



**TRANSNET FREIGHT RAIL**, a division of

**TRANSNET SOC LTD**

Registration Number 1990/000900/30

[hereinafter referred to as **Transnet**]

**REQUEST FOR QUOTATION [RFQ] No PTH/52488**

**DESCRIPTION: PROVISION OF EXAMINATIONS/INSPECTIONS ON MACHINERY, PLANT & EQUIPMENT TO ENSURE COMPLIANCE TO TRANSNET CODE.29 AND MACHINERY ACT**

**PERIOD: 6 MONTHS**

**LOCATION: VARIOUS TFR INFRA DEPOTS IN THE EASTERN CAPE & FREE STATE**

**ISSUE DATE: 11 / 09 / 2013**

**CLOSING DATE: 26 / 09 / 2013**

**CLOSING TIME: 12:00**

**Section 1  
NOTICE TO BIDDERS**

Quotations are requested from interested persons, companies, close corporations or enterprises (hereinafter referred to as the "**Respondent(s)**") to supply the above-mentioned requirement to Transnet.

**On or after 11 September 2013 RFQ documents may be inspected at, and are obtainable from the Regional Supply Chain Office, 1<sup>st</sup> Floor, Room 105, Stow Road, Uitenhage.**

**Arrangements for the collection of the RFQ documents can be made with Me. Babalwa Myozolo on telephone number 041 – 994 2042 or email: babalwa.myozolo@transnet.net**

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

**METHOD:** post and/or courier

**CLOSING VENUE:** As follows:

**Postal Address:**

TRANSNET FREIGHT RAIL  
SECRETARIATE OF THE ACQUISITION COUNCIL  
(ADMIN SUPPORT)  
REGIONAL SCS OFFICE  
P.O.BOX 95  
UITENHAGE  
6230

**Physical Address:**

TRANSNET FREIGHT RAIL  
SECRETARIAT OF THE ACQUISITION COUNCIL  
(ADMIN SUPPORT)  
TRANSNET FREIGHT RAIL BUILDING  
TENDER BOX  
1<sup>ST</sup> FLOOR PASSAGE  
STOW ROAD  
UITENHAGE

**NB:** Quotations must be enclosed in a sealed envelope which must have inscribed on the outside:

|  |                                     |
|--|-------------------------------------|
| <b>RFQ No</b>  | <b>: PTH/52488</b>                  |
| <b>Description</b>                                       | <b>: LMI/Code 29 Examinations</b>   |
| <b>Closing date and time</b>                             | <b>: 26 September 2013 at 12h00</b> |
| <b>Closing address (refer to abovementioned options)</b> |                                     |

\_\_\_\_\_  
**Respondent's Signature**

\_\_\_\_\_  
**Date & Company Stamp**

## 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. The original signed RFQ will serve as the legal binding document and no copies will be accepted for evaluation purposes

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

As prescribed in terms of the Preferential Procurement Policy Framework Act (PPPFA), Act 5 of 2000 and its Regulations, Respondents are to note the following:

- In this RFQ, Transnet will apply the 80/20 preference point system prescribed in the PPPFA if the lowest acceptable bid is greater than Thirty Thousand rand (R 30 000.00).
- Proposals will be evaluated on price which will be allocated 80 points and preference which will be allocated 20 points.
- The 80/20 preference point system applies where the acquisition of the Services will be less than R1 000 000.00. However, if the 80/20 preference point system is stipulated in this RFQ and all Bids received exceed R1 000 000.00, the RFQ will be cancelled.

In compliance with the Government Gazette No 34612, Notice No. 754 dated 23 September 2011, as from 1 October 2011 valid B-BBEE Verification Certificates must be issued by:

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

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

- a) **Large Enterprises** [i.e. annual turnover greater than R35 million]:
  - Rating level based on all seven elements of the B-BBEE scorecard
- b) **Qualifying Small Enterprises – QSE** [i.e. annual turnover between R5 million and R35 million]:
  - Rating based on any four of the elements of the B-BBEE scorecard
- c) **Exempted Micro Enterprises – EME** [i.e. annual turnover less than R5 million]:

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

- Automatic rating of B-BBEE Level 4 irrespective of race or ownership
- Black ownership greater than 50% or Black Women ownership greater than 50% automatically qualify as B-BBEE Level 3

Sufficient evidence to qualify as an EME would be a certificate (which may be in the form of a letter) from an auditor or accounting officer or a certificate from a Verification Agency accredited

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**Respondent's Signature**

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**Date & Company Stamp**

by SANAS. The certificate must confirm the company's turnover, black ownership / black female ownership, B-BBEE status level and validity date.

