



TRANSNET FREIGHT RAIL, a division of

TRANSNET SOC LTD

Registration Number 1990/000900/30

[hereinafter referred to as **Transnet**]

REQUEST FOR QUOTATION [RFQ] NO: HOAC-HO-14245

FOR THE SUPPLY/PROVISION OF: SOURCING OF PRESIDING OFFICERS/ BOARD OF INQUIRY (BOI) MEMBERS FOR RAILWAY OCCURRENCES INVESTIGATIONS LEVEL 1, NATIONALLY.

PERIOD : 1 YEAR (12 MONTHS) ON AN AS AND WHEN REQUIRED.

**FOR DELIVERY TO : TRANSNET TENDER ADVICE CENTRE
NO 21 WELLINGTON ROAD,
INYANDA HOUSE 1
PARKTOWN
GAUTENG**

ISSUE DATE : 2 JUNE 2014

CLOSING DATE : 17 JUNE 2014

CLOSING TIME : 10:00 (AM)

VALIDITY DATE PERIOD: 90 DAYS (17 SEPTEMBER 2014)

**FOR ANY RELATED TECHNICAL QUERIES, CONTACT: MR. HERBERT MPHAHLELE
ON (011) 583 0420 OR 0832545261**

Section 1

NOTICE TO BIDDERS

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

METHOD:	Hand delivered / post and/or courier]
CLOSING VENUE:	The Secretary Acquisition Council, Ground Floor, Tender Box Inyanda House 1, 21 Wellington Road, Parktown, Johannesburg, 2001

1 Responses to RFQ

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

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

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

2.1 B-BBEE Scorecard and Rating

As prescribed in terms of the Preferential Procurement Policy Framework Act (PPPFA), Act 5 of 2000 and its Regulations, Respondents are to note that the following preference point systems are applicable to all bids:

- the 80/20 system for requirements with a Rand value of up to R1 000 000 (all applicable taxes included); and
- the 90/10 system for requirements with a Rand value above R1 000 000 (all applicable taxes included).
- Bidders are to note that if the 80/20 preference point system is stipulated in this RFP and all Bids received exceed R1 000 000.00, the RFP must be cancelled. Similarly, if the 90/10 preference point system is stipulated in this RFP and all Bids received are equal to or below R1 000 000.00, the RFP must be cancelled.

When Transnet invites prospective suppliers to submit Proposals for its various expenditure programmes, it requires Respondents to have their B-BBEE status verified in compliance with the Codes of Good Practice issued in terms of the Broad Based Black Economic Empowerment Act No. 53 of 2003.

The Department of Trade and Industry recently revised the Codes of Good Practice on 11 October 2013 [Government Gazette No. 36928]. The Revised Codes will replace the Black Economic Empowerment Codes of Good Practice issued on 9 February 2007. The Revised Codes provide for

a one year transitional period starting 11 October 2013. During the transitional period, companies may elect to be measured in terms of the Revised Codes or the 2007 version of the Codes. After the first year of the implementation of the Revised Codes, B-BBEE compliance will be measured in terms of the Revised Codes without any discretion. Companies which are governed by Sector-specific Codes will be measured in terms of those Sector Codes.*

As such, Transnet will accept B-BBEE certificates issued based on the Revised Codes. Transnet will also continue to accept B-BBEE certificates issued in terms of the 2007 version of the Codes provided it was issued before 10 October 2014. Thereafter, Transnet will only accept B-BBEE certificates issued based on the Revised Codes.

Respondents are required to complete Annexure A [the B-BBEE Preference Point Claim Form] and submit it together with proof of their B-BBEE Status as stipulated in the Claim Form in order to obtain preference points for their B-BBEE status.

Note: Failure to submit a valid and original B-BBEE certificate or a certified copy thereof at the Closing Date of this RFQ will result in a score of zero being allocated for B-BBEE.

[Refer clause 19 below for Returnable Documents required]

Transnet encourages its Suppliers/Service Providers to constantly strive to improve their B-BBEE rating. Whereas Respondents will be allocated points in terms of a preference point system based on its B-BBEE scorecard to be assessed as detailed in paragraph 2.1 above, in addition to such scoring, Transnet also requests that Respondents submit a B-BBEE improvement plan. Respondents are therefore requested to indicate the extent to which they will maintain or improve their B-BBEE status over the contract period. Respondents are requested to submit their B-BBEE Improvement Plan as an additional document with their Proposals by completion of Annexure A appended hereto. *[Refer to Annexure A for further instructions]*

2.2 Supplier Development Initiatives

Historically in South Africa there has been a lack of investment in infrastructure, skills and capability development and inequality in the income distribution and wealth of a significant portion of the population. There have been a number of Government initiatives developed to address these challenges. In particular, the New Growth Path [NGP] developed in 2010 aligns and builds on previous policies to ensure the achievement of Government's development objectives for South Africa.

Transnet fully endorses and supports Government's New Growth Path policy through its facilitation of Supplier Development [SD] initiatives. Hence Respondents are required to submit their commitments with regard to Supplier Development Initiatives over the duration of this contract.

The commitments made by the successful Respondents will be incorporated as a term of the contract and monitored for compliance.

3 Communication

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

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

Name: Samantha Mgwatyu **Email:** Samantha.mgwatyu@transnet.net

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

Telephone 011 544 9486 Email: TAC.SECRETARIAT@transnet.net

4 Tax Clearance

The Respondent's original and valid Tax Clearance Certificate must accompany the Quotation. Note that no business shall be awarded to any Respondent whose tax matters have not been declared by SARS to be in order.

5 VAT Registration

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

6 Legal Compliance

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

7 Changes to Quotations

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

8 Pricing

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

9 Prices Subject to Confirmation

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

10 Negotiations

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

11 Binding Offer

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

12 Disclaimers

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

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

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

Transnet reserves the right to award business to the highest scoring bidder/s unless objective criteria justify the award to another bidder.

13 Transnet's supplier integrity pact

Transnet's Integrity Pact requires a commitment from suppliers and Transnet that they will not engage in any corrupt and fraudulent practices, anti-competitive practices; and act in bad faith towards each other. The Integrity Pact also serves to communicate Transnet's Gift Policy as well as the remedies available to Transnet where a Respondent contravenes any provision of the Integrity Pact.

Respondents are required to familiarise themselves with the contents of the Integrity Pact which is available on the Transnet Internet site [www.transnet.net/Tenders/Pages/default.aspx] or on request. Furthermore, Respondents are required to certify that they have acquainted themselves with all the documentation comprising the Transnet Integrity Pact and that they fully comply with all the terms and conditions stipulated in the Transnet Supplier Integrity Pact as follows:

YES		NO	
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Should a Respondent need to declare previous transgressions or a serious breach of law in the preceding 5 years as required by Annexure A to the Integrity Pact, such declaration must accompany the Respondent's bid submission.

14 Evaluation Criteria

Transnet will utilise the following criteria [not necessarily in this order] in choosing a Supplier/Service Provider, if so required:

Criterion/Criteria	Explanation
Stage 1 Administrative responsiveness	Completeness of response and returnable documents
Stage 2 Substantive responsiveness	Prequalification –requirement – (Failure to submit the mandatory requirements (Substantive responsiveness) will result in the disqualification of the bid) 1. Qualifications:
Technical requirements/ functionality	Technical prequalification criteria <ul style="list-style-type: none"> • Motor Vehicle road accident reconstruction expertise. • Mechanical engineering preferably with railway rolling stock or related field experience and background.

	<ul style="list-style-type: none"> • Electrical engineering, preferably with Railway infrastructure or related field experience and background. • Civil Engineering preferably with railway infrastructure, or related field experience • Forensic Investigations and Financial Auditing • Technical competence <p>2. Experience</p> <p>For the presiding officers at least (5) years</p> <p>For serving as a Board of Inquiry members at least 3 years</p>
<p>Stage 3</p> <p>Final weighted evaluation based on 90/10 preference point system as indicated in paragraph 2</p>	<p>All technical requirements met on stage 2 will move to stage 3 to compete on price and BBBEE</p>

15 Validity Period

Transnet desires a validity period of 90 [thirty] days from the closing date of this RFQ. This RFQ is valid until 17 September 2014.

16 Banking Details

BANK: _____
 BRANCH NAME / CODE: _____
 ACCOUNT HOLDER: _____
 ACCOUNT NUMBER: _____

17 Company Registration

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

18 Disclosure of Prices Quoted

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

YES NO

19 Returnable Documents

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

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

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

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

Mandatory Returnable Documents	Submitted [Yes or No]
SECTION 2 : Quotation Form	
ANNEXURE : Technical Submission/Questionnaire	

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

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

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

Essential Returnable Documents	Submitted [Yes or No]
SECTION 1 : Notice to Bidders	
- Valid and original B-BBEE Verification Certificate or certified copy thereof [Large Enterprises and QSEs] Note: failure to provide a valid B-BBEE Verification Certificate at the closing date and time of the RFQ will result in an automatic score of zero for preference	
- Valid and original B-BBEE certificate/sworn affidavit or certified copy thereof from auditor, accounting officer or SANAS accredited Verification Agency [EMEs] Note: failure to provide a valid B-BBEE Verification Certificate at the closing date and time of the RFQ will result in an automatic score of zero being allocated for preference	
- In the case of Joint Ventures, a copy of the Joint Venture Agreement or written confirmation of the intention to enter into a Joint Venture Agreement	
- Original valid Tax Clearance Certificate [Consortia / Joint Ventures must submit a separate Tax Clearance Certificate for each party]	
- SECTION 3 : Standard Terms and Conditions of Contract for the Supply of Services to Transnet	
SECTION 4 : Vendor Application Form	
- Original cancelled cheque or bank verification of banking details	
- Certified copies of IDs of shareholder/directors/members [as applicable]	
- Certified copies of the relevant company registration documents from Companies and Intellectual Property Commission (CIPC)	

Essential Returnable Documents	Submitted [Yes or No]
- Certified copies of the company's shareholding/director's portfolio	
- Entity's letterhead	
- Certified copy of VAT Registration Certificate [RSA entities only]	
- Certified copy of valid Company Registration Certificate [if applicable]	
- A signed letter from Respondent's auditor or accountant confirming most recent annual turnover figures	
- Financial Statements signed by your Accounting Officer or Audited Financial Statements for previous 3 years	
ANNEXURE A – B-BBEE Preference Points Claim Form	

- c) In addition to the requirements of paragraph a) and b) above, Respondents are further requested to submit with their Proposals the following **additional documents** as detailed below.

Please confirm submission of these additional documents by so indicating [Yes or No] in the table below:

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Section 2 QUOTATION FORM

I/We _____

hereby offer to supply the goods/services at the prices quoted in the Price Schedule below, in accordance with the conditions related thereto.

I/We agree to be bound by those terms and conditions in:

- the Standard Terms and Conditions for the Supply of Goods or Services to Transnet [Section 3 hereof]; and
- any other standard or special conditions mentioned and/or embodied in this Request for Quotation.

