



TRANSNET NATIONAL PORTS AUTHORITY, a division of

TRANSNET SOC LTD

Registration Number 1990/000900/30

[hereinafter referred to as **Transnet**]

REQUEST FOR QUOTATION [RFQ] No		PONR 001A/19-20
FOR THE SUPPLY/PROVISION OF	:	SECURITY DEPARTMENT – PROVISION OF FOOT-FLUSH PORTABLE TOILETS AT THE PORT OF NGQURA FOR THIRTY SIX (36) MONTHS
FOR DELIVERY TO	:	PORT OF NGQURA
ISSUE DATE	:	30 OCTOBER 2019
COMPULSORY SITE MEETING	:	N/A
TIME	:	N/A
VENUE	:	N/A
CLOSING DATE	:	19 NOVEMBER 2019
CLOSING TIME	:	12:00 SHARP
CLOSING VENUE	:	NEPTUNE ROAD; GROUND FLOOR TENDER BOX, EMENDI BUILDING PORT OF NGQURA HARBOUR

PREQUALIFICATION CRITERIA - ONLY RESPONDENTS FALLING IN THE FOLLOWING CATEGORIES MAY RESPOND TO THIS RFP:

- **MINIMUM BBBEE LEVEL 4;**
- **EME AND QSE ONLY**



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:	Post and/or courier
CLOSING VENUE:	Tender box at physical address, Neptune Road, Ground Floor Tender box, eMendi Building, Port of Ngqura
CLOSING TIME:	12H00

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. As explained in more detail in the B-BBEE Claim Form (Section 6), Transnet will award preference points to companies who provide proof of their B-BBEE status using either the latest version of the generic Codes of Good Practice or Sector Specific Codes (if applicable).

The value of this bid is estimated to be below R50 000 000 (all applicable taxes included); and therefore the **80/20** system shall be applicable.

Respondents are required to complete Section 6 and submit it together with valid proof of their B-BBEE Status as stipulated in the Claim Form in order to obtain preference points for their B-BBEE status.

Respondents are required at all times to comply with the latest B-BBEE legislation and/or instruction notes as issued from time to time by the DTI.

Note: Failure to submit valid and original (or certified copy of) proof of the Respondent's compliance with the B-BBEE requirements stipulated in Section 6 of this RFQ (the B-BBEE Preference Points Claim Form) at the Closing Date of this RFQ, will result in a score of zero being allocated for B-BBEE.

Respondents are required to submit proof of the subcontracting arrangement between themselves and the subcontractor. Proof of the subcontracting arrangement may include a subcontracting agreement.

Respondents are to note that it is their responsibility to select competent subcontractors that meet all requirements of the bid so that their bid is not jeopardised by the subcontractor when evaluated. Respondents are responsible for all due diligence on their subcontractors.

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

Respondent/s are discouraged from subcontracting with their subsidiary companies as this may be interpreted as subcontracting with themselves and / or using their subsidiaries for fronting. Where a Respondent intends to subcontract with their subsidiary this must be declared in their bid response.



9. 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 or an alternative bid;
- 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 should it at Transnet's discretion be more advantageous in terms of, amongst others, cost or developmental considerations;
- make no award at all;
- validate any information submitted by Respondents in response to this bid. This would include, but is not limited to, requesting the Respondents to provide supporting evidence. By submitting a bid, Respondents hereby irrevocably grant the necessary consent to Transnet to do so;
 - request audited financial statements or other documentation for the purposes of a due diligence exercise; and/or
 - not accept any changes or purported changes by the Respondent to the bid rates after the closing date and/or after the award of the business, unless the contract specifically provides for it.

Should a contract be awarded on the strength of information furnished by the Respondent, which after conclusion of the contract, is proved to have been incorrect, Transnet reserves the right to cancel the contract and/or place the Respondent on Transnet's list of Restricted Suppliers.

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

Transnet reserves the right to undertake post-tender negotiations [PTN] with selected Respondents or any number of short-listed Respondents, such PTN to include, at Transnet's option, price negotiations and any evaluation criteria listed in this RFQ document. In the event of any Respondent being notified of such short-listed/preferred bidder status, his bid, as well as any subsequent negotiated best and final offers (BAFO), will automatically be deemed to remain valid during the negotiation period and until the ultimate award of business.

Should the preferred bidder fail to sign or commence with the contract within a reasonable period after being requested to do so, Transnet reserves the right to award the business to the next highest ranked bidder, provided that he/she is still prepared to provide the required goods at the quoted price.

Under such circumstances, the validity of the bids of the next ranked bidder(s) will be deemed to remain valid, irrespective of whether the next ranked bidder(s) were issued with a Letter of Regret. Bidders may therefore be requested to advise whether they would still be prepared to provide the required goods at their quoted price, even after they have been issued with a Letter of Regret.

Transnet reserves the right to lower the threshold for Technical by 10% if no Bidders pass the predetermined minimum threshold.



10. Legal review

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

11. Security clearance

Acceptance of this bid could be subject to the condition that the Successful Respondent, its personnel providing the goods and its subcontractor(s) must obtain security clearance from the appropriate authorities to the level of CONFIDENTIAL/ SECRET/TOP SECRET. Obtaining the required clearance is the responsibility of the Successful Respondent. Acceptance of the bid is also subject to the condition that the Successful Respondent will implement all such security measures as the safe performance of the contract may require.

12. National Treasury's Central Supplier Database

Respondents are required to self-register on National Treasury's Central Supplier Database (CSD) which has been established to centrally administer supplier information for all organs of state and facilitate the verification of certain key supplier information. Transnet is required to ensure that price quotations are invited and accepted from prospective bidders listed on the CSD. Business may not be awarded to a Respondent who has failed to register on the CSD. Only foreign suppliers with no local registered entity need not register on the CSD. The CSD can be accessed at <https://secure.csd.gov.za/>. Respondents are required to provide the following to Transnet in order to enable it to verify information on the CSD:

Supplier Number: _____ **Unique registration reference number:** _____.

13. Tax Compliance

Respondents must be compliant when submitting a proposal to Transnet and remain compliant for the entire contract term with all applicable tax legislation, including but not limited to the Income Tax Act, 1962 (Act No. 58 of 1962) and Value Added Tax Act, 1991 (Act No. 89 of 1991).

It is a condition of this RFQ that the tax matters of the successful bidder be in order, or that satisfactory arrangements have been made with South African Revenue Service (SARS) to meet the bidder's tax obligations. The Tax Compliance status requirements are also applicable to foreign bidders / individuals who wish to submit bids as indicated in paragraph 15.2 below.

It is a requirement that Respondents grant a written confirmation when submitting this bid that SARS may on an ongoing basis during the tenure of the contract disclose the Respondent's tax compliance status and by submitting this bid such confirmation is deemed to have been granted.

Respondents are required to be registered on the Central Supplier Database as indicated in paragraph 14 and the National Treasury shall verify the Respondent's tax compliance status through the Central Supplier Database.

Where Consortia / Joint Ventures / Sub-contractors are involved, each party must be registered on the Central Supplier Database and their tax compliance status will be verified through the Central Supplier Database

New Tax Compliance Status (TCS) System

SARS has implemented a new Tax Compliance Status (TCS) system in terms of which a taxpayer is now able to authorise any 3rd party to verify its compliance status in one of two ways: either through the use of an electronic access PIN, or through the use of a Tax Clearance Certificate obtained from the new TCS system.



Respondents are required to provide the following to Transnet in order to enable it to verify their tax compliance status:

Tax reference number: _____

Tax Clearance Certificate & TCC Number: _____ **and PIN:** _____.

Tax Compliance Requirements for Foreign Entities

Where foreign bidders with no presence in South Africa, seek to obtain a Tax Clearance Certificate in order to meet the tax compliance requirements mentioned in 1 above, they must confirm an answer of "No" to all questions below:

- a) Is the entity a tax resident of the Republic of South Africa (RSA)?
- b) Does the entity have a branch/locally registered entity in the RSA?
- c) Does the entity have a permanent establishment in the RSA?
- d) Does the entity have any source of income (income is defined as per the Income Tax Act 58 of 1962 as the amount remaining of the gross income of any person for any year or period of assessment after deducting therefrom any amounts exempt from normal tax under Part I of Chapter II of the Act) in the RSA in the current tax year?
- e) Is the entity liable in the RSA for any form of taxation in the current tax year?

Where a foreign entity's answer to all questions above is "No", such entities are required to submit an application to SARS using the following email address: GovernmentInstitute@sars.gov.za and providing the following information to SARS:

- Details of the Foreign entity;
- Description of the service being provided; and
- Name of the South African Government Institution to whom the service is being provided.

SARS will consider this request and will then provide a scanned copy of the Tax Clearance Certificate which must be provided to Transnet with the Respondent's bid submission.

If a Respondent's answers to any one (or more) of the questions in a) to e) above changes to a "Yes" at any time during the bid process and/or after award of the contract (should a particular Respondent be successful), then the Respondent undertakes to comply with its tax obligations and to report to Transnet accordingly.

14. Protection of Personal Data

In responding to this bid, Transnet acknowledges that it may obtain and have access to personal data of the Respondents. Transnet agrees that it shall only process the information disclosed by Respondents in their response to this bid for the purpose of evaluating and subsequent award of business and in accordance with any applicable law. Furthermore, Transnet will not otherwise modify, amend or alter any personal data submitted by Respondents or disclose or permit the disclosure of any personal data to any Third Party without the prior written consent from the Respondents. Similarly, Transnet requires Respondents to process any personal information disclosed by Transnet in the bidding process in the same manner. The detailed mutual duties of Transnet and the Respondents to protect personal information is contained in paragraph 37 of the General Bid Conditions.



**Transnet urges its clients, suppliers and the general public to report any fraud or
corruption to**

TIP-OFFS ANONYMOUS: 0800 003 056

**RFQ FOR THE PROVISION OF FOOT FLUSH PORTABLE TOILETS FOR A PERIOD OF THIRY SIX
(36) MONTHS AT PORT OF NGQURA FOR 36 MONTHS**

CLOSING VENUE: GROUND FLOOR TENDER BOX, EMENDI BUILDING PORT OF NGQURA

CLOSING DATE & TIME: 19 NOVEMBER 2019 @ 12H00

VALIDITY PERIOD: 120 BUSINESS DAYS

SECTION 2 EVALUATION CRITERIA AND RETURNABLE DOCUMENTS

1. 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
Administrative responsiveness	Completeness of response and returnable documents
Substantive responsiveness	Prequalification criteria, if any, must be met and whether the Bid materially complies with the scope and/or specification given.
Functionality Threshold	As prescribed in terms of the Preferential Procurement Policy Framework Act (PPPFA), Act 5 of 2000 and its Regulations. Technical evaluation threshold 70%
Final weighted evaluation based on 80/20 preference point	<ul style="list-style-type: none"> • Pricing and price basis [firm] • 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 indicated in Section 6: B-BBEE Claim Form.

2. Validity Period

Transnet requires a validity period of 120 [one hundred and twenty] Business Days from the closing date of this RFQ.

Bidders are to note that they may be requested to extend the validity period of their bid, on the same terms and conditions, if the internal evaluation process has not been finalised within the validity period. However, once the adjudication body has approved the process and award of the business to the successful bidder(s), the validity of the successful bidder(s)' bid will be deemed to remain valid until a final contract has been concluded.

With regard to the validity period of short-listed bidders, please refer to Section 1, paragraph 9.

Disclosure of Prices Quoted

Respondents are to note that, on award of business, Transnet is required to publish the tendered prices and preferences claimed of the successful and unsuccessful Respondents *inter alia* on the National Treasury e-Tender Publication Portal, (www.etenders.gov.za), as required per National Treasury Instruction Note 01 of 2015/2016.

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

All Returnable Sections, as indicated in the header and footer of the relevant pages, must be signed, stamped and dated by the Respondent.

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

Failure to provide all these Mandatory 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.

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

Mandatory Returnable Documents	Submitted [Yes or No]
SECTION 3 : Quotation Form	
PREQUALIFICATION CRITERIA - Valid BBBEE certificate/affidavit - EME and QSE only	
ANNEXURE B : SBD1 (Tax)	

- b) **Essential Returnable Documents**

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

Essential Returnable Documents required for evaluation purposes:

Failure to provide all essential Returnable Documents used for purposes of scoring a bid, by the closing date and time of this bid will not result in a Respondent's disqualification. However, Bidders will receive an automatic score of zero for the applicable evaluation criterion. Bidders are therefore urged to ensure that all these documents are returned with their Proposals.

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

Other Essential Returnable Documents:

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

Please confirm submission of these essential Returnable Documents by indicating Yes or No in the table below:

OTHER ESSENTIAL RETURNABLE DOCUMENTS & SCHEDULES	SUBMITTED [Yes or No]
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	
SECTION 8 : Certificate of attendance of compulsory / non-compulsory Site Meeting / RFQ Briefing	
Tax Clearance Certificate or electronic access PIN obtained from SARS's new Tax Compliance Status (TCS) system [Consortia / Joint Ventures must submit a separate Tax Clearance Certificate for each party]	
Central Supplier Database (CSD) Registration	
SECTION 4: Certificate of Acquaintance with RFQ Documents	
SECTION 5: RFQ Declaration and Breach of Law Form	
SECTION 6: B-BBEE Preference Claim Form	
SECTION 7: Contractor Management SHE Documentation	
SECTION 9: Section 37(2) of the Occupational Health and Safety Act	
SECTION 10: Signed Master Agreement	

CONTINUED VALIDITY OF RETURNABLE DOCUMENTS

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

SECTION 3

SCOPE OF WORKS AND 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 Master Agreement; 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.

