Transnet Group Capital, a division of

TRANSNET SOC LTD
Registration Number 1990/000900/30
[hereinafter referred to as Transnet]

REQUEST FOR QUOTATION [RFQ] No TGC JHB 10591716/2018

FOR THE SUPPLY OF: OFFICE REFRESHMENTS (AS AND WHEN REQUIRED)

FOR DELIVERY TO: 150 COMMISSIONER STREET
CARLTON CENTRE
26TH FLOOR
JOHANNESBURG

ISSUE DATE: 26 April 2018
CLOSING DATE: 08 May 2018
CLOSING TIME: 12:00

PREQUALIFICATION CRITERIA

ONLY RESPONDENTS FALLING IN THE FOLLOWING CATEGORIES MAY RESPOND TO THIS RFQ:

- RESPONDENTS WITH A MINIMUM B-BBEE STATUS LEVEL 1 (One).
- EXEMPTED MICRO ENTERPRISES (EMEs) AND/OR QUALIFYING SMALL ENTERPRISES (QSEs) THAT ARE BLACK YOUTH OWNED (BYO), BLACK WOMEN OWNED (BWO) AND PEOPLE WITH DISABILITIES (PWDs)
Section 1
NOTICE TO BIDDERS

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

METHOD: [hand deliver / post and/or courier]
CLOSING VENUE: [tender box on 26th Floor at physical address]

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.

3 Communication

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

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

Name: Lydia Gebhuza Email: lydia.gebhuza@transnet.net
Telephone: 011 308 4775

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

Telephone 011 308 1642 Email: tcpquotations@transnet.net
4 Legal Compliance
The successful Respondent shall be in full and complete compliance with any and all applicable national and local laws and regulations.

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

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

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

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

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.

10 Specification/Scope of Work

Please refer to List of items/Pricing Schedule document attached as Annexure B.

11 Legal review

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

12 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.

13 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: ___________.

14 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

14.1 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: ______________.

14.2 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?

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.
15 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
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:

<table>
<thead>
<tr>
<th>Criterion/Criteria</th>
<th>Explanation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Administrative responsiveness</td>
<td>Completeness of response and returnable documents</td>
</tr>
<tr>
<td>Substantive responsiveness</td>
<td>Prequalification criteria, if any, must be met and whether the Bid materially complies with the scope and/or specification given.</td>
</tr>
<tr>
<td>Final weighted evaluation based on</td>
<td>• Pricing and price basis [firm]</td>
</tr>
<tr>
<td>80/20 preference point</td>
<td>• 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.</td>
</tr>
</tbody>
</table>

2 Validity Period

Transnet requires a validity period of 90 [ninety] 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.

3 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.

4 Returnable Documents

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:

<table>
<thead>
<tr>
<th>Mandatory Returnable Documents</th>
<th>Submitted [Yes or No]</th>
</tr>
</thead>
<tbody>
<tr>
<td>SECTION 3 : Quotation Form</td>
<td></td>
</tr>
<tr>
<td>ANNEXURE B : Pricing Schedule</td>
<td></td>
</tr>
</tbody>
</table>

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:

<table>
<thead>
<tr>
<th>ESSENTIAL RETURNABLE DOCUMENTS USED FOR SCORING</th>
<th>SUBMITTED [Yes or No]</th>
</tr>
</thead>
<tbody>
<tr>
<td>- Valid and original (or a certified copy) proof of Respondent’s compliance to B-BBEE requirements stipulated in Section 6 of this RFQ:</td>
<td></td>
</tr>
</tbody>
</table>

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:

<table>
<thead>
<tr>
<th>OTHER ESSENTIAL RETURNABLE DOCUMENTS &amp; SCHEDULES</th>
<th>SUBMITTED [Yes or No]</th>
</tr>
</thead>
<tbody>
<tr>
<td>- 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</td>
<td></td>
</tr>
<tr>
<td>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]</td>
<td></td>
</tr>
<tr>
<td>SECTION 4: Certificate of Acquaintance with RFQ Documents</td>
<td></td>
</tr>
<tr>
<td>SECTION 5: RFQ Declaration and Breach of Law Form</td>
<td></td>
</tr>
<tr>
<td>SECTION 6: B-BBEE Preference Claim Form</td>
<td></td>
</tr>
</tbody>
</table>

5 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

QUOTATION FORM AND CERTIFICATE OF ACQUAINTANCE WITH RFQ DOCUMENT

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

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

- the Standard RFQ Terms and Conditions for the Supply of Goods or Services to Transnet; OR 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.