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

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

Price Schedule

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

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

Notes to Pricing:

- All Prices must be quoted in South African Rand, exclusive of VAT
- To facilitate like-for-like comparison bidders must submit pricing strictly in accordance with this price schedule and not utilise a different format. Deviation from this pricing schedule could result in a bid being disqualified.
- Please note that should you have offered a discounted price(s), Transnet will only consider such price discount(s) in the final evaluation stage if offered on an unconditional basis.

SCOPE OF WORK

SPECIFICATIONS FOR THE PROVISION OF SERVICES FOR THE PRESIDING OFFICER(S) / MEMBER(S) OF THE BOARD OF INQUIRY IN RESPECT OF OCCURRENCES THAT DO NOT RESULTED IN FATALITY AT TFR NATIONALLY

1. Purpose

Transnet Freight Rail (TFR) requires a list of service providers with proven competence and experience to preside and / or to be members of a Board of Inquiry (BOI) to investigate occurrences of major nature that falls in the category of level 1 as per the Transnet Board of Inquiry policy for Level 1 & 2 Occurrences for a period of one (1) year at TFR nationally. TFR shall select a service provider from the list in terms of expertise required for the particular occurrence to be investigated on and as and when basis.

The purpose is to ensure impartiality and independence as these occurrences shall be chaired and/or membered by appropriately qualified and/or experienced Presiding Officer / Members not in the employ of Transnet Group.

2. Background

In order to afford each occurrence the requisite attention, Transnet Board of Inquiry policy for Level 1 & 2 Occurrences requires that BOI occurrences of major nature that falls in the category of level 1 are presided by external person and members of BOI include members not in the employ of Transnet. The types of railway occurrences of major nature that falls in the category of level 1 as per the Transnet Board of Inquiry policy for Level 1 & 2 Occurrences (attached).

3. Scope of service

- 3.1 Preside over a Board of Inquiry (BOI) / be a Member of a BOI to determine the immediate / root / underlying causes and circumstances of occurrences arising out of the course of the business operations of TFR;
- 3.2 Identifying any other factors that contributed to the occurrence or aggravated the outcome thereof.
- 3.3 Producing BOI reports containing details of the investigation that substantially conforms to the requirements of TFR (Corporate Safety Office)..
- 3.4 Making recommendations to eliminate and/or reduce the likelihood and mitigate such cause(s) and circumstances recurring in the future.

4. Duties of an External BOI Presiding Officer

- 4.1 Preside over a Board of Inquiry (BOI) to determine the immediate / root / underlying causes and circumstances of occurrences arising out of the course of the business operations of TFR;
- 4.2 Provide strategic direction and leadership to the other Members of the BOI necessary to give effect to the requirements of the terms of reference.
- 4.3 Delegate tasks to the BOI members commensurate with the experience and specific knowledge of members.
- 4.4 Identify any other factor(s) that contributed to the occurrence or aggravated the outcome thereof.
- 4.5 Enter into an appropriate discussions where required with the Senior Management of the company involved in an occurrence, to expedite the effective functioning of the Board of Inquiry.

- 4.6 Make recommendations to eliminate and/or reduce the likelihood and mitigate such causes and circumstances recurring in the future.
- 4.7 Produce BOI report containing details of the investigation and identify the root cause(s) of the occurrence.

5. Duties of a BOI Member

- 5.1 Be a Member of a BOI to determine the immediate / root / underlying causes and circumstances of occurrences arising out of the course of the business operations of TFR;
- 5.2 Provide the appropriate guidance to the Board of Inquiry in terms of their specific field of expertise for which they have been appointed to the BOI;
- 5.3 Constructively participate in the analysis, determination of factors, findings and conclusions as required;
- 5.4 Pose the required questions and information for the purposes of obtaining evidence
- 5.5 Contribute to the producing of the BOI report containing details of the investigation.

6. BOI process

- 6.1 A Presiding Officer / Member may be requested to travel anywhere in the Republic of South Africa performing duties as per the requirement of this process.
- 6.2 Terms of reference shall be compiled by TFR and will consist of the strict timelines which must be adhered to and the specific investigation scope as dictated by the occurrence concerned.
- 6.3 Strict BOI timelines require availability on specified set days (contained in the BOI policy).
- 6.4 BOI shall consist of various Technical Experts in their own field to complement the Team
- 6.5 Site visit usually precede the interviewing of the direct and indirect witnesses.
- 6.6 All Members of the BOI must sign a confidentiality undertaking.
- 6.7 BOI shall consist of various Technical Experts in their own field to complement the Team.
- 6.8 Personnel used by the Service Provider for this purpose have the required qualifications, experience and registration, where necessary.
- 6.9 A Corporate Safety Office Representative will co-ordinate the logistics of the BOI; scribe the draft report and circulate to Members for comments before finalisation. In other cases such as when the report needs to be classified as privilege, etc, a Chairperson shall scribe / finalise the report.

7. Technical Evaluation Criteria

7.1 Qualification

Potential Service Providers must be in possession of the following qualifications:

- 7.1.1 Mechanical Engineering preferably with Railway Rolling Stock or related field experience and background
- 7.1.2 Electrical Engineering preferably with Railway Infrastructure or related experience and background
- 7.1.3 Civil Engineering preferably with Railway Infrastructure or related experience and background
- 7.1.4 Motor vehicle road accident reconstruction expertise.
- 7.1.5 Forensic Investigations and Auditing.

7.2 Experience

Potential Service Providers must have years of experience (in the field of specialisation):

7.2.1 For Presiding Officer at least five (5) years +

7.2.2 For serving as a Board of Inquiry Member at least three (3) years +

7.3 Price

7.3.1 Quotation would be per hour.

7.3.2 Report writing would be as per the completion of the report (signed off).

7.3.3 Travelling & accommodation would be aligned to Transnet Travel policy (attached).

8. Geographic scope of the operation

A Presiding Officer / Member may be requested to travel (TFR cost) anywhere in the Republic of South Africa.

9. Types of occurrences

Any railway occurrences of major nature that falls in the category of level 1 as per the Transnet Board of Inquiry policy for Level 1 & 2 Occurrences (attached).

10. Contracting

TFR will contract with the successful organisation(s) for the service required guided by availability and its employees possessing required skills (please attach CV's).

11. Sub-contracting

11.1 Sub-contracting will not be allowed.



TFR Occurrence Investigations Corporate Safety Office Parktown		Company details Vendor no.					
<table border="1" style="margin: auto;"> <tr> <td style="width: 50%;">P.O.#</td> <td style="width: 50%;">Terms</td> </tr> <tr> <td> </td> <td>30 days</td> </tr> </table>		P.O.#	Terms		30 days		
P.O.#	Terms						
	30 days						
Description of service	Rate	Quantity (days)	Total				
BOI Presiding Officer into the occurrence							
Motor vehicle road accident reconstruction expertise							
BOI Member			R				
BOI report writing			R				
Travel (Transnet travel rate)			R				
Other charges			R				
		Subtotal	R				
		VAT	R				
		Grand total	R				

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Quotation for a BOI into the occurrence			
TFR Occurrence Investigations Corporate Safety Office Parktown			Company details Vendor no.
P.O.#		Terms	
		30 days	
Description of service	Rate	Quantity (days)	Total
BOI Presiding Officer into the occurrence			
Mechanical Engineering (Infrastructure)			
BOI Member			R
BOI report writing			R
Travel (Transnet travel rate)			R
Other charges			R
		Subtotal	R
		VAT	R
		Grand total	R

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Quotation for a BOI into the occurrence			
TFR Occurrence Investigations Corporate Safety Office Parktown			Company details Vendor no.
P.O.#		Terms	
_____		30 days	
Description of service	Rate	Quantity (days)	Total
BOI Presiding Officer into the occurrence			
Electrical Engineering			
BOI Member			R
BOI report writing			R
Travel (Transnet travel rate)			R
Other charges			R
		Subtotal	R
		VAT	R
		Grand total	R

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Quotation for a BOI into the occurrence

**TFR Occurrence Investigations
Corporate Safety Office
Parktown**

Company details
Vendor no.

P.O.#	Terms
	30 days

Description of service	Rate	Quantity (days)	Total
BOI Presiding Officer into the occurrence			
Civil Engineering (Infrastructure)			
BOI Member			R
BOI report writing			R
Travel (Transnet travel rate)			R
Other charges			R
		Subtotal	R
		VAT	R
		Grand total	R

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Quotation for a BOI into the occurrence

Company details
Vendor no.

**TFR Occurrence Investigations
Corporate Safety Office
Parktown**

		Terms	
	P.O.#	30 days	
Description of service	Rate	Quantity (days)	Total
BOI Presiding Officer into the occurrence			
Forensic Investigation and Financial Auditing)			
BOI Member			R
BOI report writing			R
Travel (Transnet travel rate)			R
Other charges			
		Subtotal	R
		VAT	R
		Grand total	R

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Board of Inquiry Policy

for

Level 1 and 2 Occurrences

Policy Reference Number	BOI/POL-09-2011
Version Number	Version 9.0
Effective Date	1 May 2013
Review Date	1 April 2015
Policy Owner	General Manager: Group Risk Management
Policy Sponsor	Chief Risk Officer
Approved By	Group Executive Committee
Date Approved	22 April 2013

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Summary of Version Control

Version Number	Effective Date	Summary of Changes
1.0	Draft	Draft policy distributed for initial comments.
2.0	Draft	Draft policy distributed for additional comments.
3.0	Draft	Draft policy distributed for final comments.
4.0	Draft	Incorporation of final comments
5.0	Draft	Incorporation of additional final comments
6.0	9 Dec 2011	Approved by Group Executive Committee
7.0	November 2012	Additional Comments from Group Compliance
8.0	February 2013	Additional Comments from Risk Working Group
9.0	April 2013	Policy revised and approved

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Group Risk



Stakeholders

Name	Designation	Approval Signature	Date	E-Mail	Contact Number
Compulsory Stakeholder Involvement					
Group HR	GM in the Office of the GE HR		14/06/13	Beatrice.Nkayi@transnet.net	011 308 1149
Group Compliance	GM: Group Compliance		21.05.13	Indira.Indira.Reddy@transnet.net	011 308 3590
Group Legal	GM: Group Legal		28/05/13	Ndiphiwe.Silinga@transnet.net	011 308 2350

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Recommended by Policy Owner and Policy Sponsor:

I hereby acknowledge that a search has been conducted and that the Policy is not duplicated or in conflict with any other Transnet Policies.