1. INVITATION TO SUBMIT A QUOTATION

1.1 Tenderers are hereby invited to tender on Hire of Foot Flush Portable Toilets at the, Port of Ngqura, Port Elizabeth, for 36 Months

2. SCOPE OF WORKS AND GENERIC CONDITIONS OF CONTRACT

2.1. BACKGROUND AND PURPOSE

In terms of the facilities regulations 2 (2) of the Occupational Health and Safety Act 85 of 1993

Transnet National Ports Authority (TNPA) Port of Ngqura, invites suitably qualified potential service providers to submit proposals (Tender Documents) for provision of portable flushable toilets.

2.2. SCOPE OF WORKS

- Supply of foot flush portable toilets placed at various TNPA, Port of Ngqura operated sites (as listed in section 2.3)
- Toilets to fitted with a ventilation pipe
- Toilets to be fitted with a hand washing facilities
- Toilets to be fitted with a soap dispensers
- Toilets to be fitted with toilet paper roll holders.

- Toilets to be fitted with urinals
- Toilets is fastened in place to prevent it from being blown by the wind and the fastening mechanism should be periodically assessed.
- Toilets to be serviced twice a week,
- The service provider to supply toilets with soap on every service interval, TNPA to provide for all other periods in between the services.
- The service provider to supply 2 x 2-ply toilet paper on every service interval, TNPA to provide for all other periods in between the service.
- Toilets to be serviced with refillable chemical which the service provider will be required to refill same during the service intervals.
- Leak proof and rust proof containers

2.3. **SITES REQUIRING TOILETS:**

- Railway Gate
- Multi-purpose Terminal
- Port Control
- Eastern Breakwater
- Sand Bypass
- Joorst Park Gate

2.4. **LOCATION OF THE SITE AND ACCESS**

2.4.1. Access to the site can be gained via the N2 Road, on to Neptune Road, past the Port Entrance Plaza.

2.5. **DURATION**

2.5.1. The duration of this contract is 36 months. This duration is subject to the contract value available in the contract. The duration may therefore be less or equal to 36 months.

2.6. **CONTRACT MANAGEMENT**

2.6.1. The Contractor will mobilize the equipment and his/her services to the designated site(s) and make such equipment and services available to TNPA Port of Ngqura as and when a request is made OR as per the frequency stipulated in the Scope of Works.

2.6.2. The TNPA Project Manager may call contractual meetings with the Contractor from time to time to discuss project progress and SHE matters.

2.6.3. The Contractor will undertake the work as specified in this Specification.

2.6.4. Quantities measured in the Bill of Quantities are estimates and may vary during the course of the contract.

2.6.5. All other conditions of contract shall be as per the TNPA Procurement Department's contract documentations and procurement policies.

2.7. VEHICLES, PLANT & EQUIPMENT:

2.7.1. The Contractor must ensure that all vehicles, plant & equipment to be used on site and in the Port are kept and maintained in good condition and working order.

2.8. CONTRACTORS' STAFF AND LABOURERS TO BE USED ON SITE:

2.8.1. The Contractors' Staff and Labourers to be used on site must:

- a) Be inducted by the TNPA SHE Department before working on site and in the Port.
- b) Have and use all safety and personal protective equipment (PPE) necessary for the task to be performed on site and in the Port.
- c) Be certified, skilled and competent to conduct their duties (competence certificates shall be provided as per the Port of Ngqura SHE Requirements and will be presented to the TNPA Supervisor upon request for such documentation).
- d) Conform to the acceptable standards of behaviour and dress appropriately.

2.9. PAYMENTS

2.9.1. Payments will be made by the TNPA Port of Ngqura as per Finance Policies.

2.10. COMPLETION & TERMINATION OF CONTRACT

2.10.1. This contract will be considered complete when the contract value has been fully spent or when the contract period has been reached or expired, whichever comes first.

2.10.2. Either party may terminate this contract by providing the other with 1 (one) months' notice (or as determined by the TNPA Procurement Department).

2.10.3. Despite anything in the contract to the contrary, TNPA Port of Ngqura may, by providing a written notice to the Contractor, terminate the contract immediately if the Contractor:

- a) Suffers an insolvency event;
- b) Refuse to comply with any reasonable instruction or direction of the TNPA Port of Ngqura representative; or
- c) Is in breach of this contract and has failed to rectify the breach following a written request do so by TNPA Port of Ngqura.

2.11. INSURANCE

2.11.1. Before the Contractor commences with the works, the Contractor must effect and maintain (if the Contractor does not already carry these insurances under its annual policies of insurance) at its own expense, all insurances required by law and the contract on terms and conditions and for amounts acceptable to the TNPA Port of Ngqura, including:

- a) Public liability insurance covering liability to third parties for injuries, death, loss of and damage to the property from anything done or omitted to be done for the public liability insurance.
- b) Motor vehicles third party insurance for all relevant vehicles.

2.11.2. Before commencement of the works and whenever subsequently requested in writing by the TNPA Project Manager, the Contractor must provide TNPA Port of Ngqura with certificates of currency to demonstrate that the insurance referred to have been affected and are being maintained.

2.11.3. The Contractor must notify TNPA Port of Ngqura immediately of any circumstances, injuries, deaths or incident that may occur on site which may, or may not, involve a claim against both the Contractor and TNPA Port of Ngqura.

2.12. INDEMNITY AND INJURY MANAGEMENT

2.12.1. The Contractor or Operator and any persons from the Contractor working on site must first ensure that they provide their signatures on the indemnity form before entering the site.

2.13. COMMUNICATION

2.13.1. All communication and instructions shall be via, email, telephone and/or letter.

2.13.2. The Contractor shall provide all their contact details with their tender submissions.

2.14. COMPLIANCE

2.14.1. The Contractor must comply and ensure that the staff complies with the Occupational Health and Safety Act, (Act 85 of 1993) and all applicable legislation and Regulations, equal opportunity legislation, the National Road Traffic Act, (Act 93 of 1996) and all applicable legislation and Regulations, the National Environment Management Act, (Act 108 of 1998) and all applicable legislation and Regulations, motor vehicle acts (third party insurance), transport acts, industrial agreements, registered workplace agreements of employer-employee agreements, the Safety, Health and Environment (SHE) requirements and all lawful direction of the TNPA Port of Ngqura.

2.14.2. The Contractor (successful bidder) shall submit a SHE File for approval after the award of tender. All general TNPA SHE documentations are attached to this document.



2.15. PARKING

2.15.1. Parking of the Contractor's plant and vehicles in the Port will be at the Contractor's risk.

3. RETURNABLE SCHEDULE

The following documents shall be submitted with the RFQ:

- 3.1. Previous experience and track record: Signed reference letters.
- 3.2. Lead / response time: Signed letter of commitment.
- 3.3. Technical Method Statements and Quality Management Plan.
- 3.4. Proposed Project Programme.
- 3.5. Health, Safety and Environment (SHE) plan.

4. TNPA PORT OF NGQURA SHE REQUIREMENTS

- 4.1. The Contractor (Successful Bidder) shall submit a Compliance File for approval by the TNPA Port of Ngqura SHE Department after the award of tender.
- 4.2. The Contractor (Successful Bidder) shall prepare a Compliance File in accordance with the table noted on **clause 5.3** of this Specification.

4.3. **CONTRACTOR'S COMPLIANCE FILE ASSESSMENT CHECKLIST**

Project Manager:			
Project name:			
Client:			
Contractor Details:			
No.	items	Approved	Not Approved
1	Principal Contractors Organogram		
2	Letter Of Good Standing With Compensation Fund		
3	Notification Letter Of Construction Work ~ Department Of Labour (If Applicable)		
4	Appointments		
5	Induction: Employees And Visitors: Staff Medical Certificates		
6	Principal Contractor's SHEQ Policy		
7	Health & Safety Plan, Integrated Legal Register, Client Specification.		
8	Fall Protection Plan (If Applicable)		
9	Risk Assessments: Method Statements: Safe Operating Procedures		
10	Incidents / Accidents Register And Investigation Reports		
11	Emergency Contact Telephone Numbers		
12	Business Continuity Plan Including Emergency Plan		
13	Documented Proof Of Daily Toolbox Safety Talks/ DSTI		
14	Inspections Checklist		
15	All Registers		
16	Welfare Facilities		
17	Electrical Compliance		
18	Mandatory Agreement		
19	Communication Plan		
20	Training Records and Competency Certificates		
21	General		

5. LEGAL MATTERS

- 5.1. No sharing, copying, or use of the data for personal gain will be allowed without the written approval of TNPA Port of Ngqura.

PRICING SCHEDULE REQUIREMENTS

Tenderer (Company)	Responsible Person	Designation	Date
Project/Tender Title	Project/Tender No.	Project Location / Description	

The following is the minimum list of pricing items that must be submitted to the Contract Manager by the contractor for approval

#	Cost element	Unit Cost (R)	# of Units	Total Cost (R)
1.	Human Resources			
2.	Systems Documentation			
3.	Meetings & Administration			
4.	Training			
5.	PPE & Safety Equipment			
6.	Signage & Barricading			
7.	Workplace Facilities			
8.	Emergency & Rescue Measures			
9.	Hygiene Surveys & Monitoring			
10.	Medical Surveillance			
11.	Safe Transport of Workers			
12.	HAZMat Management (e.g. asbestos /silica)			
13.	Substance Abuse Testing			
14.	Rewards & Recognition			
15.	Other			
16.				

Total IMS Cost (R)	
Total Tender Value (R)	
IMS Cost as % of Tender value	%



INDEMNITY

Contractors/service providers enters the property at own risk and thus waive any claims of any nature against TNPA or their employees, agents and/or mandatories in respect of any loss, damage and / or injury whether same is as a result of any negligent act on the part of the TNPA and or their employees, agents and / or mandatories or other independent contractors or subcontractors, or by third persons, or by way of defective equipment or materials supplied by TNPA and any of their contractors or suppliers, nothing at all exempted.

I HAVE READ, UNDERSTOOD AND ACCEPT THE TERMS AND CONDITIONS AS OUTLINED ABOVE:

WITNESSES:

1. _____

TENDERER

2. _____

DATE: _____

Price Schedule

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

Note:

- Respondents are required to **complete in full the table below**; failing which bidders will be disqualified.
- Price quoted to be all inclusive (travel, accommodation, etc.).

2. BILL OF QUANTITIES

This Bill of Quantities shall be read in conjunction with this Specifications Document and the RFQ clauses.

ITEM NO.	DESCRIPTION	Unit	QTY	Year 1 Rate	Year 2 Rate	Year 3 Rate
1.	Foot-Flush Portable Chemical Toilet with 2 x services per week.	Ea.	6			
	SHE FILE	Ea.				
4.	Sub-total					
5.	Add 15% VAT					
6.	TOTAL					

Delivery Lead-Time from date of purchase order (to deliver the project):
 _____ [days/weeks]

Delivery Lead-Time from date of purchase order (to complete the project):
 _____ [days/weeks]

Notes to Pricing:

- a) Respondents are to note that if the price offered by the highest scoring bidder is not market-related, Transnet may not award the contract to that Respondent. Transnet may-
- (i) negotiate a market-related price with the Respondent scoring the highest points or cancel the RFQ;
 - (ii) if that Respondent does not agree to a market-related price, negotiate a market-related price with the Respondent scoring the second highest points or cancel the RFQ;

- (iii) if the Respondent scoring the second highest points does not agree to a market-related price, negotiate a market-related price with the Respondent scoring the third highest points or cancel the RFQ.

If a market-related price is not agreed with the Respondent scoring the third highest points, Transnet must cancel the RFQ.

- b) All Prices must be quoted in South African Rand, exclusive of VAT
- c) 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.
- d) 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.



SECTION 4

CERTIFICATE OF ACQUAINTANCE WITH RFQ DOCUMENTS

By signing this certificate the Respondent is deemed to acknowledge that he/she has made himself/herself thoroughly familiar with, and agrees with all the conditions governing this RFQ. This includes those terms and conditions contained in any printed form stated to form part hereof, including but not limited to the documents stated below. As such, Transnet will recognise no claim for relief based on an allegation that the Respondent overlooked any such condition or failed properly to take it into account in calculating tendered prices or any other purpose:

1.	Transnet’s General Bid Conditions*
2.	Standard RFQ Terms and Conditions for the supply of Goods or Services to Transnet
3.	Transnet’s Supplier Integrity Pact*
4.	Non-disclosure Agreement*
5.	Vendor Application Form* and all supporting documents (first time vendors only). Alternatively, for all existing vendors, please complete the table below under the heading “Existing vendors”.
<p>Respondents are to note that the documents marked with a “*” are available on request or at the Transnet website (www.transnet.net). Please click on “Business with Us”, proceed to the tab “Tenders” and then click on “Standard Bid Documents”.</p>	

Existing vendors: existing vendors are required to confirm whether all the information (e.g. company address, contact details, banking details, etc.) relating to the existing vendor number is still correct at the time of submission of this bid or update their information in the table below:

Transnet Operating Division [e.g. TFR, TE, etc.]	Vendor Number	Information still current [tick if applicable]	Information change [indicate detail of change/s & attach appropriate proof]

Should the Bidder find any terms or conditions stipulated in any of the relevant documents quoted in the RFQ unacceptable, it should indicate which conditions are unacceptable and offer alternatives by written submission on its company letterhead, attached to its submitted Bid. Any such submission shall be subject to review by Transnet’s Legal Counsel who shall determine whether the proposed alternative(s) are acceptable or otherwise, as the case may be. A material deviation from the Standard terms or conditions could result in disqualification.



