

EXHIBIT BB 10(a)

AFFIDAVIT & ANNEXURE

OF

**MATHANE EVELINE
MAKGATHO**



**JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE CAPTURE,
CORRUPTION AND FRAUD IN THE PUBLIC SECTOR INCLUDING ORGANS OF STATE**

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STATEMENT

I, the undersigned,

MATHANE EVELINE MAKGATHO

do hereby state that:

1. I have been requested by the Commission of Inquiry into State Capture to provide a statement in respect of my role and experience at Transnet during my tenure as Transnet Group Treasurer.
2. The facts contained in this statement are both true and correct, and within my personal knowledge, unless the context provides otherwise.

Introduction

3. I have completed and obtained the following degrees:
 - 3.1. BCom, majoring in Economics, Accounting and Business Economic;
 - 3.2. BCom Hons in Economics; and
 - 3.3. Masters in Development Finance.
4. I have also successfully completed the following courses relevant to my position as Group Treasurer:
 - 4.1. Global Executive Development Programme 2014 – GIBS, University of Pretoria;


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- 4.2. Financial Engineering - Covering: Term structure of interest rates, Option pricing, Swaps, Forwards and futures, Black-Scholes formula, Volatility, Dynamic Portfolio Management and Risk management - University of California, Berkeley, CA (2001);
- 4.3. Macroeconomics Policy Management - Harvard University, Boston (1996); and
- 4.4. Economic Policy Formulation - Clingendael Institute, The Hague, (1994).
5. Before joining Transnet, I was employed by National Treasury during the period January 1998 to June 2003 as a Deputy Director International Finance and later promoted to be a Director responsible for Market Risk. Thereafter I was self-employed from July 2003 to October 2007 as a consultant specializing in the field of economics and treasury advisory. I joined Transnet as the Head of Structured Finance on the 1 November 2007 and was promoted to the position of Group Treasurer from 1 March 2013. I resigned from Transnet on 30 November 2014.

Treasury - Role, Structure, Capacity and Capabilities

6. Below I briefly summarise the role, structure, capacity and capabilities of Transnet Group Treasury (Treasury) as it was when I held the position of Group Treasurer.
 - 6.1. The role of Treasury is to ensure that Transnet Group, which includes all its divisions (Transnet Freight Rail, Transnet Rail Engineering, Transnet Pipelines, Transnet Port Authority, Transnet Port Terminals, Transnet Properties and other smaller divisions) have enough cash to meet all its operational and capital requirements. This is achieved by ensuring that funding is sourced cost effectively within Board approved risk parameters and without breaching key financial ratios.
 - 6.1.1. The key financial ratios are the cash interest cover ratio (which was targeted to be at least three times) and gearing ratio (which was set at a

maximum of 50 percent). For prudence sake, the internal gearing ratio target was set at 47 percent to allow for head room of between 47 percent and 50 percent. This is to allow the Company to take proactive steps in case gearing edges higher than 47 percent.

6.2. The following are, amongst others, key outputs of the Treasury Department:

- 6.2.1. Develop funding strategy and plan for the Group;
- 6.2.2. Manage interest rate, foreign exchange rate, commodity and all credit related risks;
- 6.2.3. Manage liquidity risk by ensuring an appropriate cash buffer and committed lines of credit are maintained;
- 6.2.4. Reduce the weighted average cost of debt;
- 6.2.5. Lead, manage and maintain relationship with the credit rating agencies lenders, banks and investors;
- 6.2.6. Lead and manage relationship with relevant regulators;
- 6.2.7. Compliance and Governance which dealt with the overall governance as per the Board approved Financial Risk Management Framework and Delegations of Authority. This also included all Treasury relevant compliance matters as per the approved Compliance framework;
- 6.2.8. Treasury accounting which included Financial Accounting, Management Accounting and hedge accounting; and
- 6.2.9. Treasury financial controls and ensuring that the Critical Financial Reporting Controls are effective and adequately covers the Treasury environment.

6.3. Treasury was organized into four departments as depicted in the attached organogram, **Annexure MM1**:

6.3.1. Front Office – Transaction Banking, Dealing (Bonds, FX, Money Market, Interest Rate Swaps and Cross Currency Swaps), Cash Management; Debt Management and Credit Rating Management;

6.3.2. Treasury Operations – Financial Accounting, Management Accounting, Exchange Control and Settlements;

6.3.3. Financial Risk Management and Compliance; and

6.3.4. Structured Finance – General Corporate and Project Specific Funding. All term funding was the responsibility of this section. This includes domestic and international bonds, development finance, export credit agency supported loans, loans, asset backed finance and project specific funding.

7. The Treasury team had a complement of about 40 staff members (i.e. 32 professionals supported by 8 administrative staff). The professional staff in Treasury had multi-disciplinary skills, competencies and experience. This included mathematicians, accountants, investment bankers, commercial lawyers, traders, financiers and economists, who were all highly experienced with an average 10-30 years of experience in their respective fields.
8. The two ratios mentioned in sub-paragraph 6.1 above, were important for Transnet's credit rating as assessed by the credit rating agencies. It was a critical part of the activities of Treasury to ensure that Transnet remains a solid investment grade rated entity since this would ensure that Transnet can secure funds cost effectively and be able to have access to short term general banking facilities, access to the capital markets and access to derivatives credit lines.

Broad Historic Context

9. When I joined Transnet in November 2007, the company was in the final stages of implementing the Four Point Turnaround strategy which saw Transnet Group change from a diverse company to a focused freight and logistics company. This included restructuring of the balance sheet with improvements in gearing from a peak of 83 percent in 2003 to 39 percent in 2007. The cash interest cover ratio also recorded a healthy improvement to 7 times cover.
10. The healthy state of the balance sheet allowed the Board and Executive to embark on an intense capital expenditure program to address backlog in maintenance of assets and to expand the capital base to enable economic growth and lower the costs of doing business in South Africa. This was to be done by creating infrastructure capacity in the Rail, Ports and Pipelines sectors ahead of demand to ensure that customers will be able to respond to favourable international and domestic trade conditions, should a need arise.
11. In 2007/2008 Transnet, the Capital Expenditure (CAPEX) stood at R78.9 billion which was up from R65 billion the previous financial year. My understanding was that though the CAPEX stood at R78,9 billion, the actual need was much more than that and it was expected to significantly increase in the years to come. In addition to the expected increase in CAPEX, it was also assumed that some of the financing will have to be sourced externally to augment cash generated by the operations.
12. At that point, I believe that a decision was taken to augment the Transnet Group Treasury by adding an additional section that will solely focus on Structured Finance. I was then appointed as Head of Structured Finance which was a new role.
13. In the months following my appointment as Head of Structured Finance, I capacitated my area by appointing 2 professionals and later on added 2 additional resources.

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14. In addition, more professionals were appointed to the Treasury team, including professionals in Treasury Operations to handle complex financial accounting matters, a Forex Trader and additional Cash and Debt Management professionals.
15. Processes were also improved and enhanced in Compliance, Governance, Financial Risk Management and Operational Risk. Cash management and cash forecasting capabilities from both a system and a process perspective also improved
16. Around 2013, the Asset and Liability Management Committee (ALCO) was set up to deal strictly with Treasury matters as Finance Committee (FINCO) could not adequately deal with Treasury matters. ALCO was a key Treasury Governance Structure that was critical in both strategy and day to day operations.
17. In anticipation to increased funding requirement and in pursuance of the Funding Strategy, the following was *inter alia* done:
 - 17.1. Launch of the R30 billion Domestic Medium Term Note Program (DMTN) listed at the Johannesburg Stock Exchange (JSE) which was later upsized to R55 billion;
 - 17.2. Nurturing relationship with domestic banks and domestic investors;
 - 17.3. Launch of the USD2 billion Global Medium Term Note Program (GMTN) listed at United Kingdom Listing Agency (UKLA) which was later upsized to USD 6 billion
 - 17.4. Establishing and nurturing of relationship with international investment banks and international investors in North America, the UK, Europe, the Middle East and the Far East;
 - 17.5. Pro-actively engaging with global Export Credit Agencies (ECA's);

- 17.6. Pro-active engagement with International Development Finance Institutions (DFI's);
- 17.7. Enhanced the Financial Risk Management Framework (FRM) (**Annexure MM24**);
- 17.8. Standardized loans and bonds covenants that are included in the loan agreements and bond programme;
- 17.9. Developed guidelines to deal with Supplier Agreements; and
- 17.10. Changed and standardized the format of acceptable performance bonds/advance payment guarantees and Parent Company guarantees.
18. Because of the proactive engagement with the banks and the lenders, we had at any point in time, about seven funding options available to us.
19. In parallel, processes and guidelines were developed to ensure that supplier contracts and all related contracts are structured to mitigate all financial risks to the extent possible and to ensure that they are structured to allow for usage of all funding options. The contract has to be able to support any mode of funding. The guidelines covered supplier contracting risk management and financial risk management as per **Annexure MM2**.
20. The guidelines for supplier contract risk management are to ensure that all possible risks emanating from mega projects are managed at contracting stage. The following requirements were *inter alia* embedded in contract negotiations as from 2008:
- 20.1. Fixed ZAR Pricing – where possible contract in ZAR to eliminate currency risk but the pricing has to be compared with what is available in the market to ensure fair pricing.