Name	Designation	Approval Signature	Date	E-Mail	Contact Number
Policy Owner Eddie Lindeque	GM: Risk Group		27/06/13	Eddie.lindeque@transnet.net	011 308 2472
Policy Sponsor Disebo Moephuli	GE: Chief Risk Officer		28/06/2013	Disebo.Moephuli@transnet.net	011 308 2600

Final Approval

Group Executive Committee

22 May 2013

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1. BACKGROUND

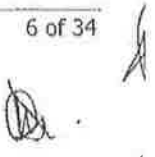
In order to afford each occurrence the requisite attention, Group Risk has in consultation with various stakeholders, classified the levels of occurrences that occur within Transnet's areas of responsibility. These levels are levels 1 to 4 and are detailed in the Transnet Occurrence Classification Guide approved in March 2009. Occurrences falling within the definition (**Annexure C of this policy**) of level 1 and 2 require a formal Board of Inquiry to be chaired by an independent presiding officer. The independent Presiding Officer shall be external to Transnet for level 1 and external to the OD requiring the BOI but internal to Transnet for level 2. The main function of the BOI is to determine the root cause(s) of such occurrence and to make recommendations regarding steps to be taken to avoid recurrence of similar occurrence in future. The Board of Inquiry (BOI) shall therefore adhere to this policy during the proceedings until the final report has been received by Transnet.

2. PURPOSE

The purpose of this Policy is to assist and guide the Presiding Officer and the Members of the formal Board of Inquiry ("BOI") in the effective fulfilment of their duties as detailed in the Terms of Reference. It should be borne in mind that the purpose of the BOI is to determine the root cause(s) and contributory causes of occurrence and to make recommendations regarding steps to be taken in avoiding the recurrence of similar occurrence.

The company shall comply with the procedural steps, illustrated in the table below, in the constituting of a Board of Inquiry, pursuant to the investigation of any occurrence.

NO.	ACTIVITY	DESCRIPTION
2.1	Occurrence reported	<ul style="list-style-type: none"> The Divisional Chief Executive will inform the Group Chief Executive and the Chief Risk Officer



		<p>within 12 hours from the occurrence occurring of the high-level details of the occurrence</p> <ul style="list-style-type: none"> The Group Chief Executive will inform the Board and the Minister of Public Enterprises of the occurrence within 48 hours of the occurrence.
2.2	Deployment of a preliminary investigative team	<ul style="list-style-type: none"> The Divisional Chief Executive or his/her delegated person, as soon as possible, deploys a team to conduct a preliminary investigation into the occurrence. This could be in the form of a site investigation and/or a discussion with the relevant person(s) involved in the occurrence or who have information relating to the circumstances of the occurrence. Unless it is a rail occurrence, the preliminary investigation team must not disturb the occurrence site without the consent of the Inspector from the Department of Labour. The Divisional Chief Executive, or his/her delegated person, will provide a report, based on the preliminary investigations and findings to the Group Chief Executive within 24 hours of the Level 1 occurrence.
2.3	Board of Inquiry appointment	<ul style="list-style-type: none"> The Divisional Chief Executive or his/her delegated person is responsible for appointing an independent Presiding Officer in cases of all level 1 and 2 where the potential of major reputational harm to Transnet exists. All fatalities or other occurrences as defined in Section 24 of the Occupational Health and Safety Act (Act 85 of 1993) must also be reported to the Chief Inspector, Department of Labour within 7 days. If the Independent Presiding Officer is an Attorney/Advocate, such appointment will be made

		<p>in line with the provisions of the Transnet Legal Policy relating to the appointment of attorneys.</p> <ul style="list-style-type: none"> • The Divisional Chief Executive or his/her delegated person is responsible for appointing the Presiding Officer, within 5 working days of the occurrence. • The Board of Inquiry shall be constituted within 10 days from the date of occurrence. • The Divisional Chief Executive or his/her delegated person is also responsible for approving the constitution of the Board of Inquiry and all the related resources necessary for the successful completion of the inquiry. • The Presiding Officer will request any relevant information from the department responsible for co-ordinating the activities of the BOI. • All employees and/or witnesses are to co-operate with the Presiding Officer and/or the Chief Inspector, Department of Labour, Rail Safety Regulator and South African Police Services.
2.4	Board of Inquiry members selection	<ul style="list-style-type: none"> • The Divisional Chief Executive or his/her delegated person shall select appropriate BOI members. • Members shall be released from their normal work related duties so that they can commit to the Terms of Reference of the Board of Inquiry for those periods they are required to attend to the BOI and related activities.
2.5	Board of Inquiry convened	<ul style="list-style-type: none"> • The Presiding Officer shall convene an alignment meeting where the Board of Inquiry members shall acquaint themselves with the Terms of Reference and the Board of Inquiry Protocol. • The first sitting of the Board of Inquiry shall take place within 5 days (excluding Saturdays, Sundays

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		and Public Holidays) of its constitution.
2.6	Board of Inquiry in action	The Board of Inquiry must conduct its duties diligently as required.
2.7	Draft Report Discussion	The Board of Inquiry members shall, within 14 days from the last sitting, discuss the format, contents and recommendations.
2.8	Draft Report Submission	<ul style="list-style-type: none"> The Board of Inquiry shall submit a preliminary draft report within 14 (excluding Saturdays, Sundays and Public Holidays) from the last sitting of the Board of Inquiry to the relevant department of the division for comment. The relevant department shall submit the preliminary draft report to the relevant Divisional Chief Executive or his/her delegated person within 5 working days of its receipt for comment.
2.9	Final Report Submission	<ul style="list-style-type: none"> The Presiding Officer shall within the 30 calendar days after the last sitting of the Board of Inquiry submit a final report, including all amendments agreed to, to the relevant department of the division. The relevant department shall submit a final report to the relevant Divisional Chief Executive or his/her delegated person within 5 working days of its receipt.
2.10	Expense report	The external members of the Board of Inquiry shall, where applicable, compile and submit to the Divisional Chief Executive or his/her delegate a detailed expense report including all the claims made by the individual members who are not Transnet employees.
2.11	Board of Inquiry closure	<ul style="list-style-type: none"> The last sitting of the Board of Inquiry shall take place no later than 20 business days after the first

		<p>sitting.</p> <ul style="list-style-type: none"> The Presiding Officer shall convene a final meeting with the relevant department where <i>inter alia</i> all documents, property and equipment must be returned to the Operating Division.
2.12	Follow up action	The Divisional Chief Executive or his delegate on consideration of the contents of the report shall consider any additional action which may be required, noting the causes of the occurrence, findings and recommendations of the Board of Inquiry and compile an action plan to implement the recommendations and actions emanating from the inquiry.

3. DEFINITIONS AND INTERPRETATIONS

3.1 Definitions

In this Policy, unless clearly inconsistent with or otherwise indicated by the context, the following words and phrases shall have the corresponding meanings assigned to them and cognate expressions shall have similar meanings:-

- 3.1.1. "Act" means Legal Succession to the South African Transport Services Act No. 9 of 1989 as amended ;
- 3.1.2. "active failure" means the final events that lead to an occurrence;
- 3.1.3. "Board of Inquiry" or "BOI" means the Board of Inquiry contemplated in clause 2.3 above established pursuant to an occurrence;
- 3.1.4. "Employee" means any person who
 - 3.1.4.1 is employed by or works for Transnet under a contract of service or learnership or apprenticeship, who works under the direction and supervision of Transnet and who receives or is entitled to receive remuneration directly from Transnet.

- 3.1.4.2 is employed via the labour broker by Transnet to perform specific duties for Transnet, provided such person works under the direction and supervision of Transnet and receives or is entitled to receive any remuneration directly from Transnet.
- 3.1.5. "Contractor" means a person, either legal person or natural person, who undertakes to work for Transnet under a contract, on a full time or part time basis and who is not an employee of Transnet
- 3.1.6. "COIDA" means the Compensation for Occupational Injuries and Diseases Act No. 130 of 1993 as amended;
- 3.1.7. "Divisional Safety Office" means the department in a division responsible for safety within that division and Corporate Safety Office shall bear the same meaning;
- 3.1.8. "Presiding Officer" means the Presiding Officer of the Board of Inquiry as appointed by the Divisional Chief Executive or his/her delegated person;
- 3.1.9. "Independent Presiding Officer" means a Presiding Officer who is not in Transnet's employ;
- 3.1.10. "External Members for Level 1 Occurrence" means persons who are not in Transnet's employ;
- 3.1.11. "External Members for Level 2 Occurrence" means persons who are in Transnet's employ but external to the Operating Division in which the occurrence took place;
- 3.1.12. "company" means Transnet SOC Ltd (including its Operating Divisions and Specialist Units), a public company existing and duly incorporated under the laws of the Republic of South Africa with registration number 1990/000900/30 and "Transnet" shall have a corresponding meaning;
- 3.1.13. "unsafe condition" means an unsafe condition present in the company which may reside at an organisational level and would include but not be limited to inadequate regulations, procedures, insufficient training, high workload, management decisions practices and/or cultural influences;

- 3.1.14. "unsafe act" means the performance of a task or other activity that is conducted in a manner that may threaten the health and/or safety of workers;
- 3.1.15. "MHIR" means the Major Hazard Installation Regulations issued in terms of the provisions contained in the OHS Act;
- 3.1.16. "management controls" include plans, engineering controls, operational methods, procedures, works instructions, actions and decisions adopted by management that enables work to proceed as expected and to ensure organisational goals are met without detrimental occurrence. It is a means of managing the risk associated with organisational programs and operations;
- 3.1.17. "member" means a member of the Board of Inquiry as appointed in accordance with clause 3.1.8 and 3.1.9 above, and who signs a confidentiality undertaking in favour of the company substantially in the form as set out in Annexure "A" hereto;
- 3.1.18. "NRSA" means the National Railway Safety Regulator Act No. 16 of 2002 as amended;
- 3.1.19. "NERSA" means National Energy Regulator South Africa;
- 3.1.20. "OHSA" means the Occupation Health and Safety Act No. 85 of 1993 (as amended from time to time);
- 3.1.21. "occurrence" means an incident or accident as contemplated in the National Railway Safety Act 16 of 2002 and in the context of this policy relates to incidents as contemplated in the Occupational Health and Safety Act 85 of 1993.
- 3.1.22. "Operating Divisions" means the Operating Divisions of Transnet, namely, Transnet National Ports Authority, Transnet Port Terminals; Transnet Engineering, Transnet Pipelines and Transnet Freight Rail and "Operating Unit" shall have the corresponding meaning;
- 3.1.23. "Specialist Units" means all business units of Transnet which have been deemed 'supporting businesses' in terms of the Company Strategy, these include

Transnet Capital Projects, Transnet Corporate Centre, Transnet Fuel Solutions, Transnet Property and Transnet Foundation;

- 3.1.24. "PFMA" means the Public Finance Management Act No 1 of 1999 (as amended);
- 3.1.25. "PAIA" means the Promotion of Access to Information Act No. 2 of 2000 (as amended from time to time);
- 3.1.26. "pipeline" means a pipeline used to transport petroleum and/or gas;
- 3.1.27. "Policy" means this board of inquiry policy;
- 3.1.28. "Ports Act" means the National Ports Act No. 12 of 2005;
- 3.1.29. "relevant person" means the person responsible and/or delegated by the company with the requisite authority for management of the work that led to the occurrence;
- 3.1.30. "Republic" means the Republic of South Africa;
- 3.1.31. "risk and behavioural influences" means psychological precursors of unsafe acts, situational characteristics or conditions which may have influenced decisions or actions taken by relevant persons.
- 3.1.32. "SHEQ Policy" means the Safety, Health, Environmental and Quality (SHEQ) Risk Management System Policy approved and adopted by the company under reference number GRM/SHEQ/POL001;
- 3.1.33. "site" means the area and/or location where an occurrence took place;
- 3.1.34. "terms of reference" means an effective framework developed by the Safety Department for cooperation, consultation and development amongst members with regard to all relevant aspects of the Board of Inquiry in relation to the occurrence;
- 3.1.35. "work" means work as defined in the Occupational Health and Safety Act 85 of 1993;

3.2 Interpretations

- 3.2.1 Any reference to the singular includes the plural and vice versa;

- 3.2.2 Any reference to natural persons includes legal persons and vice versa;
- 3.2.3 Any reference to a gender includes the other genders;
- 3.2.4 Any reference in this Policy to a party shall include a reference to that party's assigns expressly permitted under this policy;
- 3.2.5 Any reference to any legislation is to such legislation as at the date of signature and as amended or re-enacted from time to time;
- 3.2.6 Unless the context clearly indicates a contrary intention, words and expressions contained in this Policy all bear the same meaning;
- 3.2.7 The clause headings in this Policy have been inserted for convenience only and shall not be taken into account in its interpretation; and
- 3.2.8 Records shall be binding and are not merely for information purposes.

