and procedures to be implemented by the Service Provider to achieve the standards of vegetation control required in terms of the Agreement,

3.3.2.3. The chemicals to be applied, design mixes, rates of application and the timing and number of applications.

3.3.2.4. The methods and procedures to be implemented in mixing of chemicals pertaining to health and safety, quality control, protection of third parties and security.

3.3.3. The Service Provider shall conduct regular site investigations and monitoring procedures for the purpose of:

3.3.3.1. Ascertaining the nature of weed infestation and factors that could influence the work;

3.3.3.2. Monitoring the standard of weed control achieved;

3.3.3.3. Identifying any damage or hazards which may have been caused by the weed control operation and,

3.3.3.4. Planning or timeous execution of remedial work where control is not being achieved.

3.3.4. The Service Provider's programme shall allow for commencement with the initial application of chemicals at the appropriate timing, i.e. coinciding with the initial rainy season, for achieving maximum success and for completion in the shortest possible time, but not later than six weeks after commencement of the initial application.

3.3.5. The programme shall be based on the quantities and numbers of worklots shown in the Schedule of Requirements.

3.3.6. In addition to the annual programme provided, the Service Provider shall submit daily working programmes to the Project Manager's Deputy 7 days in advance of the next working week, indicating the specific areas where the Service Provider will be working each day of the week. Failure by the Service Provider to submit a daily programme and/or deviating from it without notifying the Project Manager's Deputy, preventing him/her from monitoring the Service Provider's performance, may result in payment for such work being withheld.

3.4. PERFORMANCE MONITORING AND EVALUATION / INSPECTIONS

- 3.4.1. The Service Provider shall at all times be responsible for supervision of the work and for follow-up inspections to monitor the successful control achieved over areas of completed application. The Service Provider shall immediately take appropriate remedial action in areas where the specified standards of control are not achieved.
- 3.4.2. The Project Manager's Deputy shall at any time during the application periods carry out inspections of the Service Provider's performance methods and procedures. He/she may at any time take samples of the chemicals applied and arrange for the testing thereof. Where test-samples fail to conform to the product specifications, the costs of testing will be recovered from the Service Provider, and the Service Provider may be ordered by the Project Manager's Deputy to re-treat entire worklots or sections where such chemicals were applied.
- 3.4.3. The Project Manager's Deputy will during each growth season carry out **[two]** official inspections of the work for the purpose of measuring progress and evaluating whether control, as defined, has been achieved. The inspections shall be performed visually, and the Service Provider shall be present or forfeit his/her right to dispute the measurements and evaluation of the Project Manager's Deputy.
- 3.4.4. The first inspection shall be done at, or within [21] weeks after completion of the Service Provider's initial spraying programme and after he/she has notified the Project Manager's Deputy that he/she has inspected the work and that control has been achieved. This inspection may be brought forward but not by more than four (4) weeks.
- 3.4.5. The second inspection of the season will be carried out at, or within [36] weeks after completion of the Service Provider's initial spraying programme and after he/she has notified the Project Manager's Deputy that he/she has inspected the work and that control has been achieved. This inspection may be brought forward but not by more than four (4) weeks.
- 3.4.6. During each of these inspections the worklots treated will each be measured and evaluated. A worklot that does not comply with the specified level of control will be recorded as a "rejected worklot".
- 3.4.7. The rejection of worklots that does not comply with the standard of control for individual worklots will be final and valid for that inspection in that particular year.
- 3.4.8. The rejection by the Project Manager's Deputy of work performance may be contested by the Service Provider only at the time and place of rejection.
- 3.4.9. The rejection of a worklot at a particular inspection shall remain final for that inspection for payment purposes, notwithstanding the fact that the Service Provider may execute further remedial work in order to achieve control at further and final inspections.
- 3.4.10. In the case where the Project Manager's Deputy and the Service Provider fail to agree on whether a worklot has failed, the worklot shall be recorded as a "disputed worklot" and the Service Provider shall prepare an appropriate record of all disputed worklots in order that such disputes may be resolved by way of the disputes resolution procedures stipulated in the clause 25 of the standard terms and conditions of contract for the provision of services to Transnet.

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Transnet Integrated Supply Chain Management

Transnet REQUEST FOR QUOTATION No ERACBB423-12808

Date & Company Stamp

Template iSCM 11 [RFQ for Services]

Version March 2012

4. ENVIRONMENTAL REQUIREMENTS

4.1. COMPLIANCE WITH STATUTES

4.1.1. The Service Provider's procedures for the procurement, storage, handling, transportation, application and general use of chemicals shall comply with all applicable legislation, Codes of Practice and Local, Regional or Provincial Authorities, including but not restricted to:

- a) The Fertilizers, Farm Feeds, Agricultural Remedies and Stock Remedies Act (Act 36 of 1947) as amended.
- b) The Hazardous Substance Act (Act 15 of 1973) as amended.
- c) The Water Act (Act 54 of 1956) and the Water Amendment Act (Act 9 of 1984) (where applicable).
- d) The National Environmental Management Act (Act 107 of 1998).
- e) SABS Code of Practice No. 0206-1985 "Safety procedures for the disposal of surplus pesticide and associated toxic waste".
- f) Conservation of Agricultural resources Act (Act 43 of 1983) as amended.
- g) Common law of nuisance.
- h) Mountain Catchment Area Act (Act 63 of 1970).
- i) The National Veld and Forest Fire Act (Act 101 of 1989)

4.1.2. The Service Provider's authorised representative on site shall be a **registered Pest Control Operator**, specialising in the field of **weed control** and registered in terms of the Farm Feeds Agricultural and Stock Remedies Act, Act 36 of 1947 as amended. A registered Pest Control Operator shall be in direct control of work taking place on site.

4.1.3. In the event of work taking place on numerous sites at the same time, the Service Provider must ensure that there is a registered Pest Control Operator on each site.

4.2. DAMAGE TO FAUNA AND FLORA

4.2.1. The Service Provider shall ensure that his/her employees at all times exercise care and consideration for the fauna and flora within and adjacent to the area to be sprayed.

4.2.2. The Service Provider shall not apply any chemicals of an explosive, inflammable, highly volatile or corrosive nature, which may damage crops vegetation or property or be hazardous to humans or animals. The Service Provider shall assume full responsibility for the efficiency and safety of whatever chemicals are used.

4.2.3. Dumping or polluting of any kind will not be permitted. This stipulation is also applicable to the washing out of tanks and equipment containing harmful chemicals and pollutants.

4.2.4. The Service Provider shall institute and maintain procedures for the safe disposal of all chemicals and residual materials originating from the execution of the works.

4.2.5. Containers and residual material shall not be disposed of on Transnet Freight Rail property or as part of Transnet Freight Rail refuse.

Respondent's Signature

Transnet Integrated Supply Chain Management

Transnet REQUEST FOR QUOTATION No ERACBB423-12808

Date & Company Stamp

Template iSCM 11 [RFQ for Services]

Version March 2012

- 4.2.6. The Service Provider shall take particular note of environmentally sensitive areas and shall plan and execute his/her work with the utmost care and responsibility.

5. PARTICULAR SPECIFICATIONS

This part covers the techniques, types and use of spraying equipment, required standards of workmanship, inspections, measurement, payment, and acceptability of the works in respect of the control of vegetation required in terms of the Agreement.

5.1. DEFINITIONS

Project Manager's Deputy - Any person appointed by the Transnet Freight Rail to deputise for him / her in supervising and carrying out the Agreement.

5.2. CONTROL

- 5.2.1. Control is achieved when all existing or potential growth of vegetation is permanently impaired or destroyed by the application and effects of chemical herbicides, to the extent that:

- 5.2.1.1. The constituent parts of all plants occurring within the area of treatment (worklots) cease to exist as living organisms or entities, and
- 5.2.1.2. The development of new growth of plants from dormant seeds is effectively counteracted or suppressed, for at least one growing season of the year in question; and
- 5.2.1.3. There are no dead or dry remains of any vegetation within the treated area (worklot), which may constitute a hazard, danger, or hindrance to Transnet Freight Rail personnel, equipment trucks or operations.
- 5.2.1.4. Control constitutes a process or situation where the destruction of vegetation on treated areas occurs on an **on-going basis** and not only at the time of measurement and payment inspections.

5.3. WORKLOTS

- 5.3.1. A WORKLOT is a subdivision of any area on which the Service Provider shall control vegetation.
- 5.3.1.1. In the case of yards a worklot will be areas of 300m² each.
- 5.3.1.2. Worklots in yards, depots/areas are not demarcated individually. The number of worklots within any area to be treated is calculated by dividing the total surface area by the surface area of single worklot, i.e. 300 square metres.
- 5.3.1.3. In yards, depots/areas where control is required worklots may be irregular in shape. For inspection and payment purposes, worklots shall be physically measured where necessary. In such instances the Project Manager's Deputy shall decide in advance and advise the Service Provider accordingly, of the method of measurement to be adopted in any particular area.
- 5.3.1.4. In yards, depots/areas worklots will normally be measured parallel to the main direction of the

track work present, or parallel to the main axis of any other area. Worklots will not be measured individually in different directions but will form part of a pattern of continuous and parallel worklots covering, in the most effective manner possible, the surface of any particular area.

5.3.1.5. A worklot for cable routes will normally be areas of 0.75m wide on both sides and parallel to the cable route and 200m long.

5.3.2. However, if any provisional worklot has been sprayed under this Agreement the previous year and the same worklot is again sprayed the next year, payment for the second and consecutive years sprayed would be at the normal rate applicable for that area and the work would be considered as additional work to the Schedule of Requirements.

5.3.3. Formation is the finished earthworks surface upon which the track is laid.

5.3.4. Ballast means that part normally consisting of crushed stone, gravel, ash or muck, (the material placed on the formation to support the track superstructure).

5.3.5. Declared weeds means category 1 plants and declared invader plants means category 2 and 3 plants proclaimed under the Conservation of Agricultural Resources Act, Act No. 43 of 1983, including amendments (GN Regulation 1048 of 25/05/1988 amended by GN Regulation 280 of 30/03/2001) thereto.

5.3.6. Spraying means the even and uniform application of chemical herbicides at the rate specified and applies to liquid, granular or any other formulation.

5.4. METHOD OF VEGETATION CONTROL

5.4.1. The Service Provider's methods and program shall provide rapid and effective control in all areas. Techniques, programming and chemicals employed shall therefore be directed at this aim. The Service Provider shall carry out immediate treatment of growth in all instances where rapid and effective control is not achieved during any period of the Agreement.

5.4.2. Where a chemical approach to vegetation control is adopted, hoeing (skoffel) will not be allowed as method of achieving control. Herbicides which act as a scorching agent (e.g. with Paraquat or similar active ingredient) are incapable of meeting the definition of control and shall not be used. Scorching of canopy growth only shall not constitute control of vegetation as defined. Slashing of dead material to below the height specified in 5.3. will be permitted.

5.4.3. Vegetation control in terms of the Agreement will normally be required in respect of the yards. The type of herbicides and the methods of application to be employed are as specified in the applicable returnable documents (clause 8.2) and are subject to the approval of, and monitoring by the Project Manager's Deputy.