Price Schedule

Please refer to Pricing Schedule attached as Annexure: B

Delivery Lead-Time from date of purchase order: _________________ [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”.

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”.

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:

<table>
<thead>
<tr>
<th>Transnet Operating Division [e.g. TFR, TE, etc.]</th>
<th>Vendor Number</th>
<th>Information still current [tick if applicable]</th>
<th>Information change [indicate detail of change/s &amp; attach appropriate proof]</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

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

1 __________________________
Name __________________________

2 __________________________
Name __________________________

ADDRESS OF WITNESSES

SIGNATURE OF RESPONDENT'S AUTHORISED REPRESENTATIVE: __________________________

NAME: __________________________
DESIGNATION: __________________________

__________________________  __________________________
Respondent's Signature      Date & Company Stamp
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____

<table>
<thead>
<tr>
<th>For and on behalf of</th>
<th>AS WITNESS:</th>
</tr>
</thead>
<tbody>
<tr>
<td>____________________________</td>
<td></td>
</tr>
<tr>
<td>duly authorised hereto</td>
<td></td>
</tr>
<tr>
<td>Name:</td>
<td>Name:</td>
</tr>
<tr>
<td>Position:</td>
<td>Position:</td>
</tr>
<tr>
<td>Signature:</td>
<td>Signature:</td>
</tr>
<tr>
<td>Date:</td>
<td>Registration No of Company/CC</td>
</tr>
<tr>
<td>Place:</td>
<td>Registration Name of Company/CC</td>
</tr>
</tbody>
</table>

____________________
Respondent's Signature

____________________
Date & Company Stamp
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.


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

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:

<table>
<thead>
<tr>
<th>Points</th>
<th>Points</th>
</tr>
</thead>
<tbody>
<tr>
<td>PRICE</td>
<td>80</td>
</tr>
<tr>
<td>B-BBEE STATUS LEVEL OF CONTRIBUTION</td>
<td>20</td>
</tr>
<tr>
<td>Total points for Price and B-BBEE must not exceed</td>
<td>100</td>
</tr>
</tbody>
</table>

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 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. 55of 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 defines 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:

\[ Ps = 80 \left( 1 - \frac{Pt - P_{\text{min}}}{P_{\text{min}}} \right) \]

Where
Ps = Points scored for comparative price of bid under consideration
Pt = Comparative price of bid under consideration
Pmin = 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:

<table>
<thead>
<tr>
<th>B-BBEE Status Level of Contributor</th>
<th>Number of points (80/20 system)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>20</td>
</tr>
<tr>
<td>2</td>
<td>18</td>
</tr>
<tr>
<td>3</td>
<td>14</td>
</tr>
<tr>
<td>4</td>
<td>12</td>
</tr>
<tr>
<td>5</td>
<td>8</td>
</tr>
<tr>
<td>6</td>
<td>6</td>
</tr>
<tr>
<td>7</td>
<td>4</td>
</tr>
<tr>
<td>8</td>
<td>2</td>
</tr>
<tr>
<td>Non-compliant contributor</td>
<td>0</td>
</tr>
</tbody>
</table>

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](http://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: \( \ldots \ldots \) (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)

<table>
<thead>
<tr>
<th>YES</th>
<th>NO</th>
</tr>
</thead>
</table>

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)

<table>
<thead>
<tr>
<th>YES</th>
<th>NO</th>
</tr>
</thead>
</table>

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

<table>
<thead>
<tr>
<th>Designated Group: An EME or QSE which is at least 51% owned by:</th>
<th>EME ✓</th>
<th>QSE ✓</th>
</tr>
</thead>
<tbody>
<tr>
<td>Black people</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Black people who are youth</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Black people who are women</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Black people with disabilities</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Black people living in rural or underdeveloped areas or townships</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cooperative owned by black people</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Black people who are military veterans</td>
<td></td>
<td></td>
</tr>
<tr>
<td>OR</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Any EME</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Any QSE</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

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 contributor 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, and 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.

Respondent's Signature

Date & Company Stamp
WITNESSES

1. ........................................
2. ........................................