Bidders accept that an obligation rests on them to clarify any uncertainties regarding any bid to which they intend to respond, before submitting the bid. The Bidder agrees that he/she will have no claim based on an allegation that any aspect of this RFQ was unclear but in respect of which he/she failed to obtain clarity.

The bidder understands that his/her Bid will be disqualified if this Certificate of Acquaintance with RFQ documents included in the RFQ as a returnable document, is found not to be true and complete in every respect.

SIGNED at _____ on this _____ day of _____ 20__

SIGNATURE OF WITNESSES

ADDRESS OF WITNESSES

1 _____

Name _____

2 _____

Name _____

SIGNATURE OF RESPONDENT'S AUTHORISED REPRESENTATIVE: _____

NAME: _____

DESIGNATION: _____



SECTION 5

RFQ DECLARATION AND BREACH OF LAW FORM

NAME OF ENTITY: _____

We _____ do hereby certify that:

1. Transnet has supplied and we have received appropriate responses to any/all questions [as applicable] which were submitted by ourselves for RFQ Clarification purposes;
2. we have received all information we deemed necessary for the completion of this Request for Quotation [**RFQ**];
3. we have been provided with sufficient access to the existing Transnet facilities/sites and any and all relevant information relevant to the Supply of the Goods as well as Transnet information and Employees, and has had sufficient time in which to conduct and perform a thorough due diligence of Transnet's operations and business requirements and assets used by Transnet. Transnet will therefore not consider or permit any pre- or post-contract verification or any related adjustment to pricing, service levels or any other provisions/conditions based on any incorrect assumptions made by the Respondent in arriving at his Bid Price.
4. at no stage have we received additional information relating to the subject matter of this RFQ from Transnet sources, other than information formally received from the designated Transnet contact(s) as nominated in the RFQ documents;
5. we have complied with all Obligations of the Bidder/Supplier as indicated in paragraph 3 of the Transnet Supplier Integrity which includes but is not limited to ensuring that we take all measures necessary to prevent corrupt practices, unfairness and illegal activities in order to secure or in furtherance to secure a contract with Transnet;
6. we are satisfied, insofar as our entity is concerned, that the processes and procedures adopted by Transnet in issuing this RFQ and the requirements requested from Bidders in responding to this RFQ have been conducted in a fair and transparent manner; and
7. furthermore, we declare that a family, business and/or social relationship **exists / does not exist** [delete as applicable] between an owner / member / director / partner / shareholder of our entity and an employee or board member of the Transnet Group including any person who may be involved in the evaluation and/or adjudication of this Bid.
8. In addition, we declare that an owner / member / director / partner / shareholder of our entity **is / is not** [delete as applicable] an employee or board member of the Transnet Group.
9. If such a relationship as indicated in paragraph 6 and/or 7 exists, the Respondent is to complete the following section:



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

ADDRESS:

Indicate nature of relationship with Transnet:

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

10. We declare, to the extent that we are aware or become aware of any relationship between ourselves and Transnet [other than any existing and appropriate business relationship with Transnet] which could unfairly advantage our entity in the forthcoming adjudication process, we shall notify Transnet immediately in writing of such circumstances.



BREACH OF LAW

11. We further hereby certify that *I/we **have/have not been*** [delete as applicable] 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. This includes the imposition of an administrative fine or penalty.

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

NATURE OF BREACH:

DATE OF BREACH: _____

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

SIGNED at _____ on this ____ day of _____ 20__

For and on behalf of _____ duly authorised hereto	AS WITNESS:
Name:	Name:
Position:	Position:
Signature:	Signature:
Date:	Registration No of Company/CC _____
Place:	Registration Name of Company/CC _____

SECTION 6

B-BBEE PREFERENCE POINTS CLAIM FORM

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

NB: BEFORE COMPLETING THIS FORM, BIDDERS MUST STUDY THE GENERAL CONDITIONS, DEFINITIONS AND DIRECTIVES APPLICABLE IN RESPECT OF B-BBEE, AS PRESCRIBED IN THE PREFERENTIAL PROCUREMENT REGULATIONS, 2017.

1. GENERAL CONDITIONS

1.1 The following preference point systems are applicable to all bids:

- the 80/20 system for requirements with a Rand value of up to R50 000 000 (all applicable taxes included); and
- the 90/10 system for requirements with a Rand value above R50 000 000 (all applicable taxes included).

1.2 The value of this bid is estimated to not exceed R50 000 000 (all applicable taxes included) and therefore the 80/20 preference point system shall be applicable.

1.3 Preference points for this bid shall be awarded for:

- (a) Price; and
- (b) B-BBEE Status Level of Contribution.

1.4 The maximum points for this bid are allocated as follows:

	POINTS
PRICE	80
B-BBEE STATUS LEVEL OF CONTRIBUTION	20
Total points for Price and B-BBEE must not exceed	100

1.5 Failure on the part of a bidder to submit a B-BBEE Verification Certificate from a Verification Agency accredited by the South African Accreditation System [**SANAS**], or a sworn affidavit confirming annual turnover and level of black ownership in case of all EMEs and QSEs with 51% black ownership or more together with the bid, will be interpreted to mean that preference points for B-BBEE status level of contribution are not claimed. Certificates issued by a Registered Auditor approved by the Independent Board of Auditors [**IRBA**] to Large Enterprises or QSEs with less than 51% black ownership have been discontinued but such valid certificates that were issued before 1 January 2017 may be used until they phase out completely by December 2017.

1.6 The purchaser reserves the right to require of a bidder, either before a bid is adjudicated or at any time subsequently, to substantiate any claim in regard to preferences, in any manner required by the purchaser.

2. DEFINITIONS

- (a) **"all applicable taxes"** includes value-added tax, pay as you earn, income tax, unemployment insurance fund contributions and skills development levies;
- (b) **"B-BBEE"** means broad-based black economic empowerment as defined in section 1 of the Broad-Based Black Economic Empowerment Act;

- (c) **"B-BBEE status level of contributor"** means the B-BBEE status received by a measured entity based on its overall performance using the relevant scorecard contained in the Codes of Good Practice on Black Economic Empowerment, issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act;
- (d) **"bid"** means a written offer in a prescribed or stipulated form in response to an invitation by an organ of state for the provision of services, works or goods, through price quotations, advertised competitive bidding processes or proposals;
- (e) **"Black designated group"** has meaning assigned to it in codes of good practice issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act.
- (f) **"Black People"** meaning assigned to in Section 1 of Broad-Based Black Economic Empowerment Act.
- (g) **"Broad-Based Black Economic Empowerment Act"** means the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);
- (h) **"CIPC"** means the Companies and Intellectual Property Commission, formerly known as CIPRO, the Companies and Intellectual Property Registration Office.
- (i) **"comparative price"** means the price after the factors of a non-firm price and all unconditional discounts that can be utilized have been taken into consideration;
- (j) **"consortium or joint venture"** means an association of persons for the purpose of combining their expertise, property, capital, efforts, skill and knowledge in an activity for the execution of a contract;
- (k) **"contract"** means the agreement that results from the acceptance of a bid by an organ of state;
- (l) **"co-operative"** means a co-operative registered in terms of section 7 of Cooperatives Act, 2005 (Act No. 14 of 2005)
- (m) **"Designated Group"** means - i) Black designated groups; ii) Black People; iii) Women; iv) people with disabilities or v) Small enterprise, as defined in Section 1 of National Small Enterprise Act, (102 of 1996)
- (n) **"Designated Sector"** means, sub-sector or industry or product designated in terms of regulation 8(1)(a)
- (o) **"EME"** means an Exempted Micro Enterprise as defines by Codes of Good Practice under section 9 (1) of the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);
- (p) **"firm price"** means the price that is only subject to adjustments in accordance with the actual increase or decrease resulting from the change, imposition, or abolition of customs or excise duty and any other duty, levy, or tax, which, in terms of the law or regulation, is binding on the contractor and demonstrably has an influence on the price of any supplies, or the rendering costs of any service, for the execution of the contract;
- (q) **"functionality"** means the ability of a bidder to provide goods or services in accordance with specification as set out in the bid documents;
- (r) **"Military Veteran"** has meaning assigned to it in Section 1 of Military Veterans Act, 2011 (Act No. 18 of 2011);
- (s) **"National Treasury"** has meaning assigned to it in Section 1 of Public Finance Management Act, 1999 (Act No. 1 of 1999);
- (t) **"non-firm prices"** means all prices other than "firm" prices;
- (u) **"person"** includes a juristic person;
- (v) **"People with disabilities"** meaning assigned to it in terms of Section 1 of Employment Equity Act, 1998 (Act No. 55 of 1998);

- (w) **"Price"** includes all applicable taxes less all unconditional discounts.
- (x) **"Proof of B-BBEE Status Level of Contributor"** i) the B-BBEE status level certificate issued by an unauthorised body or person; ii) a sworn affidavit as prescribed by the B-BBEE Codes of Good Practice; or iii) any other requirement prescribed in terms of the Broad-Based Black Economic Empowerment Act.
- (y) **"Rural Area"** i) a sparsely populated area in which people farm or depend on natural resources, including villages and small towns that are dispersed through the area; or ii) an area including a large settlement which depends on migratory labour and remittances and government social grants for survival, and may have traditional land tenure system.
- (z) **"QSE"** means a Qualifying Small Enterprise as defined by Codes of Good Practice under section 9 (1) of the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);
- (aa) **"rand value"** means the total estimated value of a contract in South African currency, calculated at the time of bid invitations, and includes all applicable taxes and excise duties;
- (bb) **"sub-contract"** means the primary contractor's assigning, leasing, making out work to, or employing, another person to support such primary contractor in the execution of part of a project in terms of the contract;
- (cc) **"total revenue"** bears the same meaning assigned to this expression in the Codes of Good Practice on Black Economic Empowerment, issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act and promulgated in the *Government Gazette* on 9 February 2007;
- (dd) **"Township"** means an urban living area that any time from the late 19th century until 27 April 1994, was reserved for black people, including areas developed for historically disadvantaged individuals post 27 April 1994
- (ee) **"Treasury"** meaning assigned to it in Section 1 of the Public Finance Management Act, 1999 (Act No. 1 of 1999)
- (ff) **"trust"** means the arrangement through which the property of one person is made over or bequeathed to a trustee to administer such property for the benefit of another person; and
- (gg) **"trustee"** means any person, including the founder of a trust, to whom property is bequeathed in order for such property to be administered for the benefit of another person.
- (hh) **"Youth"** meaning assigned to it in terms of Section 1 of National Youth Development Agency Act, 2008 (Act No. 54 of 2008)

3. ADJUDICATION USING A POINT SYSTEM

- 3.1 The bidder obtaining the highest number of total points will be awarded the contract.
- 3.2 Preference points shall be calculated after prices have been brought to a comparative basis taking into account all factors of non-firm prices and all unconditional discounts.
- 3.3 Points scored must be rounded off to the nearest 2 decimal places.
- 3.4 In the event that two or more bids have scored equal total points, the successful bid must be the one scoring the highest number of preference points for B-BBEE.
- 3.5 However, when functionality is part of the evaluation process and two or more bids have scored equal points including equal preference points for B-BBEE, the successful bid must be the one scoring the highest score for functionality.
- 3.6 Should two or more bids be equal in all respects, the award shall be decided by the drawing of lots.

4. POINTS AWARDED FOR PRICE

4.1 THE 80/20 OR 90/10 PREFERENCE POINT SYSTEMS

A maximum of 80 or 90 points is allocated for price on the following basis:

$$P_s = 80 \left(1 - \frac{P_t - P_{\min}}{P_{\min}} \right) \quad \text{or} \quad P_s = 90 \left(1 - \frac{P_t - P_{\min}}{P_{\min}} \right)$$

Where

P_s = Points scored for comparative price of bid under consideration

P_t = Comparative price of bid under consideration

P_{\min} = Comparative price of lowest acceptable bid

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

- 5.1 In terms of Regulation 6 (2) and 7 (2) of the Preferential Procurement Regulations, preference points must be awarded to a bidder for attaining the B-BBEE status level of contribution in accordance with the table below:

B-BBEE Status Level of Contributor	Number of points (90/10 system)	Number of points (80/20 system)
1	10	20
2	9	18
3	6	14
4	5	12
5	4	8
6	3	6
7	2	4
8	1	2
Non-compliant contributor	0	0

- 5.2 A bidder who qualifies as an EME in terms of the B-BBEE Act must submit a sworn affidavit confirming Annual Total Revenue and Level of Black Ownership. Furthermore EMEs may also obtain a sworn affidavit from CIPC (formerly CIPRO) Self Service Terminals when registering a business or filing annual returns. In these instances Transnet would require proof of turnover as well as proof of ownership. Sworn affidavits must substantially comply with the format that can be obtained on the DTI's website at www.dti.gov.za/economic_empowerment/bee_codes.jsp.
- 5.3 QSEs that are at least 51% Black owned or higher are only required to obtain a sworn affidavit on an annual basis confirming that the entity has an Annual Total Revenue of R50 million or less and the entity's Level of Black ownership.
- 5.4 A Bidder other than EME or a QSE that is at least 51% Black owned must submit their original and valid B-BBEE status level verification certificate or a certified copy thereof, substantiating their B-BBEE rating issued by a Registered Auditor approved by IRBA or a Verification Agency accredited by SANAS.
- 5.5 A trust, consortium or joint venture (including unincorporated consortia and joint ventures) must submit a consolidated B-BBEE Status Level verification certificate for every separate bid.
- 5.6 Tertiary Institutions and Public Entities will be required to submit their B-BBEE status level certificates in terms of the specialized scorecard contained in the B-BBEE Codes of Good Practice.
- 5.7 A person will not be awarded points for B-BBEE status level if it is indicated in the bid documents that such a bidder intends sub-contracting more than 25% of the value of the contract to any other enterprise that does not qualify for at least the points that such a bidder qualifies for, unless the intended sub-contractor is an EME that has the capability and ability to execute the sub-contract.