5.4.4. The Project Manager's Deputy's approval shall first be obtained for use of other herbicides.

5.4.5. Application methods shall, however, be entirely in accordance with the manufacturer's specifications and recommendations for safe and effective use of the herbicides or herbicide mixtures concerned.

5.4.6. Any deviation from the method of work submitted as per the applicable returnable document (Clause 8.2) by the Supplier shall be subject to the approval of the Project Manager's Deputy.

5.5. STANDARDS OF WORKMANSHIP

5.5.1. Standard of vegetation control for individual worklots.

5.5.2. Vegetation control shall be such that there is no live vegetation growth (including creepers) exceeding 150mm in any dimension, occurring in the worklot, nor more than fifteen (15) live plants of any lesser size.

This excludes overhanging canopy growth of plants: -

- (a) with rootstock established entirely outside the worklot.
- (b) with rootstock established on the boundary of the worklot, provided that:
 - control was achieved over the remainder of the worklot.
 - a clear spray line is visible, showing that herbicide was entirely applied over the entire surface of the worklot.
 - the Service Provider took the presence of such growth into account and that the choice of herbicides and chemical use was adjusted accordingly.
 - The boundary concerned is not the boundary of an adjoining worklot.

This exception does not apply in the case of creeping grasses (e.g. Cynodon) with nodal rooting within the worklot even though such growth may originate from a plant outside the worklot.

5.5.3. In addition, there shall be no dry or dead remains of vegetation within the worklot greater than 150mm in height and of a density such that it constitutes a hazard, hindrance or danger to Transnet Freight Rail operations, trucks or equipment in the area.

5.5.4. The evaluation to what density of dry or dead growth constitutes a hazard, hindrance or obstruction shall be made by the Project Manager's Deputy.

5.6. MANUAL REMOVAL OF VEGETATION

No felling or hoeing of vegetation will be allowed during the two months preceding final inspection. Herbicides may not be applied 2 weeks preceding final inspection for a season or a year's program. All lots where such hoeing and felling or herbicides application were done will be rejected.

For this Agreement, the Service Provider should timeously acquaint him/herself with the existing conditions of the sites and ensure that his/her tender prices for the **first year only**, includes all work necessary to achieve the required control, e.g. slashing and removal of debris before or just after spraying. The intention to slash and remove should be cleared with the Project Manager's Deputy prior to work starting.

5.7. REMEDIAL WORK

5.7.1 The Service Provider shall carry out remedial work to all worklots where control has not been achieved, prior to the official inspections taking place. Such remedial work shall include the removal of dry or dead growth with any dimensions in excess of 150mm and forming a nuisance or hazard to Transnet Freight Rail operations, from the treated worklots.

Respondent's Signature

Transnet Integrated Supply Chain Management

Transnet REQUEST FOR QUOTATION No ERACBB423-12808

Date & Company Stamp

Template iSCM 11 [RFQ for Services]

Version March 2012

- 5.7.2 The Project Manager’s Deputy may, at any time after the first measurement order the Service Provider to carry out remedial action, to commence within 2 weeks after being so ordered. Prior to the commencement of this proposed remedial action an envisaged remedial work program must be submitted to the Project Manager’s Deputy for his/her approval. Failing to do so the Project Manager’s Deputy may arrange for such action to be carried out by others at the cost of the Service Provider.
- 5.7.3 Hoeing (skoffel) will not be allowed on its own as a remedial action.
- 5.7.4 Fire may not be used as a method of vegetation control or as a method of remedial action.

5.8 OVERALL CONTROL

5.8.1 The overall standard of control to be achieved by the Service Provider over the Agreement area, defined as “Overall Control” and expressed as a percentage, will be determined by application of the following formula;

$$Overall\ Control = \frac{(Worklots\ treated - Worklots\ rejected)}{Worklots\ treated} \times 100$$

5.8.2 The standard of “Overall Control” (service level table) to be provided on each district by the Service Provider shall be:

YEAR	Year 1	Year 2
Minimum % of the total work which shall comply, with the standard of control for individual work-lots.	90	95

5.8.3 Failure by the Service Provider to achieve the standard of “Overall Control” shall constitute a material breach of Agreement by the Service Provider, which will entitle the Project Manager’s Deputy to act in terms of the standard terms and conditions of contract for the provision of services to Transnet.

5.9 PRICE ADJUSTMENT FOR INFLATION:

5.9.1 A contract price adjustment factor to be determined in accordance with the formula will be applied to allow for all increases or decreases in costs, from any cause whatsoever, which may occur after the closing date of the submission of tenders and before the date of completion.

5.9.2 The contract price adjustment factor shall be rounded off to six decimal places.

5.9.3 The formula for the contract price adjustment factor shall be -

$$(1 - x) \left(0.20 \frac{Lt}{Lo} + 0.05 \frac{Pt}{Po} + 0.70 \frac{Mt}{Mo} + 0.05 \frac{Dt}{Do} - 1 \right)$$

where x = 0,15 and

Lo, Po, Mo and *Do* are respectively labour, machinery, material and diesel fuel indices ruling for the calendar month four (4) months prior to closing date of the tender;

Lt, Pt, Mt and *Dt* are respectively labour, machinery, material and diesel fuel indices ruling for the calendar month four (4) months prior to the date of measurement.

5.9.4 The indices to be used shall be those for the Consumer Price Index, Production Price Index and Contract Price Adjustment Provisions as obtained from the monthly Statistical News Release published by STATS South Africa.

- *Lo* and *Lt* shall be the labour indices for Metropolitan Areas (P0141; Table A; CPI: Main Indices; CPI for primary urban areas).
- *Po* and *Pt* shall be the average of the price indices of Metals, machinery, equipment & computing equipment (weighted average of General & special purpose machinery and Household appliances & office machinery) and Transport Equipment (All) in the rate of 4:1 (P0142.1).
- *Mo* and *Mt* shall be the price indices of Chemical, rubber & plastic products (Basic and other chemicals) in table 2 of the PO142.1.
- *Do* and *Dt* shall be the price indices for selected materials (Diesel fuel, Coast & Witwatersrand) (Contract Price Adjustment Provisions, CPAP, P0151, Table 4).

5.9.5 When the value of an index at the time of calculation is not known the latest available index shall be used and any correction necessary shall be made by addition or subtraction in subsequent monthly payment certificates.

5.9.6 The amounts to be added to or subtracted from the monthly payment certificates shall be calculated by multiplying the amount certified for payment for that month (but excluding amounts not subject to price adjustment) by the contract price adjustment factor for that month.

5.9.7 Adjustment to measurements of previous months' quantities will be included in calculation of the amount certified for payment and will therefore be subject to the price adjustment factor of the current measurement month.

5.9.8 Any additions to or deductions from the amount payable, brought about by the application of the contract price adjustment factor, shall be deemed to have made full allowance for all increases or decreases in cost from any cause whatsoever, including all overhead costs as well as any increases and decreases therein, and profit.

5.9.9 Value added tax shall be excluded from individual payment item rates and price adjustment indices as it will be added to the total of the month's measurement, after price adjustment have been made in terms hereof.

6. GENERAL SPECIFICATIONS

6.1. GENERAL

6.1.1. E4E (January 2004) – Safety Arrangements and Procedural Compliance with the Occupational Health and Safety Act.

- 6.1.2. Specification E7/1 (Jul 1998): Specification for works on, over, under or adjacent to railway lines and near high voltage

6.2. HEALTH AND SAFETY

- 6.2.1. The Service Provider shall at all times comply with safety rules, regulations and legislation, as well as Transnet Freight Rail (TFR) Safety Guidelines for Infrastructure (Latest Edition).
- 6.2.2. The Service Provider shall at all times comply with the Basic Conditions of Employment Act as well as all other relevant labour legislation. The Service Provider must conduct his/her own formal risk assessment to identify all risks. The Service Provider is to clearly indicate in his/her **tender submission** the processes and procedures he/she intends implementing to mitigate the total of all these risks: e.g.
- 6.2.2.1. Working with herbicides
- 6.2.2.2. live OHTE
- 6.2.2.3. Executing work on one line while a normal train service is running on adjacent line/s
- 6.2.2.4. Sanitation and refuse disposal as a threat to the environment.
- 6.2.3. The Service Provider shall be responsible to ensure the use of only technically competent trained staff on all types of work. The Service Provider will have to ensure that the Service Provider's personnel operating his/her own locomotives, haulage equipment, road rail vehicles or any other track vehicles on Transnet Freight Rail lines undergo a Transnet Freight Rail Operating course and also receive a certificate of track section competency. This cost is to be borne by the Service Provider.
- 6.2.4. The Service Provider shall ensure that all workers are appropriately equipped and wearing Personal Protective Equipment (PPE) and that Safety Talks are conducted and noted in the Site Diary before the start of every shift.
- 6.2.5. The Service Provider shall be responsible to ensure that site staff is always competently trained with regards to Electrical Awareness Training.
- 6.2.6. The Service Provider shall be responsible to ensure that workers working on machines (high risk areas), operators, machine fitters, area Project Manager's Deputies and Agreement 'supervisors' site staff are always competently trained with regards to PWC Electrical Educational Training.
- 6.2.7. The Service Provider shall also be responsible to ensure that Agreement managers in charge of sites are always competently trained with regards to COM Competency Electrical Training (to follow PWC Training).
- 6.2.8. The Service Provider shall ensure that all his/her employees undergo medical surveillance where required by legislation.
- 6.2.9. Non-compliance with safety requirements will result in an immediate suspension of work without payment.
- 6.2.10. Where training is required by the Service Provider and Transnet Freight Rail (TFR) is committed to provide training, the Service Provider shall **qualify his/her tender** as to what and how many staff, training will be required for. After award of the Agreement, the Service Provider shall then arrange with the appropriate Transnet Freight Rail (TFR) representative, through the Project Manager's Deputy, for this training / testing.

Respondent's Signature

Transnet Integrated Supply Chain Management

Transnet REQUEST FOR QUOTATION No ERACBB423-12808

Date & Company Stamp

Template iSCM 11 [RFQ for Services]

Version March 2012

The following training shall be arranged for the following Service Provider's staff:

Course	Objective	Duration & trainer	Grade to attend
A) Awareness (Electrical)	To inform all Service Providers staff working near a machine and on the line on electrified sections of the dangerous situations of high voltage OHTE	Two hour on-the-job lecture and training. Accredited Electrical Trainer / Depot's Electrical Supervisor	All workers and staff working on the Agreement
B) COM Competency (Electrical) (To follow A)	Work permits safe working procedures under the direct supervision of a responsible representative	Lecture room training = 0,25 d On-the-job training = 0,25 d Criterion test = 0,5 days Total = 1 day Accredited Electrical Trainer	Supervisor (Responsible person in charge at machine working)

- The electrical awareness training must be arranged for beforehand on-the-job.
- The electrical educational and competency training may be arranged for at either a depots lecture room (Transnet Freight Rail (TFR) property), or at a venue of the Service Provider's choice (Service Provider's cost).