- 20.2. **Bankable Payment Schedule** – most funding instruments like ECA backed, DFI's and bank loans provides for the ability to match drawdowns under the loan with the payment schedule of the supplier contract. For this to work properly, milestone payments should be negotiated to require payment only once a month.
- 20.3. **Parent Company Guarantee** - to cover for instances where a contracted party is a subsidiary or an affiliate of an overseas company that has the know-how and Intellectual Property (IP) for the goods being procured that the know-how and IP can still be accessible and that they will make good if the local subsidiary does not perform as expected.
- 20.4. **Advance payment guarantee** – to cover the advance payment that is required within a few days/weeks of contract signature as well as different milestone payment that are paid to the supplier before delivery of goods. This is to cover Transnet in case the supplier does not fulfil its obligations as per the signed commercial contract. Transnet will have a recourse to claim back payments made in advance of deliveries.
- 20.5. **Performance and warranty bonds** – if delivered goods do not meet expectations as per specifications and the supplier does not remedy the defect as per the dispute resolution mechanism in the contract, then Transnet will have recourse and claim under the bond.

The Market Demand Strategy (MDS) and R300 Billion CAPEX Plan

21. After the successful implementation of the Four Point Turnaround strategy, Transnet developed a Growth Strategy which was later renamed the Quantum Leap Strategy (QLS) in February 2010. However, as a result of insufficient rail capacity constraining economic growth in the RSA, particularly in respect of the demand for transportation of mining products, Transnet adopted the MDS, which replaced the QLS with effect from 1 April 2012. The MDS is supposed to provide for capacity ahead of demand in rail, port

MDS

and pipeline infrastructure and assist in lowering the cost of doing business in South Africa. It is therefore important of all parts of the logistics supply chain to work well and in sync from “pit to port”.

Funding Plan and Strategy

22. To support the CAPEX plan, a robust, structured and well-articulated funding strategy is developed annually as part of the Corporate Plan. The overall objective of the funding plan is to ensure that the Company has enough liquidity to meet its requirements, without breaching the key financial ratios as agreed with the Shareholder in the Shareholder Compact, and to maintain Transnet’s investment grade credit rating.
23. The funding plan is intended to support the objectives of the MDS by focusing on: (i) diversifying funding sources (including both investor base and jurisdiction); (ii) exploring innovative funding solutions to fund projects; (iii) providing sufficient liquidity ahead of demand; (iv) providing appropriate cost effective funding on time; and (v) managing financial risks (primarily foreign exchange, interest rate and commodity risks).
24. In terms of the MDS, Transnet will fund over two thirds of its CAPEX plan through internally generated funds with the remainder funded externally. The funding strategy outlines the way Transnet will be funded given that Transnet raises borrowing in the debt capital markets based on the strength of its financial position.

Role of Treasury in the Acquisition of the 1064 Locomotives

Tender Stage

25. As indicated in paragraphs 19-20 above, in respect of Supplier Contracts Risk Management, Treasury is a key stakeholder in all projects. All key tenders are reviewed by Treasury before they are advertised. Treasury is part of the team that evaluates the

financial proposals and also part of the negotiation team once the preferred bidder is selected.

26. The draft tender documents for the 1064 Locomotives were sent to Treasury for review, input and sign off before they could be advertised. The draft tender documents were normally sent to Danie Smit in his capacity as the Deputy Treasurer responsible for Financial Risk Management and Compliance and me. This was to ensure that all financial risk management and matters relevant to financing are covered in the tender documents. These included foreign exchange pricing guidelines, bonding requirements and ECA funding language as mega projects have a large part of imported component.
27. Once, the tender documents were finalized and advertised, Treasury had no further role to play during the open tender stage.
28. After the bids have been received and the tender had closed, a cross functional team was assembled to evaluate the received bids. Group Treasury was represented by Danie Smit and Tsietsi Tlaletsi who was a Senior Manager responsible for Debt Management. This process took place between October 2013 and December 2013.
29. In the initial stages of tender evaluation, a technical evaluation and a financial evaluation was done with the outcome of the evaluations being the four preferred bidders. The shortlisted bidders were:
 - 29.1. General Electric (GE);
 - 29.2. Bombardier;
 - 29.3. China South Rail (CSR); and
 - 29.4. China North Rail (CNR).

30. Sometime during January 2014 when it was clear that the above four companies were the preferred bidders, the data room was setup at the Transnet Freight Rail (TFR) offices in Parktown. As per my normal responsibilities, I needed to review the financing part of the tender documents. This was important for me to understand what the suppliers had proposed and also to assess whether their funding proposals were over and above what we had already started exploring within Treasury. It was also important for me to be able to lead the team on financing and cash related matters.
31. A bidder's financing document would normally include a letter of support from their home country's ECA, indicating support and possible commercial and political insurance cover. In addition, some might also include a high-level term sheet with amount of funding available for the transaction, commercial and other terms and conditions.
32. It goes without saying, that by going to the data room, I would merely be discharging my executive responsibilities which is to be expected.
33. When I arrived at the data room for the first time, I was told that Anoj Singh, had given instructions that I should not be allowed into the data room. This came as a surprise to me, as reviewing such documents was part of my responsibilities. I wondered why he would give an instruction that I should not be allowed into the data room. I concluded that, there might be information contained in the bidders' documents that he felt I should not see. By now, I had firmly established myself as a no-nonsense lady and could only assume that it is because he knew that I do not subscribe to any conduct that is not ethical.
34. I ignored the information and proceeded as per normal. I spent the whole week at the data room and reviewed the financial files for each of the four preferred bidders. Indeed, two or three of bidders had something similar in their BEE party's disclosure. There is one name which I cannot remember which appeared in more than one bidder's documents. When I saw this similarity, I was on that day with Gary Pita (GM responsible

for Group Supply Chain) in the data room. I whispered to him and said; "*Hey Gary, did you see? The beneficiaries are the same for most of these contracts.*" We both sighed and continued quietly with our work. At that time, I was not aware that Gary Pita was one of Anoj Singh's enablers.

35. The financing proposals from the bidders were aligned to the planned activities and in some instances to the funding initiatives that were already ongoing and done independently of the bidding process in line with the Board approved Funding Strategy of sourcing funds ahead of demand.
36. This was the case for Bombardier and GE as we had already started discussions with Export Development Canada (EDC) and Export Import Bank of the United states (US Exim). In the case of GE, we already had an approved cost-effective funding structure that we used for the 100 locomotives and therefore a similar structure was anticipated for the new locomotives.
37. After spending a week at TFR reviewing the tender documents, I reported back to Anoj Singh and he did not indicate what I was told on my first day that I was not allowed in the data room. He seemed satisfied with the report that I gave him about spending time at TFR, reviewing the preferred bidders' tender documents. I was not surprised that he pretended as if he did not give negative instructions about me in this regard.

Contract Negotiation Stage

38. After the preferred bidders are selected, normal practice was to again assemble a multi-disciplinary team for supplier contract negotiations. It is normal practice for Group Treasury to be involved in supplier contract negotiation and to lead financing discussions given the potential impact on cash required. I expected the same to apply in this case, that I will lead the financing and financial risk management discussions.

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39. Contract negotiations were held at Webber Wentzel offices and members of the cross functional teams attended those sessions daily. This included colleagues from Transnet Engineering, TFR and Transnet Group. The Transnet finance team members were Yousuf Laher, Zunaid Vallay, Mohammed Moola; Thabo Seape and Danie Smit.
40. Regiments was also part of the contract negotiation team represented by Eric Wood.
41. Under normal circumstances, in my capacity as Group Treasurer and the Head of Structured Finance (one of the Deputy Treasurers) I would have been part of the team. Instead, Anoj Singh chose Danie Smit who is very polite and a peaceable person.
42. My impression at the time was that Anoj Singh deliberately chose the finance team that will be submissive to do exactly as he tells them to do. I believe that it was his strategy to surround himself with people who would not be comfortable to, or have power to disagree with him. He would rather deal with subordinates a few levels below himself than his direct reports or his peers.
43. It is important to note that Regiments Capital only became part of the McKinsey Consortium after the Nedbank Consortium was removed from the McKinsey Consortium (see **Annexure MM3**). Anoj Singh informed me that Nedbank had a conflict of interest and he will discuss it with them and recommend that they be replaced with Regiments Capital. I believe that discussions and agreement were held with Nedbank and its partners as Regiments replaced them (see **Annexure MM4**).
44. At the time, it was not clear what Regiment's role was supposed to be. In my view the internal Treasury team was more than competent and experienced to deal with this type of transactions. I further hold the view that Regiments lacked this experience and accordingly, their services were not required on this transaction.
45. After the daily negotiations with the bidders, the financial team would congregate at Regiments offices to wrap up events of the day. I attended the negotiations and wrap up

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meetings a few times, but got a feeling that I was not wanted in these meetings with the bidders. Instead of the financing stream being led by me as the Group Treasurer or my delegate, Anoj Singh together with Eric Wood led this process.