- 5.8 A person awarded a contract may not sub-contract more than 25% of the value of the contract to any other enterprise that does not have an equal or higher B-BBEE status level than the person concerned, unless the contract is sub-contracted to an EME that has the capability and ability to execute the sub-contract.
- 5.9 Bidders are to note that the rules pertaining to B-BBEE verification and other B-BBEE requirements may be changed from time to time by regulatory bodies such as National Treasury or the DTI. It is the Bidder's responsibility to ensure that his/her bid complies fully with all B-BBEE requirements at the time of the submission of the bid.

6. BID DECLARATION

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

7. B-BBEE STATUS LEVEL OF CONTRIBUTION CLAIMED IN TERMS OF PARAGRAPHS 1.4 AND 5.1

7.1 B-BBEE Status Level of Contribution: . =(maximum of 10 or 20 points)
 (Points claimed in respect of paragraph 7.1 must be in accordance with the table reflected in paragraph 5.1 and must be substantiated by means of a B-BBEE certificate issued by a Verification Agency accredited by SANAS or a Registered Auditor approved by IRBA or a sworn affidavit.

8. SUB-CONTRACTING

8.1 Will any portion of the contract be sub-contracted?

(Tick applicable box)

YES	NO
-----	----

8.1.1 If yes, indicate:

- i) What percentage of the contract will be subcontracted.....%
- ii) The name of the sub-contractor.....
- iii) The B-BBEE status level of the sub-contractor.....
- iv) Whether the sub-contractor is an EME.

(Tick applicable box)

YES	NO
-----	----

v) Specify, by ticking the appropriate box, if subcontracting with an enterprise in terms of Preferential Procurement Regulations,2017:

Designated Group: An EME or QSE which is at last 51% owned by:	EME ✓	QSE ✓
Black people		
Black people who are youth		
Black people who are women		
Black people with disabilities		
Black people living in rural or underdeveloped areas or townships		
Cooperative owned by black people		
Black people who are military veterans		
OR		
Any EME		
Any QSE		



9. DECLARATION WITH REGARD TO COMPANY/FIRM

9.1 Name of company/firm:.....

9.2 VAT registration number:.....

9.3 Company registration number:.....

9.4 TYPE OF COMPANY/ FIRM

- Partnership/Joint Venture / Consortium
- One person business/sole propriety
- Close corporation
- Company
- (Pty) Limited

[TICK APPLICABLE BOX]

9.5 DESCRIBE PRINCIPAL BUSINESS ACTIVITIES

.....

9.6 COMPANY CLASSIFICATION

- Manufacturer
- Supplier
- Professional service provider
- Other service providers, e.g. transporter, etc.

[TICK APPLICABLE BOX]

9.7 Total number of years the company/firm has been in business:.....

9.8 I/we, the undersigned, who is / are duly authorised to do so on behalf of the company/firm, certify that the points claimed, based on the B-BBEE status level of contribution indicated in paragraph 7 of the foregoing certificate, qualifies the company/ firm for the preference(s) shown and I / we acknowledge that:

- i) The information furnished is true and correct;
- ii) The preference points claimed are in accordance with the General Conditions as indicated in paragraph 1 of this form;
- iii) In the event of a contract being awarded as a result of points claimed as shown in paragraph 7, the contractor may be required to furnish documentary proof to the satisfaction of the purchaser that the claims are correct;
- iv) If a bidder submitted false information regarding its B-BBEE status level of contributor, local production and content, or any other matter required in terms of the Preferential Procurement Regulations, 2017 which will affect or has affected the evaluation of a bid, or where a bidder has failed to declare any subcontracting arrangements or any of the conditions of contract have not been fulfilled, the purchaser may, in addition to any other remedy it may have
 - (a) disqualify the person from the bidding process;
 - (b) recover costs, losses or damages it has incurred or suffered as a result of that person’s conduct;
 - (c) cancel the contract and claim any damages which it has suffered as a result of having to make less favourable arrangements due to such cancellation;
 - (d) if the successful bidder subcontracted a portion of the bid to another person without disclosing it, Transnet reserves the right to penalise the bidder up to 10 percent of the value of the contract;



- (e) recommend that the bidder or contractor, its shareholders and directors, or only the shareholders and directors who acted on a fraudulent basis, be restricted by the National Treasury from obtaining business from any organ of state for a period not exceeding 10 years, after the audi alteram partem (hear the other side) rule has been applied; and
- (f) forward the matter for criminal prosecution.

<p>WITNESSES</p> <p>1.</p> <p>2.</p>
--

<p>.....</p> <p>SIGNATURE(S) OF BIDDERS(S)</p> <p>DATE:</p> <p>ADDRESS</p> <p>.....</p>

SECTION 7
CONTRACTOR MANAGEMENT SHE DOCUMENTATION
(TO BE SUBMITTED ON AWARD)

CONTRACTOR - COMPANY'S NAME			
CONTRACTOR - PERSON'S NAME			
NATURE OF CONTRACTOR'S BUSINESS/ACTIVITES			
DOCUMENTS HANDED TO CONTRACTOR		DATE RECEIVED	SIGNATURE
1.	<i>Transnet SHERQ Policy</i>		
2.	<i>Addendum to the Transnet SHERQ Policy</i>		
3.	Generic Port of Ngqura and Port of Port Elizabeth SHE Specifications		
4.	Section 37 (2) Agreement		
5.	Port of Ngqura OEMP and Port of Port Elizabeth EMP.		
6.	General SHE Awareness Document		
7.	TNPA Contractor SHE Rules		
8.	Environmental Awareness Template		
9.	Site Monitoring Template		
MINIMUM DOCUMENTS REQUIRED FROM CONTRACTOR		DATE RECEIVED	SIGNATURE
1.	SHE Organogram – Legal appointments (16.2, SHE Rep, First Aider, Incident Investigator etc.)		
2.	Detailed Scope of Work		
3.	Method Statement for approval		
4.	SHE Risk Assessment		
5.	SHE Plan (Refer to Port of PE EMP template and Port of Ngqura OEMP)		
6.	Emergency Procedure with contact details (Include TNPA Port of PE/Ngqura Port Control contact details)		
7.	Fall Protection Plan (if applicable)		
8.	Incident Investigation and Reporting Procedure		
9.	Equipment List/Register		
10.	Equipment and tools Inspection checklist		
11.	Equipment tests certificates (if applicable)		
12.	Employee Training Records (Competence Certificates)		

13.	Employee List (completed-to be updated on a regular basis)		
14.	Safe Working Procedures/Standard Operating Procedures.		
15.	SHE Talk/Tool box topics list (if applicable)		
16.	Employee Medical Records where applicable (Conducted by Occupation Medical Practitioner)		
17.	Valid letter of good standing with Compensation Commissioner or any other accredited IOD Compensation Insurer.		
18.	List of Sub - Contractors		
19.	Signed letter of appointment of sub-contractors		
20.	Section 37 (2) Agreement-signed (including subcontractors)		
21.	Notification of Construction work (Annexure A of OHS Act 85 of 1993), (if applicable)		
22.	Membership/Registration with any applicable Societies/Authority		

Abbreviations

- | | |
|----------|--|
| 1. SHE: | Safety, Health and Environment. |
| 2. OEMP: | Operational Environmental Management Plan. |
| 3. EMP: | Environmental Management Plan. |
| 4. OHS: | Occupational Health and Safety. |

Note:

1. The contractor may only commence with work on site after all the above requirements have been met and employees have attended induction.
2. This form as well as all the documentation received by the SHE Department from the contractor must be kept on the Contract SHE file.



SECTION 8
CERTIFICATES

1. BRIEFING CERTIFICATE (where applicable)

This is to certify that.....has/have today attended the briefing session in respect of the services/goods to be provided in terms of this tender.

SIGNED AT on this day of 20.....

**TRANSNET NATIONAL PORTS AUTHORITY
REPRESENTATIVE**

2. SITE INSPECTION CERTIFICATE (where applicable)

This is to certify that has/have today inspected and examined the site of the proposed works.

SIGNED AT on this day of 20.....

**TRANSNET NATIONAL PORTS AUTHORITY
REPRESENTATIVE**



SECTION 9

SECTION 37(2) OF THE OCCUPATIONAL HEALTH AND SAFETY ACT

**WRITTEN AGREEMENT ON
OCCUPATIONAL HEALTH AND SAFETY**

**In accordance with the provision of Section 37(2)
of the Occupational Health and Safety Act 85 of 1993**

AS ENTERED INTO BY AND BETWEEN

**TRANSNET NATIONAL PORTS AUTHORITY
A DIVISION OF
TRANSNET SOC LIMITED
REGISTRATION NUMBER 1990/000900/30**

(hereinafter referred to as "the Employer")

AND

(hereinafter referred to as "the Mandatory")

Compensation Fund Number: _____

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- 24. DURATION OF AGREEMENT**
- 25. HEADINGS**

1. REPORTING

- 1.1 The Mandatory and/or his designated person appointed in terms of Section 16(2) of the Occupational Health and Safety Act 85 of 1993 ("the OHS Act") shall report to the Risk Manager and/or a Project Manager and/or a representative designated by the Employer prior to commencing the work at the premises.

2. WARRANTY OF COMPLIANCE

- 2.1 In terms of this agreement the Mandatory warrants that he agrees to the arrangements and procedures as prescribed by the Employer and as provided for in terms of Section 37(2) of the OHS Act for the purposes of compliance with the Act.
- 2.2 The Mandatory further warrants that he and/or his employees undertake to maintain such compliance with the OHS Act. Without derogating from the generality of the above, or from the provisions of the said agreement, the Mandatory shall ensure that the clauses as hereunder described are at all times adhered to by himself and his employees.
- 2.3 The Mandatory hereby undertakes to ensure that the health and safety of any other person on the premises is not endangered by the conduct and/or his nominated Chief Executive Officer.

3. APPOINTMENTS AND TRAINING

- 3.1 The Mandatory shall appoint competent persons as per Section 16(2) of the OHS Act. Any such appointed person shall be trained on any occupational health and safety matter and the OHS Act provisions pertinent to the work is to be performed under his responsibility. Copies of any appointments made by the Mandatory shall immediately be provided to the Employer.
- 3.2 The Mandatory shall further ensure that all his employees are trained on the health and safety aspects relating to the work and that they understand the hazards associated with such work being carried out on the premises. Without derogating from the foregoing, the Mandatory shall, in particular, ensure that all his users or operators of any materials, machinery or equipment are properly trained in the use of such materials, machinery or equipment.
- 3.3 Notwithstanding the provisions of the above, the Mandatory shall ensure that he, his appointed responsible persons and his employees are at all times familiar with the provisions of the OHS Act, and that they comply with the provisions of the Act.

4. SUPERVISION, DISCIPLINE AND REPORTING

- 4.1 The Mandatory shall ensure that all work performed on the Employer's premises are done under strict supervision and that no unsafe or unhealthy work practices are permitted. Discipline regarding health and safety matters shall be strictly enforced against any of his employees regarding non-compliance by such employee with any health and safety matters.
- 4.2 The Mandatory shall further ensure that his employees report to him all unsafe or unhealthy work situations immediately after they become aware of the same and that he in turn immediately reports these to the Employer and/or his representative.

5. ACCESS TO THE OHS ACT

- 5.1 The Mandatory shall ensure that he has an updated copy of the OHS Act on site at all times and that this is accessible to his appointed responsible persons and employees, save that the parties may make arrangements for the Mandatory and his appointed responsible persons and employees to have access to the Employer's updated copy/copies of the Act.

6. COOPERATION

- 6.1 The Mandatory and/or his responsible persons and employees shall provide full co-operation and information if and when the Employer or his representative inquires into occupational health and safety issues concerning the Mandatory. It is hereby recorded that the Employer and his representative shall at all times be entitled to make such inquiry.
- 6.2 Without derogating from the generality of the above, the Mandatory and his responsible persons shall make available to the Employer and his representative, on request, all and any checklists and inspection registers required to be kept by him in respect of any of his materials, machinery or equipment.

7. WORK PROCEDURES

- 7.1 The Mandatory shall, after having established the dangers associated with the work performed, develop and implement mitigation measures to minimize or eliminate such dangers for the purpose of ensuring a healthy and safe working environment. The Mandatory shall then ensure that his responsible persons and employees are familiar with such mitigation measures.
- 7.2 The Mandatory shall implement any other safe work practices as prescribed by the Employer and shall ensure that his responsible persons and employees are made conversant with and adhere to such safe work practices.
- 7.3 The Mandatory shall ensure that work for which a permit is required by the Employer is not performed by his employees prior to the obtaining of such a permit.

8. HEALTH AND SAFETY MEETINGS

- 8.1 If required in terms of the OHS Act, the Mandatory shall establish his own health and safety committee(s) and ensure that his employees, being the committee members, hold health and safety representatives to attend the Employer's health and safety committee meetings.

9. COMPENSATION REGISTRATION

- 9.1 The Mandatory shall ensure that he has a valid proof of registration with the Compensation Commissioner, as required in terms of the Compensation for Occupational Injuries and Diseases Act 130 of 1993, and that all payments owing to the Commissioner are discharged. The Mandatory shall further ensure that the cover remain in force while any such employee is present on the premises.