7. PRICING INSTRUCTIONS

7.1. GENERAL

7.1.1. Measurement and payment shall be in accordance with relevant provisions of clause 7.2 of each of the SANS 1200 Standardised Specifications for Civil Engineering Construction referred to in the Service information.

7.1.2. The units of measurement described in this Schedule of Requirements are metric units. Abbreviations used in the Schedule of Requirements are as follows:

%	=	percentage
h	=	hour
ha	=	hectare
kg	=	kilogram
kl	=	kilolitre
km	=	kilometre

l	=	litre
m	=	metre
No.	=	number
Prov sum	=	Provisional sum
Sum	=	Lump sum
W/day	=	Work day
R/only	=	Rate only
Worklot	=	area totalling 300m ²

7.1.3. For the purpose of these Schedule of Requirements, the following words shall have the meanings assigned to them:

Unit:	The unit of measure for each item of work as defined in the COLTO Standard specification.
Quantity:	The number of units of works for each item.
Rate:	The agreed payment per unit measurement.
Amount:	The product of the quantity and the agreed rate for an item.

7.1.4 No allowance is made for waste on items in the Schedule of Requirements.

7.1.5 **It will be assumed that the prices included in the Schedule of Requirements are based on acts, ordinances, regulations, by-laws, International Standards and National Standards that were published 28 days before the closing date for tenders.**

7.1.6 Such prices and rates cover all costs and expenses that may be required for the execution of the works described in accordance with the provisions of the Service Information, and shall cover the cost of all general risks, liabilities and obligations set forth or implied in the Agreement Data, as well as overhead charges and profit.

7.1.7 The quantities set out in the Schedule of Requirements are estimated and may be more or less than stated. The Service Provider shall submit with his/her tender a complete and detailed priced Schedule of Requirements (prepared in black ink).

7.1.8 Each item shall be priced by the Service Provider. If the Service Provider has omitted to price any items in the Schedule of Requirements, the cost of the work included in such items will be held to be spread over and included in the prices given in the other items of work.

7.1.9 Payment for this Agreement shall be based on the Schedule of Requirements and the payment will be made in accordance with the rates tendered in the Schedule of Requirements.

The absence of stated quantities in the Schedule of Requirements is no guarantee that none will be required. **Reasonable prices should therefore be inserted for every item as these prices may be considered in adjudication of tenders.**

The short descriptions of the items in the Schedule of Requirements are for identification purposes only.

Items classified as "provisional worklots" in the Schedule of Requirements indicate that there is no certainty about the amount of work, which will be required. In this Agreement the provisional items, where

applicable, are for the treatment of areas, which are not necessarily treated annually.' These areas will be measured per provisional worklot as defined in 5.3 and stated in the Schedule of Quantities. The standard of control for individual worklots shall apply.

7.2 MEASUREMENT AND PAYMENT

- 7.2.1 Payment will be based on the numbers of worklots treated as instructed by the Project Manager's Deputies and to which the Service Provider successfully applied the vegetation control measures and has achieved the standard of control defined in clause 5.4.
- 7.2.2 No payment will be made for rejected worklots where control achieved does not meet the standards of control specified.
- 7.2.3 Measurement and payment for the work completed will be made in [2] stages.
- 7.2.4 After completion of the initial spraying of the entire Agreement Area the Project Manager's Deputies or his/her deputy and the Service Provider will measure the work performed (number of worklots sprayed). The Service Provider will thereafter receive payment at [50%] of the rates tendered for all of the completed work.
- 7.2.5 A second measurement and evaluation will be made concurrent with the first official inspection conducted in accordance with clause 3.4.4. The Service Provider will thereafter receive payment at [25%] of the rates tendered for all worklots where control as specified has been achieved or clear signs are evident that control is in the process of being achieved.
- 7.2.6 A third measurement and evaluation will be made concurrent with the second official inspection conducted in accordance with clause 3.4.5. The Service Provider will thereafter receive payment at [25%] of the rates tendered for all worklots where control has been achieved.

8. GENERAL INFORMATION

- 8.1 The Respondent(s) shall be fully responsible to Transnet for the acts and omissions of persons directly or indirectly employed by them.
- 8.2 The Respondent(s) must provide the information requested and comply with the requirements stated in this RFQ.

9. NATIONAL RAILWAY SAFETY REGULATOR ACT

In compliance with the National Railway Safety Regulator Act, 16 of 2002, the successful Respondent (**the Respondent**) shall ensure that the Services to be supplied to Transnet, under the terms and conditions of a agreement between the parties, comply fully with the specifications as set forth in this RFQ, and shall thereby adhere to railway safety requirements and/or regulations [as applicable]. Permission for the engagement of a subcontractor by the Respondent, as applicable, both initially and during the course of a agreement, 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 Respondent 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 the organisation.

Accepted:

YES		NO	
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10. SERVICE LEVELS

- 10.1 An experienced national account representative(s) is required to work with Transnet's sourcing/procurement department. [No sales representatives are needed for individual department/locations]. Additionally, there shall be a minimal number of people, fully informed and accountable for this agreement.
- 10.2 Transnet will have quarterly reviews with the Respondent's account representative on an on-going basis.
- 10.3 Transnet reserves the right to request that any member of the Respondent's team involved on the Transnet account be replaced if deemed not to be adding value for Transnet.
- 10.4 The Respondent guarantees that it will achieve a 95% service level on the following measures. If the Respondent does not achieve this level as an average over each quarter, Transnet will receive a 1.5% rebate on quarterly sales payable in the next quarter:
 - a)
 - b)
 - c) on time deliveries
- 10.6 Respondent must provide a telephone number for customer service calls.
- 10.7 Failure of the Respondent to comply with stated service level requirements will give Transnet the right to cancel the agreement in whole, without penalty to Transnet, giving 30 [thirty] days' notice to the Respondent.

Acceptance of Service Levels:

YES		NO	
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11 RISK

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

11.1 Quality of Services required:

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

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

11.4 Compliance with the National Railway Safety Regulator Act, 16 of 2002 [refer paragraph 0 above]:

"PREVIEW COPY ONLY"

13. EVALUATION CRITERIA

Phase 1: Will be a disqualifying phase. The following documents are mandatory documents and must be attached and those that comply will progress to be competitively evaluated in Phase 2. Minimum mandatory documents for progressing from phase 1 to phase 2 are detailed below:

- Fully completed clause by clause compliance to project specifications
- 2 Valid pest control operator (PCO) certificates in industrial weed control
- List and attach label specifications of chemicals to be used
- A program of work schedule including program of remedial work

Phase 2: Only Respondents who obtain 60 points or more in this technical/quality phase will proceed to phase 3 to be evaluated on the 80/20 principle for price and BBBEE.

- Clause by clause compliance
- Risk assessment
- Technical capacity / resources
- Program schedule

Phase 3: All Respondents who progress from phase 2 will be evaluated in phase 3. Bids will be evaluated on the 80/20 principle for price and BBBEE as the bid is <R1m

- Price
- BBBEE

Weighted evaluation based on the 80/20 preference point system:

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

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

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

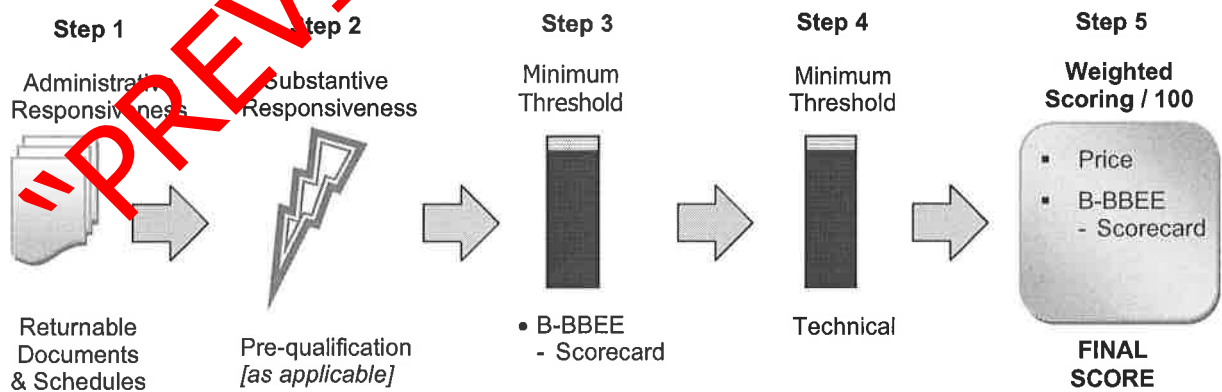
Where:

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

B-BBEE status of company

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

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



**THE CHEMICAL CONTROL OF VEGETATION BY MEANS OF HERBICIDE
FOR A PERIOD OF TWO YEARS
Section 3: PRICING AND DELIVERY SCHEDULE**

Location	Annual Worklots 300m2	Rate Per Worklot	Total for Year 1	Rate Per Worklot	Total for Year 2
PIET RETIEF (EXCL) - WITHEID EAST(EXCL.)					
STATION YARDS					
MKONDO	119.949				
MOOLMAN	94.94				
CONFIDENCE	57.346				
COMMONDALE	92.88				
HLUNGWANA	61.268				
DUMBE	16.31				
PAULPIETERSBURG	182.87				
MGOJANA	21.745				
MAHULUMBE	17.58				
MQWABE	76.438				



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Transnet Integrated Supply Chain Management
Transnet REQUEST FOR QUOTATION No ERACBB423-12808

Date & Company Stamp _____

Template iSCM 11 [RFQ for Services]
Version March 2012

ZUNGWINI	34.545					
MSWANENI LOOP	17.195					
ZSA	28.776					
VRYHEID EAST	2011.45					
VRYHEID	213.7					
BALLAST SIDING	83.11					
SIKAME	88.673					
TENDEKA	60.983					
HLOBANE	79					
BUILDING SURROUNDS - RELAY ROOMS						
MKONDO - MKT	0.60					
MOOLMAN - MMN	0.60					
MOOLMAN - CONFIDENCE - MCN	0.51					
CONFIDENCE - CNC	0.61					
HOT BOX						
COMMONDALE - CON	0.60					
HLUNGWANA - HGW	0.58					
DUMBE DEVIATION - DBE	0.81					

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Respondent's Signature

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Transnet Integrated Supply Chain Management

Template iSCM 11 [RFQ for Services]

Transnet REQUEST FOR QUOTATION No ERACBB423-12808

Version March 2012

DUMBE DEVIATION - DBE	1.16					
MAHULUMBE - MLX	1.16					
HOT BOX						
MQWABE - MQX	1.09					
ZUNGWINI - ZGN	1.48					
ZUNGWINI - ZGN	0.25					
MSWANENI DEVIATION - MSI	0.81					
ZUNGWINI - ZSA	1.08					
ZUNGWENI - ZSB	1.06					
VRYHEID EAST VHD A	1.23					
SIKAME - STA	0.83					
SIGNAL W/SHOP VHD EAST	26.41					
CTC OFFICE COMPLEX	8.55					
TENDEKA - TDA	1.24					
HLOBANE - HLB	0.66					
BUILDING SURROUNDS - ELECTRICAL SUB STATIONS						
PIET RETIEF TSS	0.45					
MOOLMAN SUB	6.32					