46. Anoj Singh and I had many meetings regarding the role of Regiments, their appointment and the need for them to be part of the negotiating and transacting team. He insisted that they were helping him and not me. We had many intense arguments and he accused me of refusing assistance from "experienced" professionals. In turn, I challenged him for using external resources when it was not necessary because the Treasury Team had all the necessary experience and understood Transnet processes and procedures, particularly the covenants in the financial agreements already executed by Transnet. I attach hereto **Annexures MM5 and MM6** as evidence where I sought clarity from Anoj Singh and Brian Molefe regarding the respective roles of Regiments and Group Treasury.
47. As Eric Wood and Anoj Singh had put a tight hold on the discussions with no room for me, it became apparent to me that I was not wanted and instead they preferred my Deputy Danie Smit to walk the road with them.
48. They even held meetings without inviting me, where I believe they were discussing financial structuring, contract cash flows, financial risk management and financing options. All of these are the responsibilities of the Group Treasurer and it continued to surprise and annoy me that Anoj Singh will choose to discuss such critical company matters with outsiders and exclude his own team.
49. In one specific instance a colleague, who I will not mention, provided me with a copy of a page of Anoj Singh's diary, wherein he was supposed to discuss a hedging structure with Goldman Sachs and instructed his office not to invite any Treasury member, but he gave instructions that Eric Wood of Regiments, Vikas Sagar of McKinsey and Gary Pita

who was the GM Supply Chain be invited. The copy of Anoj Singh's 13 August 2014 diary, with his handwritten notes is attached as **Annexure MM7**.

50. This proved to me that indeed Anoj Singh did not want Group Treasury to participate in Treasury matters, but instead trusted the three gentlemen mentioned in paragraph 49 above. I found this very strange and highly suspicious and wondered what the motive was behind all of this. I could not understand why Anoj Singh would expose the Company to so much risk.
51. Given the fact that I felt not wanted, I decided to focus on other critical Treasury matters.
52. At the beginning of January and February 2014, we were working on the assumption that the deposit required for the four contracts is projected to be around R48 billion. This was based on the estimated contract value for the 1224 locomotives (1064+100+60), which equated to 10 percent of the estimated contract values, as reflected in the attached **Annexure MM8** with Anoj Singh's handwritten notes and initials, dated 20 February 2014.
53. The deposit required was reflected in our daily, weekly and monthly cash flow projections as per **Annexure MM9**, dated 18 February 2014.
54. Around March 2014 we were informed that the deposit required is no longer R4,8 billion but R7,9 billion, excluding VAT, which translated to about R8,4 billion including VAT. This was a result of the contract value ballooning to R63,4 billion for the 1064+100+60 locomotives, which happened as a result of the contract negotiations.

Contract Signing Stage

55. Under normal circumstances, once the negotiation team has completed its work and the contract is in final draft form, it will then be circulated to key departments for sign off. Group Treasury is one of the key departments that needs to sign off.

56. As per normal, Danie Smit showed me the final draft and politely asked if I was comfortable to sign off the contract to give it "Green light" from Group Treasury's perspective. I responded by saying that I cannot sign off a contract that I was not party to during negotiations and suggested that Anoj Singh sign it off.
57. I believe that the sign offs were received from all key divisions as the contract was signed on 17 March 2014. As I was not comfortable with the process from a Treasury view, I decided not to attend the signing ceremony. I also knew that the media and photographers were invited and did not want my picture to appear in any of the media reports.

Post Contract Signing Stage

58. Once the contracts have been signed, Group Treasury was provided with the project cashflows to ensure that funds are made available for each payment milestone. The following table is the payment schedule as at 17 March 2014. The initial payment of R8,4 billion was made around 31 March 2014, covering all 1224 (1064+100+60) locomotives, as reflected in the table below:

	1064 LOCOS	100 LOCOS CSR	60 LOCOS GE	TOTAL	TOTAL INC VAT
31-Mar-14	4 824 230 378	1 320 000 000	1 226 259 154	7 370 489 532	8 402 358 067
31-Mar-15	5 296 242 801	1 596 760 000	155 910 092	7 048 912 893	8 035 760 698
31-Mar-16	5 996 892 523	1 351 240 000	369 629 545	7 717 762 068	8 798 248 758
31-Mar-17	16 925 184 794	132 000 000		17 057 184 794	19 445 190 665
31-Mar-18	15 427 598 883			15 427 598 883	17 587 462 727
31-Mar-19	1 077 075 031			1 077 075 031	1 227 865 535
	49 547 224 410	4 400 000 000	1 751 798 792	55 699 023 202	63 496 886 450

59. The deposit paid for 1064 locomotives was 9,74 percent of the contract value, 30 percent for 100 CSR locomotives and 70 percent for 60 GE locomotives. Normal practice is to pay around 10 percent of contract value as deposit and do not know the rationale behind

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paying CSR 30 percent for the additional 100 locomotives and 70 percent for GE's additional 60 locomotives. This was out of line with normal practice.

Unsolicited Proposals from Regiments

60. In this section, I deal with three unsolicited proposals that Regiments submitted to me during 2013 and 2014. I had serious concerns about these proposals which I raised with Anoj Singh and Brian Molefe.

Proposal for Advisory Services on the 1064 Transaction

61. Beginning of January 2014, which is around the same time that the contracts were being negotiated, after they replaced Nedbank, Regiments presented an unsolicited proposal to me to act as advisors on the 1064 locomotives, dated 9 January 2014 and attached hereto as **Annexure MM10**.
62. I had a meeting with Niven Pillay who was a Director at Regiments to discuss the proposal. I then requested him to revise the proposal and link the deliverables with the proposed timelines and proposed budget. Their proposed fee was a R1 million monthly retainer and a performance fee equal to 20% of the savings over the interest rate of Transnet's most recent funding secured, prior to 1 January 2014.
63. I reported back my discussion with Niven Pillay to Anoj Singh and the fact that I requested them to revise the proposal and link the deliverables to proposed timelines and a proposed budget. He responded with annoyance and informed me that I should not worry about timelines and budgets and that Regiments were not meant to be my advisors but his advisors, advising him through me. He surprised me as in my opinion, their proposal was very vague, and I could not establish their proposed value add.
64. I followed up his statement with an email, attached as **Annexure MM5** requesting clarity on how I was expected to manage Regiments if I was instructed not to worry about budget and deliverables. I don't recall him responding to my request for clarification.

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65. Regiments was subsequently appointed by Anoj Singh as the Transaction Advisors as they later became heavily involved during the 1064 contract negotiations as discussed above. I was not involved in the appointment and decisions around the scope of work, deliverables, timelines and budget.
66. I then learnt with disbelief that Regiments was paid R107 766 135 between May 2013 and 31 March 2014 and a further R211 690 670 between 1 April 2014 and 16 July 2014 as per the attached SAP print out for this period, **Annexure MM11**.
67. In addition, there were other invoices that were paid to both Regiments and McKinsey that amounted to R350 million. What further shocked me was that all of these invoices were for immediate payment and were generally paid within a day which was contrary to our Cash Management Policy for which Anoj Singh, in his capacity as the GCFO and Executive Director, was the custodian on all finance related matters.

The R5 Billion Proposal

68. My concerns about Regiments started in 2013. One day in 2013, I cannot remember the exact date, but I believe it was the third quarter of 2013, I received a call from Masotsha Mngadi who used to work at Nedbank Capital as a relationship manager with Transnet being one of the clients that he was responsible for. He asked me if Transnet was looking for money as Regiments is in the market looking for money on behalf of Transnet. That came as a shock to myself as discussion with banks relating to borrowings should be initiated by Treasury and me as the Head of Treasury. His response was that he was also surprised that Eric Wood of Regiments will be requesting funding on behalf of Transnet. He told me that he heard from Moss Brickman who worked for Nedbank Treasury Department and that Moss Brickman, was working with Regiments on this fund-raising initiative. This discussion happened on either a Thursday or Friday, I cannot remember the exact dates.