10. MEDICAL EXAMINATIONS

- 10.1 The Mandatory shall ensure that all his employees undergo routine medical examinations and that they are medically fit for the purposes of the work they are to perform.

11. INCIDENT REPORTING AND INVESTIGATION

- 11.1 All incidents referred to in Section 24 of the OHS Act shall be reported by the Mandatory to the Department of Labour and to the Employer. The Employer shall further be provided with copies of any written documentation relating to any incident.
- 11.2 The Employer retains an interest in the reporting of any incident as described above as well as in any formal investigation and/or inquiry conducted in terms of section 32 of the OHS-Act into such incident.

12. SUBCONTRACTORS

- 12.1 The Mandatory shall notify the Employer of any subcontractor he may wish to perform work on his behalf on the Employer's premises. It is hereby recorded that all the terms and provisions contained in this clause shall be equally binding upon the subcontractor prior to the subcontractor commencing with the work. Without derogating from the generality of this paragraph:



- 12.1.1 The Mandatory shall ensure that training as discussed under appointments and training, is provided prior to the subcontractor commencing work on the Employer's premises.
- 12.1.2 The Mandatory shall ensure that work performed by the subcontractor is done under his strict supervision, discipline and reporting.
- 12.1.3 The Mandatory shall inform the Employer of any health and safety hazards and/or issue that the subcontractor may have brought to this attention.
- 12.1.4 The Mandatory shall inform the Employer of any difficulty encountered regarding compliance by the subcontractor with any health and safety instruction, procedure and/or legal provision applicable to the work the subcontractor performs on the Employer's premises.

13. SECURITY AND ACCESS

- 13.1 The Mandatory and his employees shall enter and leave the premises only through the main gate(s) and/or checkpoint(s) designated by the Employer. The Mandatory shall ensure that employees observe the security rules of the Employer at all times and shall not permit any person who is not directly associated with the work from entering the premises.
- 13.2 The Mandatory and his employees shall not enter any area of the premises that is not directly associated with their work.
- 13.3 The Mandatory shall ensure that all materials, machinery or equipment brought by him onto the premises are recorded at the main gate(s) and/or checkpoint(s). Failure to do this may result in a refusal by the Employer to allow the materials, machinery or equipment to be removed from the premises.

14. FIRE PRECAUTIONS AND FACILITIES

- 14.1 The Mandatory shall ensure that an adequate supply of fire-protection and first-aid facilities are provided for the work to be performed on the Employer's premises, save that the parties may mutually make arrangements for the provision of such facilities.
- 14.2 The Mandatory shall further ensure that all his employees are familiar with fire precautions at the premises, which included fire-alarm signals and emergency exits, and that such precautions are adhered to.

15. ABLUTION FACILITIES

- 15.1 The Mandatory shall ensure that an adequate supply of ablution facilities are provided for his employees performing work on the Employer's premises, save that the parties may mutually make arrangements for the provision of such facilities.

16. HYGIENE AND CLEANLINESS

- 16.1 The Mandatory shall ensure that the work site and surround area is at all times maintained to the reasonably practicable level of hygiene and cleanliness. In this regard, no loose materials shall be left lying about unnecessarily and the work site shall be cleared of waste material regularly and on completion of the work.

17. NO NUISANCE

- 17.1 The Mandatory shall ensure that neither he nor his employees undertake any activity that may cause environmental impairment or constitute any form of nuisance to the Employer and/or his surroundings.
- 17.2 The Mandatory shall ensure that no hindrance, hazard, annoyance or inconvenience is inflicted on the Employer, another Mandatory or any tenants. Where such situations are unavoidable, the Mandatory shall give prior notice to the Employer.

18. INTOXICATION NOT ALLOWED

- 18.1 No intoxicating substance of any form shall be allowed on site. Any person suspected of being intoxicated shall not be allowed on the site. Any person required to take medication shall notify the relevant responsible person thereof, as well as the potential side effects of the medication.

19. PERSONAL PROTECTIVE EQUIPMENT

- 19.1 The Mandatory shall ensure that his responsible persons and employees are provided with adequate personal protective equipment (PPE) for the work they may perform and in accordance with the requirements of General Safety Regulation 2 (1) of the OHS Act. The Mandatory shall further ensure that his responsible persons and employees wear the PPE issued to them at all material times.

20. PLANT, MACHINERY AND EQUIPMENT

- 20.1 The Mandatory shall ensure that all the plant, machinery, equipment and/or vehicles he may wish to utilize on the Employer's premises is/are at all times of sound order and fit for the purpose for which it/they is/are attended to, and that it/they complies/comply with the requirements of Section 10 of the OHS Act.
- 20.2 In accordance with the provisions of Section 10(4) of the OHS Act, the Mandatory hereby assumes the liability for taking the necessary steps to ensure that any article or substance that it erects or installs at the premises, or manufactures, sells or supplies to or for the Employer, complies with all the prescribed requirements and will be safe and without risks to health and safety when properly used.

21. NO USAGE OF THE EMPLOYER'S EQUIPMENT

- 21.1 The Mandatory hereby acknowledge that his employees are not permitted to use any materials, machinery or equipment of the Employer unless the prior written consent of the Employer has been obtained, in which case the Mandatory shall ensure that only those persons authorized to make use of same, have access thereto.

22. TRANSPORT

- 22.1 The Mandatory shall ensure that all road vehicles used on the premises are in a roadworthy condition and are licensed and insured. All drivers shall have relevant and valid driving licenses and vehicle shall carry passengers unless it is specifically designed to do so. All drivers shall adhere to the speed limits and road signs on the premises at all times.
- 22.2 In the event that any hazardous substances are to be transported on the premises, the Mandatory shall ensure that the requirements of the Hazardous Substances Act 15 of 1973 are complied with fully all times.

23. CLARIFICATION

- 23.1 In the event that the Mandatory requires clarification of any of the terms or provisions of this agreement, he should contact the Risk Manager of the Employer.

24. DURATION OF AGREEMENT

- 24.1 This agreement shall remain in force for the duration of the work to be performed by the Mandatory and/or while any of the Mandatory's employees are present on the Employer's premises.



25. HEADINGS

The headings as contained in this agreement are for reference purposes only and shall not be construed as having any interpretative value in themselves or as giving any indication as to the meaning of the contents of the paragraphs contained in this agreement.

Thus done and signed at _____ on the _____ day of _____ 20_____

For and on behalf of the Employer

For and on behalf of the Mandatory

Witnesses:

1. _____

2. _____



SECTION 10

MASTER AGREEMENT

entered into by and between

TRANSNET SOC LTD

[Registration No. 1990/000900/30]

trading through it's Operating Division TRANSNET NATIONAL PORTS AUTHORITY (hereinafter referred to as TNPA)

and

.....

**FOR THE PROVISION OF SERVICES:
SECURITY DEPARTMENT – PROVISION OF FOOT-FLUSH TOILETS AT PORT OF NGQURA FOR
THIRSTY SIX (36) MONTHS**

Agreement Number	PONR 001A/19-20
Commencement Date
Expiry Date
Contract Value	R.....

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SCHEDULE 1 – WORK ORDER(s)



1 INTRODUCTION

This Agreement is entered into by and between:

Transnet SOC Ltd [Registration Number 1990/000900/30] whose registered address is Carlton Centre, 150 Commissioner Street, Johannesburg 2001, Gauteng, Republic of South Africa [**Transnet**]

and

..... [Registration Number] whose registered address is
 [**the Service Provider**].

NOW THEREFORE, IT IS AGREED:

- 1.2 Transnet hereby appoints the Service Provider to provide, and Transnet undertakes to accept the provision of Services provided for herein, as formally agreed between the Parties and in accordance with the Work Order(s) issued as schedules to this Agreement from time to time; and
- 1.3 the Service Provider hereby undertakes to render the Services provided for herein, as formally agreed between the Parties and in accordance with the Work Orders issued as schedules to this Agreement from time to time.

2 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:

- 2.1 **AFSA** means the Arbitration Foundation of South Africa;
- 2.2 **Agreement** means this 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 this 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 this 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 this 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 this 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 this 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 **Data** means all data, databases, documents, information, graphics, text or other material in an electronic or tangible medium which the Parties to this Agreement generate, collect, process, store or transmit in relation to their business;
- 2.9 **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 this Agreement and in respect of which such Party is liable to the other;
- 2.10 **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;
- 2.11 **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;
- 2.12 **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 this Agreement, as amended by mutual agreement between the Parties and in accordance with the provisions of this Agreement from time to time;
- 2.13 **Foreground Intellectual Property** means all Intellectual Property developed by either Party pursuant to this Agreement;
- 2.14 **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;
- 2.15 **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;
- 2.16 **Materials** means the Deliverables, the Service Provider Materials and the Third Party Materials;
- 2.17 **Parties** mean the Parties to this Agreement together with their subsidiaries, divisions, business units, successors-in-title and their assigns;
- 2.18 **Party** means either one of these Parties;
- 2.19 **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;
- 2.20 **Permitted Purpose** means any activity or process to be undertaken or supervised by Personnel or employees of one Party during the term of this 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;
- 2.21 **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;

- 2.22 **Purchase Order(s)** means official orders issued by an operating division of Transnet to the Service Provider for the provision of Services;
- 2.23 **Service(s)** means [REDACTED], the Service(s) provided to Transnet by the Service Provider, pursuant to the Work Order(s) in terms of this Agreement;
- 2.24 **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;
- 2.25 **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;
- 2.26 **Subcontractor** means the third party with whom the Service Provider enters into a Subcontract;
- 2.27 **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 this Agreement at no expense to Transnet, and used by the Service Provider in the performance of the Services;
- 2.28 **Tax Invoice** means the document as required by Section 20 of the VAT Act, , as may be amended from time to time;
- 2.29 **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;
- 2.30 **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;
- 2.31 **VAT** means Value-Added Tax chargeable in terms of the VAT Act, as may be amended from time to time;
- 2.32 **VAT Act** means the Value Added Tax Act, No 89 of 1991, as may be amended from time to time; and
- 2.33 **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 this Agreement from time to time.

3 INTERPRETATION

- 3.1 Clause headings in this Agreement are included for ease of reference only and do not form part of this 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 this 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 this 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 This Agreement is an agreement under the terms and conditions of which the Service Provider will arrange for the provision of services to Transnet 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 this 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 this Agreement as if it were fully incorporated into the body of this Agreement.
- 4.4 During the period of this Agreement, both Parties can make written suggestions for amendments to the Work Order(s), in accordance with procedures set out in clause 32 [*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 this Agreement and/or a Purchase Order, or where this 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 this 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 this 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 this Agreement and that this Agreement is executed by a duly authorised representatives of the Service Provider;
 - b) it will discharge its obligations under this 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 this 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] calendar 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] calendar 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] calendar 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 32 [*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 this 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 this 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 this 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 this 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 this 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 16 [*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 this 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 this 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 this 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 26 – *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;
- 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; and
- n) ensure that at all times, during the currency of this Agreement, it complies with all obligations and commitments in terms of the provisions of the Income Tax Act, No 58 of 1962, the VAT Act or any other tax legislation relating to their liability for Income Tax, VAT, Pay as You Earn or any other tax. The Service provider shall further ensure the validity of its Tax Clearance Certificate, for the duration of this Agreement.

9 SUBCONTRACTING

- 9.1 The Service Provider may only enter into a subcontracting arrangement with the approval of Transnet. If the Service Provider subcontracts a portion of the contract to another person without declaring it to Transnet, Transnet reserves the right to penalise the Service Provider up to 10% of the value of the contract.
- 9.2 Should Transnet approve the Service Provider's subcontracting arrangement, the Service Provider and not the Sub-contractor will at all times be held liable for performance in terms of its contractual obligations.
- 9.3 The Service Provider may not subcontract more than 25% of the value of the contract to any other enterprise that does not have an equal or higher B-BBEE status level of contributor than the Service Provider, unless the contract is Subcontracted to an Exempted Micro Enterprise (EME) that has the capability and ability to execute the Subcontract.

10 B-BBEE AND SOCIO-ECONOMIC OBLIGATIONS

10.1 B-BBEE Scorecard

- a) Transnet fully endorses and supports the Broad-Based Black Economic Empowerment Programme and is strongly of the opinion that all South African business enterprises have an equal obligation to redress the imbalances of the past. It is also a fundamental requirement of the RFP that the Service Provider also contributes to the Supplier Development Programme, as applied by Transnet.



- b) In response to this requirement, the Service Provider shall submit to Transnet's Contract Manager or such other designated person details of its B-BBEE status in terms of the latest Codes of Good Practice issued in terms of the B-BBEE Act and proof thereof at the beginning of March each year during the currency of this Agreement.
- c) The Service Provider undertakes to notify and provide full details to Transnet in the event there is:
 - (i) a change in the Service Provider's B-BBEE status which is less than what it was at the time of its appointment including the impact thereof; and
 - (ii) a corporate or internal restructure or change in control of the Service Provider which has or likely to impact negatively on the Service Provider's B-BBEE status.
- d) Notwithstanding any other reporting requirement in terms hereof, the Service Provider undertakes to provide any B-BBEE data (underlying data relating to the Service Provider which has been relied upon or utilised by a verification agency or auditor for the purposes of issuing a verification certificate in respect of the Service Provider B-BBEE status) which Transnet may request on written notice within 30 (thirty) calendar days of such request. A failure to provide such data shall constitute a Service Provider Default and may be dealt with in accordance with the provisions of clause 23.
- e) In the event there is a change in the Service Provider's B-BBEE status, then the provisions of clause 23 shall apply.