4. SCOPE

The scope of this Policy is applicable to the Presiding Officers, the Members of the Board of Inquiry, all Transnet Operating Divisions and Specialist Divisions, employees, and level 1 and 2 Boards of Inquiry. Any interaction with external stakeholders must be done in consultation with Transnet's Legal Departments

5. POLICY STATEMENT

5.1 Constitution of the Board of Inquiry

The Board of Inquiry shall be constituted with the powers as determined by the Divisional Chief Executive from time to time within the terms of reference.

5.2 Composition of the Board of Inquiry for Level 1 occurrences

The Board of Inquiry shall include but not be limited to the following members as appropriate to the particular case:

NOTE: The Board of Inquiry for Level 1 occurrences shall consist of a minimum of 60% external members (Non Transnet employees).

5.2.1 a Presiding Officer duly experienced in the handling of a Board of Inquiry;

NOTE: a Secretary, who is not a member of the Board of Inquiry, shall be provided by the Division in consultation with the Presiding Officer for the recording of events, logistics surrounding the activities of the Board of Inquiry and the submission of the reports;

5.2.2 a person admitted to practice as an advocate or an attorney in the Republic with expert knowledge in matters related to the occurrence (where the Presiding Officer is not an attorney) **(Member)**;

5.2.3 experts in operating processes and procedures **(Member(s))**;

5.2.4 a representative of Group Risk **(Member)**; and

5.3 In order for the Board of Inquiry to convene, it shall consist of a minimum of 4 members of which the following are compulsory members:-

5.3.1 Presiding Officer **(Member)**;

5.3.2 representative of Group Risk **(Member)**; and

5.3.3 two external persons **(Members)**.

5.4 Additional members may be appointed based upon: -

5.4.1 the scope, extent and nature of the occurrence;

5.4.2 credibility of the findings and recommendations of the Board of Inquiry are to be supported by the experience of its members;

5.4.3 the sustainability and respectability of the independence of the Board of Inquiry; and/or

5.4.4 the mutual agreement between the Divisional Chief Executive or his/her delegate and the Board of Inquiry Presiding Officer.

5.5 In the course of the Board of Inquiry proceedings the Presiding Officer has the right, in addition to that rendered by the terms of reference, to request the following: -

- 5.5.1 specialist engineering investigation and/or analysis to clarify and/or support evidence to hand;
- 5.5.2 request special witnesses to confirm and/or support evidence to hand (especially in the technical/operational environment);
- 5.5.3 request applicable information from the relevant person/s involved and any associated entity which has an impact on the Board of Inquiry conducting its duties;
- 5.5.4 incur reasonable costs in order to fulfil the obligations of the terms of reference (with due consideration of the procurement policy of the company); and/or
- 5.5.5 appoint persons responsible for the recording and transcription of all proceedings (with due consideration of the procurement policy of the company).

5.6 Composition of the Board of Inquiry for Level 2 occurrences

5.6.1 The Board of Inquiry shall include but not be limited to the following members as appropriate to the particular case:

NOTE: The Board of Inquiry for Level 2 occurrences shall consist of a minimum of 60% external members (Transnet employees, but external to the Operating Division in which the occurrence took place).

5.6.2 an external Presiding Officer duly experienced in the handling of a Board of Inquiry;

NOTE: A Secretary, who is not a member of the Board of Inquiry, shall be nominated by the Division in consultation with the Presiding Officer for the recording of events, logistics surrounding the activities of the Board of Inquiry and the submissions of the reports.

5.6.3 experts in operating processes and procedures who are not in the employment of the Division under investigation **(Member(s))**; and

5.7 In order for the Board of Inquiry to convene, it shall consist of a minimum of 4 members of which the following are compulsory members:-

5.7.1 Presiding Officer **(Member)**;

5.7.2 representative of Divisional Risk Department **(Member)**;

5.7.3 external person **(Member)** and

5.7.4 person knowledgeable in operating processes and procedures who are not in the employment of the Operating Division under investigation **(Member)**;

5.8 Additional members may be appointed based upon: -

5.8.1 the scope, extent and nature of the occurrence;

5.8.2 credibility of the findings and recommendations of the Board of Inquiry are to be supported by the experience of its members;

5.8.3 the sustainability and respectability of the independence of the Board of Inquiry; and/or

5.8.4 the mutual agreement between the Divisional Chief Executive or his/her delegate and the Board of Inquiry Presiding Officer.

5.9 In the course of the Board of Inquiry proceedings the Presiding Officer has the right, in addition to that rendered by the terms of reference, to request the following: -

5.9.1 specialist engineering investigation and/or analysis to clarify and/or support evidence to hand;

5.9.2 request special witnesses to confirm and/or support evidence to hand (especially in the technical/operational environment);

- 5.9.3 request applicable information from the relevant person/s involved and any associated entity which has an impact on the Board of Inquiry conducting its duties;
- 5.9.4 incur reasonable costs in order to fulfil the obligations of the terms of reference (with due consideration of the procurement policy of the company); and/or
- 5.9.5 appoint persons responsible for the recording and transcription of all proceedings (with due consideration of the procurement policy of the company).

5.10 Participation

Participation in a Board of Inquiry is restricted to the following:-

- 5.10.1 the Presiding Officer and members of the Board of Inquiry;
- 5.10.2 the persons appointed to record and transcribe the proceedings;

5.11 Participation is strictly prohibited to *inter alia*:-

- 5.11.1 management and/or other employees (unless they are members of the Board of Inquiry) of the company whereby such participation could undermine the integrity or independence of the Board of Inquiry; and
- 5.11.2 the general public.

5.12 The roles of the members of the Board of Inquiry

5.12.1 The Presiding Officer of the Board of Inquiry shall be responsible to:

- 5.12.1.1 provide strategic direction and leadership necessary to give effect to the requirements of the terms of reference;
- 5.12.1.2 appoint a secretary to record the proceedings of the inquiry, if such has not been done by the company;
- 5.12.1.3 delegate tasks, if he/she deems it necessary, to the Board of Inquiry members commensurate with the experience and specific knowledge of members;

5.12.1.4 submit a specified account to the company indicating the costs incurred in conducting the Board of Inquiry; and

5.12.1.5 enter into appropriate discussions where required with the Senior Management of the Division involved in an occurrence, to expedite the effective functioning of the Board of Inquiry.

5.12.2 The secretary of the Board of Inquiry shall be responsible to:-

5.12.2.1 Co-ordinate the logistical arrangements associated with a Board of Inquiry (arranging site visits, arranging venues for holding the inquiry, calling of witnesses, obtaining material evidence, making travel arrangements, organising refreshments, etc);

5.12.2.2 Maintain the evidence and witness register,

5.12.2.3 Collate and distribute information to Board of Inquiry members as required;

5.12.2.4 Project manage the Board of Inquiry activities to achieve the objectives and schedule as required by the mandate contained in the terms of reference;

5.12.2.5 Compile the draft and final reports for submission to the Board;

5.12.2.6 Control all equipment, facilities and tools as may be issued by the company to the Board of Inquiry in the execution of the Board of Inquiry activities.

5.12.3 The relevant Divisional department shall be responsible to:-

5.12.3.1 Provide guidance and leadership to the Board of Inquiry members and specifically the Chairperson to effectively comply with this protocol and conforming to the terms of reference;

5.12.3.2 Render such specialist expertise as may be required in the investigation, analysis and compilation of conclusions/ findings and recommendations;

5.12.3.3 Render and/or acquire the specialist technical expertise as may be required in the execution of the activities of the Board of Inquiry;

5.12.3.4 Provide feedback to the company of any short comings and/or recommend changes to the protocol to improve the effectiveness of the execution of an inquiry.

5.12.4 All other members shall be responsible to:-

5.12.4.1 provide the appropriate guidance to the Board of Inquiry in terms of their specific field of expertise for which they have been appointed to the Board of Inquiry;

5.12.4.2 constructively participate in the analysis, determination of causal factors, findings and conclusions as required; and

5.12.4.3 compose the required questions and information requirements to obtain evidence.

5.13 Terms of reference

5.13.1 The terms of reference shall be in accordance with the format set out in **Annexure B** and may be reviewed from time to time by the Safety Office based upon:-

5.13.1.1 recommendations as put forward by the Incumbent Board of Inquiry;

5.13.1.2 as may be determined by changing circumstances; and/or

5.13.1.3 continuous improvement of effectiveness and efficiency of the Board of Inquiry.

5.13.2 The terms of reference shall be handed over to the Presiding Officer of the Board of Inquiry as an addendum to the letter of appointment of the Presiding Officer of the Board of Inquiry.

5.13.3 The Presiding Officer shall ensure that the members of the Board of Inquiry:-

5.13.3.1 receive a copy of the terms of reference;

5.13.3.2 understand the contents thereof; and

5.13.3.3 comply with the intent and spirit thereof.

5.12.3.4 Provide feedback to the company of any short comings and/or recommend changes to the protocol to improve the effectiveness of the execution of an Inquiry.

5.12.4 All other members shall be responsible to:-

5.12.4.1 provide the appropriate guidance to the Board of Inquiry in terms of their specific field of expertise for which they have been appointed to the Board of Inquiry;

5.12.4.2 constructively participate in the analysis, determination of causal factors, findings and conclusions as required; and

5.12.4.3 compose the required questions and information requirements to obtain evidence.

5.13 Terms of reference

5.13.1 The terms of reference shall be in accordance with the format set out in **Annexure B** and may be reviewed from time to time by the Safety Office based upon:-

5.13.1.1 recommendations as put forward by the incumbent Board of Inquiry;

5.13.1.2 as may be determined by changing circumstances; and/or

5.13.1.3 continuous improvement of effectiveness and efficiency of the Board of Inquiry.