69. The practice was that if there is a need for funding for Transnet projects or for general corporate services, I will make a recommendation to the GCFO and GCE recommending that we go out on a tender to the domestic and international banks requesting proposals to fund Transnet. We would then after having considered all the proposals from banks, choose a suitable institution and/or institutions. In other instances, we received reverse enquiries from investors and/or banks and if the proposal suited Transnet needs, I will make a recommendation to either GCFO, GCE or Board as per the Delegation of Authority.
70. The mandate to negotiate with banks, rested with the Treasury Department and no one outside Transnet had authority to engage banks on Transnet's behalf.
71. The following Monday (after my telephonic discussions with Masotsha Mngadi) was a day where we had two important committees, FINCO and CAPIC. These were monthly meetings with FINCO scheduled in the morning from 9:00 to 13:00 and CAPIC in the afternoon from 14:00 to 17:00. These two committees are sub committees of EXCO that are responsible for finance and capital expenditure matters. On that day, Anoj Singh gave me a funding proposal from Regiments, in hard copy, and informed me that it was a very important matter that Brian Molefe needed executed speedily. He said that I should excuse myself from attending FINCO and CAPIC and rather spend the day working on this urgent proposal and draft a memo recommending the proposal for his signature and approval by Brian Molefe.
72. The Regiment's proposal was that Regiments will facilitate a 5-year, R5 billion loan facility that was to be funded by Nedbank. Of interest was the "in between" structure (similar to a Special Vehicle Structure – but not spelled out in that detail) that served as a conduit between the lender Nedbank and Transnet. The details of the structure were not clear, but Transnet would pay interest in terms of the "in between structure" to the structure which would in turn remit the funds to Nedbank. This was a very unusual

structure as Transnet deals directly with lenders and pays interest and capital directly into the lender's designated account, unless if it is structured transaction.

73. The proposed facility was priced much higher than normal facilities or similar loan facilities or domestic bonds. My calculation indicated that Transnet would have to pay an additional R150 million per annum in interest payments over and above what Transnet normally pays for similar facilities. This translated into potential losses of R750 million over a five-year period. I shared my analysis with Anoj Singh and indicated that I do not recommend the proposal given potential excessive costs in interest payments. He responded saying that it is an instruction from Brian Molefe and that I should quickly complete the memorandum for approval the same day.
74. I felt very uncomfortable with the "same day approval" request as we have never rushed funding initiatives before and definitely not "same day" especially given the potential loss of R750 million over a five-year period.
75. I decided to discuss the matter directly with Brian Molefe and went to his office. I told him that I understand that he expects me to urgently recommend a R5 billion, five- year loan that Regiments is proposing wherein R150 million would be unnecessarily incurred per annum accumulating to R750 million over a five-year period with no clear benefits for Transnet. I was irate at that time that I explicitly told him that should we approve the structure, we will go to jail for stealing money as we are the custodians of Transnet's funds.
76. The structure was overpriced, we had a direct relationship with Nedbank and there was no need to use a conduit like Regiments to engage with Nedbank. Brian Molefe agreed with me and said that he will handle the matter. The structure was never implemented.
77. To the best of my knowledge, Regiments did not have a mandate to talk to the banks on behalf of Transnet.



Unsolicited Cross Currency Proposal with SARB as Counterparty

78. In another instance, Regiments represented by Eric Wood came up with a cross currency proposal that would entail Transnet seeking a request from National Treasury for the South African Reserve Bank to act as cross currency counterparty.
79. Market practice is that commercial banks who are authorized dealers, are the ones that act as counterparties.
80. The structure shocked me as it had the potential to introduce further volatility to the already fragile Rand and potentially have a negative impact on the country's foreign exchange reserves.
81. Again, I went to Brian Molefe as I had lost patience with Anoj Singh and Eric Wood. I explained the proposed structure to Brian Molefe and the fact that we are expected to make a presentation to National Treasury requesting approval to have the SARB as a cross currency counterparty. I reminded him of the days when South Africa had a large net open forward position because of the forward book that had accumulated over time. I reminded him again how the net open forward position (NOFP) contributed to the Rand's vulnerability in the late 1990s and early 2000s and the fact that the country's foreign exchange reserves could not grow. A decision was taken in the late 1990's or early 2000's by National Treasury and SARB to eliminate the forward book and focus on building the country's foreign exchange reserves and improve the country's external vulnerability.
82. I told Brain Molefe that it would not be proper for me and him knowing the details of the NOFP and the challenges that it caused the country, to be the ones that go back to National Treasury, effectively requesting a resurfacing of the forward book. I even said that, it might be simple for Anoj Singh and Eric Wood to propose the structure, because they don't have the information that some of us have. In fact, I believed that our former

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colleagues at the National Treasury and Reserve Bank will be shocked if we were to propose the structure to them.

83. Brian Molefe quickly responded and assured me that he will discuss the matter with Anoj Singh, and he will personally deal with the matter. He agreed with me that the structure should not be supported.
84. The structure was indeed never proposed to National Treasury. At that point in time, I still trusted Brian Molefe but questioned the fact that he was allowing Anoj Singh to do as he wishes, and he was in fact giving Anoj Singh more powers by increasing his scope of work. In this case, Anoj Singh's area of responsibility was extended to include Group Capital which was the overseer of the group's Capital expenditure plan. He was effectively in control of the Company's procurement function, capital investment, reporting, accounting as well as treasury functions. I felt that too much power was concentrated on one individual and exposed the Company to undue risk.
85. I highlighted this concentration of power and potential dangers to Brian Molefe. He casually responded that he will manage Anoj Singh.

McKinsey and Co

86. Soon after I was appointed Group Treasurer, I believe it was between April and May 2013, Anoj Singh introduced me to Vikas Sagar of McKinsey. Anoj Singh suggested that I should have fortnightly meetings with him so that he can provide expert advice as and when I needed it.
87. Around that time, Citi Bank proposed a credit rating management methodology which was aligned to our thinking of pro-active stakeholder management and engagement. I shared this with Anoj Singh. Then suddenly, McKinsey came up with a credit rating management methodology proposal. The fee proposal was R1,1 million per week

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(written) for a period of 14 weeks which added up to R15,4 million, excluding VAT, for a credit rating review assignment. I attached hereto the proposal as **Annexure MM12**.

88. Vikas Sagar said this was a very good price and a highly discounted price as I am known to be a tough negotiator. He further said that, if the proposal was made to Anoj Singh directly, the costing would have been much higher.
89. I told Anoj Singh we could do this on our own and did not need McKinsey's intervention. We then did our own credit rating model which was spot on as the outcome was aligned to Standard and Poor's rating. We even shared the results with the Transnet Executive Committee and Board and used it as a tool to direct strategic interventions around matters that are within Transnet's control.
90. Anoj Singh was not happy with this as he felt that I consistently refused his offers to use external consultants. I expected him to be happy and commend our good work as we saved the company approximately R15 million in this one instance. Instead, he expected me to blindly follow him and have the company incur costs on an assignment that the internal team had the capacity to do.

Cooperation Agreement with China Development Bank (March 2013)

91. Sometime towards the end of February 2013, I received a call from the GCE's office to join a meeting with the Chinese delegation from China Development Bank (CDB). The Transnet team was led by Brian Molefe and the following colleagues were also present:
 - 91.1. Siyabonga Gama – CEO of TRF;
 - 91.2. Richard Vallihu - CEO of TE and some of his team members; and
 - 91.3. Anoj Singh.
 - 91.4. The Department of International Relations was part of the meeting and represented by the DG, Ambassador Jerry Matjila.

92. The Chinese delegation presented a draft Tripartite Cooperation agreement between Transnet, CSR and CDB which they wanted to be discussed at the meeting (see **Annexure MM13**). It expressed CSR and CDB's interest in assisting Transnet to execute the MDS and financing some of the projects and included the procurement of goods and services. They expected Brian Molefe to respond to the draft Tripartite agreement during the meeting. He politely responded that as we have not yet reviewed the document, Transnet was not able to respond to what was contained in the draft document.
93. It came to my attention that Transnet and CSR already had agreed to cooperate to identify specific areas of cooperation in the rail business as per **Annexure MM14** wherein Brian Molefe confirmed the Rail Working Committee. As a follow up to that, the Transnet Rail Working Committee identified areas of cooperation after having considered future business requirements of both TFR and TE as per **Annexure MM15**.
94. He proposed that a working committee be set up that would review and negotiate the Tripartite Cooperation agreement. I was then chosen to lead the negotiations on behalf of Transnet. I worked on the Tripartite Cooperation agreement with Transnet's Legal advisor, Gosame Khoele as well as the GM in the GCE's office, Phyllis Difeto.
95. We requested that CSR and all procurement related matters be excluded from the Cooperation agreement as Transnet has its own governance processes and is legally obliged to follow the terms of the PFMA before any procurement contract can be signed. This is recorded in clause 2.3 of the agreement which stipulates as follows:

"2.3 All of the above will be achieved without compromising on sound governance and effective processes which each Party is required to following,"

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96. A day before the signing of the Cooperation agreement, the DPE raised an objection on how clause 2.2 was worded. We then changed it through an amendment to the already agreed agreement from the below wording:

"2.2 In recognition of CDB's mandate and subject to the provisions of this Agreement, throughout the term of the MDS, Transnet consents to CDB identifying opportunities, contacting and informing potential Chinese Suppliers who are likely to be relevant to participate in whatever open and competitive tender process prescribed by Transnet."

to read as follows (as per DPE's guidance **Annexure MM16**):

"In recognition of CDB's mandate, CDB will identify opportunities, contact and inform potential Chinese companies in respect of Transnet projects and businesses based on publicly available information."