........................................
SIGNATURE(S) OF BIDDER(S)
DATE: ....................................
ADDRESS ..................................

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

Respondent's Signature

Date & Company Stamp
### PRICING SCHEDULE

<table>
<thead>
<tr>
<th>ITEM NO.</th>
<th>DESCRIPTION</th>
<th>AMOUNT</th>
<th>UOM</th>
</tr>
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<tbody>
<tr>
<td>1</td>
<td>CLOVER FULL CREAM LONG LIFE MILK 1 LITRE</td>
<td></td>
<td>6PACK</td>
</tr>
<tr>
<td>2</td>
<td>CLOVER LOW FAT LONG LIFE MILK 1 LITRE</td>
<td></td>
<td>6PACK</td>
</tr>
<tr>
<td>3</td>
<td>NESCAFE COFFEE 1 KG</td>
<td></td>
<td>EACH</td>
</tr>
<tr>
<td>4</td>
<td>CANDERELS SWEETENER (PKT OF 1000)</td>
<td></td>
<td>EACH</td>
</tr>
<tr>
<td>5</td>
<td>5 ROSES TAGLESS TEABAGS 200G/BOX</td>
<td></td>
<td>EACH</td>
</tr>
<tr>
<td>6</td>
<td>FRESHPAK ROOIBOS TAGLESS TEABAGS 80/BOX</td>
<td></td>
<td>EACH</td>
</tr>
<tr>
<td>7</td>
<td>FOAM/POLYSTERENE CUPS 250ml/1000</td>
<td></td>
<td>P/BOX</td>
</tr>
<tr>
<td>8</td>
<td>SELATI BROWN SUGAR 2KG</td>
<td></td>
<td>EACH</td>
</tr>
<tr>
<td>9</td>
<td>SELATI WHITE SUGAR 2.5KG</td>
<td></td>
<td>EACH</td>
</tr>
<tr>
<td>10</td>
<td>BAKERS CHOICE ASSORTED (2KG BOX)</td>
<td></td>
<td>EACH</td>
</tr>
<tr>
<td>11</td>
<td>DISH CLOTHS/SWABS SMALL (PACKS OF 2)</td>
<td></td>
<td>EACH</td>
</tr>
<tr>
<td>12</td>
<td>DISH CLOTHS/LARGE (PACKS OF 2)</td>
<td></td>
<td>EACH</td>
</tr>
<tr>
<td>13</td>
<td>SPONGE SCOURERS(PKT OF 3)</td>
<td></td>
<td>P/PACK</td>
</tr>
<tr>
<td>14</td>
<td>PAPER TOWELS ROLLS 165MMX1500MM JUMBO (KIMBERLY CLARK)</td>
<td></td>
<td>EACH</td>
</tr>
<tr>
<td>15</td>
<td>PLASTIC TEASPOONS 500/PKTS</td>
<td></td>
<td>P/PACK</td>
</tr>
<tr>
<td>16</td>
<td>VALPRE STILL WATER 500ML</td>
<td></td>
<td>P/24</td>
</tr>
<tr>
<td>17</td>
<td>ASSORTED COOL DRINKS</td>
<td></td>
<td>P/24</td>
</tr>
<tr>
<td>18</td>
<td>ROLLER TOWELS TWINSAYER 52 SHEETS(275MMX 220MM)</td>
<td></td>
<td>P/PACK</td>
</tr>
<tr>
<td>19</td>
<td>JACOBS DECAF COFFEE 200G</td>
<td></td>
<td>EACH</td>
</tr>
<tr>
<td>20</td>
<td>CLEAR BIN LINERS 40CM X 40CM/100</td>
<td></td>
<td>P/PACK</td>
</tr>
<tr>
<td>21</td>
<td>PLEDGE FURNITURE POLISH (BOX OF 10)</td>
<td></td>
<td>P/BOX</td>
</tr>
<tr>
<td>22</td>
<td>Single Origin Mug &amp; Bean Medium Roast Coffee(See picture)</td>
<td></td>
<td>250g</td>
</tr>
<tr>
<td>23</td>
<td>Wiener Mischung 2 Medium Roast Ground (House of Coffees)(See Picture)</td>
<td></td>
<td>250g</td>
</tr>
<tr>
<td>24</td>
<td>Coffee filter Paper size 110/250</td>
<td></td>
<td>1000 (box)</td>
</tr>
</tbody>
</table>