5.13.2 The terms of reference shall be handed over to the Presiding Officer of the Board of Inquiry as an addendum to the letter of appointment of the Presiding Officer of the Board of Inquiry.

5.13.3 The Presiding Officer shall ensure that the members of the Board of Inquiry:-

5.13.3.1 receive a copy of the terms of reference;

5.13.3.2 understand the contents thereof; and

5.13.3.3 comply with the intent and spirit thereof.

5.14 Code of ethics

5.14.1 Members of the Board of Inquiry shall conduct company inquiries, in:-

5.14.1.1 a professional, equitable, expeditious, objective and open manner;

5.14.1.2 accordance with the Terms of Reference for each Board of Inquiry;

5.14.1.3 a dignified manner displaying the highest personal integrity.

5.14.2 Members of the Board of Inquiry, in the execution of their duties, in particular shall:-

5.14.2.1 ensure that all facts obtained in an inquiry/investigation are given the significance they deserve relative to other facts;

5.14.2.2 ensure that all items presented as fact have been checked for validity, including judgements based upon personal professional experience;

5.14.2.3 use the best expertise, methods and equipment in determining the validity of information;

5.14.2.4 keep an open mind to the introduction of new facts or relevant opinions and be willing to revise findings accordingly;

5.14.2.5 ensure that inquiries/investigations are conducted in a neutral and objective manner without prejudgements that might be perceived as being partial to any party;

5.14.2.6 employ the highest deals of courtesy and fairness in dealings, with involved individuals, interested parties, industry and the public at large;

5.14.2.7 represent the company in a professional manner;

5.14.2.8 ensure that the membership of the Board of Inquiry is not used to effect personal gain or favour of any nature what so ever; and

5.14.2.9 promote the reduction of safety deficiencies through comprehensive occurrence inquiries/investigations as a fundamental element in accident prevention.

5.15 Evidence

All evidence must be obtained, retained and utilized in furthering the purpose of the Board of Inquiry and/or investigation in a confidential manner. With due consideration of the above, cognisance must be taken of the potential of the Board of Inquiry and/or investigation report being involved in subsequent legal proceedings and thus all evidence shall be treated with the appropriate professionalism and confidentiality and legal privilege where a presiding officer is a legal practitioner.

5.16 Witnesses

5.16.1 In the process of accumulating the evidence the Board of Inquiry shall determine the persons who should be considered to testify in a hearing and/or submit an affidavit as appropriate to the circumstances of the individual involved and the time constraints applicable to the Board of Inquiry, cognisant of the nature of the occurrence.

5.16.2 A witness directly involved in an occurrence should be informed of his/her right not to incriminate himself/herself. He / She must also be advised that the purpose of the Inquiry is to establish the root cause of the occurrence and that the BOI report will not be used as evidence in any disciplinary steps/enquiries. Where necessary, such employee can be assisted by a labour representative or any other employee of their choice within the company.

5.16.3 The language proficiency of a witness must be determined and interpreters should be used in appropriate instances.

5.16.4 In all instances, victimization shall be forbidden in terms of the provisions of Section 26 of the Act.

5.17 Witness interviews

5.17.1 The objective of the interview procedure is to obtain information and further understanding of the occurrence which cannot be revealed by examination of the site or of documents themselves.

5.17.2 To gather information freely, people being interviewed need to be dealt with in a non-threatening manner and environment.

5.17.3 Persons to be interviewed shall be advised of the procedures being followed with regard to the interviewing of witnesses, the authority by which the investigation is being undertaken and the following support systems available to the witness whenever necessary.

5.17.3.1 Counselling;

5.17.3.2 Transportation to and from the BOI;

5.17.3.3 Accommodation;

5.17.3.4 Interpreter; and

5.17.3.5 Representation.

5.18 Root Cause Analysis

5.18.1 A risk based investigation method (RCAT or similar) shall be implemented by the members of the Board of Inquiry when investigating the occurrence and the analysis of inter alia the evidence and the scrutiny of witness statements/evidence in relation to the occurrence.

5.18.2 A risk based investigation aims to identify both local factors and failures within the broader organisation and productive system that contributed to the occurrence.

5.18.3 Occurrences rarely occur due to single failure or breach in risk controls. Rather they are the result of multiple events encompassing risk control failures, at risk behaviour, risk and behavioural influences and management controls. An occurrence in the absence of a single failure is a combination of act and condition together with an active failure committed by an individual or team in the company.

5.18.4 A risk based investigation approach, requires that we give cognisance to both the management controls and risk and behavioural influences leading up to the occurrence.

5.18.5 Both management control and risk and behavioural influence are influenced through five levels of action which are required to be scrutinized and considered. Each level should be considered by the Board of Inquiry as follows:

Decision Makers

5.18.5.1 Those who are responsible for the strategic management of available resources to achieve and balance the goals of safety and efficiency; e.g.; manufactures, company management, regulatory authorities. (Management control)

Line Management

5.18.5.2 Those who implement decisions made by upper management by adopting and implementing the everyday activities and procedures for maintenance and operations, including such company practices as training, and supervision. (Risk influences)

Preconditions

5.18.5.3 The conditions created by upper-management decisions and line-management actions that allow the work force to safely and effectively carry out their responsibilities, such as serviceable equipment, knowledge of the system, adequate rest motivation, freedom from stress, and so on. (Behavioural influences)

Productive Activities

5.18.5.4 The actions and decisions taken during operation of the system that directly affect the safety of work and the health of persons involved.

Defences

5.18.5.5 The controls e.g. physical barriers, rules, regulations, safety practices, etc. in place to prevent injury, ill health, damage, or costly interruptions of service.

5.19 Confidentiality

5.19.1 All members of the Board of Inquiry must sign a confidentiality undertaking substantially in the form set out in Annexure "A" hereto.

5.19.2 Pursuant to the provisions contained in s44 of PAIA, the Board of Inquiry and the Information Officer of the company must refute a request for access to any report produced as a result of the Board of Inquiry, as the report contains an opinion, advice, report or recommendation obtained or prepared for the purpose of assisting the company in formulating an optimised policy in preventing a further occurrence and would have the effect of frustrating a deliberative process as contemplated in the provisions contained in PAIA.

6. ROLES AND RESPONSIBILITIES

6.1 Policy owner

The policy owner is the General Manager: Group Risk Management and responsible for drafting and maintaining the policy.

6.2 Policy sponsor

The Policy Sponsor is the Chief Risk Officer, who is responsible for approving this policy prior to the policy being presented to Group Executive Committee for approval and release. The Sponsor is responsible for:

- Providing support to this policy;
- Consulting with GCE for approval of exceptions/deviations;
- Responsible for the funding of the development (and implementation) of the policy;
- Reviewing the policy for consistency with related Transnet policies, systems, Codes of practice or conduct; and
- Ensuring that the correct approval and documentation processes are followed.

6.3 Approval committee

This will be presented to the Group Risk Management Committee for review and to the Group Executive Committee for approving the issue of the recommended policy.

7. RELATED INFORMATION AND REFERENCE

- 7.1 Transnet's shareholder is the State of the Republic of South Africa.
- 7.2 The company in terms of the provisions contained in the Act is required to ensure that at the request of the Department of Transport or any local government body designated as a transport authority, rail commuter services are provided within, to and from the Republic in the public interest.
- 7.3 The company is also required to generate income from the use of assets transferred to it by the Minister of Transport.
- 7.4 In terms of the provisions contained in the Ports Act, the company through its operating division, the Transnet National Ports Authority owns, manages, controls and administers commercial sea ports of the Republic with the objective of promoting economic growth and development in the country.
- 7.5 In terms of the provisions contained in the Ports Act, the company must regulate and control the enhancement of safety and security with the port limits.
- 7.6 The company through its operating division Transnet Pipelines is the custodian of pipeline assets, and currently serves as its object the petroleum industry and gas industry by transporting petroleum and gas products over varying distances through pipelines in compliance with the requirements placed upon it by the National Energy Regulator of South Africa.
- 7.7 Without limitation to the provisions contained in Section 24, and 25 of the OHS Act, Regulation 5 (2) of the MHIR, the company, on the occurrence of any major occurrence as contemplated therein, is entitled but not obliged to constitute a Board of Inquiry.

- 7.8 Pursuant to the provisions contained in the Act, the company shall have the power to generally, to do any other thing or perform any other act, whether within or outside the Republic, that may assist the company in achieving its objects.
- 7.9 Notwithstanding and without limitation to the provisions contained in the SHEQ Policy, the company intends to constitute a Board of Inquiry for the purposes of convening and executing its mandate on an ad hoc basis, in order to investigate any occurrence, optimise its internal policies and/or to take a decision as result thereof in furtherance of its objects as espoused in terms of the provisions contained in inter alia OHS Act, MHIR, NRSA, the Act and the Ports Act on the happening of an occurrence.

This policy should be read in conjunction with the following supporting guidelines/ Policies/ Documents:

Internal Documents:

- Safety, Health and Environment occurrence reporting standard (reference GRM/SHEQ/STD 010)
- BOI Directive – 21 October 2010. Issued by the Chief Risk Officer
- Enterprise Risk Management Strategy and Framework Description – July 2010
- SHEQ Risk Management Policy (reference: GRM/SHEQ/POL 001) – November 2011
- The Transnet Legal Policy

8. EXCLUSIONS

The following exclusions apply to this Policy.

- Level 3 and 4 occurrence, as defined in the Safety, Health and Environment occurrence reporting standard.

9. REQUEST TO DEVIATE FROM POLICY

In cases where material and compelling circumstances merit deviation(s) from particular provision(s) of a policy, written submissions shall be sent to Group Chief Executive or his delegated person, who shall have full authority to grant such request, in whole or in part, or to refuse same.

10. WARNING

No opinions, press statements or comments or any other form of communication may be provided by the BOI to the media or any third party. All enquiries must be referred to the relevant Transnet media spokesperson.

Breaches of this policy will be seen in a very serious light. Employees who do not conform to the Policy or Principles & Standards may be subject to disciplinary action in terms of the applicable Transnet disciplinary processes and procedures.

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ANNEXURE A
CONFIDENTIALITY UNDERTAKING

I acknowledge that I may, in the course of the activities undertaken as a member of the Board of Inquiry instituted under reference number by Transnet SOC Ltd, obtain information (whether or not in documentary form) relating to the Board of Inquiry and its internal affairs, and

Bearing this in mind, I undertake:

- a) to comply with the provisions contained in clause 5.19.2 of the Board of Inquiry Policy;
- b) not to disclose this information to any person without the prior written consent of Transnet SOC Ltd, unless this is strictly necessary to perform the work of the Board of inquiry;
- c) to take all reasonable steps in order to ensure that no other person gains access to information in my possession, and to inform the Board of Transnet SOC Ltd immediately if I learn that a person not duly authorised has gained access to it;
- d) to immediately return documents I obtain in carrying out this work (including any copies which may have been made), on the request of Transnet SOC Ltd.

I accept that these obligations will continue to apply even when the work of the Board of Inquiry is completed.