This Cooperation is not limited to the MDS."

97. In my opinion, the revised Cooperation agreement was benign as we negotiated it in such a manner that all financial, legal and reputational risks were identified and mitigated. The revised agreement merely acknowledged and recorded the possibility of the two Companies working together.
98. The Cooperation agreement was signed on 26 March 2013 at the Union Buildings, Pretoria in the presence of former President Jacob Zuma and the President of the People's Republic of China, President Xi Jinping (see **Annexure MM17**).
99. In a letter dated 15 August 2013, the Minister of Public Enterprises raised further concerns about the signed Cooperation agreement, in particular in respect of the following:

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99.1. Clauses 2.1 and 2.2 which were already amended to include comments from DPE. The Minister indicated that the two clauses might be construed as giving CDB preferential rights or right of first refusal, and

99.2. That clauses 2.1 and 2.2 may pose a risk for Transnet and the DPE in implementing Supplier Development and Localisation drive.

100. The letter further stated the following (**Annexure MM18**):

To this end, I hereby request Transnet to reopen negotiations with China Bank with a view to amend the Cooperation Agreement and address the Department's concerns, failing which the Cooperation Agreement in its current form must be terminated.

101. To the best of my knowledge, the negotiations were not reopened as the then Transnet Chairman, Mr Mafika Mkhwanazi, responded to the Minister in a letter dated 12 September 2013, seeking to clarify the intent of the Cooperation agreement as per the attached **Annexure MM19**. The agreement remained as it was before.

Financing the 1064 plus 160 Locomotives

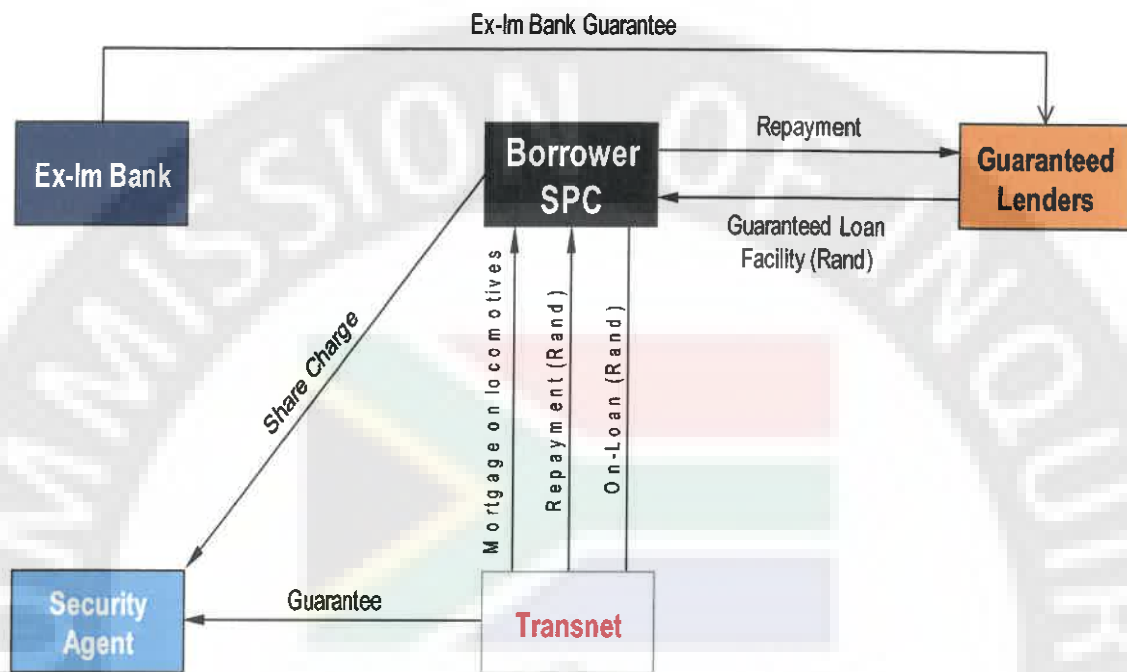
102. All of the four preferred suppliers had support from their respective country ECA's and/or country DFI's.

103. In the same vein, US Exim and EDC had indicated their willingness to support the GE and Bombardier payment tranches. I deem it necessary to demonstrate the type of work that Transnet Treasury had done on the locomotive funding structures and in particular, the GE locomotives. This will hopefully illustrate that my discomfort and disagreement with Regiments' involvement was based on the progress achieved at that time.

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GE Tranche

104. The US Exim financing structure, as set out below, was already developed and agreed upon. The new tranche under the new locomotive would be the same structure with similar terms and conditions.



Bombardier Tranche

105. Around the same time, Transnet issued an RFP to banks to finance the GE and Bombardier tranches, and about 8 local and international banks responded with a total commitment of R22,5 billion. In addition to this, the Export Development Canada (EDC) and Investec had put together a proposal of ZAR equivalent of USD600 million to finance the Bombardier tranche.

CSR and CNR Tranche

106. The Chinese bidders had included letters of funding support from CDB. CDB indicated their willingness to fund the CSR and CNR locomotives. We started engaging with CDB around March/April 2014 on funding the Chinese locomotives. After the initial

engagements with CDB, we formally requested approval to continue with the negotiations, as per **Annexure MM20**.

107. CBD proposed a 15 year loan of up to \$2.5 billion at a rate of 3 months Libor + 260-290 basis points. In addition, CDB had suggested onerous terms and conditions. This pricing translated into Jibar plus about 450 basis points which was about 250 basis points more than Transnet's normal pricing. See attached **Annexure MM21** indicating Transnet's internal pricing.
108. This message was communicated a number of times with CDB Johannesburg Branch officials (see attached copies of their business cards as **Annexure MM22**) who I thought in turn communicated with CDB head office in Beijing. They even requested that we indicate to them what Transnet's acceptable pricing and terms and conditions were which we promptly did.
109. The pricing was above Transnet's weighted cost of debt and Transnet had requested CDB to revise their pricing downwards and was waiting for CDB's response in this regard. In addition, Transnet had requested that CDB approach and partner with the Industrial and Commercial Bank of China ("ICBC") with a view to bringing the pricing within acceptable levels. This is because ICBC and Standard Bank had shown interest through a joint proposal in financing Transnet. Their pricing was reasonable.
110. With the passing of time, it became clear that CDB Johannesburg was not able to negotiate on behalf of Transnet, as most of the requests were not sufficiently responded to. They had however agreed to taking hedges on their own books and providing Transnet with a ZAR facility. This was ideal as it would match the supplier contract which is denominated in Rand.
111. Even though CDB were slow to respond, I was hopeful that we could still negotiate further to a point where their terms and conditions, including pricing became comparable

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to similar facilities. I had in our process shared with them the high level terms and conditions that Transnet had entered into with other DFI's and other ECA's.

Trip to China to get funding terms finalized

112. Given the communication challenges which I thought were caused by language differences, I then suggested that we visit Beijing so that we can present our request directly to CDB head office officials. The trip was supposed to be made by me, Anoj Singh and Brian Molefe.
113. The trip was initially planned for the week of the 16th April 2014 but cancelled a few days before departure and Anoj Singh told me that Brian Molefe cancelled the meetings. The trip was then rescheduled to the week of 12 May 2014 which was again cancelled a few days before the planned trip. We then rescheduled for the first week of July which again a few days before departure, I was told that the trip has been cancelled.
114. I was extremely disappointed as it takes a lot of work to plan such a trip. I also thought that it was not proper to have a large contract without a specific funding facility and we needed to have face to face discussions with CDB to establish whether we continue with them or use other available facilities. I complained bitterly and Brian Molefe decided to let Anoj Singh and I travel to China to meet with the CDB team in July 2014.
115. On 1 July 2014, Anoj Singh and I attended the planned meeting with CDB in Beijing. The discussions started with the normal greetings and introductions. As we were busy with the introductions, a young Chinese official handed out a page, dated 29 October 2013 to everyone in attendance, with a list of names on it. The list is attached hereto as **Annexure MM23**. I noted the date on the list and I thought that this must have been a mistake as the date of the meeting was 1 July 2014. I thought we will be requested to hand back the outdated list and be provided with a list reflecting the correct date. However, everyone in the meeting seemed to be comfortable with the list. I then

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assumed that there may have been a meeting on 29 October 2014, of which I was not aware. I thought that if that was the case, this 1 July 2014 meeting was a follow up to that meeting.