10.2 B-BBEE Improvement Plan

- a) Transnet encourages its suppliers to constantly strive to improve their B-BBEE levels. To this end, the Service Provider undertakes to provide Transnet with a B-BBEE Improvement Plan to indicate the extent to which their B-BBEE status will be maintained or improved over the contract period, as per Annexure [REDACTED] of the RFP.
- b) The Service Provider shall, for the duration of this Agreement, comply with the B-BBEE Improvement Plan.
- c) The terms of the B-BBEE Improvement Plan and monetary value of the commitments thereunder shall not (unless otherwise agreed in writing) be less or less favourable than the commitments made by the Service Provider in such B-BBEE Improvement Plan.
- d) Breach of B-BBEE Improvement Plan obligations also provide Transnet cause to terminate the contract in certain cases where material milestones are not being achieved.

10.3 Supplier Development Implementation Plan

- a) In addition to the Supplier Development Plan which the Service Provider provided as part of its bid, the Service Provider undertakes, as stipulated in the RFP, to provide Transnet with a Supplier Development Implementation Plan [**the Implementation Plan**] setting out the nature, extent and monetary value of the Service Provider's commitments which the Service Provider shall undertake, as well as mechanisms and procedures to allow for access to information and verification of the Service Provider's compliance with the Implementation Plan, as shall be agreed with Transnet but in any event no later than 45 (forty five) calendar days from the signature date of the LOI/LOA.

- b) The Parties undertake to negotiate in good faith with a view to agreeing the content of the Implementation Plan by no later than 45 (forty five) calendar days as aforesaid (or such later date as Transnet may consent to in writing).
- c) If the Parties (acting reasonably and in good faith with due consideration to the Supplier Development Plan proposed by the Service Provider in response to the RFP fail to reach agreement on the Supplier Development Implementation Plan within the time limit stipulated in the clause above, it shall constitute a Service Provider Default and Clause 23 shall apply.
- d) The Supplier's Implementation Plan shall include, but not be limited to skills development, Job creation and Job preservation.
- e) The terms of the Implementation Plan's and the monetary value of the commitments thereunder shall not (unless otherwise agreed in writing) be less or less favourable than the commitments made by the Service Provider in the Supplier Development Implementation Plan.

10.4 Green Economy/Carbon Footprint

- a) In addition to the Supplier Development and B-BBEE commitments that the Service Provider makes, the Service Provider has in its bid provided Transnet with an understanding of the Service Provider's position with regard to issues such as waste disposal, recycling and energy conservation.

10.5 Reporting

- a) The Service Provider shall monitor, audit, and record in an auditable manner, its own implementation and compliance with the B-BBEE Improvement Plan and the Supplier Development Implementation Plan and provide the Contract Manager with such information as the Contract Manager may reasonably request concerning the implementation of the B-BBEE Improvement Plan and the Supplier Development Implementation Plan.
- b) The Service Provider shall, on a monthly basis from the Commencement Date and within 7 (seven) calendar days of the end of the previous calendar month, provide Transnet with a report (for monitoring purposes only) in respect of each of the undertakings stipulated in this clause 10.5 **Error! Reference source not found..**
- c) Transnet, through its Supplier Development division, shall, every 6 (six) months from the Commencement Date, review and verify the Service Provider's undertakings stipulated in this clause with respect to B-BBEE and Supplier Development commitments, based on the Service Provider's report.
- d) The Service Provider shall provide adequate proof to enable Transnet to verify compliance with the B-BBEE Improvement Plan and Supplier Development Implementation Plan. Such proof shall include, but not be limited to, the following:
Quarterly reports

Post verification of the submitted report to Transnet, Transnet shall engage with the Service Provider on the findings. The Contract Manager, assisted by the relevant specialist from Transnet's Supplier Development division, must report to the Service Provider at the end of every 6 (six) months as to whether or not the Contract Manager and/or the Supplier Development specialist reasonably considers, based on the information available to it, that the Service Provider has during such time complied with the B-BBEE Improvement Plan and the Supplier Development Implementation Plan and the extent, if any, to which the Service Provider has not so complied.

- e) Without prejudice to the Transnet's rights under this Agreement:
- (i) if the Contract Manager and/or Transnet's Supplier Development specialist reasonably considers that the Service Provider is not at any time complying with its B-BBEE Improvement Plan and/or the Supplier Development Implementation Plan, the Contract Manager and/or the Supplier Development specialist may make such recommendations as is considered reasonably appropriate to the Service Provider as to the steps he reasonably considers should be taken by the Service Provider in order for the Service Provider to remedy such non-compliance and the time period within which such steps must be taken;
 - (ii) If such recommendations are not implemented by the Service Provider in accordance with such recommendations, then the provisions of clause 11 **Error! Reference source not found.** shall apply; and
 - (iii) Transnet may at any time request a meeting with the Service Provider to consider any non-compliance reported to it by the Supplier Development specialist of Transnet and/or the Contract Manager or which otherwise comes to its attention. Both Parties must attend such a meeting and negotiate in good faith with a view to reach agreement on the steps or actions that the Service Provider must undertake in order to remedy that non-compliance.
- f) In the event the Service Provider is found not to have met the B-BBEE and/or Supplier Development requirements agreed upon in the B-BBEE Improvement Plan and the Supplier Development Implementation Plan, and/or is found to be fraudulent in submitting the reports, then Transnet shall impose a non-compliance penalty as provided for in clause 11 or shall be entitled to terminate in terms of clauses 22 and 23.
- g) For the sake of completion of its contractual obligations, the Service Provider shall be obliged to complete all the undertakings made under the B-BBEE Improvement Plan and the Supplier Development Implementation Plan 3 to 6 months before the Termination Date.

11 PENALTIES

11.1 Non-Compliance Penalties for Supplier Development:

- a) If the Service Provider fails, at any agreed milestone, to achieve its commitments under and in accordance with the Supplier Development Implementation Plan ("a **Non-Compliance**"), the Service Provider shall pay a Non-Compliance penalty ("Non-compliance Penalty") to

Transnet in respect of such Non-compliance as set out in Clause (e) below. The penalties shall be imposed per milestone measurement or for non-delivery of committed values.

- b) Respondents are to note that Transnet will determine the size of the entity (i.e. EME, QSE and Large) and the applicable Non-compliance Penalties annually based on the Service Provider's turnover in the year the penalty applies.

Applicable Rates of Non-compliance Penalties for Supplier Development:

- c) Failure to adhere to the milestones and targets defined in an Implementation Plan may result in the invocation of financial penalties. To the extent that the ①Actual Supplier Development Spend is lower than the ②Required Supplier Development Spend (or the ③Adjusted Required Supplier Development Spend, as the case may be), the Service Provider shall be liable for Penalties which is the difference in value between the Actual Supplier Development Spend and the Required Supplier Development Spend (or the Adjusted Required Supplier Development Spend, as the case may be plus an additional percentage as indicated in the Table under Clause e) below. Such Non-compliance Penalties shall be calculated and levied at the relevant milestones as stipulated in the Supplier Development Implementation Plan in accordance with the table below.
- d) Breach of SD obligations also provide Transnet cause to terminate the contract in certain cases where material milestones are not being achieved.
- e) Table: SD Non Compliance Penalties

In relation to Supplier Development Implementation Plan, Non Compliance Penalties shall apply as follows:

Company Size	SD Penalty
Measured Entities (LME)	The difference in value between the committed and delivered SD value (i.e. 100% of the undelivered portion of the committed SD value) plus an additional 10% (ten per cent) of such difference
Qualifying Small Enterprise (QSE)	The difference in value between the committed and delivered SD value (i.e. 100% of the undelivered portion of the committed SD value) plus an additional 5% (five per cent) of such difference
Exempted Micro Enterprises(EME)	The difference in value between the committed and delivered SD value (i.e. 100% of the undelivered portion of the committed SD value) plus an additional 3% (three per cent) of such difference

For the purposes of this clause –

- ① Actual Supplier Development Spend means the monetary value of SD initiatives actually delivered by the Service Provider during the period under review;
- ② Required Supplier Development Spend means the monetary value of SD obligations that the Service Provider has agreed to deliver during the period under review;
- ③ Adjusted Required Supplier Development Spend means any adjustment to the Required SD spend as agreed to between the parties, reduced to writing and signed by the parties.

Non-compliance Penalty Certificate:

- f) If any Non-compliance Penalty arises, the Supplier Development Manager shall issue a Non-compliance Penalty Certificate on the last day of each month during such Non-compliance indicating the Non-compliance Penalties which have accrued during that period.
- g) A Non-compliance Penalty Certificate shall be prima facie proof of the matters to which it relates. If the Service Provider disputes any of the amounts set out in a Non-compliance Penalty Certificate:
 - the dispute shall be resolved in accordance with the provisions of the Agreement; and
 - if pursuant to that referral, it is determined that the Service Provider owes any amount to Transnet pursuant to the Non-compliance Penalty Certificate, then the Service Provider shall pay such amount to Transnet within 10 (ten) Business Days of the determination made pursuant to such determination and an accompanying valid Tax Invoice.

Payment of Non-compliance Penalties:

- h) Subject to Clause (g) above, the Service Provider shall pay the Non-compliance Penalty indicated in the Non-compliance Penalty Certificate within 10 (ten) Business Days of Transnet issuing a valid Tax Invoice to the Service Provider for the amount set out in that certificate. If Transnet does not issue a valid Tax Invoice to the Service Provider for Non-compliance Penalties accrued during any relevant period, those Non-compliance Penalties shall be carried forward to the next period.
- i) The Service Provider shall pay the amount due within 10 (ten) days after receipt of a valid Tax Invoice from Transnet, failing which Transnet shall, without prejudice to any other rights of Transnet under this Agreement, be entitled to call for payment which may be in any form Transnet deems reasonable and/or appropriate.
- j) Should the Service Provider fail to pay any Non Compliance Penalties within the time indicated above (as applicable), Transnet shall be entitled to deduct (set off) the amount not paid by the Service Provider from the account of the Service Provider in the ensuing month.
- k) The Non Compliance Penalties set forth in this Clause are stated exclusive of VAT. Any VAT payable on Non Compliance Penalties will be for the account of the Service Provider.

11.2 Non-compliance Penalties for the B-BBEE Improvement Plan:



- a) If the Service Provider fails, at any agreed milestone, to achieve its commitments under and in accordance with the B-BBEE Improvement Plan ("a **Non-compliance**"), the Service Provider shall pay a Non-compliance penalty ("Non-compliance Penalty") to Transnet in respect of such Non-compliance. The penalties shall be imposed per milestone measurement.
- b) Respondents are to note that Transnet will determine the size of the entity (i.e. EME, QSE and Large) and the applicable Non-compliance Penalties annually based on the Service Provider's turnover in the year the penalty applies.

Applicable Rates of Non-compliance Penalties in respect of B-BBEE Improvement plan:

- c) The Non-compliance Penalty shall be based on a percentage of the cumulative amount paid to the Service Provider by Transnet during the preceding year of a contract. Penalties shall only apply in respect of contracts lasting 3 years or more and shall be imposed at the Applicable Rates mentioned in Table 1 below.
- d) In order to ensure that payment of any applicable Non-compliance penalty is guaranteed, Transnet is entitled to make stipulated monthly/milestone deductions from amounts due to the Service Provider. These amounts shall be retained as security to ensure that the Service Provider will be able to discharge its obligations in respect of any applicable Non-compliance Penalty and shall be the "BBBEE Retention Amount". The relationship between the Non-compliance Penalty and the B-BBEE Retention Amount is illustrated in Table 2 below. The deduction of the B-BBEE Retention Amount shall be based on the following:
 - i. Transnet shall be entitled to deduct a stipulated percentage from each monthly/milestone payment based on the penalty percentage stipulated in the next year as indicated in Table 1 below.
 - ii. By way of illustration, in respect of EMEs, in year 2 Transnet shall deduct 0,5% of each monthly/milestone payment to ensure that the Service Provider will be able to meet its obligations in respect of any applicable Non-compliance Penalty due at the end of year 3. The same approach in calculation of the B-BBEE Retention Amount applies in respect of years 3 and beyond, based on the penalty percentage as stipulated in Table 2 below.

Table 1 : 5 Year Contracts (General Commodities)

	QSEs and EMEs other than Black Owned EMEs	Large Enterprises	51% Black Owned Large Enterprise	Designated Groups (51% Ownership): BWO, BYO, BDO & BO EMEs
1	Not Applicable (Engagement with Transnet-M&E)	Not Applicable (Engagement with Transnet-M&E)	Not Applicable (Engagement with Transnet-M&E)	Not Applicable (Engagement with Transnet-M&E)
2	Not Applicable (Engagement with Transnet-M&E)	Not Applicable (Engagement with Transnet-M&E)	Not Applicable (Engagement with Transnet-M&E)	Not Applicable (Engagement with Transnet-M&E)
3	0.5% of the preceding year's monthly/milestone payments	1% of the preceding year's monthly/milestone payments	0.75% of the preceding year's monthly/milestone payments	0.5% of the preceding year's monthly/milestone payments
4	1% of the preceding year's monthly/milestone payments	1.5% of the preceding year's monthly/milestone payments	1% of the preceding year's monthly/milestone payments	0.75% of the preceding year's monthly/milestone payments
5 **	1% of the preceding year's monthly/milestone payments	2.5% of the preceding year's monthly/milestone payments	2% of the preceding year's monthly/milestone payments	1% of the preceding year's monthly/milestone payments

**This includes contracts in excess of 5 years in duration.

Table 2: Relationship between Non-compliance Penalty and B-BBEE Retention amount

	B-BBEE Retention Amount	Non-compliance Penalty
1	Not Applicable	Not Applicable
2	Deduction from monthly/milestone payments based on the penalty percentage stipulated for year 3	Not Applicable

3	Deduction from monthly/milestone payments based on the penalty percentage stipulated for year 4	B-BBEE Retention Amount deducted in year 2 will be used to discharge any applicable Non-compliance Penalty due at the end of year 3
4	Deduction from monthly/milestone payments based on the penalty percentage stipulated for year 5	B-BBEE Retention Amount deducted in year 3 will be used to discharge any applicable Non-compliance Penalty due at the end of year 4
5 **	Deduction from monthly/milestone payments based on the penalty percentage stipulated for year 5 and subsequent years	B-BBEE Retention Amount deducted in year 4 will be used to discharge any applicable Non-compliance Penalty due at the end of year 5

**The B-BBEE Retention Amount and applicable Non-compliance Penalties will apply similarly to contracts in excess of 5 years in duration.