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Transnet Integrated Supply Chain Management

Template ISCM 11 [RFQ for Services]

Transnet REQUEST FOR QUOTATION No ERACBB423-12808

Version March 2012

LANGFONTEIN TSS	0.36							
HLUNGWANA SUB	0.83							
DUMBE SUB	0.36							
MQWABE SUB	6.05							
SIKAME SUB (25 Kv)	5.43							
VRYHEID EAST TSS (25 Kv)	0.43							
ELECTRICAL W/SHOP VHD EAST	41.70							
ELECTRICAL TRAINING CENTRE VHD EAST	6.08							
MAIN SUB (11 Kv)	1.20							
DIESEL DEPOT SUB (11 Kv)	0.53							
ADMIN SUB (11 Kv)	0.74							
WERF SUB (11 Kv)	0.72							
WERKSINSPEKTEUR SUB (11 Kv)	0.72							
R4MT OUTDOOR SUB (11 Kv)	0.00							
BUILDING SURROUNDS - MICROWAVE TOWERS								
SCHEEPERSNEK	4.44							
VHD MOUNTAIN	0.90							

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Transnet Integrated Supply Chain Management

Template iSCM 11 [RFQ for Services]

Transnet REQUEST FOR QUOTATION No ERACBB423-12808

Version March 2012

BUILDING SURROUNDS - OFFICE AREA	
VRYHEID	
PARKING AREA	2.3
WALL SURROUND	1.19
CTC AREA	5.26
BUILDING SURROUNDS - MTV YARD	
VHD YARD	34.67
BUILDING SURROUNDS - SIGNAL BOXES	
MKONDO - VRYHEID EAST(EXCL.)	14.9325
VRYHEID AREA	5.83
SIKAME (EXCL) - HLOBANE	0.72
ERMELO - PIET RETIEF	
STATION YARDS	
MAVIRISTAD	27.16
SHEEPMOOR	165
NGWEMPISI	136
PANBULT	206.67
ISWEPE	158.67

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WILDRAND	82.33								
KEMP	18.33								
PIET RETIEF	214.33								
SUBSTATIONS									
SHEEPMORE	3.5								
ISWEPE	2.8								
HLELO	4.5								
WILDRAND	3.6								
RELAYROOMS									
SHEEPMORE	1.250								
ISWEPE	1.250								
HLELO	1.000								
WILDRAND	4.3								
MAIN SUB.ERMELO YARD MINI SUB.	3.800								
TELLI CONTROL									
MAVIRISTAD	0.01								
SHEEPMORE	0.020								
SHEEPMORE 11KV	0.020								

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PANBULT	0.020						
PANBULT	1.250						
ISWEPE	0.300						
ISWEPE 11KV	0.020						
ISWEPE	0.600						
HLELO	0.500						
WILDRAND	0.920						
WILDRAND	0.950						
KEMP	0.020						
KEMP	0.020						
PIET RETIEF 98/8	2.770						
TOTAL	4830.781						

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Respondent's Signature

Transnet Integrated Supply Chain Management

Transnet REQUEST FOR QUOTATION No ERACBB423-12808

Date & Company Stamp

Template iSCM 11 [RFQ for Services]

Version March 2012

I/We accept that any agreement resulting from this offer will be for a period of only; and agree to a penalty clause to be negotiated with Transnet, which will allow Transnet to invoke a penalty [details to be negotiated] against us should the delivery of the Services be delayed due to non-performance by ourselves.

The law of the Republic of South Africa shall govern any agreement 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 agreement which may have to be entered into in the event of their Proposal being accepted and to act on their behalf in all matters relating to such agreement.

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

Name of Entity: _____

Facsimile: _____

Address: _____

NOTIFICATION OF AWARD OF RFQ

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

VALIDITY PERIOD

Transnet requires a validity period up to **30 April 2014** against this RFQ.

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

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

1. Registration number of company / C.C. _____
2. Registered name of company / C.C. _____

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

CONFIDENTIALITY

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

DISCLOSURE OF PRICES TENDERED

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

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

RETURNABLE DOCUMENTS AND SCHEDULES

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

SECTION 1 : Notice to Bidder	√
SECTION 2 : Background, Overview and Scope of Requirements	√
SECTION 3 : Pricing & Delivery Schedule	√
SECTION 4 : Proposal Form	√
SECTION 5 : Vendor Application Form	√
- Original or certified cancelled cheque or bank verification of banking details	√
- Certified copies of IDs of shareholder/directors/members [as applicable]	√
- Certified copy of Certificate of Incorporation [CM29/CM9 name change]	√
- Certified copy of share certificates [CK1/CK2 if CC]	√
- Entity's letterhead	√
- Original Tax Clearance Certificate	√
- Certified copy of VAT Registration Certificate	√

- Certified copy of Company Registration Certificate	√
- Certified Valid B-BBEE Accreditation Certificate [Large Enterprises and QSEs]	√
- Annual financials signed off by an accounting officer [EMEs]	√
- Audited financial for previous 3 years - Large Enterprises and QSEs	√
SECTION 6 : Signing Power - Resolution of Board of Directors	√
SECTION 7 : Certificate of Acquaintance with RFQ Documents	√
SECTION 8 : General Bid Conditions – Services	√
SECTION 9 : Standard Terms and Conditions of Agreement	√
SECTION 10 : RFQ Declaration Form	√
SECTION 11 : Breach of Law	√
SECTION 12 : Bid Clarification Request Form	√
SECTION 13 : Supplier Code of Conduct	√
SECTION 14 : Certificate of attendance of Site Meeting / RFQ Briefing	√
SECTION 15 : Non-Disclosure Agreement	√
SECTION 16 : Plant and Equipment	√
SECTION 17 : E4B – Minimum Communal Health Requirements	√
SECTION 18 : E4E – Safety arrangements and Procedural compliance	√
Fully completed clause by clause compliance to project specifications	√
2 valid pest control operator (PCO) certificates in industrial weed control	√
List and attach label specifications of chemicals to be used	√
A program of works schedule including program of remedial work	√

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

CONTINUED VALIDITY OF RETURNABLE DOCUMENTS

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

Respondent's Signature

Transnet Integrated Supply Chain Management

Transnet REQUEST FOR QUOTATION No ERACBB423-12808

Date & Company Stamp

Template iSCM 11 [RFQ for Services]

Version March 2012

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

SIGNED at _____ on this _____ day of _____ 2014

NAME OF WITNESS		NAME OF WITNESS	
ADDRESS OF WITNESS		ADDRESS OF WITNESS	
SIGNATURE OF WITNESS		SIGNATURE OF WITNESS	

SIGNATURE OF RESPONDENT'S REPRESENTATIVE:

NAME	
DESIGNATION	
TELEPHONE	
CELLPHONE	
FACSIMILE	

**THE CHEMICAL CONTROL OF VEGETATION BY MEANS OF HERBICIDE
FOR A PERIOD OF TWO YEARS**

Section 5: SUPPLIER DECLARATION FORM

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	CC	Trust	Pty Ltd	Limited	Partnership	Sole Proprietor	
VAT number (if registered)							
Company Telephone Number							
Company Fax Number							
Company E-Mail Address							
Company Website Address							
Bank Name				Bank Account Number			
Postal Address						Code	
Physical Address						Code	
Contact Person							
Designation							
Telephone							
Email							
Annual Turnover Range (Last Financial Year)	< R5 Million		R5-35 million		> R35 million		
Does Your Company Provide	Products		Services		Both		
Area Of Delivery	National		Provincial		Local		
Is Your Company A Public Or Private Entity				Public		Private	

Respondent's Signature

Transnet Integrated Supply Chain Management

Transnet REQUEST FOR QUOTATION No ERACBB423-12808

Date & Company Stamp

Template iSCM 11 [RFQ for Services]

Version March 2012

Does Your Company Have A Tax Directive Or IRP30 Certificate	Yes		No	
Main Product Or Service Supplied (E.G.: Stationery/Consulting)				

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

Transnet Contact Person	
Contact number	
Transnet operating division	

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

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

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**THE CHEMICAL CONTROL OF VEGETATION BY MEANS OF HERBICIDE
FOR A PERIOD OF TWO YEARS**

Section 6: SIGNING POWER – RESOLUTION OF BOARD OF DIRECTORS

NAME OF ENTITY: _____

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

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

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

FULL NAME _____
SIGNATURE CHAIRMAN

FULL NAME _____
SIGNATURE SECRETARY



**THE CHEMICAL CONTROL OF VEGETATION BY MEANS OF HERBICIDE
FOR A PERIOD OF TWO YEARS**

Section 7: CERTIFICATE OF ACQUAINTANCE WITH RFQ DOCUMENTS

NAME OF ENTITY:

I/We

_____ 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 response.

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

SIGNED at _____ on this _____ day of _____ 2014

SIGNATURE OF WITNESS

SIGNATURE OF RESPONDENT

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**THE CHEMICAL CONTROL OF VEGETATION BY MEANS OF HERBICIDE
FOR A PERIOD OF TWO YEARS**

Section 8: GENERAL BID CONDITIONS - SERVICES

Refer General Bid Conditions attached hereto

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**THE CHEMICAL CONTROL OF VEGETATION BY MEANS OF HERBICIDE
FOR A PERIOD OF TWO YEARS**

**Section 9: STANDARD TERMS AND CONDITIONS OF AGREEMENT
FOR THE PROVISION OF SERVICES TO TRANSNET**

Refer Form ST&C attached hereto.

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

THE CHEMICAL CONTROL OF VEGETATION BY MEANS OF HERBICIDE
FOR A PERIOD OF TWO YEARS
Section 10: RFQ DECLARATION FORM

NAME OF ENTITY: _____

We _____ do hereby certify that:

- 1. Transnet has supplied and we have received appropriate responses to any/all questions [as applicable] which were submitted by ourselves for bid clarification purposes;
2. we have received all information we deemed necessary for the completion of this REQUEST FOR QUOTATION [RFQ];
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 contact(s) as nominated in the RFQ documents;
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 this RFQ have been conducted in a fair and transparent manner; and
5. furthermore, we declare that a family, business and/or social relationship exists / does not exist [delete as applicable] between an owner / member / director / partner / shareholder of our entity and an employee or board member of the Transnet Group.

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

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

ADDRESS:

Indicate nature of relationship with Transnet:

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

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

SIGNED at _____ on this _____ day of _____ 2014

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

IMPORTANT NOTICE TO RESPONDENTS

- 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.