116. I may be speculating, but given the demeanour of everyone who received the 29 October 2013 list, I suspected that a meeting might have been held on that day and that discussions and possible agreements might have been reached.

117. I did not ask anyone about the outdated list and what it meant, but simply noted its contents with interest.

118. Approximately thirty minutes into the meeting with CDB in Beijing, representatives of Clifford Chance law firm entered the meeting room. I am told that they were called the same morning and requested to represent CDB on a transaction with Transnet. I also learnt during the tea break, as I had a chat with one of the Clifford Chance lawyers, that they were actually briefed about the transaction in the lift on their way to the meeting room.

119. This surprised me as we had taken the discussion with CDB very serious and had already engaged with our internal legal team and external team around April of that year.

120. It also came to my attention that many things that we were discussing that I thought we had made progress on, CDB Beijing was hearing it for the first time. It became clear to me that the messages that we have been sending to CDB Beijing via CDB Johannesburg did not get to Beijing.

121. We continued with the discussions though we had to start from a zero base. The discussions lasted the whole day and we finished between 16:30 and 17:00. As we were making our way out, Anoj Singh requested to have a private discussion with the Executive in charge of the CDB Henan Branch together with an interpreter who was fluent in English. The meeting lasted for approximately 30 minutes.

122. After the meeting, Anoj Singh told me that his travel plans had suddenly changed and he was no longer travelling back home with me the following day. He indicated that he will be travelling via London to South Africa that same afternoon. He then requested me to collect his suitcase which he had left in his hotel room before I leave for South Africa. The following day before I booked out of the hotel, I picked up Anoj Singh's red suitcase from his room. I travelled back home with my luggage and his red suitcase. I don't know what his suitcase contained as I did not open it.

123. When I landed at OR Tambo airport, I thought I will take the suitcase with me when I go back to work. However when I switched my cell phone on I received a message from Anoj Singh that his driver will collect his suitcase from me at the airport. When I entered the arrival hall I met Anoj Singh's driver who collected the red suitcase from me.

Regiments taking over the CDB Negotiations

124. Upon my return from China, I had to travel again to Europe to complete my Global Leadership Program which was tailor made for Transnet Executives and I was away for about 10 days.

125. Before I travelled to Europe, I had briefed my team about the trip and the next steps that were necessary to progress negotiations on the CDB funding proposal.

126. Upon my return from Europe which was around end-July 2014, I was shocked to find out that CDB was now communicating directly with Regiments and that Eric Wood was leading the negotiations. This was in parallel to Transnet furthering negotiations with CDB. See attached the letter to CDB (**Annexure MM25**), drafted by me and signed by Anoj Singh dated 25 July 2014, where to we attached our Transnet tracked comments to the CDB indicative term sheets (**Annexure MM26**).



127. I again complained bitterly to both Anoj Singh and Brian Molefe, as I believed there was no need to use Regiments because of our internal Treasury capacity (see **Annexure MM6**).
128. Anoj Singh and I continued to argue about the CDB pricing proposal and I was told that Nedbank is able to price the swap cheaper and will price much cheaper than the 450 basis points that our internal pricing was showing. Our internal pricing was also aligned to the Standard Bank pricing and I knew that we were always correct, as our pricing model was tried and tested several times. We continued sharing with CDB Johannesburg what Transnet's acceptable commercial terms were as per **Annexure MM27**.
129. I then called Masotsha Mngadi of Nedbank and complained about Nedbank's relationship with Regiments. The reason for my complaint was that Regiments always quoted Nedbank to make their point that CDB pricing is commercially acceptable and that Transnet should accept the CDB pricing proposal. I understand that Eric Wood was able to make this assertion as he had a great relationship with Moss Brickman of Nedbank who I believe worked for Nedbank Treasury division. I requested Masotsha Mngadi to lodge a complaint for me with Brian Kennedy, the CEO of Nedbank Capital around what I thought was an improper relationship between Nedbank and Regiments.
130. I understand that a meeting that included Brian Kennedy and the Head of Compliance took place wherein Moss Brickman was reprimanded. I then requested the official Nedbank pricing which was aligned to our internal pricing. I used the "official" Nedbank pricing to refute Eric Wood's claim that Nedbank can price a plain vanilla cross currency swap cheaper by over 100 basis points than where the market was. See attached as **Annexure MM28** an email from Nedbank to myself in which Nedbank indicated their "highly valued relationship with Transnet". I also attach hereto as **Annexure MM29** Nedbank's official pricing.

131. Brian Molefe organised a meeting between Transnet and Regiments to resolve the CDB pricing proposal "impasse". The meeting was held at the Melrose Arch Hotel and Transnet was represented by Anoj Singh, Brian Molefe and myself and Regiments by Eric Wood and Niven Pillay.
132. Brian Molefe suggested that as everyone seemed to think that my pricing indication is off the mark and the one that Eric Wood received from Nedbank seemed reasonable, I should agree with them as I was the only one who did not agree. I told Brian Molefe that my position has not changed and will not change, as the CDB facility is expensive and not worth it.
133. I then decided to record my recommendation and concerns. On 21 August 2014 I sent an email to both Brian Molefe and Anoj Singh, detailing my key concerns around CDB **Annexure MM30**.
134. However, Regiments recommended that Transnet should proceed with the transaction, as referenced in slides three and four of a presentation by Regiments to Transnet, attached as **Annexure MM31**. Regiments was now in direct discussions with CDB, as per **Annexures 32 to 34**. I realised a few weeks later that Anoj Singh had appointed Regiments to be the Transaction Advisors on 31 July 2014 as per **Annexure MM35**.
135. Anoj Singh wrote a memorandum (attached as **Annexure MM36**) in response to the concerns that I raised. He recommended that Brian Molefe approve the response that he recommended refuting my concerns that the CDB transaction was expensive and not worth it. Instead of approving as per Anoj Singh's recommendation, Brian Molefe only "NOTED" the response.
136. I found Brian Molefe's response of "NOTED" instead of "APPROVED", as per paragraph 5 of the memorandum interesting. This confirmed to me that Brian Molefe considered

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my analysis and conclusion that approximately R3.7 billion could be wasted costs had merit.

137. On 20 August 2014, I drafted an internal memorandum to the Board to seek approval for funding initiatives subject to acceptable terms and conditions, as per **Annexure MM37**. I had suggested to Anoj Singh in an email, dated 20 August 2014 (attached as **Annexure MM38**) that we should use the internal Transnet pricing in the Board pack as to not mislead the Board about the CDB funding costs.

138. I later discovered that Anoj Singh had replaced the Treasury Board memorandum with a PowerPoint presentation that was based on the flawed Regiments analysis (see **Annexure MM31**). The following statements in the presentation were factually incorrect, because:

138.1. It stated that the loan was fairly was priced and that it compared favourably to Transnet's weighted average cost of debt (WACD), which was 9.35% at the time. Our internal pricing of the CDB loan 12.71%, which was clearly above the WACD.

138.2. The presentation incorrectly compared the CDB loan to a global bond, which should not be the case, as CDB is a DFI and should be compared to other DFI's;

138.3. It stated that the foreign currency exposure was eliminated. This was incorrect as Transnet had to SWAP from USD to ZAR, which was a risk;

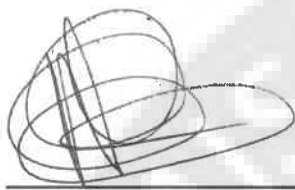
139. It is further stated that the cross currency SWAP executed by CDB would benefit Transnet to the tune of R3.5 billion. This is an incorrect statement as our analysis indicated the contrary, as per **Annexure MM30**.

This funding PowerPoint presentation titled "Transnet Board of Directors – Locomotive Funding Initiatives", dated 28 August 2014, is attached as **Annexure MM39**.



140. Pursuant to Anoj Singh's representation to the Board, the attached CDB Term Facility Agreement was signed on 4 June 2015, committing Transnet to a very expensive loan agreement (see **Annexure MM40**).

141. Based on all of the above, I decided to resign, as I felt that the environment in Transnet was not conducive for me to continue with my employment. I resigned from my position with effect of 30 November 2014.