Total excluding VAT

---

TGC JHB 10591716/2018
MASTER AGREEMENT

entered into by and between

TRANSNET SOC LTD

and

FOR THE SUPPLY OF GOODS:
OFFICE REFRESHMENTS

Agreement Number ..................................
Commencement Date 01 June 2018
Expiry Date 30 November 2018
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<td>24 PARTIAL INVALIDITY</td>
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<td>20</td>
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<td>28 AMENDMENT AND CHANGE CONTROL</td>
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<tr>
<td>29 GENERAL</td>
<td>21</td>
</tr>
</tbody>
</table>
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 Supplier**].

NOW THEREFORE, IT IS AGREED:

1.1 Transnet hereby appoints the Supplier to provide, and Transnet undertakes to accept the supply of Goods provided for herein, as formally agreed between the Parties and in accordance with the Schedule of Requirements issued as a schedule to this Agreement; and

1.2 the Supplier hereby undertakes to provide the Goods provided for herein, as formally agreed between the Parties and in accordance with the Schedule of Requirements issued as a schedule to this Agreement.

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, and/or schedules, including the Schedule of Requirements, the technical specifications for the Goods 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 Supplier [as agreed, in writing, between the Parties], which collectively and exclusively govern the supply of Goods and provision of ancillary Services by the Supplier to Transnet;

2.3 **Background Intellectual Property** means all Intellectual Property introduced and required by either Party to give effect to their obligations under 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 01 June 2018, 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 **Designs** mean registered Designs and/or Design applications and will include the monopoly right granted for the protection of an independently created industrial design including designs dictated essentially by technical or functional considerations as well as topographies of integrated circuits and integrated circuits;
2.9 **Expiry Date** means **30 November 2018**

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

2.11 **Goods** means **Office Refreshments**, the material / products specified in the Schedule of Requirements appended as Schedule 1 hereto;

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

2.13 **Intellectual Property** means Patents, Designs, Know-How, Copyright and Trade Marks and all rights having equivalent or similar effect which may exist anywhere in the world and includes all future additions and improvements to the Intellectual Property;

2.14 **Know-How** means all Confidential Information of whatever nature relating to the Intellectual Property and its exploitation as well as all other Confidential Information generally relating to Transnet's field of technology, including technical information, processing or manufacturing techniques, Designs, specifications, formulae, systems, processes, information concerning materials and marketing and business information in general;

2.15 **Parties** mean the Parties to this Agreement together with their subsidiaries, divisions, business units, successors-in-title and assigns;

2.16 **Party** means either one of these Parties;

2.17 **Patents** mean registered Patents and Patent applications, once the latter have proceeded to grant, and includes a right granted for any inventions, products or processes in all fields of technology;

2.18 **Permitted Purpose** means any activity or process to be undertaken or supervised by a Staff member of one Party during the term of 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;

2.19 **Price(s)** means the agreed Price(s) for the Goods to be purchased from the Supplier by Transnet, as detailed in the Schedule of Requirements, issued in accordance with this Agreement, as amended by mutual agreement between the Parties and in accordance with the terms and conditions in this Agreement from time to time;

2.20 **Purchase Order(s)** means official orders issued by an operating division of Transnet to the Supplier for the supply of Goods or ancillary Services;

2.21 **Services** means Services provided to Transnet including activities such as consultation, advisory services, implementation services and day-to-day assistance provided by the Supplier, pursuant to the Schedule of Requirements in terms of this Agreement;
2.22 **Staff** means any partner, employee, agent, consultant, independent associate or contractor, Subcontractor and the staff of such Subcontractor, or other authorised representative of either Party;

2.23 **Schedule of Requirements** means Schedule 1 hereto;

2.24 **Subcontract** means any contract or agreement or proposed contract or agreement between the Supplier and any third party whereby that third party agrees to provide to the Supplier the Goods or related Services or any part thereof or material used in the manufacture of the Goods or any part thereof;

2.25 **Subcontractor** means the third party with whom the Supplier enters into a Subcontract;

2.26 **Tax Invoice** means the document as required by Section 20 of the Value-Added Tax Act, 89 of 1991, as may be amended from time to time;

2.27 **Trade Marks** mean registered Trade Marks and Trade Mark applications and include any sign or logo, or combination of signs and/or logos capable of distinguishing the goods or services of one undertaking from those of another undertaking; and

2.28 **VAT** means Value-Added Tax chargeable in terms of the Value-Added Tax Act, 89 of 1991, as may be amended from time to time.