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

Transnet will accordingly allocate a maximum of **20 [twenty] points** to the Respondent's final score based on an entity's B-BBEE scorecard rating.

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

*[Refer clause **Error! Reference source not found.** below for Returnable Documents required]*

### 3 Communication

- a) Respondents are warned that a response will be liable for disqualification should any attempt be made by a Respondent either directly or indirectly to canvass any officer(s) or employee of Transnet in respect of this RFQ between the closing date and the date of the award of the business.
- b) A Respondent may, however, before the closing date and time, direct any written enquiries relating to the RFQ to the following Transnet employee:

|          |   |  |
|----------|---|--|
| Name     | : | Granville van der Merwe  |
| Division | : | Transnet Freight Rail (SCS)  |
| Email    | : | <a href="mailto:Granville.vandermerwe@transnet.net">Granville.vandermerwe@transnet.net</a> |

- c) Respondents may also, at any time after the closing date of the RFQ, communicate with the Admin Support Office on any matter relating to its RFQ response:

|           |                              |
|-----------|------------------------------|
| Telephone | 041 – 994 2042               |
| Email     | babalwa.myozolo@transnet.net |

### 4 Tax Clearance

The Respondent's original valid Tax Clearance Certificate must accompany the Quotation. Failure to provide this document with the RFQ submission will result in disqualification.

### 5 VAT Registration

The valid VAT registration number must be stated here: \_\_\_\_\_ *[if applicable].*

### 6 Legal Compliance

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

### 7 Changes to Quotations

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

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**Respondent's Signature**

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**Date & Company Stamp**

**8 Pricing**

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

**9 Prices Subject to Confirmation**

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

**10 Negotiations**

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

**11 Binding Offer**

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

**12 Disclaimers**

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

- modify the RFQ's goods / service(s) and request Respondents to re-bid on any changes;
- reject any Quotation which does not conform to instructions and specifications which are detailed herein;
- disqualify Quotations submitted after the stated submission deadline;
- not necessarily accept the lowest priced Quotation;
- reject all Quotations, if it so decides;
- place an order in connection with this Quotation at any time after the RFQ's closing date;
- award only a portion of the proposed goods / service/s which are reflected in the scope of this RFQ;
- split the award of the order/s between more than one Supplier/Service Provider; or
- make no award at all.

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

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

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

NATURE OF BREACH:

\_\_\_\_\_

DATE OF BREACH: \_\_\_\_\_

\_\_\_\_\_  
Respondent's Signature

\_\_\_\_\_  
Date & Company Stamp

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

### 13 Evaluation Criteria

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

#### **Phase One:**

- Administrative responsiveness - Completeness of response and returnable documents

#### **Phase Two:**

- Weighted evaluation based on 80/20 preference point system:
  - Pricing and price basis [firm] - whilst not the sole factor for consideration, competitive pricing and overall level of unconditional discounts<sup>1</sup> will be critical

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

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

Where:

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

- B-BBEE status of company

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

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

<sup>1</sup> Only unconditional discounts will be taken into account during evaluation. A discount which has been offered conditionally will, despite not being taken into account for evaluation purposes, be implemented when payment is effected.

\_\_\_\_\_  
**Respondent's Signature**

\_\_\_\_\_  
**Date & Company Stamp**

**14 Validity Period**

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

This RFQ is valid until \_\_\_\_\_.