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THE CHEMICAL CONTROL OF VEGETATION BY MEANS OF HERBICIDE
FOR A PERIOD OF TWO YEARS
Section 11: BREACH OF LAW

NAME OF ENTITY: _____

I/We _____

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

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

NATURE OF BREACH:

DATE OF BREACH: _____

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

SIGNED at _____ on this _____ day of _____ 20__

SIGNATURE OF WITNESS

SIGNATURE OF RESPONDENT

THE CHEMICAL CONTROL OF VEGETATION BY MEANS OF HERBICIDE FOR A PERIOD OF TWO YEARS

Section 13: RESPONDENT CODE OF CONDUCT

Transnet aims to achieve the best value for money when buying or selling Services 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 Respondent dealing with Transnet must understand and support. These are:

- The Transnet Procurement Procedures Manual [PPM];
- Section 217 of the Constitution - the five pillars of Public PSCM [Procurement and Supply Chain Management]: fair, equitable, transparent, competitive and cost effective;
- The Public Finance Management Act [PFMA];
- The Broad Based Black Economic Empowerment Act [B-BBEE]; and
- The Prevention and Combating of Corrupt Activities Act

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

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

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

1. *Transnet will not participate in corrupt practices and therefore expects its Respondents to act in a similar manner.*

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

- Employees must not accept or request money or anything of value, directly or indirectly, to:
 - illegally influence their judgement or conduct or to ensure the desired outcome of a sourcing activity;
 - win or retain business or to influence any act or decision of any decision stakeholders involved in sourcing decisions; or
 - gain an improper advantage.
- There may be times when a Respondent is confronted with fraudulent or corrupt behaviour of Transnet employees. We expect our Respondents to use our "Tip-offs Anonymous" Hot line to report these acts [0800 003 056].

Respondent's Signature

Transnet Integrated Supply Chain Management

Transnet REQUEST FOR QUOTATION No ERACBB423-12808

Date & Company Stamp

Template iSCM 11 [RFQ for Services]

Version March 2012

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

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

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

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

Conflicts of Interest

A conflict of interest arises when personal interests or activities influence [or appear to influence] the ability to act in the best interests of Transnet.

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

Respondent's Signature

Transnet Integrated Supply Chain Management

Transnet REQUEST FOR QUOTATION No ERACBB423-12808

Date & Company Stamp

Template iSCM 11 [RFQ for Services]

Version March 2012

**THE CHEMICAL CONTROL OF VEGETATION BY MEANS OF HERBICIDE
FOR A PERIOD OF TWO YEARS**

Section 14: CERTIFICATE OF ATTENDANCE OF INFORMATION BRIEFING

It is hereby certified that –

1. _____

2. _____

Representative(s) of _____ [name of entity]

attended the RFQ briefing in respect of the proposed Services to be supplied in terms of this RFQ on
_____ 2014

TRANSNET'S REPRESENTATIVE

RESPONDENT'S REPRESENTATIVE

DATE _____

DATE _____

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**THE CHEMICAL CONTROL OF VEGETATION BY MEANS OF HERBICIDE
FOR A PERIOD OF TWO YEARS**

Section 15: NON-DISCLOSURE AGREEMENT [NDA]

Complete and sign the Non-Disclosure Agreement attached hereto

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**THE CHEMICAL CONTROL OF VEGETATION BY MEANS OF HERBICIDE
FOR A PERIOD OF TWO YEARS**

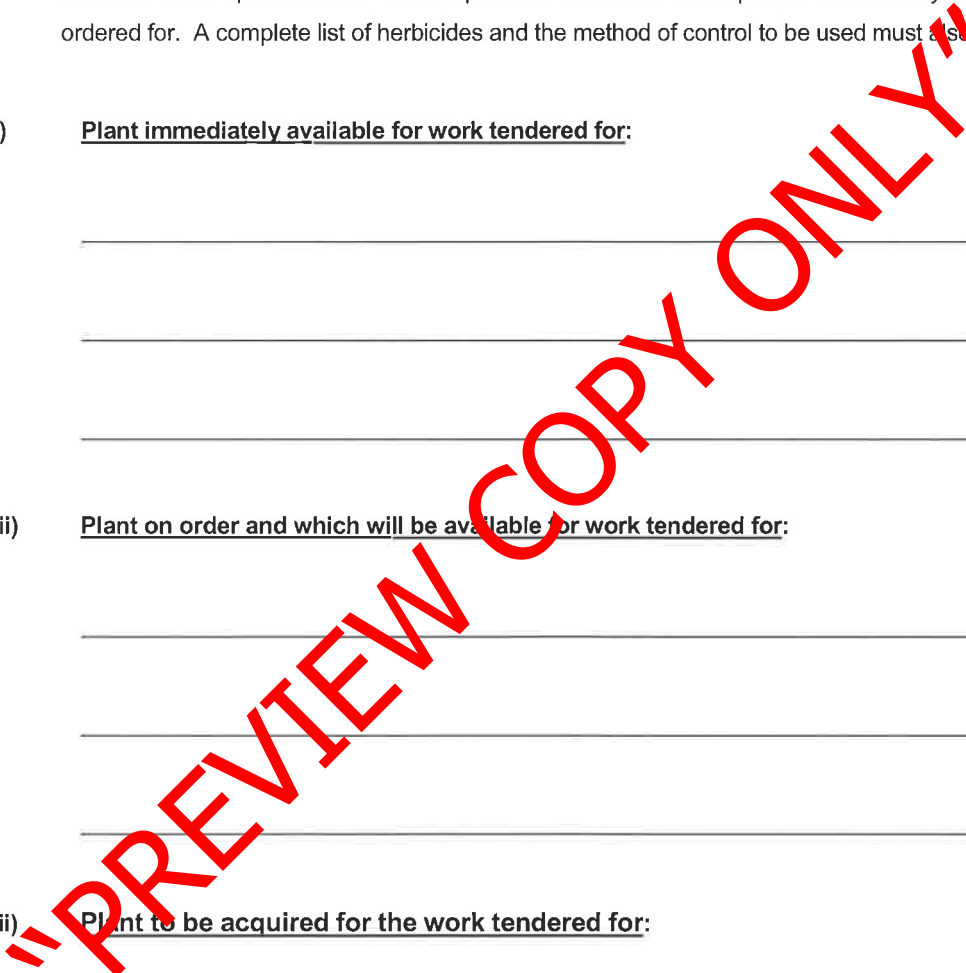
Section 16: SCHEDULE OF PLANT, EQUIPMENT AND TEAMS

Schedule of major plant and equipment to be used in the execution of this agreement in terms of the Agreement Conditions and specifications. The respondent must state which plant is immediately available and which will be ordered for. A complete list of herbicides and the method of control to be used must also be specified.

(i) Plant immediately available for work tendered for:

(ii) Plant on order and which will be available for work tendered for:

(iii) Plant to be acquired for the work tendered for:



**THE CHEMICAL CONTROL OF VEGETATION BY MEANS OF HERBICIDE
FOR A PERIOD OF TWO YEARS**

Section 17: E4B – MINIMUM COMMUNAL HEALTH REQUIREMENTS

**MINIMUM COMMUNAL HEALTH REQUIREMENTS IN AREAS OUTSIDE THE JURISDICTION OF A LOCAL
AUTHORITY: TEMPORARY FACILITIES FOR RESPONDENT'S PERSONNEL**

1. CAMPS

- 1.1 Prior to the erection of any camp, the Respondent shall submit to the Technical Officer, for his approval, details of his Proposals as to the site, water supply, sanitation, and size and type of buildings. Where the site is on private land, the Respondent shall submit the written approval for the use of the site of the relevant statutory authority and of the owner and occupier of the land (as applicable).
- 1.2 Camps must not be erected on land infested with field rodents.
- 1.3 Adequate drainage shall be provided to carry off storm and waste water.
- 1.4 Buildings shall be built to a neat and orderly pattern.
- 1.5 All buildings shall have smooth, hard, impervious floors, graded to provide effective drainage and to permit washing.
- 1.6 Camps shall be maintained by the Respondent at his own expense in a clean and tidy condition. The Respondent shall take such steps as the Technical Officer and landowner/occupier may demand to prevent the creation of a nuisance.
- 1.7 When so instructed by the Technical Officer, the Respondent shall, at his own expense, erect suitable screens between the camp and any public road, thoroughfare or railway line.
- 1.8 After removal of a camp, the Respondent shall, at his own expense, restore the site to its original condition to the satisfaction of the Technical Officer and of the landowner and occupier where the site is on private land.

2. HOUSING

- 2.1 Every living room shall have cross ventilation, both constant and occasional. Where only one window is provided, it shall not be in the same wall as the door.
- 2.2 Dimensions of living rooms shall be sufficient to allow 3.5 square metres of floor area and 11 cubic metres of air space for each person over the age of 10 years. The floor area of any living room shall not be less than 7,8 square metres.
- 2.3 Flat-roofed quarters shall have a minimum roof height of 3 metres above floor level. For quarters with pitched roofs, the wall height shall be not less than 2, 6 metres above the floor with a minimum height above floor of 3 metres at the top of the pitch.
- 2.4 Doors shall not be less than 2m x 0,75m and must be halved.

- 2.5 Windows of each living room shall have an area not less than one twelfth of the floor area and shall be capable of opening to at least half their full area.
- 2.6 In areas where malaria is prevalent, doors and windows must be fitted with gauze screens.
- 2.7 Cooking shelters shall comprise roofed structures, three sides of which shall be enclosed by a weatherproof material, approved by the Technical Officer to a height of at least **1m** above ground level.
- 2.7.1 Sleeping quarters shall not accommodate more than 8 persons per room.
- 2.7.2 Pegboards shall be carried on metal or concrete supports and shall be separated by partitions not less than 0,4 metres high extending to within 150mm of the end of the bunk. Pegboards shall be removable for cleaning.

3. **WATER SUPPLY AND ABLUTION FACILITIES**

- 3.1 The Respondent shall ensure that an adequate and conveniently situated supply of potable water is provided.
- 3.2 Separate buildings for ablution facilities shall be provided. Where approval has been obtained for the housing of males and females, separate facilities for each sex shall be provided. The proportion shall be 1 cubicle for 20 persons.
- 3.3 Waste water shall be hygienically disposed of.

4. **SANITATION**

- 4.1 Separate buildings for latrine facilities shall be provided. Where housing are provided for both males and females, separate facilities for each sex shall be provided. The proportions shall be at least one squatting seat for every 15 persons or less in the case of pit latrines, or one for every 10 persons or less in case of flush latrines.
- Latrines shall be fly proof and sited at least 10 metres from any other building, and shall not face on any public road, thoroughfare, railway line or residential property. Pits shall not be less than 2, 5 metres deep and sited not less than 120 metres from nearest underground water source.
- 4.2 Latrines shall be so constructed, situated and maintained, and night soil so disposed of as to prevent access by animals, breeding of flies, pollution of streams and domestic water supplies, and other nuisances. Where a night soil removal service is operated by a competent authority, use of such service shall be obligatory, and the use of pit latrines and atria pits will not be permitted.
- 4.3 At least one refuse bin of adequate size with close fitting lid shall be provided for each building. Refuse bins shall be emptied and cleaned out daily.
- 4.4 Labour shall be employed on camp sanitation duties on the following basis:-
- 4.4.1 Where the number of persons living at the camp is 20 or less - one unit.
- 4.4.2 For additional numbers over 20 living at the camp - one unit per 100 or part thereof.
- 4.5 Unless refuse is removed by a competent authority, it shall be disposed of in pits and covered over daily with a layer of earth or ash of sufficient thickness to prevent depredations by rodents and the breeding of flies.