3 **INTERPRETATION**

3.1 Clause headings in 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 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 Supplier will arrange for the supply to Transnet of the Goods which meet the requirements and specifications of Transnet, the delivery of which is controlled by means of Purchase Orders to be issued by Transnet and executed by the Supplier in accordance with this Agreement.

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

4.3 Each properly executed Purchase Order forms an inseparable part of 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 Schedule of Requirements in accordance with procedures set out in clause 28 [Amendment
and *Change Control*. A Party will advise the other Party within 14 [fourteen] Business Days, or such other period as mutually agreed, whether the amendment is acceptable.

4.5 Insofar as any term, provision or condition in the Schedule of Requirements conflicts with a like term, provision or condition in this Agreement and/or a Purchase Order, the term or provision or condition in this Master Agreement shall prevail, unless such term or provision or condition in this Master Agreement has been specifically revoked or amended by mutual written agreement between the Parties.

5 **AUTHORITY OF PARTIES**

5.1 Nothing in 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:
   a) enter into an agreement in the name of the other; or
   b) give any warranty, representation or undertaking on the other’s behalf; or
   c) create any liability against the other or bind the other’s credit in any way or for any purpose whatsoever.

6 **DURATION AND CANCELLATION**

6.1 Notwithstanding the date of signature hereof, the Commencement Date if this Agreement is **01 June 2018** and the duration shall be for a period of six (6) Months, expiring on **31 November 2018**, 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.

6.2 Notwithstanding clause 16 [*Breach and Termination*], either Party may cancel this Agreement without cause by giving 30 [thirty] 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.

7 **GENERAL OBLIGATIONS OF THE SUPPLIER**

7.1 The Supplier 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 storage or delivery of the Goods;
   c) conduct its business in a professional manner which will reflect positively upon the Supplier and the Supplier’s products;
   d) keep full records clearly indicating all transactions concluded by the Supplier relating to the delivery of the Goods and keep such records for at least 5 [five] years from the date of each such transaction;
e) obtain, and at all times maintain in full force and effect, any and all licences, permits and the like required under applicable laws for the provision of the Goods and ancillary Services and the conduct of the business and activities of the Supplier;

f) observe and ensure compliance with all requirements and obligations as set out in the labour and related legislation of South Africa, including the Occupational Health and Safety Act, 85 of 1993, as may be amended from time to time;

g) comply with all applicable environmental legislation and regulations, demonstrate sound environmental performance and have an environmental management policy which ensures that its products, including the Goods or ancillary Services are procured, produced, packaged, delivered and are capable of being used and ultimately disposed of in a way that is environmentally appropriate; and

h) ensure the validity of all renewable certifications, including but not limited to its Tax Clearance Certificate and B-BBEE Verification Certificate, throughout the entire term of this Agreement. Should the Supplier fail to present Transnet with such renewals as they become due, Transnet shall be entitled, in addition to any other rights and remedies that it may have in terms of the Agreement, to terminate this Agreement forthwith without any liability and without prejudice to any claims which Transnet may have for damages against the Supplier.

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

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

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

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

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

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

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

g) treat all enquiries from Transnet in connection with the supply of the Goods and/or ancillary Services with courtesy and respond to all enquiries promptly and efficiently. Where the Supplier is unable to comply with the provisions of this clause, the Supplier will advise Transnet of the delay and the reasons therefore and will keep Transnet informed of progress made regarding the enquiry;

h) when requested by Transnet, provide clear and accurate information regarding the Supplier’s own policies and procedures, excluding Know-How and other Confidential Information, except where a non-disclosure undertaking has been entered into between the Parties;
i) not allow a conflict of interest to develop between its own interests [or the interests of any of its other customers] and the interests of Transnet;

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

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

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

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

7.3 In compliance with the National Railway Safety Regulator Act, 16 of 2002, as may be amended from time to time, the Supplier shall ensure that the Goods and ancillary Services, to be supplied to Transnet under the terms and conditions of 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 Supplier, as applicable, shall be subject to a review of the capability of the proposed Subcontractor to comply with the specified railway safety requirements and/or regulations. The Supplier and/or its Subcontractor shall grant Transnet access, during the term of this Agreement, to review any safety-related activities, including the coordination of such activities across all parts of its organisation.