In addition, I acknowledge that, where disclosure of the information I obtain is controlled by statutory provision, I may be prosecuted for wrongful disclosure.

Signed _____

[Print name] _____

Company/Firm _____

Dated _____

ANNEXURE B

TERMS OF REFERENCE TO THE BOARD OF INQUIRY ("The Board") INTO THE CIRCUMSTANCES SURROUNDING THE FATALITY OF, ON THE OF 201..., AT APPROXIMATELY ...H..., ON THEIN.....

1. Principal objectives of Board of Inquiry:

Subject to the Transnet Policy for Boards of Inquiry into Level 1 and 2 Occurrence, to investigate the occurrence to establish:

- 1.1. Transnet legal position in contemplation of possible litigation;
- 1.2. The facts;
- 1.3. The immediate causes;
- 1.4. The root/underlying causes;
- 1.5. Robust recommendations, and
- 1.6. Succinct report covering all the elements of the Terms of Reference.

Where the Board of Inquiry identifies shortfalls in the effectiveness of the management system, corrective measures will be recommended. The report will be compiled and submitted by the chairman in accordance with the timelines provided for the submission of the report.

2. Methodology:

The causation model will be used to do this investigation.

3. Scope:

- 3.1 The Board is required to especially focus on failure in management systems and special attention given to and make findings and report on:
 - The immediate and root/underlying causes leading up to and surrounding the occurrence.
 - The activation, execution and management of the emergency processes and relevant directives.
 - The effectiveness and execution of safety procedures at the site.
 - The identification of the measurement of control – Risk assessment and management systems.
 - The procedures pertaining to giving and obeying lawful instruction(s).

- 3.2 The Board is further mandated to make robust recommendations in order to prevent the risk of, and/or mitigate the consequences of recurrence of the accident.
- 3.3 The Board of Inquiry is requested to formulate their recommendations in such a way that:
- (a) the recommendations are clear, specific and unambiguous as to what is expected from whom;
 - (b) the recommendations are measurable, practicable and attainable; and
 - (c) the recommendations are results orientated and coupled to specific timeframes.
- 3.4 The Preliminary and Final Report must be delivered, in accordance with the timelines stated under clause 2.8 and 2.9 above to the officials stated. The Preliminary Report shall include a summary of the preliminary findings and recommendations and time lines for implementation

4. Witnesses:

- 4.1 A witness directly involved in an occurrence should be informed of

his/her right not to incriminate himself/herself. He / She must also be advised that the purpose of the Inquiry is to establish the root cause of the occurrence and that the BOI report will not be used as evidence in any disciplinary steps/enquiries. Where necessary, such employee can be assisted by a labour representative or any other employee of their choice within the company.

ANNEXURE C

DEFINITION OF LEVEL 1 AND 2 OCCURRENCES

Level 1

A undesirable occurrence that meets one or more of the following criteria:

1. Technical:

- 1.2 Plant /Asset damage exceeds R10 million in the case of Transnet Freight Rail and R2 million in respect of all other Operating Divisions;
- 1.3 Occurrence/Occurrence that have resulted in significant business interruption, as per Transnet risk rating;
- 1.4 An occurrence impacting significantly on more than one Division; and
- 1.5 Impact on customers, stakeholders or outside parties where costs to Transnet might exceed R10 million in the case of Transnet Freight Rail and R2 million in respect of all other Operating Divisions.

2. Operational:

- 2.1 The death of an employee and/or contractor on Transnet premises as a result of Transnet's operations;
- 2.2 Where significant quantities of a dangerous substance are spilled;
- 2.4 Exposure to any hazardous chemical substance: above the occupational exposure limit Control Limit (OEL – CL) listed in table 1 of the Regulations for Hazardous Chemical Substances with or without the required use of respiratory protection unless BA sets were used as part of rescue situations. This is in terms of Regulation 10 (1)b. Including exposure to uncontrolled regulated asbestos dust and/or PCB oil fumes without the required use of respiratory protection;
- 2.5 Transnet becoming liable to prosecution or other legal action; and
- 2.6 Major political or media focus on the image of Transnet.

3. Environmental:

- 3.1 Environmental occurrences as defined by NEMA section 30(1)(a) and the National Water Act (36 of 1998) Section 20 (1), that resulted in:

- 3.1.1 A significant impact on the physical or biological environment (air, ground, water and habitat) with extensive or long term impairment of ecosystem function or surface and ground water resources. An inconvenience/disturbance/disruption/annoyance (including odour, dust, noise, traffic problem, loss of water supply) of a long duration or with a long term on interested and affected parties. A release of material (gas, liquid, solid) or energy that will cause chronic illness, permanent lost time injury, fatality or extensive property damage is experienced by interested and affected parties;
- 3.1.2 Irreparable damage to highly valued structures and sacred locations.
- 3.1.3 Public or national / international media outcry; and
- 3.1.4 Instances where water samples taken by or for the regulator to check legal compliance, were found to be outside the permitted limits and have resulted in prosecution.

Level 2

An undesirable occurrence that meets one or more of the following criteria:

4. Technical:

- 4.1 Plant/asset damage more than R5 million in the case of Transnet Freight Rail and R1 million in respect of all other Operating Divisions;
- 4.2 Capacity loss considered significant by the Divisional Chief Executive Officer;
- 4.3 Events that have resulted in serious business interruption and other impact to customers; and
- 4.4 An environmental occurrence as defined by NEMA section 30(1)(a) and the National Water Act (36 of 1998) Section 20 (1).

5. Operational:

- 5.1 Work related physical harm to a person or persons that results in admission in an Intensive Care Unit;

6. Environmental:

6.1 Environmental occurrences that resulted in:

- 6.1.1 A moderate impact on the physical or biological environment (air, ground, water or habitat) with limited impairment of ecosystem function and/or surface and ground water resources;
- 6.1.2 An inconvenience disturbance / disruption/annoyance (including odour, dust, noise, traffic problems, loss of water supply) of moderate or with medium effect on interested and affected parties;
- 6.1.3 A release of material (gas, liquid, solid) or energy that causes severe but reversible illness, non-lost time injury or moderate property damage experienced by interested and affected parties;
- 6.1.4 Damage to rare structures of cultural significance or significant infringement of cultural values / sacred locations;
- 6.1.5 Attention from local media or widespread complaints; and
- 6.1.6 Instances where water samples taken by or for the regulator to check legal compliance, have been outside the permitted limits and an official caution/ prohibition or improvement notice was issued.

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Section 3

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

A Supplier/Service Provider shall be obliged to adhere to the Standard Terms and Conditions for the Supply of Goods and Services to Transnet as expressed hereunder. Should the Respondent find any condition(s) unacceptable, it should indicate which condition(s) is/are unacceptable and offer an alternative(s). A Quotation submitted by a Respondent will be subjected to review and acceptance or rejection of its proposed contractual terms and conditions by Transnet's Legal Counsel, prior to consideration for an award of business.

1 SOLE AGREEMENT

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

2 CONFORMITY WITH ORDER

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

3 DELIVERY AND TITLE

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

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

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

4 PRICE AND PAYMENT

4.1 Prices specified in an Order cannot be increased. Payment for the Goods/Services shall be made by Transnet against an original undisputed invoice(s) [a Tax Invoice], supporting documentation and month-end statement from the Supplier/Service Provider. Tax Invoices plus supporting documentation shall be posted to the address shown in the Order.

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

5 PROPRIETARY RIGHTS LIABILITY

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

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

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

6 PROPRIETARY INFORMATION

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

7 PUBLICITY

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

service for the Goods at a level to be agreed with Transnet.

8 TERMINATION OF ORDER

- 8.1 Transnet may cancel an Order in whole or in part at any time upon at least 7 [seven] days' written notice to the Supplier/Service Provider, or when there is a change in control of the Supplier/Service Provider or the Supplier/Service Provider commits any serious breach or any repeated or continued material breach of its obligations under these Terms and/or Order or shall have been guilty of conduct tending to bring itself into disrepute, on written notice to the Supplier/Service Provider when such work on the Order shall stop.
- 8.2 Transnet shall pay the Supplier/Service Provider a fair and reasonable price for justified work in progress, where such price reflects only those costs not otherwise recoverable by the Supplier/Service Provider, at the time of termination, and the Supplier/Service Provider shall give Transnet full assistance to check the extent of such work in progress. Payment of such price shall be in full and final satisfaction of any claims arising out of such termination and upon such payment the Supplier/Service Provider shall deliver to Transnet all work, including any materials, completed or in progress. The sum payable to the Supplier/Service Provider under this clause will not in any event exceed the total amount that would have been payable to the Supplier/Service Provider had the Order not been terminated.
- 8.3 In the event of termination the Supplier/Service Provider must submit all claims within 2 [two] months of termination after which time claims will only be met in what Transnet considers exceptional circumstances.
- 8.4 If the Goods or Services are not provided in accordance with an Order, the Order shall be deemed terminated and the Supplier/Service Provider shall compensate Transnet for any costs incurred in obtaining substitute Goods or any damage caused due to the failure or delay in the delivery.

9 ACCESS

The Supplier/Service Provider shall be liable for the acts, omissions and defaults of its personnel or agents who, for the purposes of the Order, shall be treated as if they are the Supplier's/Service Provider's employees. The Supplier/Service Provider shall ensure that any such personnel or agents, whilst on Transnet's premises, shall comply with Transnet's health and safety, security and system security rules and procedures as and where required.

10 WARRANTY

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

11 INSOLVENCY

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

12 ASSIGNMENT

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

13 NOTICES

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

14 LAW

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

15 GENERAL

Completion or termination of an Order shall be without prejudice to any Term herein which by its nature would be deemed to continue after completion or termination, including but not limited to **clauses Error! Reference source not found., Error! Reference source not found., Error! Reference source not found., Error! Reference source not found. and Error! Reference source not found.** Headings are included herein for convenience only. If any Term herein be held illegal or unenforceable, the validity or enforceability of the remaining Terms shall not be affected. No failure or delay by Transnet to enforce any rights under these Terms will operate as a waiver thereof by Transnet. All rights and remedies available to either party under these Terms shall be in addition to, not to the exclusion of, rights otherwise available at law.