- 4.6 Adequate measures shall be taken against all vermin and insects responsible for the spread of disease. Any instructions of a competent health authority shall be carried out promptly and implicitly.
- 4.7 Buildings and bed boards shall be treated whenever necessary with an approved insecticide.
- 4.8 The Respondent shall permit and facilitate inspection of the camp and structures on the site by the staff of Transnet or any other competent authority, and shall comply with any reasonable request by such staff or any other competent authority to eliminate any unsanitary condition.
- 4.9 Any outbreak of infectious disease shall immediately be reported telephonically and confirmed in writing to the Technical Officer.
- 4.10 The keeping of animals of any sort is not permitted.
- 4.11 The Respondent shall have on hand at the camp the necessary tools, disinfectants and cleaning materials to maintain and clean the sanitary facilities.

5. **RATIONS**

Rations, where supplied by the Respondent, shall be stored in a suitable and rodent proof building with sufficient shelving.

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**THE CHEMICAL CONTROL OF VEGETATION BY MEANS OF HERBICIDE
FOR A PERIOD OF TWO YEARS**

**Section 18: E4E – SAFETY ARRANGEMENTS AND PROCEDURAL COMPLIANCE
(ACT 85 OF 1993) AND APPLICABLE REGULATIONS**

1. General

- 1.1 The Respondent and Transnet Limited (hereinafter referred to as "Transnet") are individual employers, each in its own right, with their respective duties and obligations set out in the Occupational Health and Safety Act, Act 85 of 1993 (the Act) and applicable Regulations.
- 1.2 The Respondent accepts, in terms of the General Conditions of Agreement and in terms of the Act, his obligations as an employer in respect of all persons in his employ, other persons on the premises or the Site or place of work or on the work to be executed by him, and under his control. He shall, before commencement with the execution of the agreement work, comply with the provisions set out in the Act, and shall implement and maintain a Health and Safety Plan as described in the Construction Regulations, 2003 and as approved by Transnet, on the Site and place of work for the duration of the Agreement.
- 1.3 The Respondent accepts his obligation to comply fully with the Act and applicable Regulations notwithstanding the omission of some of the provisions of the Act and the Regulations from this document.
- 1.4 Transnet accepts, in terms of the Act, its obligations as an employer of its own employees working on or associated with the site or place of work, and the Respondent and Technical Officer or his deputy shall at all times, co-operate in respect of the health and safety management of the site, and shall agree on the practical arrangements and procedures to be implemented and maintained during execution of the Works.
- 1.5 In the event of any discrepancies between any legislation and this specification, the applicable legislation will take precedence.

2. Definitions

- 2.1 In this Specification any word or expression to which a meaning has been assigned in the Construction Regulations shall have the meaning so assigned to it, unless the context otherwise indicates: -
- 2.2 The work included in this Agreement shall for the purposes of compliance with the Act be deemed to be "Construction Work", which, in terms of the Construction Regulations, 2003 means any work in connection with: -
- (a) the erection, maintenance, alteration, renovation, repair, demolition or dismantling of or addition to a building or any similar structure;
 - (b) the installation, erection, dismantling or maintenance of fixed plant where such work includes the risk of a person falling;
 - (c) the construction, maintenance, demolition or dismantling of any bridge, dam, canal, road, railway, runway, sewer or water reticulation system or any similar civil engineering structure; or
 - (d) the moving of earth, clearing of land, the making of an excavation, piling, or any similar type of work;
- 2.3 "competent person" in relation to construction work, means any person having the knowledge, training and experience specific to the work or task being performed: Provided that where appropriate qualifications

and training are registered as per the South African Qualifications Authority Act, 1995 these qualifications and training shall be deemed to be the required qualifications and training;

- 2.4 **“respondent”** means principal respondent as defined by the Construction Regulations, 2003.
- 2.5 **“fall protection plan”** means a documented plan, of all risks relating to working from an elevated position, considering the nature of work undertaken, and setting out the procedures and methods applied to eliminate the risk;
- 2.6 **“health and safety file”** means a file, or other record in permanent form, containing the information required to be kept on site in accordance with the Act and applicable Regulations;
- 2.7 **“Health and Safety Plan ”** means a documented plan which addresses the hazards identified and include safe work procedures to mitigate, reduce or control the hazards identified;
- 2.8 **“Risk Assessment”** means a programme to determine any risk associated with any hazard at a construction site, in order to identify the steps needed to be taken to remove, reduce or control such hazard;
- 2.9 **“the Act”** means the Occupational Health and Safety Act No. 85 of 1995.

3. Procedural Compliance

- 3.1 The Respondent who intends to carry out any construction work shall, before carrying out such work, notify the Provincial Director in writing if the construction work:-
- (a) includes the demolition of a structure exceeding a height of 3 metres; or
 - (b) includes the use of explosives to perform construction work; or
 - (c) includes the dismantling of fixed plant at a height greater than 3m,
- and shall also notify the Provincial Director in writing when the construction work exceeds 30 days or will involve more than 300 person days of construction work and if the construction work:-
- (a) includes excavation work deeper than 1m; or
 - (b) includes working at a height greater than 3 metres above ground or a landing.
- 3.2 The notification to the Provincial Director shall be on a form similar to Annexure A of the Construction Regulations, 2003, also shown in Annexure 1 of this Specification. The Respondent shall ensure that a copy of the completed notification form is kept on site for inspection by an inspector, Technical Officer or employee.
- 3.3 The Respondent shall, in accordance with the Act and applicable Regulations, make all the necessary appointments of competent persons in writing on a form similar to Annexure 2 of this Specification and deliver copies thereof to the Technical Officer. Copies should also be retained on the health and safety file.
- 3.4 Subcontractors shall also make the above written appointments and the Respondent shall deliver copies thereof to the Technical Officer.
- 3.5 In the case of a self-employed Respondent or any subcontractor who have the appropriate competencies and supervises the work himself, the appointment of a construction supervisor in terms of regulation 6.1 of the Construction Regulations, 2003 will not be necessary. The Respondent shall in such a case execute and sign a declaration, as in Annexure 3, by which he personally undertakes the duties and obligations of the "Chief Executive Officer" in terms of section 16(1) of the Act.
- 3.6 The Respondent shall, before commencing any work, obtain from the Technical Officer an access

certificate as in Annexure 4 executed and signed by him, permitting and limiting access to the designated site or place of work by the Respondent and any subcontractors under his control.

- 3.7 Procedural compliance with Act and Regulations, as above, shall also apply to any subcontractors as employers in their own right. The Respondent shall furnish the Technical Officer with full particulars of such subcontractors and shall ensure that they comply with the Act and Regulations and Transnet's safety requirements and procedures.

4. Special Permits

Where special permits are required before work may be carried out such as for hotwork, isolation permits, work permits and occupations, the Respondent shall apply to the Technical Officer or the relevant authority for such permits to be issued. The Respondent shall strictly comply with the conditions and requirements pertaining to the issue of such permits.

5. Health and Safety Programme

- 5.1 The respondent shall, with his RFQ, submit a Health and Safety Programme setting out the practical arrangements and procedures to be implemented by him to ensure compliance by him with the Act and Regulations and particularly in respect of: -

- (i) The provision, as far as is reasonably practical, of a working environment that is safe and without risk to the health of his employees and subcontractors in terms of section 8 of the Act;
- (ii) the execution of the agreement work in such a manner as to ensure in terms of section 9 of the Act that persons other than those in the Respondent's employment, who may be directly affected by the agreement work are not thereby exposed to hazards to their health and safety;
- (iii) ensuring, as far as is reasonably practical, in terms of section 37 of the Act that no employee or subcontractor of the Respondent does or omits to do any act which would be an offence for the Respondent to do or omit to do.

- 5.2 The Respondent's Health and Safety Programme shall be based on a risk assessment in respect of the hazards to health and safety of his employees and other persons under his control that are associated with or directly affected by the Respondent's activities in performing the agreement work and shall establish preventative measures as are reasonable and practical in protecting the safety and health of such employees and persons.

- 5.3 The Respondent shall cause a risk assessment contemplated in clause 5.2 above to be performed by a competent person, appointed in writing, before commencement of any Construction Work and reviewed during construction. The Risk Assessments shall form part of the Health and Safety programme to be applied on the site and shall include at least the following:

- (a) The identification of the risks and hazards that persons may be exposed to;
- (b) the analysis and evaluation of the hazards identified;
- (c) a documented Health and Safety Plan, including safe work procedures to mitigate, reduce or control the risks identified;
- (d) a monitoring and review plan.

- 5.4 The Health and Safety Plan shall include full particulars in respect of: -
- (a) The safety management structure to be instituted on site or place of work and the names of the Respondent's health and safety representatives and members of safety committees where applicable;
 - (b) the safe working methods and procedures to be implemented to ensure the work is performed in compliance with the Act and Regulations;
 - (c) the safety equipment, devices and clothing to be made available by the Respondent to his employees;
 - (d) the site access control measures pertaining to health and safety to be implemented;
 - (e) the arrangements in respect of communication of health and safety related matters and incidents between the Respondent, his employees, subcontractors and the Technical Officer with particular reference to the reporting of incidents in compliance with Section 24 and General Administrative Regulation 8 of the Act and with the pertinent clause of the General Conditions of Agreement forming part of the Agreement and
 - (f) the introduction of control measures for ensuring that the Safety Plan is maintained and monitored for the duration of the Agreement.
- 5.4.1 The Health and Safety programme shall be subject to the Technical Officer's approval and he may, in consultation with the Respondent, order that additional and/or supplementary practical arrangements and procedures be implemented and maintained by the Respondent or that different working methods or safety equipment be used or safety clothes be issued which, in the Technical Officer's opinion, are necessary to ensure full compliance by the Respondent with his obligations as an employer in terms of the Act and Regulations. The Technical Officer or his deputy shall be allowed to attend meetings of the Respondent's safety committee as an observer.
- 5.5 The Respondent shall take reasonable steps to ensure that each subcontractor's Health and Safety Plan is implemented and maintained on the construction site: Provided that the steps taken, shall include periodic audits at intervals mutually agreed to between the them, but at least once every month.
- 5.6 The Respondent shall stop any subcontractor from executing any construction work, which is not in accordance with the Respondent's, and/or subcontractor's Health and Safety Plan for the site or which poses a threat to the health and safety of persons.
- 5.7 The Respondent shall ensure that a copy of the Health and Safety Plan is available on site for inspection by an inspector, Technical Officer, agent, subcontractor, employee, registered employee organisation, health and safety representative or any member of the health and safety committee.
- 5.8 The Respondent shall consult with the health and safety committee or, if no health and safety committee exists, with a representative group of employees, on the development, monitoring and review of the Risk Assessment.
- 5.9 The Respondent shall ensure that all employees under his control are informed, instructed and trained by a competent person regarding any hazard and the related work procedures before any work commences, and thereafter at such times as may be determined in the Risk Assessment.

- 5.10 The Respondent shall ensure that all subcontractors are informed regarding any hazard as stipulated in the Risk Assessment before any work commences, and thereafter at such times as may be determined in the Risk Assessment.
- 5.11 The Respondent shall ensure that all visitors to a construction site undergoes health and safety induction pertaining to the hazards prevalent on the site and shall be provided with the necessary personal protective equipment.