8 INVOICES AND PAYMENT

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

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

8.3 All Prices set out in this Agreement and the Schedule of Requirements hereto are exclusive of VAT.

8.4 Unless otherwise provided for in the Schedule of Requirements 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] days after date of receipt by Transnet of the Supplier's statement together with the relevant undisputed Tax Invoice(s) and supporting documentation.

8.5 Where the payment of any Tax Invoice, or any part of a Tax Invoice which is not in dispute, is not made in accordance with this clause 8, the Supplier shall be entitled to charge interest on the outstanding amount, at the Standard Bank of South Africa's prime rate of interest in force, for the period from the due date of payment until the outstanding amount is paid.
8.6 The Supplier shall remain the owner of all plant, material, machinery, equipment and the like [collectively, the Supplier’s Goods] provided to Transnet until Transnet has paid in full for the Supplier’s Goods, it being specifically agreed that Transnet shall acquire no rights [including liens] of whatsoever nature in such Supplier’s Goods until date of final payment by Transnet. Subject to the foregoing, all risk and benefit to the Supplier’s Goods shall pass from the Supplier to Transnet on delivery of the Supplier’s Goods by the Supplier to Transnet.

9 PRICING ADJUSTMENTS

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

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

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

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

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

9.6 If during the period of this Agreement the Supplier sells any materials which are the same as, equivalent to, or substantially similar to the Goods herein, at a total delivered cost to a third party lower than the total delivered cost to a Transnet facility, then the Supplier has an opportunity to adjust its Price for the Goods purchased hereunder within 30 [thirty] calendar days so that the Price is the same or lower than the total delivered cost of such third party. If the Supplier fails to do so or cannot legally do so, Transnet may (i) purchase the Goods from any other such supplier, in which case the obligations, including, but not limited to, any purchase and sale requirements and/or commitments, if any, of Transnet and the Supplier hereunder shall be reduced accordingly; or (ii) terminate 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 Supplier shall certify in writing to Transnet that it is in compliance with this clause and shall provide all information that Transnet reasonably requests in order to verify such compliance.

10 WARRANTIES

The Supplier warrants that:

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

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

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

11 THIRD PARTY INDEMNITY

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

12 INSPECTION

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

12.2 When inspection at the Supplier’s works or warehouse is specified, Transnet’s authorised inspector shall have free access to the premises of the Supplier at all times during working hours on a Business Day; shall have liberty to inspect work which is the subject of the Purchase Order at any stage of manufacture, and may reject any Goods which are found to be incomplete, defective or in any way not in conformity with the terms and specifications of this Agreement; and the Supplier shall afford all reasonable facilities for such access and inspection.

12.3 The Supplier shall provide inspection gauges, measuring and test equipment to ensure that the requirements of this Agreement are satisfied. All gauges, templates, tools and other equipment required to check the accuracy of the work shall be calibrated at regular and reasonable intervals by a laboratory which has been approved in writing by Transnet. This certificate shall not be more than 12 [twelve] months old.

12.4 The Supplier shall prepare and supply, without charge to Transnet, all test pieces, samples and specimens; shall provide all labour and apparatus for carrying out tests and analyses in accordance with the terms of this Agreement or Purchase Order, and render all reasonable assistance in making such tests and analyses.

12.5 All special rules governing gauging, testing, analysis and other inspection procedures shall be adhered to strictly in accordance with the terms of this Agreement or Purchase Order and the conditions of any specifications and drawings quoted therein.
12.6 Inspection will be arranged by the Staff of Transnet, as indicated in the Purchase Order(s).

12.7 When Goods are ready for inspection, the Supplier shall apply promptly to the appropriate authority for instructions regarding such inspection. All applications for inspection shall quote Transnet’s Agreement or Purchase Order number. 7 [seven] Business Days’ notice of readiness from the Supplier shall be given to the authorised inspector appointed by Transnet to carry out such inspection.