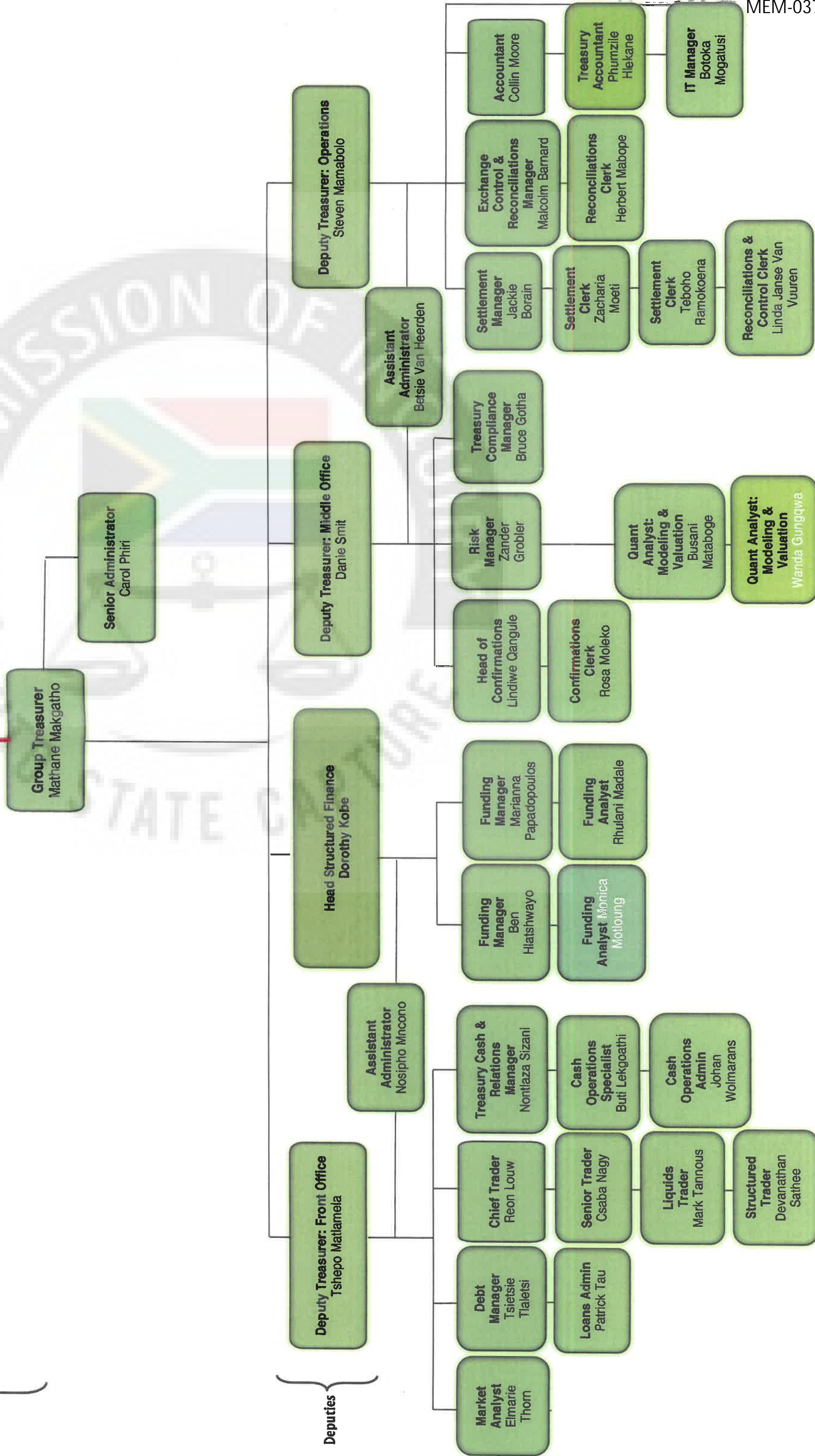
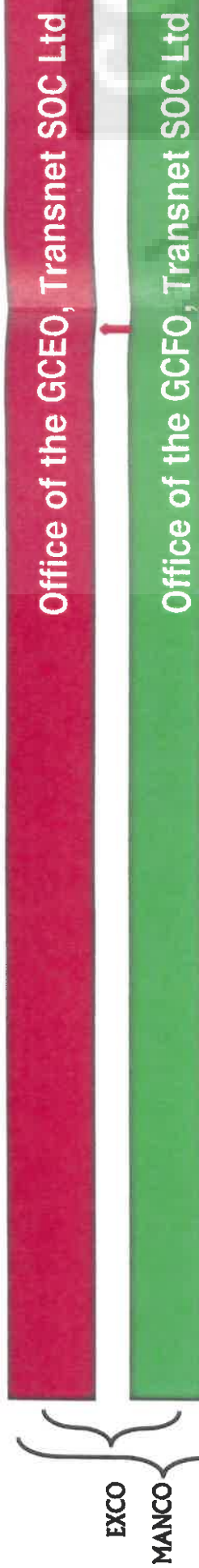
MATHANE EVELINE MAKGATHO

16 May 2019

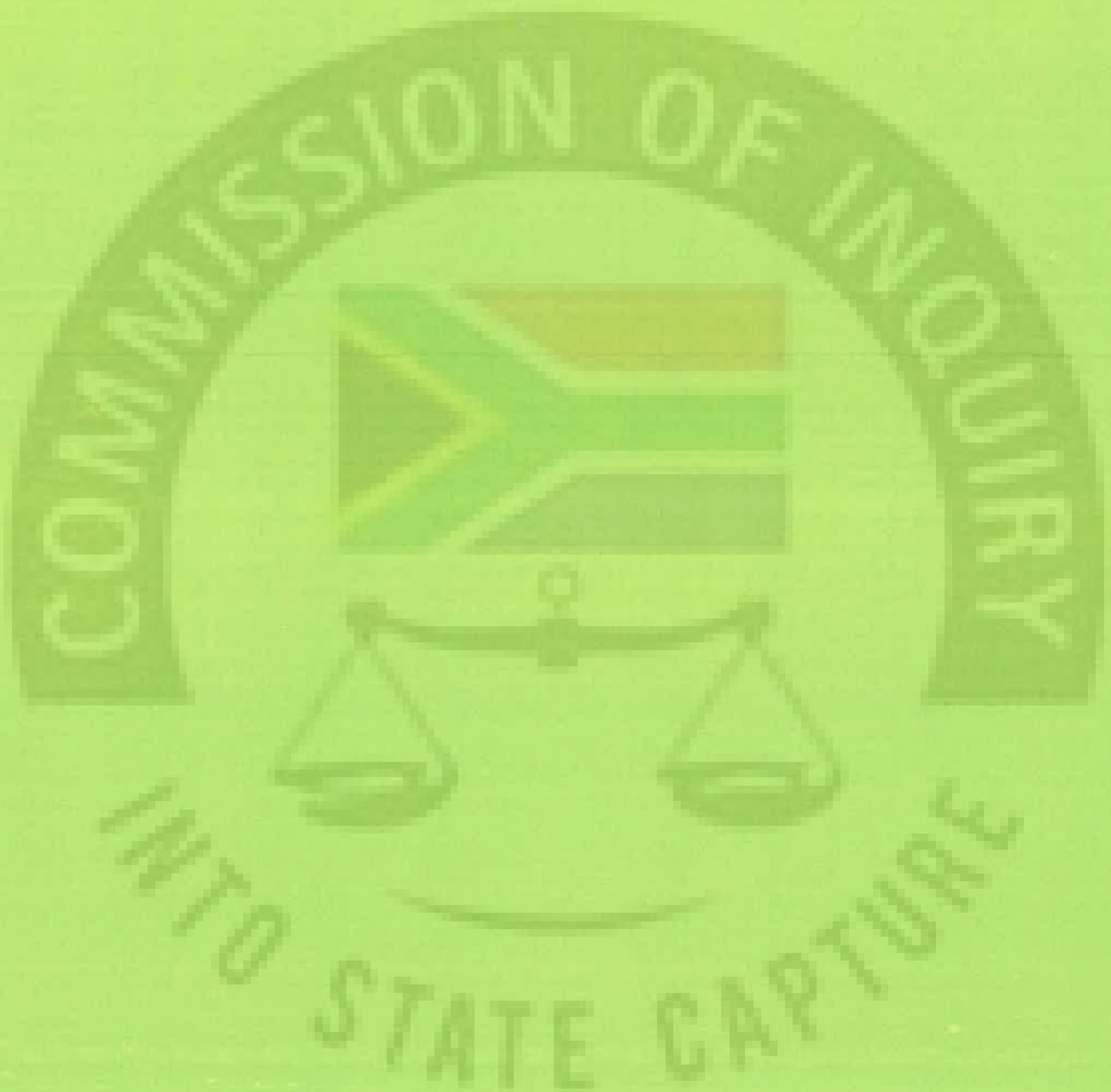
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Annexure “MM1”