6 Fall Protection Plan

- 6.1 In the event of the risk and hazard identification, as required in terms of clause 5.3 of this Specification, revealing risks relating to working from an elevated position the respondent shall cause the designation of a competent person, responsible for the preparation of a fall protection plan;
- (a) The Respondent shall implement, maintain and monitor the fall protection plan for the duration of Agreement.
- (b) The Respondent shall also take such steps to ensure the continued adherence to the fall protection plan.
- 6.2 The fall protection plan shall include:-
- (a) A Risk Assessment of all work carried out from an elevated position;
- (b) the procedures and methods to address all the identified risks per location;
- (c) the evaluation of the employees physical and psychological fitness necessary to work at elevated positions;
- (d) the training of employees working from elevated positions; and
- (e) the procedure addressing the inspection, testing and maintenance of all fall protection equipment.

7. Hazards and Potential Hazardous Situations

The Respondent and the Technical Officer shall immediately notify one another of any hazardous or potentially hazardous situations which may arise during performance of the Agreement by the Respondent or any subcontractor and, in particular, of such hazards as may be caused by the design, execution and/or location and any other aspect pertaining to the agreement work.

8. Health and Safety File

- 8.1 The Respondent shall ensure that a health and safety file is opened and kept on site and shall include all documentation required as per the Act and applicable regulations, and made available to an inspector, the Technical Officer, or subcontractor upon request.
- 8.2 The Respondent shall ensure that a copy of the both his Health and Safety Plan as well as any subcontractor's Health and Safety Plan is available on request to an employee, inspector, respondent or the Technical Officer.
- 8.3 The Respondent shall hand over a consolidated health and safety file to the Technical Officer upon completion of the Construction Work and shall in addition to documentation mentioned in the Act and applicable Regulations include a record of all drawings, designs, materials used and other similar information concerning the completed structure.

ANNEXURE 1

OCCUPATIONAL HEALTH AND SAFETY ACT, 1993

Regulation 3(1) of the Construction Regulations

NOTIFICATION OF CONSTRUCTION WORK

-
-
- 1 (a) Name and postal address of principal respondent:

 - (b) Name and tel. no of principal respondent's contact person:

 2. Principal respondent's compensation registration number: _____

 3. (a) Name and postal address of client:

 - (b) Name and tel no of client's contact person or agent:

 4. (a) Name and postal address of designer(s) for the project:

 - (b) Name and tel. no of designer(s) contact person:

 5. Name and telephone number of principal respondent's construction supervisor on site appointed in terms of regulation 6(1). _____

 6. Name/s of principal respondent's construction sub-ordinate supervisors on site appointed in terms of regulation 6(2). _____

 7. Exact physical address of the construction site or site office:

 8. Nature of the construction work:

 9. Expected commencement date: _____

10. Expected completion date: _____

11. Estimated maximum number of persons on the construction site: _____

12. Planned number of respondents on the construction site accountable to the principle respondent:

13. Name(s) of respondents already chosen:

1.18 Principal Respondent

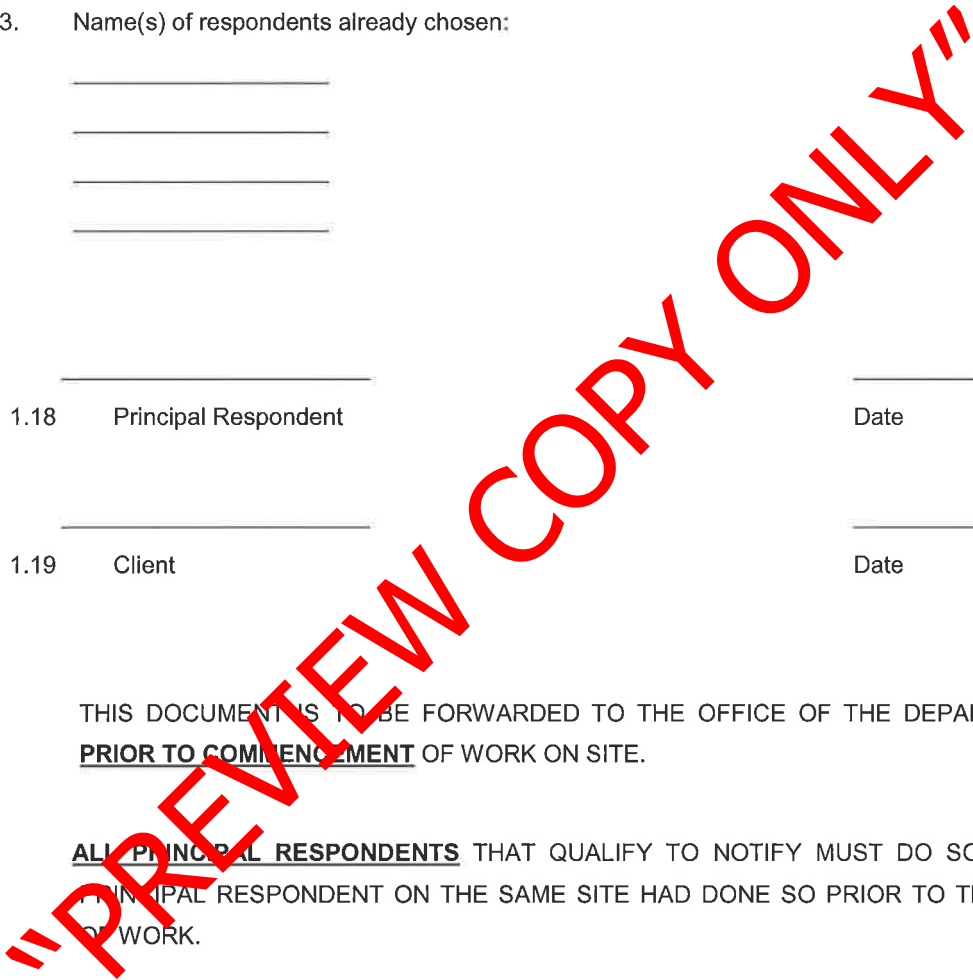
Date

1.19 Client

Date

* THIS DOCUMENT IS TO BE FORWARDED TO THE OFFICE OF THE DEPARTMENT OF LABOUR PRIOR TO COMMENCEMENT OF WORK ON SITE.

* ALL PRINCIPAL RESPONDENTS THAT QUALIFY TO NOTIFY MUST DO SO EVEN IF ANOTHER PRINCIPAL RESPONDENT ON THE SAME SITE HAD DONE SO PRIOR TO THE COMMENCEMENT OF WORK.



ANNEXURE 2

(COMPANY LETTER HEAD)

OCCUPATIONAL HEALTH AND SAFETY ACT, 1993 (ACT 85 OF 1993) :

SECTION/REGULATION: _____

REQUIRED COMPETENCY: _____

In terms of

_____, I, _____

representing the Employer) do hereby appoint

As the Competent Person on the premises at

(physical address) to assist in compliance with the Act and the applicable Regulations.

Your designated area/s is/are as follows :-

Date : _____

Signature :- _____

Designation :- _____

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ACCEPTANCE OF DESIGNATION

I, _____ do hereby accept this designation and acknowledge that I understand the requirements of this appointment.

Date : _____

Signature :- _____

Designation :- _____

ANNEXURE 3

(COMPANY LETTER HEAD)

OCCUPATIONAL HEALTH AND SAFETY ACT, 1993 (ACT 85 OF 1993) :

DECLARATION

In terms of the above Act I, _____, am personally assuming the duties and obligations as Chief Executive Officer, defined in Section 1 of the Act and in terms of Section 16 (1), I will as far as is reasonably practicable, ensure that the duties and obligations of the Employer as contemplated in the above Act are properly discharged.

Signature :- _____

Date : _____

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ANNEXURE 4

(LETTER HEAD OF BUSINESS DIVISION OR UNIT OF TRANSNET LIMITED)

SITE ACCESS CERTIFICATE

Access to : _____ (Area)

Name of Respondent/Builder :- _____

Agreement/Order No.: _____

The agreement works site/area described above are made available to you for the carrying out of associated works

In terms of your agreement/order with
(company) _____

Kindly note that you are at all times responsible for the control and safety of the Works Site, and for persons under your control having access to the site.

As from the date hereof you will be responsible for compliance with the requirements of the Occupational Health and Safety Act, 1993 (Act 85 of 1993) as amended, and all conditions of the Agreement pertaining to the site of the works as defined and demarcated in the agreement documents including the plans of the site or work areas forming part thereof.

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Signed: _____ Date : _____

TECHNICAL OFFICER

ACKNOWLEDGEMENT OF RECEIPT

Name of Respondent/Builder :-	
--------------------------------------	--

Do hereby acknowledge and accept the duties and obligations in respect of the Safety of the site/area of Work in terms of the Occupational Health and Safety Act; Act 85 of 1993.

Name : _____

Designation : _____

Signature : _____

Date : _____

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**THE CHEMICAL CONTROL OF VEGETATION BY MEANS OF HERBICIDE
FOR A PERIOD OF TWO YEARS**

Section 19: CLAUSE BY CLAUSE COMPLIANCE FORM

Clause Nr	Comply	Does Not Comply	Comments
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GENERAL BID CONDITIONS - SERVICES

[March 2012]

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TABLE OF CONTENTS

1 DEFINITIONS.....3

2 GENERAL.....3

3 LODGING OF BID DOCUMENTS3

4 USE OF BID FORMS3

5 RAISING OF A CHARGE FOR PLANS, SPECIFICATIONS AND BID FORMS.....4

6 DEFAULTS BY RESPONDENTS.....4

7 CURRENCY5

8 EXCHANGE AND REMITTANCE.....5

9 ACCEPTANCE OF BID5

10 LAW GOVERNING CONTRACT.....6

11 IDENTIFICATION6

12 FORMAL NOTIFICATION REGARDING NAME OF SUCCESSFUL RESPONDENT6

13 UNAUTHORISED COMMUNICATION ABOUT BIDS6

14 CONTRACT DOCUMENTS6

15 SECURITIES.....7

16 PRICES SUBJECT TO CONFIRMATION7

17 DELETION OF SERVICES EXCLUDED FROM BID7

18 ALTERATIONS MADE BY THE RESPONDENT TO BID PRICES7

19 VALUE-ADDED TAX8

20 TERMS AND CONDITIONS OF BID8

21 IMPORTANT NOTICE TO RESPONDENTS REGARDING PAYMENT8

22 PLANS, DRAWINGS, DIAGRAMS, SPECIFICATIONS AND DOCUMENTS9

23 VISITS TO FOREIGN COUNTRIES9

24 BIDS BY OR ON BEHALF OF FOREIGN RESPONDENTS.....9

1 DEFINITIONS

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

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

2 GENERAL

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

3 LODGING OF BID DOCUMENTS

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

4 USE OF BID FORMS

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

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

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

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

6 DEFAULTS BY RESPONDENTS

- 6.1 If the Respondent, after it has been notified of the acceptance of its Bid fails to:
 - a) enter into a formal contract when called upon to do so in terms of clause 14 [*Contract Documents*], within such period as Transnet may specify; or
 - b) accept an order in terms of the Bid; or
 - c) when called upon to do so, furnish satisfactory security of the fulfilment of the contract in terms of clause 15 [*Securities*],Transnet may, in any such case, without prejudice to any other legal remedy which it may have, proceed to accept any other Bid or, if it is necessary to do so, call for Bids afresh, and may recover from the defaulting Respondent any additional expense incurred by it in calling for new offers or in accepting a higher offer.
- 6.2 If any Respondent, who has submitted a Bid and/or concluded a contract with Transnet [hereinafter referred to as the **Service Provider**], or in the capacity of agent or subcontractor who has been associated with such Bid or contract:
 - 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 incorrect statement in the affidavit or certificate referred to in clause 12 [*Formal Notification Regarding Name of Successful Respondent*] and is unable to prove to the satisfaction of Transnet that
 - (i) it made the statement in good faith honestly believing it to be correct; and