**15 Banking Details**

BANK: \_\_\_\_\_

BRANCH NAME / CODE: \_\_\_\_\_

ACCOUNT HOLDER: \_\_\_\_\_

ACCOUNT NUMBER: \_\_\_\_\_

**16 Company Registration**

Registration number of company / C.C. \_\_\_\_\_

Registered name of company / C.C. \_\_\_\_\_

**17 Disclosure of Prices Quoted**

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

YES  NO

**18 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 **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 mandatory Returnable Documents by so indicating [Yes or No] in the table below:

\_\_\_\_\_  
**Respondent's Signature**

\_\_\_\_\_  
**Date & Company Stamp**

| Returnable Documents  | Submitted<br>[Yes or No] |
|---|--------------------------|
| SECTION 1 : Notice to Bidders   |                          |
| <ul style="list-style-type: none"> <li>- Valid B-BBEE Verification Certificate [RSA Large Enterprises and QSEs]<br/>Note: failure to provide a valid B-BBEE Verification Certificate at the closing date and time of the tender will result in an automatic score of zero being allocated for B-BBEE scorecard</li> </ul>                                       |                          |
| <ul style="list-style-type: none"> <li>- Valid B-BBEE certificate from auditor, accounting officer or SANAS accredited Verification Agency [RSA EMEs]<br/>Note: failure to provide a valid B-BBEE Verification Certificate at the closing date and time of the tender will result in an automatic score of zero being allocated for B-BBEE scorecard</li> </ul> |                          |
| SECTION 2 : Quotation Form  |                          |
| SECTION 3 : Standard Terms and Conditions of Contract for the Supply of Goods or Services to Transnet   |                          |
| ANNEXURE A : Area to be covered   |                          |
| ANNEXURE B : RFQ Declaration Form   |                          |
| LETTER OF GOOD STANDING ISSUED BY COMPENSATION COMMISSIONER (ORIGINAL OR CERTIFIED COPY)  |                          |
| TAX CLEARANCE CERTIFICATE (ORIGINAL)  |                          |
| LMI OR LMI'S ECSA PROFESSIONAL REGISTRATION DOCUMENT  |                          |
| COPY OF CERTIFICATE AS AN LME WITH THE DEPARTMENT OF LABOUR IN ALL CATEGORIES AS REQUIRED IN THE SCOPE OF REQUIREMENTS  |                          |
| PROOF OF PUBLIC LIABILITY INSURANCE   |                          |

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 Respondent's Signature

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 Date & Company Stamp



Respondents to complete this section:

|                              |                  |
|------------------------------|------------------|
| NAME OF RESPONDENT .....     |                  |
| PHYSICAL ADDRESS .....       |                  |
| .....                        |                  |
| Respondent's contact person: | Name.....        |
|                              | Designation..... |
|                              | Telephone.....   |
|                              | Cell Phone.....  |
|                              | Facsimile.....   |
|                              | Email.....       |
|                              | Website.....     |

"PREVIEW COPY ONLY"

\_\_\_\_\_  
**Respondent's Signature**

\_\_\_\_\_  
**Date & Company Stamp**

**Section 2**  
**QUOTATION FORM**

I/We \_\_\_\_\_  
hereby offer to supply the service at the prices quoted in the Price Schedule below, in accordance with the conditions related thereto.

I/We agree to be bound by those terms and conditions in:  
the Standard Terms and Conditions for the Supply of Goods and Services to Transnet; 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 and service 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 service required, on a "delivered nominated destination" basis, excluding VAT:

| Item No                     | Description of Service                | Unit of Measure                | Estimated Quantity | Unit Price (ZAR) | Total Price (ZAR) |
|-----------------------------|---------------------------------------|--------------------------------|--------------------|------------------|-------------------|
| 1                           | Labour – Examinations & Documentation | Per Hour                       | 297                |                  |                   |
| 2                           | Travelling                            | Km                             | 6000               |                  |                   |
| 3                           | Accommodation & Meals                 | Per Night<br>Away from<br>Base | 18                 |                  |                   |
| Gross Total (excluding VAT) |                                       |                                |                    | R                |                   |