- e) The BBBEE Retention Amount shall be retained by Transnet as security for the obligations of the Service Provider in terms of the BBBEE Improvement Plan.
- f) Should there be a change in the status of the Service Provider between the year the B-BBEE Retention Amount is deducted and the year the penalty is imposed, Transnet will be entitled to recover any shortfall between the B-BBEE Retention Amount and Non-compliance Penalty imposed, withhold payment due to the Service Provider in lieu of payment of the remaining shortfall or deduct (set off) the amount not paid by the Service Provider from the account of the Service Provider in the ensuing month.
- g) Should the Service Provider's obligations:
 - be met in terms of the BBBEE Improvement Plan, the BBBEE Retention Amount shall be released within 30 (thirty) days of the date of verification of compliance by the Service Provider of its obligations in terms of the BBBEE Improvement Plan, at which time the monies shall be paid over to the Service Provider; and
 - not be met, unless such failure is attributable to the occurrence of a Force Majeure Event, the Service Provider shall forfeit the BBBEE Retention Amount and shall have no further claim against Transnet for the repayment of such amount.

Non-compliance Penalty Certificate:

- h) If any Non-compliance Penalty arises, the Supplier Development Manager shall issue a Non-compliance Penalty Certificate on the last day of each month during such Non-compliance indicating the Non-compliance Penalties which have accrued during that period.
- i) A Non-compliance Penalty Certificate shall be prima facie proof of the matters to which it relates. If the Service Provider disputes any of the amounts set out in a Non-compliance Penalty Certificate:
 - the dispute shall be resolved in accordance with the provisions of the Agreement; and



- if pursuant to that referral, it is determined that the Service Provider owes any amount to Transnet pursuant to the Non-compliance Penalty Certificate, then the Service Provider shall pay such amount to Transnet within 10 (ten) Business Days of the determination made pursuant to such determination and an accompanying valid Tax Invoice.

Payment of Non-compliance Penalties:

- j) Subject to Clause (i) above, the Service Provider shall pay the Non-compliance Penalty indicated in the Non-compliance Penalty Certificate within 10 (ten) Business Days of Transnet issuing a valid Tax Invoice to the Service Provider for the amount set out in that certificate. If Transnet does not issue a valid Tax Invoice to the Service Provider for Non-compliance Penalties accrued during any relevant period, those Non-compliance Penalties shall be carried forward to the next period.
- k) The Service Provider shall pay the amount due within 10 (ten) days after receipt of a valid Tax Invoice from Transnet, failing which Transnet shall, without prejudice to any other rights of Transnet under this Agreement, be entitled to call for payment which may be in any form Transnet deems reasonable and/or appropriate.
- l) Should the Service Provider fail to pay any Non Compliance Penalties within the time indicated above (as applicable), Transnet shall be entitled to deduct (set off) the amount not paid by the Service Provider from the account of the Service Provider in the ensuing month.
- m) The Non Compliance Penalties set forth in this Clause are stated exclusive of VAT. Any VAT payable on Non Compliance Penalties will be for the account of the Service Provider.

12 FEES AND EXPENSES

- 12.1 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.
- 12.2 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].
- 12.3 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.
- 12.4 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.

13 INVOICING AND PAYMENT

- 13.1 Transnet shall pay the Service Provider the amounts stipulated in the relevant schedule or Work Order, subject to the terms and conditions of this Agreement.
- 13.2 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 valid and undisputed Tax Invoices, or such portion of the Tax Invoices which are valid and undisputed become due and payable to the Service Provider for the provision of the Services, in terms of clause 13.4 below.
- 13.3 All Fees and other sums payable under this Agreement are exclusive of VAT, which will be payable at the applicable rate in ZAR.
- 13.4 Unless otherwise provided for in the Work Order(s) appended to this 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] calendar days after date of receipt by Transnet of the statement together with all valid and undisputed Tax Invoices and supporting documentation.
- 13.5 Where the payment of any Tax Invoice, or any part thereof which is not in dispute, is not made in accordance with this clause 13, 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.

14 FEE ADJUSTMENTS

- 14.1 If during the period of this Agreement Transnet can purchase similar Services of a like quality from another service provider at a lower fee than the Service Provider, Transnet may notify the Service Provider accordingly and the Service Provider shall have an opportunity to adjust the Fee of the Services purchased hereunder accordingly within 30 [thirty] calendar days of such notice. If the Service Provider fails to do so or cannot legally do so, Transnet may (i) purchase the Services from such other service provider in which case the obligations, including, but not limited to, any purchase and sale requirements and/or commitments, if any, of Transnet and the Service Provider hereunder shall be reduced accordingly; (ii) terminate this Agreement without any penalty, liability or further obligation; or (iii) continue purchases under this Agreement.
- 14.2 If during the period of this Agreement the Service Provider sells any services which are the same as, equivalent to, or substantially similar to the Services herein to a third party lower than the fee charged to Transnet, then the Service Provider has an opportunity to adjust its Fees for the Services purchased hereunder within 30 [thirty] calendar days so that the Fee is the same or lower than the fees charged to such third party. If the Service Provider fails to do so or cannot legally do so, Transnet may (i) purchase the Services from such other service provider in which case the obligations, including, but not limited to, any purchase and sale requirements and/or commitments, if any, of Transnet and the Service Provider hereunder shall be reduced accordingly; or (ii) terminate this Agreement without any penalty, liability or further obligation. Within 30 [thirty] calendar days of the Commencement Date of this Agreement or at any time Transnet so requests, the Service Provider shall certify in writing to Transnet that it is in compliance with this clause and shall provide all information that Transnet reasonably requests in order to verify such compliance.



- 14.3 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 29 of this Master Agreement [*Dispute Resolution*].

15 INTELLECTUAL PROPERTY RIGHTS

15.1 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.
- e) The above shall not pertain to any software licenses procured by the Service Provider from third parties and used in the performance of the Services.

15.2 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 this 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 this 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 this Agreement and/or the prior written consent of Transnet [which consent shall not be unreasonably withheld or delayed], the Service Provider shall under no circumstances be entitled as of right, or to claim the right, to use Transnet's Background Intellectual Property and/or Foreground Intellectual Property.

15.3 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.

15.4 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.

15.5 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.

16 SERVICE PROVIDER'S PERSONNEL

- 16.1 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.
- 16.2 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.
- 16.3 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.
- 16.4 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 this Agreement.
- 16.5 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.

17 LIMITATION OF LIABILITY

- 17.1 The Service Provider's liability under this clause 17 shall be in addition to any warranty or condition of any kind, express or implied by law or otherwise, relating to the Goods or ancillary Services, including the quality of the Goods or ancillary Services or any materials delivered pursuant to this Agreement.

- 17.2 Neither Party excludes or limits liability to the other Party for:
- a) death or personal injury caused by its negligence, [including its employees', agents' or Subcontractors' negligence]; or
 - b) fraud or theft.
- 17.3 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 this Agreement. The Service Provider's liability arising out of this clause 17.3 shall be limited to direct damages.
- 17.4 Subject always to clauses 17.1 and 17.2 above, the liability of either the Service Provider or Transnet under or in connection with this 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.
- 17.5 Subject to clauses 17.1 to 17.4 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.
- 17.6 If for any reason the exclusion of liability in clause 17.5 above is void or unenforceable, either Party's total liability for all loss or damage under this Agreement shall be as provided in clause 17.3 above.
- 17.7 Nothing in this clause 17 shall be taken as limiting the liability of the Parties in respect of clauses 20 [*Confidentiality*] and 15 [*Intellectual Property Rights*].

18 INSURANCES

- 18.1 Without limiting the liability of the Service Provider under this Agreement, the Service Provider shall take out insurance for Public liability and 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 this 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.
- 18.2 The Service Provider shall arrange insurance with reputable insurers and will produce to Transnet evidence of the existence of the policies at the inception of the contract and on an annual basis within 30 [thirty] calendar days after date of policy renewals. The policy certificates must be in the name of the Service Provider and the Public liability policy must have a minimum insurance cover limit of R5,000,000.00(Five million rand)per claim without limiting the number of claims.
- 18.3 Subject to clause 18.4 below, if the Service Provider fails to effect adequate insurance under this clause 18, 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.

- 18.4 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 18.1 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 this Agreement on giving the other Party not less than 30 [thirty] calendar days prior written notice to that effect.
- 18.5 Should any claim exceed the amount of limits covered by the Service provider's Liability Insurance Policy(s) the Service Provider shall be liable for the difference between the actual amount claimed and the amount insured. Likewise it is recorded that in the event that the annual limit of cover is exceeded the Service provider shall be fully liable for any claims above those applicable limits.

19 PROTECTION OF PERSONAL DATA

- 19.1 The Parties agree that they may obtain and have access to personal data for the duration of the Agreement for the fulfilment of the rights and obligations contained herein. In performing the obligations as set out in this Agreement, the Parties shall at all times ensure that:
- a) they process data only for the express purpose for which it was obtained;
 - b) once processed for the purposes for which it was obtained, all data will be destroyed to an extent that it cannot be reconstructed to its original form;
 - c) data is provided only to authorised personnel who strictly require the personal data to carry out the Parties' respective obligations under this Agreement;
 - d) they do not disclose personal data of the other Party, other than in terms of this Agreement;
 - e) they have all reasonable technical and organisational measures in place to protect all personal data from unauthorised access and/or use;
 - f) they have appropriate technical and organisational measures in place to safeguard the security, integrity and authenticity of all data in its possession or under its control in terms of this Agreement;
 - g) such personal data is protected against unauthorised or unlawful processing, accidental loss, destruction or damage, alteration, disclosure or access.
- 19.2 The Parties agree that if personal data will be processed for additional purposes beyond the original purpose for which it was obtained, explicit consent must be obtained beforehand from those persons whose information will be subject to further processing.
- 19.3 Should it be necessary for either Party to disclose or otherwise make available the personal data to any third party (including sub-contractors and employees), it may do so only with the prior written permission of the other Party. The Party requiring such permission shall require of all such third parties, appropriate written undertakings to be provided, containing similar terms to that set forth in this clause 18, and dealing with that third party's obligations in respect of its processing of the personal data. Following approval by the other Party, the Party requiring permission agrees that the provisions of this clause 18 shall *mutatis mutandis* apply to all authorised third parties who process personal data.



- 19.4 The Parties shall ensure that any persons authorized to process data on their behalf (including employees and third parties) will safeguard the security, integrity and authenticity of all data. Where necessary to meet this requirement, the Parties shall keep all personal data and any analyses, profiles, or documents derived therefrom logically separated from all other data and documentation held by it.
- 19.5 The Parties shall carry out regular assessments to identify all reasonably foreseeable internal and external risks to the personal data in its possession or under its control. The Parties shall implement and maintain appropriate safeguards against the risks which it identifies and shall also regularly verify that the safeguards which it has in place has been effectively implemented.
- 19.6 The Parties agree that they will promptly return or destroy any personal data in their possession or control which belongs to the other Party once it no longer serves the purpose for which it was collected in relation to this Agreement, subject to any legal retention requirements. This may be at the request of the other Party and includes circumstances where a person has requested the Parties to delete all instances of their personal data. The information will be destroyed in such a manner that it cannot be reconstructed to its original form, linking it to any particular individual or organisation.
- 19.7 Personal Information security breach: Service Provider's Obligations
- a) The Service Provider shall notify the Information Officer of Transnet, in writing as soon as possible after it becomes aware of or suspects any loss, unauthorised access or unlawful use of any personal data and shall, at its own cost, take all necessary remedial steps to mitigate the extent of the loss or compromise of personal data and to restore the integrity of the affected Goods as quickly as is possible. The Service Provider shall also be required to provide Transnet with details of the persons affected by the compromise and the nature and extent of the compromise, including details of the identity of the unauthorised person who may have accessed or acquired the personal data.
 - b) The Service Provider shall provide on-going updates on its progress in resolving the compromise at reasonable intervals until such time as the compromise is resolved.
 - c) Where required, the Service Provider may be required to notify the South African Police Service; and/or the State Security Agency and where applicable, the relevant regulator and/or the affected persons of the security breach. Any such notification shall always include sufficient information to allow the persons to take protective measures against the potential consequences of the compromise.
 - d) The Service Provider undertakes to co-operate in any investigation relating to security which is carried out by or on behalf of Transnet including providing any information or material in its possession or control and implementing new security measures.