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

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

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

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

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

7 CURRENCY

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

8 EXCHANGE AND REMITTANCE

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

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

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

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

9 ACCEPTANCE OF BID

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

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

10 LAW GOVERNING CONTRACT

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

11 IDENTIFICATION

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

12 FORMAL NOTIFICATION REGARDING NAME OF SUCCESSFUL RESPONDENT

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

13 UNAUTHORISED COMMUNICATION ABOUT BIDS

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

14 CONTRACT DOCUMENTS

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

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

15 SECURITIES

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

16 PRICES SUBJECT TO CONFIRMATION

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

17 DELETION OF SERVICES EXCLUDED FROM BID

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

18 ALTERATIONS MADE BY THE RESPONDENT TO BID PRICES

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

19 VALUE-ADDED TAX

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

20 TERMS AND CONDITIONS OF BID

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

21 IMPORTANT NOTICE TO RESPONDENTS REGARDING PAYMENT

21.1 Method of Payment

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

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

21.2 Conditional Discount

Respondents offering prices which are subject to a conditional discount applicable for payment within a specific period are to note that the conditional period will be calculated as from the date of receipt by Transnet of the Service Provider's month-end statement reflecting the relevant Tax Invoice(s) for payment purposes, provided the conditions of the order or contract have been fulfilled and the Tax

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

22 PLANS, DRAWINGS, DIAGRAMS, SPECIFICATIONS AND DOCUMENTS

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

23 VISITS TO FOREIGN COUNTRIES

23.1 Respondents must furnish details in a covering letter if it is considered necessary that employees of Transnet should carry out inspection and/or review any operational Services at the premises of the preferred Respondent or its subcontractors overseas for the purpose of a product demonstration and/or final acceptance or for any other reason.

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

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

23.3 Transnet will make all arrangements with regard to booking of air journeys, hotel reservations, transport to and from airports, places of inspection or demonstration, etc. and all expenses will be for the account of Transnet.

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

24 BIDS BY OR ON BEHALF OF FOREIGN RESPONDENTS

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

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

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

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

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

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

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

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

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

FORM ST&C - SERVICES [March 2012]

"PREVIEW COPY ONLY"

TABLE OF CONTENTS

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

"PREVIEW COPY ONLY"

1 INTRODUCTION

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

2 DEFINITIONS

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

- 2.1 **AFSA** means the Arbitration Foundation of South Africa;
- 2.2 **Agreement** means the Agreement and its associated schedules and/or annexures and/or appendices, including the Work Order(s), specification for the Services and such special conditions as shall apply to the Agreement, together with the General Tender Conditions and any additional provisions in the associated bid documents tendered by the Service Provider [as agreed in writing between the Parties], which collectively, and exclusively govern the provision of Services by the Service Provider to Transnet;
- 2.3 **Background Intellectual Property** means all Intellectual Property introduced and required by either Party to give effect to their obligations under the Agreement owned in whole or in part by or licensed to either Party or their affiliates prior to the Commencement Date or developed after the Commencement Date otherwise pursuant to the Agreement;
- 2.4 **Business Day** 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:
- information relating to methods of operation, data and plans of the disclosing Party;
 - the contents of the Agreement;
 - 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;
 - any information disclosed by either Party and which is clearly marked as being confidential or secret;
 - 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;
- o) information concerning the charges, Fees and / or costs of the disclosing Party or its authorised Subcontractors, or their methods, practices or service performance levels actually achieved;

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

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

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

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

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

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

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

3 INTERPRETATION

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

4 NATURE AND SCOPE

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

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

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

5 AUTHORITY OF PARTIES

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

6 WARRANTIES

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

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

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

7 TRANSNET'S OBLIGATIONS

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

8 GENERAL OBLIGATIONS OF THE SERVICE PROVIDER

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

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

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

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

9 FEES AND EXPENSES

9.1 In consideration of the provision of the Services, Transnet will pay to the Service Provider the Fees detailed in the relevant schedule or Work Order.

9.2 Transnet will not be invoiced for materials used in the provision of the Services save for those materials [if any] set out in the Work Order and accepted by Transnet or in any relevant Work Order [which will be invoiced to Transnet at cost].

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

10 INVOICING AND PAYMENT

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

11 FEE ADJUSTMENTS

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

12 INTELLECTUAL PROPERTY RIGHTS

12.1 Title to Confidential Information

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

12.2 Title to Intellectual Property

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

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

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

12.3 Title to Improvements

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

12.4 Unauthorised Use of Confidential Information

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

12.5 Unauthorised Use of Intellectual Property

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

13 SERVICE PROVIDER'S PERSONNEL

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

14 LIMITATION OF LIABILITY

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

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

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

15 INSURANCES

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

16 CONFIDENTIALITY

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

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

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

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

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

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

17 TOTAL OR PARTIAL FAILURE TO PERFORM THE SCOPE OF SERVICES

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

18 TERM AND TERMINATION

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

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

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

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

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

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

- 18.5 Transnet may cancel any schedule or Work Order hereto at any time on giving the Service Provider 30 [thirty] days' written notice.
- 18.6 Notwithstanding this clause 18, either Party may cancel the Agreement without cause by giving 30 [thirty] days prior written notice thereof to the other Party.

19 CONSEQUENCE OF TERMINATION

- 19.1 Termination in accordance with clause 18 [*Term and Termination*] shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to either Party and all provisions which are to survive the Agreement or impliedly do so shall remain in force and in effect.
- 19.2 On termination of the Agreement or a Work Order, the Service Provider will immediately deliver up, and procure that its Personnel will immediately deliver up to Transnet, all Deliverables and property belonging to Transnet [or, in the event of termination of a Work Order, such as is relevant to that Work Order] which may be in the possession of, or under the control of the Service Provider, and certify to Transnet in writing that this has been done.
- 19.3 To the extent that any of the Deliverables and property referred to in clause 19.2 above are in electronic form and contained on non-detachable storage devices, the Service Provider will provide Transnet with unencrypted copies of the same on magnetic media and will irretrievably destroy and delete copies so held.
- 19.4 In the event that the Agreement is terminated by the Service Provider under clause 18.2 [*Term and Termination*], or in the event that a Work Order is terminated by Transnet under clause 18.5 [*Term and Termination*], Transnet will pay to the Service Provider all outstanding Fees [apportioned on a *pro rata* basis] relating to the work undertaken by the Service Provider up until the date of such termination. Transnet will also pay the costs of any goods and materials ordered by the Service Provider in relation to the such work for which the Service Provider has paid or is legally obliged to pay, in which case, on delivery of such goods or materials, the Service Provider will promptly deliver such goods and materials to Transnet or as it may direct.
- 19.5 The provisions of clauses 0 [*Definitions*], 6 [*Warranties*], 12 [*Intellectual Property Rights*], 14 [*Limitation of Liability*], 16 [*Confidentiality*], 19 [*Consequence of Termination*], 25 [*Dispute Resolution*] and 29 [*Governing Law*] shall survive termination or expiry of the Agreement.
- 19.6 If either Party [**the Defaulting Party**] commits a material breach of the Agreement and fails to remedy such breach within 30 [thirty] Business Days of written notice thereof, the other Party [hereinafter **the Aggrieved Party**], shall be entitled, in addition to any other rights and remedies that it may have in terms of the Agreement, to terminate the Agreement forthwith without any liability and without prejudice to any claims which the Aggrieved Party may have for damages against the Defaulting Party.
- 19.7 Should:
- a) the Service Provider effect or attempt to effect a compromise or composition with its creditors; or
 - b) either Party be provisionally or finally liquidated or placed under judicial management, whether provisionally or finally; or

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

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

20 ASSIGNMENT

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

21 FORCE MAJEURE

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

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

22 EQUALITY AND DIVERSITY

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

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

23 NON-WAIVER

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

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

24 PARTIAL INVALIDITY

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

25 DISPUTE RESOLUTION

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

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

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

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

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

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

26 ADDRESSES FOR NOTICES

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

a) **Transnet**

(i) For legal notices:

[●]

Fax No. [●]

Attention: Legal Department

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

b) **The Service Provider**

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

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

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

26.3 Any notice shall be deemed to have been given:

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

27 WHOLE AND ONLY AGREEMENT

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

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

28 AMENDMENT AND CHANGE CONTROL

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

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

29 GOVERNING LAW

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

29.1 Change of Law

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

30 COUNTERPARTS

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

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"PREVIEW COPY ONLY"

NON-DISCLOSURE AGREEMENT

entered into by and between

TRANSNET SOC LTD

Registration Number 1990/000900/30

and

Registration Number _____

RFP Number ETAC/0706-9940

"PREVIEW COPY ONLY"

TABLE OF CONTENTS

1 INTERPRETATION3
2 CONFIDENTIAL INFORMATION.....4
3 RECORDS AND RETURN OF INFORMATION5
4 ANNOUNCEMENTS5
5 DURATION5
6 PRINCIPAL.....5
7 ADEQUACY OF DAMAGES.....6
8 PRIVACY AND DATA PROTECTION.....6
9 GENERAL.....6

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Respondent's Signature

Date & Company Stamp

THIS AGREEMENT is made between

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

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

and

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

whose registered office is at _____

WHEREAS

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

IT IS HEREBY AGREED

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 Proposal [**RFP**] 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:
 - a) 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

- b) 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
 - c) 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:
- a) 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
 - b) 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 2.3b) 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.

3 RECORDS AND RETURN OF INFORMATION

- 3.1 The Receiving Party agrees to ensure proper and secure storage of all Information and any copies thereof.
- 3.2 The Receiving Party shall keep a written record, to be supplied to the Disclosing Party upon request, of the Confidential Information provided and any copies made thereof and, so far as is reasonably practicable, of the location of such Confidential Information and any copies thereof.
- 3.3 The Company shall, within 7 (seven) days of receipt of a written demand from Transnet:
- a) return all written Confidential Information (including all copies); and
 - b) 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.
- 3.4 The Company shall on request supply a certificate signed by a director as to its full compliance with the requirements of clause 3.3b) above.

4 ANNOUNCEMENTS

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

5 DURATION

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

6 PRINCIPAL

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

7 ADEQUACY OF DAMAGES

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

8 PRIVACY AND DATA PROTECTION

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

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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