12.8 Transnet shall have the right to recover from the Supplier the cost of inspection of any Goods that have been rejected by its authorised inspector in terms of this clause 12.

13 **DEFECTIVE GOODS**

13.1 Notwithstanding any certificate and/or receipt that may have been issued by or on behalf of Transnet either in South Africa or overseas, Goods will be accepted at the place of delivery or at the port of shipment, as specified in this Agreement, only as regards outward condition of packages and Transnet retains the right to reject the Goods supplied, on or after arrival at the place to which they are consigned, or after they have been placed in use in South Africa, should they be found defective.

13.2 If Goods are rejected owing to latent defects becoming apparent during machining operations or other preparation necessary on the part of Transnet before they can be put into use, the Supplier shall bear all expenses incurred by Transnet in carrying out such necessary operations.

13.3 If such Goods are rejected, the Supplier will pay the following costs:

a) For Goods purchased in South Africa on an ex works basis, the cost of transport from the Supplier’s works in South Africa to the named destination where the Goods have been rejected by Transnet, plus handling charges and storage, if leviable; or

b) For Goods manufactured overseas, the Supplier shall pay all replacement costs including the overseas inland transport cost, freight and insurance charges incurred plus railage or other inland transport costs from the South African port to the place where the Goods have been rejected by Transnet, including handling charges, storage, landing charges, customs duty and surcharges, if leviable.

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

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

13.6 Should the Supplier fail, when called upon to remedy or make good such defects within a reasonable time or to request Transnet to do so, Transnet may proceed to remedy or make good such defects and thereafter recover from the Supplier all such costs and expenses as aforementioned.
13.7 Any amount recoverable from the Supplier in terms of this clause may, without prejudice to any other legal remedies available to Transnet, be deducted in whole or in part from any monies in the hands of Transnet which are due for payment to the Supplier.

14 TOTAL OR PARTIAL FAILURE TO PERFORM THE SCOPE OF SUPPLY

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

a) no manufacturing of the Goods specified in a Purchase Order has commenced and there is little or no prospect, in Transnet’s opinion, that manufacturing will commence within a reasonable time; or

b) delivery of any of the Goods is being or is likely to be delayed beyond the promised delivery date(s), and there is little or no prospect of the Purchase Order(s) being carried out within reasonable adherence to the promised delivery rate(s) or time(s),

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

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

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

15 RIGHTS ON CANCELLATION

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

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

16.1 If either Party [the Defaulting Party] commits a material breach of this Agreement and fails to remedy such breach within 10 [ten] Business Days of written notice thereof, the other Party [hereinafter the Aggrieved Party], shall be entitled, in addition to any other rights and remedies that it may have in terms of 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.

16.2 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;
   or
   d) any similar action, application or proceeding in any jurisdiction to which it is subject.

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

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

17 CESSION

17.1 Upon written notice to the Supplier, Transnet shall be entitled:
   a) to appoint Transnet’s financier of the Goods as first payer under this Agreement, without transferring the ultimate responsibility for payment which will remain with Transnet; and
   b) to cede, assign and transfer its right, title and interest in the Goods to such financier as part of the funding consideration for the Goods.

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

18 FORCE MAJEURE

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

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

19 CONFIDENTIALITY

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

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

b) not to use, exploit, permit the use of, directly or indirectly, or in any other manner whatsoever apply the Confidential Information disclosed to it as a result of 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 such person or entity; and
k) each Party may by written notice to the other Party specify which of the Party’s employees, officers or agents are required to sign a non-disclosure undertaking.

19.2 The duties and obligations with regard to Confidential Information in this clause 19 shall not apply where:
a) a Party can demonstrate that such information is already in the public domain or becomes available to the public through no breach of this Agreement by that Party, or its Staff; 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.

19.3 This clause 19 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 Supplier 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.

20 INSURANCES

20.1 Without limiting the liability of the Supplier under this Agreement, the Supplier shall take out insurance in respect of all risks for which it is prudent for the Supplier to insure against including any liability it may have as a result of its activities under this Agreement for theft, destruction, loss of or damage to Goods, death or injury to any person and damage to property. The level of insurance will be kept under review by Transnet, on an annual basis, to ensure its adequacy,
provided that any variation to the level of such insurance shall be entirely at the discretion of the Supplier.