16 COUNTERPARTS

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



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

SIGNED at _____ on this _____ day of _____ 20__

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

NAME: _____

DESIGNATION: _____

REGISTERED NAME OF COMPANY: _____

PHYSICAL ADDRESS:

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

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

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

Section 4

VENDOR APPLICATION FORM

Respondents are to furnish the following documentation and complete the Vendor Application Form below:

1. **Original** cancelled cheque **OR** letter from the Respondent's bank verifying banking details **[with bank stamp]**
2. **Certified** copy of Identity Document(s) of Shareholders/Directors/Members [where applicable]
3. **Certified copies** of the relevant company registration documents from Companies and Intellectual Property Commission (CIPC)
4. **Certified copies** of the company's shareholding/director's portfolio
5. A letter on the company's letterhead confirm physical and postal addresses
6. **Original** valid SARS Tax Clearance Certificate
7. **Certified copy** of VAT Registration Certificate
8. **A valid and original** B-BBEE Verification Certificate / sworn affidavit **or certified copy** thereof meeting the requirements for B-BBEE compliance as per the B-BBEE Codes of Good Practice
9. **Certified copy** of valid Company Registration Certificate [if applicable]

Vendor Application Form

Company trading name			
Company registered name			
Company Registration Number or ID Number if a Sole Proprietor			
Form of entity [√]	<input type="checkbox"/> CC	<input type="checkbox"/> Trust	<input type="checkbox"/> Pty Ltd
	<input type="checkbox"/> Limited	<input type="checkbox"/> Partnership	<input type="checkbox"/> Sole Proprietor
VAT number [if registered]			
Company telephone number			
Company fax number			
Company email address			
Company website address			
Bank name		Branch & Branch code	
Account holder		Bank account number	
Postal address			Code

Physical Address				Code	
Contact person					
Designation					
Telephone					
Email					
Annual turnover range [last financial year]	< R5 m	R5 - 35 m	> R35 m		
Does your company provide	Products	Services	Both		
Area of delivery	National	Provincial	Local		
Is your company a public or private entity	Public		Private		
Does your company have a Tax Directive or IRP30 Certificate	Yes		No		
Main product or services [e.g. Stationery/Consulting]					

Complete B-BBEE Ownership Details:

% Black ownership	% Black women ownership	% Disabled Black ownership	% Youth ownership		
Does your entity have a B-BBEE certificate			Yes	No	
What is your B-BBEE status [Level 1 to 9 / Unknown]					
How many personnel does the entity employ		Permanent	Part time		

If you are an existing Vendor with Transnet please complete the following:

Transnet contact person	
Contact number	
Transnet Operating Division	

Duly authorised to sign for and on behalf of Company / Organisation:

Name		Designation	
Signature		Date	

HOAC -14245:

Sourcing of Presiding officers/Members of Board of Inquiry for railway occurrences
Investigation, level 1

TRANSNET



Appendix (ii)

**STANDARD TERMS AND CONDITIONS OF CONTRACT
FOR THE PROVISION OF SERVICES TO TRANSNET
[February 2013]**

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1 INTRODUCTION

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

2 DEFINITIONS

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

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

- f) information relating to the past, present and future research and development of the disclosing Party;
 - g) information relating to the business activities, business relationships, products, services, customers, clients and Subcontractors of the disclosing Party where an onus rests on the disclosing Party to maintain the confidentiality of such information;
 - h) information contained in the software and associated material and documentation belonging to the disclosing Party;
 - i) technical and scientific information, Know-How and trade secrets of a disclosing Party including inventions, applications and processes;
 - j) Copyright works;
 - k) commercial, financial and marketing information;
 - l) data concerning architecture, demonstrations, tools and techniques, processes, machinery and equipment of the disclosing Party;
 - m) plans, designs, concepts, drawings, functional and technical requirements and specifications of the disclosing Party;
 - n) information concerning faults or defects in goods, equipment, hardware or software or the incidence of such faults or defects; and
 - o) information concerning the charges, Fees and / or costs of the disclosing Party or its authorised Subcontractors or their methods, practices or service performance levels actually achieved;
- 2.7 **Copyright** means the right in expressions, procedures, methods of operations or mathematical concepts, computer program codes, compilations of data or other material, literary works, musical works, artistic works, sound recordings, broadcasts, program carrying signals, published editions, photographic works, or cinematographic works of the copyright owner to do or to authorise the doing of certain acts specified in respect of the different categories of works;
- 2.8 **Default** means any breach of the obligations of either Party [including but not limited to fundamental breach or breach of a fundamental term] or any Default, act, omission, negligence or statement of either Party, its employees, agents or Subcontractors in connection with or in relation to the subject of the Agreement and in respect of which such Party is liable to the other;
- 2.9 **Deliverable(s)** means any and all works of authorship, products and materials developed, written, prepared, assembled, integrated, modified or provided by the Service Provider in relation to the Services;
- 2.10 **Designs** mean registered Designs and/or Design applications and will include the monopoly right granted for the protection of an independently created industrial design including designs dictated essentially by technical or functional considerations as well as topographies of integrated circuits and integrated circuits;
- 2.11 **Fee(s)** shall mean the agreed Fees for the Services to be purchased from the Service Provider by Transnet, as detailed in the Work Order(s), issued in accordance with the Agreement, as amended by mutual agreement between the Parties and in accordance with the provisions of the Agreement from time to time;
- 2.12 **Foreground Intellectual Property** means all Intellectual Property developed by either Party pursuant to the Agreement;

- 2.13 **Intellectual Property** means Patents, Designs, Know-How, Copyright and Trade Marks and all rights having equivalent or similar effect which may exist anywhere in the world and includes all future additions and improvements to the Intellectual Property;
- 2.14 **Know-How** means all Confidential Information of whatever nature relating to the Intellectual Property and its exploitation as well as all other Confidential Information generally relating to Transnet's field of technology, including technical information, processing or manufacturing techniques, Designs, specifications, formulae, systems, processes, information concerning materials and marketing and business information in general;
- 2.15 **Materials** means the Deliverables, the Service Provider Materials and the Third Party Materials;
- 2.16 **Parties** mean the Parties to the Agreement together with their subsidiaries, divisions, business units, successors-in-title and their assigns;
- 2.17 **Party** means either one of these Parties;
- 2.18 Patents mean registered Patents and Patent applications, once the latter have proceeded to grant, and includes a right granted for any inventions, products or processes in all fields of technology;
- 2.19 **Permitted Purpose** means any activity or process to be undertaken or supervised by Personnel or employees of one Party during the term of the Agreement, for which purpose authorised disclosure of the other Party's Confidential Information or Intellectual Property is a prerequisite in order to enable such activity or process to be accomplished;
- 2.20 **Personnel** means any partner, employee, agent, consultant, independent associate or supplier, Subcontractor and the staff of such Subcontractor, or other authorised representative of either Party;
- 2.21 **Purchase Order(s)** means official orders issued by an operating division of Transnet to the Service Provider for the provision of Services;
- 2.22 **Service(s)** means [●], the Service(s) provided to Transnet by the Service Provider, pursuant to the Work Order(s) in terms of the Agreement;
- 2.23 **Service Level Agreement** or **SLA** means the processes, deliverables, key performance indicators and performance standards relating to the Services to be provided by the Service Provider;
- 2.24 **Subcontract** means any contract or agreement or proposed contract or agreement between the Service Provider and any third party whereby that third party agrees to provide to the Service Provider the Services or any part thereof;
- 2.25 **Subcontractor** means the third party with whom the Service Provider enters into a Subcontract;
- 2.26 **Service Provider Materials** means all works of authorship, products and materials [including, but not limited to, data, diagrams, charts, reports, specifications, studies, inventions, software, software development tools, methodologies, ideas, methods, processes, concepts and techniques] owned by, or licensed to, the Service Provider prior to the Commencement Date or independently developed by the Service Provider outside the scope of the Agreement at no expense to Transnet, and used by the Service Provider in the performance of the Services;
- 2.27 **Tax Invoice** means the document as required by Section 20 of the Value-Added Tax Act, 89 of 1991, as may be amended from time to time;

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

3 INTERPRETATION

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

4 NATURE AND SCOPE

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

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

5 AUTHORITY OF PARTIES

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

6 WARRANTIES

- 6.1 The Service Provider warrants to Transnet that:
- a) it has full capacity and authority to enter into and to perform the Agreement and that the Agreement is executed by a duly authorised representatives of the Service Provider;
 - b) it will discharge its obligations under the Agreement and any annexure, appendix or schedule hereto with all due skill, care and diligence;
 - c) it will be solely responsible for the payment of remuneration and associated benefits, if any, of its Personnel and for withholding and remitting income tax for its Personnel in conformance with any applicable laws and regulations;
 - d) it will procure licences for Transnet in respect of all Third Party Material detailed in the Work Order(s), and will procure the right for Transnet to take such copies [in whole or in part] of such Third Party Materials as it may reasonably require for the purposes of back-up for archiving and disaster recovery; and
 - e) the use or possession by Transnet of any Materials will not subject Transnet to any claim for infringement of any Intellectual Property Rights of any third party.
- 6.2 The Service Provider warrants that it will perform its obligations under the Agreement in accordance with the Service Levels as defined in the relevant schedule. Transnet may at its discretion audit compliance with the Service Levels, provided that any such audit is carried out with reasonable prior notice and in a reasonable way so as not to have an adverse effect on the performance of the Services. Without prejudice to clause 6.3 below, in the event that the Service Provider fails to meet the Service Levels, Transnet may claim appropriate service credits or invoke a retention of Fees as detailed in the relevant schedule and/or Work Order.
- 6.3 The Service Provider warrants that for a period of 90 [ninety] days from Acceptance of the Deliverables they will, if properly used, conform in all material respects with the requirements set out in the relevant schedule. The Service Provider will at its expense remedy any such non-conformance as soon as possible but in any event within 30 [thirty] days of notification by

Transnet. In the event that the Service Provider fails or is unable to remedy such non-conformance within such time-scale, Transnet will be entitled to employ a third party to do so in place of the Service Provider and any excess charges or costs incurred by Transnet as a result shall be paid by the Service Provider.

6.4 The Service Provider will remedy any defect within 30 [thirty] days of being notified of that defect by Transnet in writing.

6.5 The Service Provider will not be liable to remedy any problem arising from or caused by any modification made by Transnet to the Deliverables, or any part thereof, without the prior approval of the Service Provider.

6.6 The Service Provider shall advise Transnet of the effects of any steps proposed by Transnet pursuant to clause 6.5 above, including but not limited to any cost implications or any disruption or delay in the performance of the Services. The Parties agree that any changes to the Services, including the charges for the Services or any timetables for delivery of the Services, will be agreed in accordance with the change control procedure, as set out in clause 28 [*Amendment and Change Control*].

6.7 The Service Provider warrants that:

- a) it has, using the most up-to-date software available, tested for [and deleted] all commonly known viruses in the Materials and for all viruses known by the Service Provider at the date of the relevant Work Order; and
- b) at the time of delivery to Transnet, the Materials do not contain any trojan horse, worm, logic bomb, time bomb, back door, trap door, keys or other harmful components.

The Service Provider agrees that, in the event that a virus is found, it will at its own expense use its best endeavours to assist Transnet in reducing the effect of the virus and, particularly in the event that a virus causes loss of operational efficiency or loss of data, to assist Transnet to the same extent to mitigate such losses and to restore Transnet to its original operating efficiency.

6.8 The Service Provider undertakes to comply with South Africa's general privacy protection in terms of Section 14 of the Bill of Rights in connection with the Agreement and shall procure that its Personnel shall observe the provisions of Section 14 [as applicable] or any amendments and re-enactments thereof and any regulations made pursuant thereto.