20 CONFIDENTIALITY

- 20.1 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 this 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 this 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 this 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 this 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 this 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 this 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 this Agreement as if such person or entity has signed this Agreement. The Party disclosing the Confidential Information shall be responsible for any breach of the provisions of this 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.
- 20.2 The duties and obligations with regard to Confidential Information in this clause 2018 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 this 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.
- 20.3 This clause 20 shall survive termination for any reason of this Agreement and shall remain in force and effect from the Commencement Date of this Agreement and 5 [five] years after the termination of this Agreement. Upon termination of this Agreement, all documentation furnished to the Service Provider by Transnet pursuant to this Agreement shall be returned to Transnet including, without limitation all corporate identity equipment including dyes, blocks, labels, advertising matter, printing matter and the like.

21 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 this Agreement or Work Order, Transnet may cancel this 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.

22 TERM AND CANCELLATION

- 22.1 Notwithstanding the date of signature hereof, the Commencement Date of this Agreement is [REDACTED] and the duration shall be for a [REDACTED] [REDACTED] year period, expiring on [REDACTED], unless:
- a) this 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) this Agreement is extended at Transnet's option for a further period to be agreed by the Parties.



- 22.2 Notwithstanding clause 23 [*Breach and Consequence of Termination*], either Party may cancel this Agreement without cause by giving 30 [thirty] calendar days prior written notice thereof to the other Party, provided that in such instance, this Agreement will nevertheless be applicable in respect of all Purchase Orders which have been placed prior to the date of such cancellation.

23 BREACH AND CONSEQUENCE OF TERMINATION

- 23.1 Termination in accordance with clause 22 [*Term and Cancellation*] 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 this Agreement or impliedly do so shall remain in force and in effect.
- 23.2 On termination of this 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.
- 23.3 To the extent that any of the Deliverables and property referred to in clause 23.2 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.
- 23.4 In the event that this Agreement is terminated by the Service Provider under clause 22.2 [*Term and Cancellation*], or in the event that a Work Order is terminated by Transnet under clause 23.5 [*Breach and Consequences of 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.
- 23.5 If either Party [**the Defaulting Party**] commits a material breach of this Agreement and fails to remedy such breach within 30 [thirty] calendar 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 this Agreement, to terminate this Agreement forthwith without any liability and without prejudice to any claims which the Aggrieved Party may have for damages against the Defaulting Party.
- 23.6 Either Party may terminate this Agreement forthwith by notice in writing to the other Party when the other Party is unable to pay its debts as they fall due or commits any act or omission which would be an act of insolvency in terms of the Insolvency Act, 24 of 1936 [as amended from time to time], or if any action, application or proceeding is made with regard to it for:
- a) a voluntary arrangement or 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;



- d) any similar action, application or proceeding in any jurisdiction to which it is subject.
- 23.7 Transnet may terminate this 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.
- 23.8 Notwithstanding this clause 23, Transnet may cancel this Agreement:
- (a) without cause by giving 30 [thirty] calendar days prior written notice thereof to the Service Provider, or
- (b) by notice in writing to the Service Provider, where the Service Provider fails to provide Transnet with a valid Tax Clearance Certificate issued by the South African Revenue Service at any time during the currency of this Agreement.
- 23.9 The provisions of clauses 2 [Definitions], 6 [Warranties], 15 [Intellectual Property Rights], 17 [Limitation of Liability], 20 [Confidentiality], 23 [Breach and Consequence of Termination], 29 [Dispute Resolution] and 33 [Governing Law] shall survive termination or expiry of this Agreement.

24 CESSION

- 24.1 Upon written notice to the Service Provider, Transnet shall be entitled to cede, assign or novate this Agreement to any third party.
- 24.2 The Service Provider is not entitled to cede, delegate, assign, Subcontract or in any other manner dispose of any of its rights or obligations in terms of this Agreement without the prior written consent of Transnet, which consent shall not be withheld or delayed unreasonably.

25 FORCE MAJEURE

- 25.1 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 this Agreement caused by an act of *force majeure* such as acts of God, fire, flood, war, lockout, government action, laws or regulations, terrorism or civil disturbance, defaults 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. Transnet may however rely on strikes, industrial dispute and riots as a ground of *force majeure*.
- 25.2 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 this 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] calendar days of the act of *force majeure* first occurring, either Party may thereafter terminate this Agreement with immediate notice.

26 EQUALITY AND DIVERSITY

- 26.1 The Service Provider will not victimise, harass or discriminate against any employee of either Party to this Agreement or any applicant for employment with either Party to this 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.
- 26.2 Both Parties to this Agreement undertake that they will not, and shall ensure that its employees, agents and Subcontractors will not breach any applicable discrimination legislation and any amendments and re-enactments thereof.

27 NON-WAIVER

- 27.1 Failure or neglect by either Party, at any time, to enforce any of the provisions of this 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 this Agreement.
- 27.2 Such failure or neglect shall not, in any manner, affect the continued, unaltered validity of this Agreement, or prejudice the right of that Party to institute subsequent action.

28 PARTIAL INVALIDITY

If any provision of this 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.

29 DISPUTE RESOLUTION

- 29.1 Should any dispute of whatsoever nature arise between the Parties concerning this Agreement, the Parties shall try to resolve the dispute by negotiation within 10 [ten] Business Days of such dispute arising.
- 29.2 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.
- 29.3 Such dispute shall be finally resolved in accordance with the rules of AFSA by an arbitrator or arbitrators appointed by AFSA.
- 29.4 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 29.
- 29.5 This clause 29 is severable from the rest of this Agreement and shall remain in effect even if this Agreement is terminated for any reason.
- 29.6 This clause 29 shall not preclude either Party from seeking urgent relief in a court of appropriate jurisdiction, where grounds for urgency exist.



30 ADDRESSES FOR NOTICES

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

a) **Transnet**

(i) For legal notices: [Redacted]
[Redacted]
[Redacted]
Fax No. [Redacted]
Attention: Sibulele Mzizi

(ii) For commercial matters: [Redacted]
[Redacted]
[Redacted]
Fax No. [Redacted]
Attention: Sibulele Mzizi

b) **The Service Provider**

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

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

30.2 Any notice shall be addressed to a Party at its physical address or delivered by hand, or sent by fax or email.

30.3 Any notice shall be deemed to have been given:

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



- c) if sent by email, on the date and time received, provided that such notice shall be confirmed by prepaid registered post on the date of dispatch of such email, or, should no postal facilities be available on that date, on the next Business Day.

31 WHOLE AND ONLY AGREEMENT

- 31.1 The Parties hereby confirm that this Agreement constitutes the whole and only agreement between them with regard to the subject matter of this Agreement.
- 31.2 The Parties hereby confirm that this 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 this Agreement, including any annexures, appendices, schedules or Work Order(s) appended hereto.

32 AMENDMENT AND CHANGE CONTROL

- 32.1 Any requirement for an amendment or change to this Agreement or to a Work Order shall only be valid if it is in writing, signed by both Parties and added to this Agreement as an addendum hereto.
- 32.2 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 29 [*Dispute Resolution*].

33 GENERAL

33.1 Governing Law

This 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.

33.2 Change of Law

In this 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 this 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 29 [*Dispute Resolution*] above.

33.3 Counterparts

This 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 this Agreement by signing any such counterpart.

34 DATABASE OF RESTRICTED SUPPLIERS

- 34.1 The process of restriction is used to exclude a company/person from conducting future business with Transnet and other organs of state for a specified period. No Bid shall be awarded to a Bidder whose name (or any of its members, directors, partners or trustees) appear on the Register of



Tender Defaulters kept by National Treasury, or who have been placed on National Treasury's List of Restricted Suppliers. Transnet reserves the right to withdraw an award, or cancel a contract concluded with a Bidder should it be established, at any time, that a bidder has been restricted with National Treasury by another government institution.

- 34.2 All the stipulations on Transnet's restriction process as laid down in Transnet's Supply Chain Policy and Procurement Procedures Manual are included herein by way of reference. Below follows a condensed summary of this restriction procedure.
- 34.3 On completion of the restriction procedure, Transnet will submit the restricted entity's details (including the identity number of the individuals and registration number of the entity) to National Treasury for placement on National Treasury's Database of Restricted Suppliers for the specified period of exclusion. National Treasury will make the final decision on whether to restrict an entity from doing business with any organ of state for a period not exceeding 10 years and place the entity concerned on the Database of Restricted Suppliers published on its official website
- 34.4 The decision to restrict is based on one of the grounds for restriction. The standard of proof to commence the restriction process is whether a "*prima facie*" (i.e. on the face of it) case has been established.
- 34.5 Depending on the seriousness of the misconduct and the strategic importance of the Goods/Services, in addition to restricting a company/person from future business, Transnet may decide to terminate some or all existing contracts with the company/person as well.
- 34.6 A supplier or contractor to Transnet may not subcontract any portion of the contract to a restricted company.
- 34.7 Grounds for restriction include: If any person/Enterprise which has submitted a Bid, concluded a contract, or, in the capacity of agent or subcontractor, has been associated with such Bid or contract:
- a) Has, in bad faith, withdrawn such Bid after the advertised closing date and time for the receipt of Bids;
 - b) has, after being notified of the acceptance of his 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;
 - c) has carried out any contract resulting from such bid in an unsatisfactory manner or has breached any condition of the contract;
 - d) has offered, promised or given a bribe in relation to the obtaining or execution of the contract;
 - e) has acted in a fraudulent or improper manner or in bad faith towards Transnet or any Government Department or towards any public body, Enterprise or person;
 - f) has made any incorrect statement in a certificate or other communication with regard to the Local Content of his Goods or his B-BBEE status and is unable to prove to the satisfaction of Transnet that:

- (i) he made the statement in good faith honestly believing it to be correct; and
- (ii) before making such statement he took all reasonable steps to satisfy himself of its correctness;
- g) has submitted false information regarding any other matter required in terms of the Preferential Procurement Regulations, 2017 issued in terms of the Preferential Procurement Policy Framework Act which will affect the evaluation of a Bid or where a Bidder has failed to declare any subcontracting arrangements;
- h) caused Transnet damage, or to incur costs in order to meet the contractor's requirements and which could not be recovered from the contractor;
- i) has litigated against Transnet in bad faith.

34.8 Transnet recognizes that trust and good faith are pivotal to its relationship with its suppliers/service providers. When a dispute arises between Transnet and its supplier/service provider, the parties should use their best endeavours to resolve the dispute in an amicable manner, whenever possible. Litigation in bad faith negates the principles of trust and good faith on which commercial relationships are based. Accordingly, Transnet will not do business with a company that litigates against it in bad faith or is involved in any action that reflects bad faith on its part. Litigation in bad faith includes, but is not limited to the following instances:

- a) Vexatious proceedings. These are frivolous proceedings which have been instituted without proper grounds;
- b) Perjury. Where a supplier/service provider commits perjury either in giving evidence or on affidavit;
- c) Scurrilous allegations. Where a supplier/service provider makes allegations regarding a senior Transnet employee which are without a proper foundation, scandalous, abusive or defamatory.
- d) Abuse of court process. When a supplier/service provider abuses the court process in order to gain a competitive advantage during a bid process.

34.9 Where any person or Enterprise 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 Years, such person/Enterprise may also be restricted. Serious breaches of the law would include but are not limited to corruption, fraud, theft, extortion, or contraventions of the Competition Act 89 of 1998 (e.g. collusive tendering). This process excludes minor convictions such as traffic offences or personal disagreements between parties which have no bearing on the business operations of the person or Enterprise.



Thus signed by the Parties and witnessed on the following dates and at the following places:

For and on behalf of Transnet SOC Ltd operating as Transnet National Ports Authority duly authorised hereto	For and on behalf of duly authorised hereto
Name:	Name:
Position:	Position:
Signature:	Signature:
Date:	Date:
Place:	Place:

AS WITNESS: Name:	AS WITNESS: Name:
Signature:	Signature:

AS WITNESS: Name:	AS WITNESS: Name:
Signature:	Signature:

ANNEXURE A
TECHNICAL EVALUATION CRITERIA

- 3.1. This technical evaluation criteria is to be read in conjunction with the RFQ documents.
- 3.3. Minimum points required to qualify = 80 points.
- 3.4. Should all bidders not meet the minimum required points to qualify, the threshold shall be decreased by 10%.
- 3.5. All required documentation for the technical evaluation shall be attached to the RFQ on submission.

CRITERIA	SUB CRITERIA	POINTS AWARDED	MAXIMUM NUMBER OF POINTS
Company experience in the field of maintaining portable (foot-flush) ablution facilities (Company profile and experience to be provided and attached to Returnable Schedule)	Company has operated for 5 years in the industry of portable (foot-flush) ablution facilities	40	40
	Company has operated for 5-3 years in the industry of portable (foot-flush) ablution facilities	20	
	Company has operated for 2 to 1 year(s) in the industry of portable (foot-flush) ablution facilities	20	
	Company has operated for less than one (1) year in the industry of portable (foot-flush) ablution facilities	5	
Key management staff experience in the industry	Team members have 10+ to 7 years collective experience in the industry of portable (foot-flush) ablution facilities	30	30
	Team members have 5-3 years collective experience in the industry of portable (foot-flush) ablution facilities	20	
	Team members have 2 to 1 year (s) collective experience in the industry of portable (foot-flush) ablution facilities	5	
	Team members have 0 years collective experience in the industry	0	

CRITERIA	SUB CRITERIA	POINTS AWARDED	MAXIMUM NUMBER OF POINTS
Method Statements Method statement for all Cleaning activities on site. (all data to be attached to Returnable Schedule)	Method Statement submitted meets the requirements of the tender and demonstrates a sound health and safety measures	30	30
	Method Statement submitted and does not demonstrate a sound health and safety measures	0	
Maximum possible score			100