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

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

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

21 LIMITATION OF LIABILITY

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

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

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

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

22 INTELLECTUAL PROPERTY RIGHTS

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

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

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

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

22.2 Title to Intellectual Property

a) All right, title and interest in and to Foreground Intellectual Property prepared, conceived or developed by the Supplier, its researchers, agents and employees shall vest in Transnet and the Supplier acknowledges that it has no claim of any nature in and to the Foreground Intellectual Property. The Supplier 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 Supplier shall reasonably assist Transnet in attaining and maintaining protection of the Foreground Intellectual Property.

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

d) No consideration shall be paid by Transnet to the Supplier for the assignment of any Foreground Intellectual Property from the Supplier to Transnet, over and above the sums payable in terms of this Agreement. The Supplier undertakes to sign all documents and do all things as may be necessary to effect, record and perfect the assignment of the 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], the Supplier shall under no circumstances be entitled as of right, or to claim the right, to use Transnet’s Background Intellectual Property and/or Foreground Intellectual Property.

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

22.4 Unauthorised Use of Confidential Information

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

22.5 Unauthorised Use of Intellectual Property

a) The Supplier agrees to notify Transnet in writing of any conflicting uses of, and applications 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 Supplier acquires knowledge and Transnet shall have the right, as its own option, to proceed against any party infringing its Intellectual Property.

b) It shall be within the sole and absolute discretion of Transnet to determine what steps shall be taken against the infringer and the Supplier shall co-operate fully with Transnet, at Transnet’s cost, in whatever measure including legal action to bring any infringement of illegal use to an end.

c) The Supplier shall cooperate to provide Transnet promptly with all relevant ascertainable facts.

d) If proceedings are commenced by Transnet alone, Transnet shall be responsible for all expenses but shall be entitled to all damages or other awards arising out of such proceedings. If proceedings are commenced by both Parties, both Parties will be responsible for the expenses and both Parties shall be entitled to damages or other awards arising out of proceedings.

23 NON-WAIVER

23.1 Failure or neglect by either Party, at any time, to enforce any of the provisions of 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.

23.2 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.
24  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.

25  DISPUTE RESOLUTION
25.1 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.
25.2 If the dispute has not been resolved by such negotiation, either of the Parties may refer the
dispute to AFSA and notify the other Party accordingly, which proceedings shall be held in
Johannesburg.
25.3 Such dispute shall be finally resolved in accordance with the rules of AFSA by an arbitrator or
arbitrators appointed by AFSA.
25.4 This clause constitutes an irrevocable consent by the Parties to any proceedings in terms hereof,
and neither of the Parties shall be entitled to withdraw from the provisions of this clause or claim
at any such proceedings that it is not bound by this clause 25.
25.5 This clause 25 is severable from the rest of this Agreement and shall remain in effect even if this
Agreement is terminated for any reason.
25.6 This clause 25 shall not preclude either Party from seeking urgent relief in a court of appropriate
jurisdiction, where grounds for urgency exist.

26  ADDRESSES FOR NOTICES
26.1 The Parties to this Agreement select the physical addresses and facsimile numbers, as detailed
hereafter, as their respective addresses for giving or sending any notice provided for or required
in terms of this Agreement, provided that either Party shall be entitled to substitute such other
address or facsimile number, as may be, by written notice to the other:
   a) Transnet
      (i) For legal notices: Mr. Quinton Koen
          150 Commissioner Street, Johannesburg
          2001
          Attention: Transnet Group Capital Legal Council

      (ii) For commercial notices: Lydia Gebhuza (Buyer)
          150 Commissioner Street, Johannesburg
          2001
          Email address: Lydia.gebhuza@transnet.net
b) The Supplier

(i) For legal notices: 

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

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

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

Fax No. ...........

Attention: ...........

(ii) For commercial notices: 

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

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

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

Fax No. ...........

Attention: ...........

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

26.3 Any notice shall be deemed to have been given:

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

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

27 WHOLE AND ONLY AGREEMENT

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

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

28 AMENDMENT AND CHANGE CONTROL

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

29 GENERAL

29.1 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.

29.2 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 Supplier and Transnet cannot reach agreement on the nature of the changes required or on modification of Prices, delivery schedules, warranties, or other terms and conditions, either Party may seek to have the matter determined in accordance with clause 25 [Dispute Resolution] above.

29.3 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.

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

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