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

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

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 Verification Certificate, for the duration of the Agreement. Should the Service Provider fail to present Transnet with such renewals as they become due, Transnet shall be entitled, in addition to any other rights and remedies that it may have in terms of the Agreement, to terminate the Agreement forthwith without any liability and without prejudice to any claims which Transnet may have for damages against the Service Provider.
- 8.2 The Service Provider acknowledges and agrees that it shall at all times:
- a) render the Services and perform all its duties with honesty and integrity;
 - b) communicate openly and honestly with Transnet and demonstrate a commitment to performing the Services timeously, efficiently and to the required standards;

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

11 FEE ADJUSTMENTS

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

12 INTELLECTUAL PROPERTY RIGHTS

12.1 Title to Confidential Information

- a) Transnet will retain all right, title and interest in and to its Confidential Information and Background Intellectual Property and the Service Provider acknowledges that it has no claim of any nature in and to the Confidential Information and Background Intellectual Property that is proprietary to Transnet. For the avoidance of doubt, all the Service Provider's Background Intellectual Property shall remain vested in the Service Provider.
- b) Transnet shall grant to the Service Provider an irrevocable, royalty free, non-exclusive licence to use Transnet's Background Intellectual Property only for the Permitted Purpose. This license shall not permit the Service Provider to sub-license to other parties.

- c) The Service Provider shall grant to Transnet an irrevocable, royalty free, non-exclusive licence to use the Service Provider's Background Intellectual Property for the Permitted Purpose. This licence shall not permit Transnet to sub-license to other parties.
- d) The Service Provider shall grant Transnet access to the Service Provider's Background Intellectual Property on terms which shall be *bona fide* negotiated between the Parties for the purpose of commercially exploiting the Foreground Intellectual Property, to the extent that such access is required.

12.2 Title to Intellectual Property

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

12.3 Title to Improvements

Any improvements, developments, adaptations and/or modifications to the Foreground Intellectual Property, and any and all new inventions or discoveries, based on or resulting from the use of Transnet's Background Intellectual Property and/or Confidential Information shall be exclusively owned by Transnet. The Service Provider shall disclose promptly to Transnet all such improvements, developments, adaptations and/or modifications, inventions or discoveries. The

Service Provider hereby undertakes to sign all documents and do all things as may be necessary to effect, record and perfect the assignment of such improvements, developments, adaptations and/or modifications, inventions or discoveries to Transnet and the Service Provider shall reasonably assist Transnet in attaining, maintaining or documenting ownership and/or protection of the improved Foreground Intellectual Property.

12.4 Unauthorised Use of Confidential Information

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

12.5 Unauthorised Use of Intellectual Property

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

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 renewals.
- 15.3 Subject to clause 15.4 below, if the Service Provider fails to effect adequate insurance under this clause 15, it shall notify Transnet in writing as soon as it becomes aware of the reduction or inadequate cover and Transnet may arrange or purchase such insurance. The Service Provider shall promptly reimburse Transnet for any premiums paid provided such insurance protects the Service Provider's liability. Transnet assumes no responsibility for such insurance being adequate to protect all of the Service Provider's liability.
- 15.4 In the event that the Service Provider receives written notice from its insurers advising of the termination of its insurance cover referred to in clause 15.1 above or if the insurance ceases to be available upon commercially reasonable terms, the Service Provider shall immediately notify Transnet in writing of such termination and/or unavailability, whereafter either the Service Provider or Transnet may terminate the Agreement on giving the other Party not less than 30 [thirty] days prior written notice to that effect.

16 CONFIDENTIALITY

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

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

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

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

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

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 1 [*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 Counsel

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

b) **The Service Provider**

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

(ii) For commercial matters: [●]

Fax No. [●]

Attention: [●]

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 ONLY COPY"



Appendix (i)

GENERAL BID CONDITIONS - SERVICES

[February 2013]

"PREVIEW ONLY COPY"

[February 2013]

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1 DEFINITIONS

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

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

2 GENERAL

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

3 SUBMISSION OF BID DOCUMENTS

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

4 USE OF BID FORMS

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

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

5 BID FEES

- 5.1 A non-refundable fee may be charged for Bid Documents, depending on the administrative cost of preparing and issuing such Bid Documents.
- 5.2 Only Respondents that have paid the Bid fee and provided proof of payment when submitting their Bid will be considered.

6 VALIDITY PERIOD

- 6.1 Respondents must hold their Bid valid for acceptance by Transnet at any time within the requested validity period after the closing date of the RFX.
- 6.2 Respondents may be requested to extend their validity period for a specified additional period. In such instances, Respondents will not be allowed to change any aspect of their Bid, unless they are able to demonstrate that the proposed change(s) is as a direct and unavoidable consequence of Transnet's extension of the validity period.

7 SITE VISIT / BRIEFING SESSION

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

8 CLARIFICATION BEFORE THE CLOSING DATE

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

9 COMMUNICATION AFTER THE CLOSING DATE

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

10 UNAUTHORISED COMMUNICATION ABOUT BIDS

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

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11 RETURNABLE DOCUMENTS

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

12 DEFAULTS BY RESPONDENTS

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

- a) enter into a formal contract when called upon to do so within such period as Transnet may specify; or
- b) accept an order in terms of the Bid;
- c) furnish satisfactory security when called upon to do so for the fulfilment of the contract; or
- d) comply with any condition imposed by Transnet,

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

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

- a) has withdrawn such Bid after the advertised date and hour for the receipt of Bids; or
- b) has, after having been notified of the acceptance of its Bid, failed or refused to sign a contract when called upon to do so in terms of any condition forming part of the Bid Documents; or
- c) has carried out any contract resulting from such Bid in an unsatisfactory manner or has breached any condition of such contract; or
- d) has offered, promised or given a bribe in relation to the obtaining or the execution of such contract; or
- e) has acted in a fraudulent or improper manner or in bad faith towards Transnet or any government department or towards any public body, company or person; or
- f) has made any misleading or incorrect statement either
 - (i) in the affidavit or certificate referred to in clause 18 [*Notice to Unsuccessful Respondents*]; or
 - (ii) in any other document submitted as part of its Bid submissionand is unable to prove to the satisfaction of Transnet that
 - it made the statement in good faith honestly believing it to be correct; and
 - before making such statement, it took all reasonable steps to satisfy itself of its correctness; or
- g) caused Transnet damage, or to incur costs in order to meet the Service Provider's requirements which could not be recovered from the Service Provider;
- h) has litigated against Transnet in bad faith;

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

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

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

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

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

13 CURRENCY

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

14 PRICES SUBJECT TO CONFIRMATION

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

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

15 ALTERATIONS MADE BY THE RESPONDENT TO BID PRICES

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

16 EXCHANGE AND REMITTANCE

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

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

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- 16.3 The Respondent who desires to avail itself of the aforementioned facility must at the time of bidding furnish the information called for in the *Exchange and Remittance* section of the Bid Documents and also furnish full details of the principals to whom payment is to be made.
- 16.4 The South African Reserve Bank's approval is required before any foreign currency payments can be made to or on behalf of Respondents.
- 16.5 Transnet will not recognise any claim for adjustment of the order and/or contract price if the increase in price arises after the date on which agreement on an overall Rand contract has been reached.
- 16.6 Transnet reserves the right to request a pro-forma invoice/tax invoice in order to ensure compliance with the contract and Value-Added Tax Act no. 89 of 1991 [**VAT Act**].

17 ACCEPTANCE OF BID

- 17.1 Transnet does not bind itself to accept the lowest priced or any Bid.
- 17.2 Transnet reserves the right to accept any Bid in whole or in part.
- 17.3 Upon the acceptance of a Bid by Transnet, the parties shall be bound by these General Bid Conditions and any contractual terms and/or any schedule of "Special Conditions" or otherwise which form part of the Bid Documents.
- 17.4 Where the Respondent has been informed by Transnet per fax message or email of the acceptance of its Bid, the acknowledgement of receipt transmitted shall be regarded as proof of delivery to the Respondent.

18 NOTICE TO UNSUCCESSFUL RESPONDENTS

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

19 TERMS AND CONDITIONS OF CONTRACT

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

20 CONTRACT DOCUMENTS

- 20.1 The contract documents will comprise these General Bid Conditions, the Terms and Conditions of Contract and any schedule of "Special Conditions" which form part of the Bid Documents.
- 20.2 The abovementioned documents together with the Respondent's Bid response will constitute the contract between the parties upon receipt by the Respondent of Transnet's letter of award / intent, subject to all additional amendments and/or special conditions thereto as agreed to by the parties.

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

21 LAW GOVERNING CONTRACT

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

22 IDENTIFICATION

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

23 CONTRACTUAL SECURITIES

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

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

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

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

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

24 DELETION OF ITEMS TO BE EXCLUDED FROM BID

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

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25 VALUE-ADDED TAX

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

25.2 In respect of foreign Services rendered:

- a) the invoicing by a South African Service Provider on behalf of its foreign principal rendering such Service represents a Service rendered by the principal; and
- b) the Service Provider's Tax Invoice(s) for the local portion only [i.e. the "commission" for the Services rendered locally] must show the VAT separately.

26 IMPORTANT NOTICE TO RESPONDENTS REGARDING PAYMENT

26.1 Method of Payment

- a) The attention of the Respondent is directed to the Terms and Conditions of Contract which set out the conditions of payment on which Bid price(s) shall be based.
- b) However, in addition to the 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 26.1a) above. Failure to comply with clause 26.1a) above may preclude a Bid from further consideration.

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

26.2 Conditional Discount

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

27 DELIVERY REQUIREMENTS

27.1 Period Contracts

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

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27.2 Progress Reports

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

27.3 Emergency Demands as and when required

If, due to unforeseen circumstances, the rendering of the Services covered by the Bid are required at short notice for immediate delivery, the Service Provider will be given first right of refusal for such business. If it is unable to meet the desired critical delivery period, Transnet reserves the right to purchase such services as may be required to meet the emergency outside the contract if immediate delivery can be offered from any other source. The "*Total or Partial Failure to Perform the Scope of Services*" section in the Terms and Conditions of Contract will not be applicable in these circumstances.

28 SPECIFICATIONS AND COPYRIGHT

28.1 Specifications

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

28.2 Copyright

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

29 BIDS BY OR ON BEHALF OF FOREIGN RESPONDENTS

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

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

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

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

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

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- b) The Power of Attorney must be signed by the principal under the same title as used in the Bid Documents.
 - c) If a Power of Attorney held by the South African representative or agent includes matters of a general nature besides provision for the entering into and signing of a contract with Transnet, a certified copy thereof should be furnished.
 - d) The Power of Attorney must authorise the South African representative or agent to choose the *domicilium citandi et executandi* as provided for in the Terms and Conditions of Contract.
- 29.5 If payment is to be made in South Africa, the foreign Service Provider [i.e. the principal, or its South African agent or representative], must notify Transnet in writing whether, for payment by electronic funds transfer [EFT]:
- a) funds are to be transferred to the credit of the foreign Service Provider's account at a bank in South Africa, in which case the name and branch of such bank shall be furnished; or
 - b) funds are to be transferred to the credit of its South African agent or representative, in which case the name and branch of such bank shall be furnished.

30 CONFLICT WITH BID DOCUMENT

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

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