**Time period to complete the required work every second month:** \_\_\_\_\_  
**[days/weeks/months]**

**Notes to Pricing:**

- a) All Prices must be quoted in South African Rand, exclusive of VAT
- b) To facilitate like-for-like comparison bidders must submit pricing strictly in accordance with this price schedule and not utilise a different format. Deviation from this pricing schedule could result in a bid being disqualified.
- c) Please note that should you have offered a discounted price(s), Transnet will only consider such price discount(s) in the final evaluation stage if offered on an unconditional basis.
- d) The estimated quantities are based on 11 days & 6 nights at 9hrs/day for labour, accommodation/meals and 2000km's for travelling to cover all the required areas as per Annexure A per examination. The estimated quantities makes provision for 3 examinations over a period of 6 months

\_\_\_\_\_  
**Respondent's Signature**

\_\_\_\_\_  
**Date & Company Stamp**

**SCOPE OF REQUIREMENTS – LMI / CODE 29 EXAMINATIONS****Tenderer Requirements**

The tenderer must be registered as an LME with the department of labour in all the categories as requested in the tender. The tenderer must supply a copy of this approval letter with the tender. The tenderer must supply a copy of the LMI or LMI's ECSA professional registration document that will perform the inspections.

The LMI must be registered in all categories as listed in the RFQ.

**Services to be provided to Ensure Compliance to Transnet Code.29 & Machinery Act.**

Execute LMI / Code.29 Examinations / Inspections on Machinery, Plant & Equipment.

Execute Annual Load tests

Execute 2 monthly Brake tests on all RRV's

Updating all Log sheets / Certification

Feedback to Customers regarding Items requiring annual tests

Feedback to Customers regarding non-conformance & deviations

**Intervals of LMI / Code.29 Examinations / Inspections.**

Execute every second month.

**Execution of LMI / Code.29 Examinations / Inspections.**

Mondays to Fridays - excluding Public Holidays

Daily from 07h00 to 16h00

Duration per Inspection cycle = should be completed within max. 14 days.

Appointments with Supervisors for Examinations / Inspections to be made at least 5 working days in advance.

**Lists of Machinery, Plant & Equipment Items & Supervisors**

Lists will be provided by Supervisor Mech.Maint.

Lists to be updated by Contractor in collaboration with Supervisors.

Items may be transferred between Supervisors or to Workshop for Repairs.

**Categories of Machinery, Plant & Equipment**

Cranes & Truck Mounted Cranes

Lifting

Appliances

Steel Wire Ropes & Fibre Ropes

Lifting Tackle Components

Miscellaneous Machinery, Plant & Equipment

Goods & Material Hoists

Pressure & Vacuum Vessels & Gauges

Mechanical Handling Vehicles

Machinery & Plant : Guarding & Safety

Portable Hand tools

Trestles

Portable Ladders

Road-Rail Vehicle

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**Respondent's Signature**

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**Date & Company Stamp**

### Section 3

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

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

#### 1 SOLE AGREEMENT

Unless otherwise agreed in writing, these terms [**Terms** and each **Term**] and Transnet's purchase order(s) [**Order** or **Orders**] represent the only conditions upon which Transnet SOC Ltd [**Transnet**] procures goods or services specified in the Order [collectively, the **Products**] from the person to whom the Order is addressed [**the Supplier**]. Transnet does not accept any other conditions which the Supplier 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

Products shall conform strictly with the Order. The Supplier 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 warrants that the Products 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 obligations under the Order.
- 3.2 The Supplier will not be excused for delay in delivery or performance except due to circumstances outside its control and then only subject to the Supplier 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 if such a delay becomes, in Transnet's absolute opinion, significant.
- 3.3 Risk of loss or damage to Products shall pass to Transnet on delivery, and title shall pass to Transnet when payment to the Supplier for the Products has been effected.
- 3.4 If on delivery, the Products do not conform to the Order, Transnet may reject the Products and the Supplier shall promptly rectify any defects or in Transnet's opinion, supply appropriate replacement Products at the Supplier's expense within the specified delivery times, without any liability due by Transnet. Products shall be subject to such testing and/or inspection as Transnet may consider necessary.

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**Respondent's Signature**

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**Date & Company Stamp**

#### **4 PRICE AND PAYMENT**

- 4.1 Prices specified in an Order cannot be increased. Payment for the Products shall be made by Transnet against an original undisputed invoice(s) [a **Tax Invoice**], supporting documentation and month-end statement from the Supplier. Tax Invoices plus supporting documentation shall be posted to the address shown in the Order.
- 4.2 Payment of the Supplier'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, 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 Products or any written material provided to Transnet relating to any Products 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 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 following a design or process originated and furnished by Transnet. The Supplier shall either

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

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

#### **6 PROPRIETARY INFORMATION**

All information which Transnet has divulged or may divulge to the Supplier and any information relating to Transnet's business which may have come into the Supplier's possession whilst carrying out an Order, and the existence of the Order, shall be treated by the Supplier 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 shall return all materials issued pursuant to the Order and, pending this, shall protect

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**Respondent's Signature**

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**Date & Company Stamp**

Transnet's rights in any such materials. Such confidential information shall at all material times be the property of Transnet.

## **7 DEVELOPMENT WORK IN THE PRODUCTION OF PRODUCTS**

If the production or provision of any Products involves research and/or development which is wholly or partly funded by Transnet, then all intellectual property or other rights as a result thereof shall be the property of Transnet on creation.

## **8 PUBLICITY**

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

## **9 AFTER SALES SERVICE**

The Supplier shall provide replacement parts necessary to ensure the uninterrupted operation of the Products supplied for the duration of the warranty period, from delivery of any particular item of the Products and if requested by Transnet shall make these parts available to a third party maintainer of Transnet's choice at the same price as if the parts had been supplied to Transnet. The Supplier undertakes to provide a maintenance service for Products, should Transnet so request, on terms to be agreed. If the Order so indicates, the Supplier will provide a warranty service for the Products at a level to be agreed with Transnet.

## **10 TERMINATION OF ORDER**

- 10.1 Transnet may cancel an Order in whole or in part at any time upon at least 7 [seven] days' written notice to the Supplier, or when there is a change in control of the Supplier or the Supplier 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 when such work on the Order shall stop.
- 10.2 Transnet shall pay the Supplier a fair and reasonable price for justified work in progress, where such price reflects only those costs not otherwise recoverable by the Supplier, at the time of termination, and the Supplier 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 shall deliver to Transnet all work, including any materials, completed or in progress. The sum payable to the Supplier under this clause will not in any event exceed the total amount that would have been payable to the Supplier had the Order not been terminated.
- 10.3 In the event of termination the Supplier must submit all claims within 2 [two] months of termination after which time claims will only be met in what Transnet considers exceptional circumstances.
- 10.4 If the Products are not provided in accordance with an Order, the Order shall be deemed terminated and the Supplier shall compensate Transnet for any costs incurred in obtaining substitute Products or any damage caused due to the failure or delay in the delivery.

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**Respondent's Signature**

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**Date & Company Stamp**

**11 ACCESS**

The Supplier 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 employees. The Supplier 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.

**12 WARRANTY**

The Supplier warrants that it is competent to supply the Products in accordance with these Terms to the reasonable satisfaction of Transnet and that all Products 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 Products 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 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.

**13 INSOLVENCY**

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

**14 ASSIGNMENT**

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

**15 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.

**16 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 hereby irrevocably submits but without prejudice to Transnet's right to take proceedings against the Supplier 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 does not have a

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**Respondent's Signature**

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**Date & Company Stamp**

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.

**17 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 5, 6, 7, 8 and 12. 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.

**18 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.

"PREVIEW COPY ONLY"

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**Respondent's Signature**

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**Date & Company Stamp**



**ANNEXURE A**

**EAST LONDON INFRA MAINTENANCE DEPOT AREA TO BE COVERED**

**Refer Form attached hereto.**

**ANNEXURE B**

**RFQ DECLARATION FORM**

**Refer Form attached hereto. (Compulsory)**

"PREVIEW COPY ONLY"

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**Respondent's Signature**

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**Date & Company Stamp**