Annexure “MM2”



GUIDELINES AS PROVIDED BY TRANSNET TO EXPLAIN AND ASSIST IN ESTABLISHING SUPPLIER AGREEMENTS, FX PAYMENTS, THE HEDGING PROCESS AND EXCHANGE CONTROL



Date updated: 27 July 2008

GUIDELINES AS PROVIDED BY TRANSNET TO EXPLAIN AND ASSIST IN ESTABLISHING SUPPLIER AGREEMENTS, FX PAYMENTS, THE HEDGING PROCESS AND EXCHANGE CONTROL

*Par 1 is a summarized version of the approved **FX policy** as approved by the Board and should always be considered when agreements are entered into.*

1) APPROVED FX POLICY

- 1.1) Whenever possible eliminate foreign currency risk exposures by entering into fixed RAND based contracts with both local and/or global suppliers.
- 1.2) If the above is not possible because the costs are excessive and/or if the supplier is not willing to accept those conditions, the contract should be concluded in such a way that Transnet will pay the foreign supplier in a foreign currency. In turn, Transnet should manage the foreign exchange rate risk by hedging or transferring exposures to the market.
- 1.3) If local (South African) suppliers are used where there is an imported component; invoices can only be issued in RAND as exchange control regulations prohibit local suppliers invoicing in a foreign currency. No contracts with local suppliers should have embedded derivatives. All contracts with a foreign currency component of more than R50m and less than R100m per contract should be reviewed by Treasury and the business unit CFO before it can be concluded. Contracts with a foreign currency component of more than R100m should get sign off from the GCFO.

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GUIDELINES AS PROVIDED BY TRANSNET TO EXPLAIN AND ASSIST IN ESTABLISHING SUPPLIER AGREEMENTS, FX PAYMENTS, THE HEDGING PROCESS AND EXCHANGE CONTROL



2) By applying the above FX policy into practice, the following approach is suggested in tenders:

- 2.1) Involve Group Finance **from the tender stage** in respect of all tenders where the value is **more than R100m**. Provide electronic version to Treasury – **Danie Smit** (Tel.+ 27 11 308 2622) and **Mathane Makgatho** (Tel. + 27 11 308 2613), Group Reporting – **Anoj Singh** (Tel +27 11 308 2253) and **Tanuja Naidoo** (Tel +27 031 361 1362) and Group Tax – **Helen Walsh** (Tel + 27 011 308 2208). Group Finance will review and comment on the tender document to provide guidance on clauses that should be added to the tender document. The objective is to identify all the risks before they materialize and mitigate these as best we can.
- 2.2) Advance payments should be avoided as far as possible (this is a decision from FINCO) and payment should only happen on receipt of goods and or services. If advance payments cannot be avoided, a serious attempt should be made to reduce to as low as possible. If this is a deal breaker and the agreement cannot be concluded without an advance payment, an advance payment guarantee (APG) should be requested to ensure Transnet is not out of pocket in case of liquidation. The issuer of the guarantee should at least have a minimum long term credit rating of A-1. A performance bond should also be in place to cover the unlikely event of a supplier not being able to fulfill its obligations in so far as performance is concerned.
- 2.3) The following principles should be applied when **tenders** are prepared and these will be reviewed as and when the need arises as circumstances change;
- 2.3.1) In instances where the imported component exceeds **\$3m** and the supplier is a **locally registered SA Company or CC, the supplier must be in a position to provide Transnet with a fixed Rand price** for the overall agreement (excluding escalation). The fixed Rand price will be subject to VAT at the standard rate of 14%. In this instance, the supplier will have to hedge the FX risk exposure and the cost of hedging must be acceptable to Transnet as Transnet will verify if hedging rates are market related taking into account the rating of the supplier. Alternatively if a local supplier is not in a position to

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GUIDELINES AS PROVIDED BY TRANSNET TO EXPLAIN AND ASSIST IN ESTABLISHING SUPPLIER AGREEMENTS, FX PAYMENTS, THE HEDGING PROCESS AND EXCHANGE CONTROL



provide hedging and does have a partnership with a foreign company, FX invoicing can be issued from the foreign partner provided that the respondent to the tender discloses the partnership at the tender stage and the agreement between Transnet and the supplier should be drafted in such a way that the local supplier legally accepts the condition that the "subsidiary abroad/relationship" can accept payments on their behalf from Transnet. The nature and form of the partnership must therefore ensure that this is allowable. In these circumstances, the foreign company needs to assess whether it is conducting an "enterprise" for VAT purposes in South Africa. If the foreign company is deemed to be conducting an "enterprise" in SA, then the foreign component of the transaction will also be subject to VAT in SA. The VAT implications with regard to foreign companies conducting business in SA will impact directly on the ability of Treasury to remit FX invoices as invoices including VAT must be issued in Rands. Therefore it is imperative to establish the VAT status of a foreign company (and therefore the VAT status of all parties in the partnership) before engaging in the FX invoicing process.

- 2.3.2) In instances where imported components of **more than \$3m** are involved and where the supplier **is an overborder registered company and/or a local joint venture, the supplier must indicate if they are willing to provide a fixed Rand price (excluding escalation) for the overall agreement.** It is imperative at this stage to establish the VAT status of the over-border registered company and/or local joint venture, to assess whether VAT will be levied in respect of the transaction. If VAT is to be levied, the over-border registered company and/or local joint venture will be obliged to issue tax invoices in Rands to Transnet which would impact on the FX invoicing process. For example, if the over-border registered company is deemed to be conducting an "enterprise" for VAT purposes in SA, then the invoices issued by the over-border registered company will be subject to VAT and will have to be in Rands, including the foreign component of the transaction. In this case, the issuing of foreign currency invoices with VAT is not permitted in terms of SA VAT legislation. In this instance, the supplier will have to hedge the FX risk exposure and the cost of hedging must be market related. Transnet will verify this in the market and allow for a percentage of the contract price variation for additional cost of credit risk of the supplier. Please note the local joint venture will still need South African Reserve Bank approval. The supplier must provide a full split between local and foreign content and reflect the foreign currency cash flows and expected delivery dates.

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- 2.3.3) Should Transnet find that the variance between the hedged contract by the supplier and itself is beyond the allowable percentage, Transnet will engage with the supplier to try and understand the additional costs. In the latter above if, the hedging costs are unacceptable to Transnet and if the supplier cannot provide hedging to Transnet, the supplier must provide dual currency invoicing to Transnet. (Foreign currency invoices for imports and Rand invoices for local content). The VAT implications with regard to dual currency invoicing would also need to be assessed by Group Tax prior to the FX invoicing process as tax invoices including VAT cannot be issued in foreign currency in terms of SA VAT legislation and must be issued in Rands. SARB approval is required in respect of local joint ventures to be paid in foreign currency and the JV must approach the SARB for approval before payments can be done.
- 2.3.4) **Supplier must indicate if they are willing to offer a reduced price on the goods/services delivered to Transnet, if Transnet can provide proof of secured funding when the final agreement is concluded and signed.**
- 2.3.5) In cases where a foreign content is involved, Treasury has to be made aware of the supplier's name and country of export so as to enable Treasury to source ECA supported funding. The information is required before the contract is signed.
- 2.3.6) The following standard clause should be included in tenders to enable Transnet to source Export Credit Agency (ECA) financing. "Transnet has established with Barclays Capital an export credit (ECA) supported umbrella loan facility. The Tenderer acknowledges the right of the Employer to use ECA supported funding for this project. ECA funding will need to be executed in a manner acceptable to the Employer. If, for whatever reason, ECA support is not in place in a timely manner the Employer reserves the right to make payments from other sources on the full understanding that any payments made by the Employer will still be eligible to be reimbursed from the Export credit facility at a later point in time. Should the Export Credit Agency require the Contractor to assist the Employer in executing the funding application, the Contractor agrees to do so. The Employer reserves the right to use any other source of funding available in the market."

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2.4) Agreements/letters of acceptance

All agreements with an FX component of more than **\$3 million (R25m equivalent if another FX currency)** must be referred to Group Treasury, Group Tax, Group Legal and Group Reporting before it can be concluded. Provide electronic copies and when agreed electronically, sign off should be obtained on a term sheet from the respective business divisions involved. All agreements where the **RAND value is more than R100 million**, must be referred to the same division and sign off obtained before agreements are concluded. Financial risks, Accounting, Income Tax, VAT and Funding related issues will be considered by the relevant sections.

2.5) Suggested proposals for inclusion in agreements:

- Similar wording on FX as suggested for the tenders above can be used in the agreements/letter of acceptance, depending on the legal status of the successful tenderer.
- The currency of payment and the delivery and payment dates should be clearly defined in the agreement.
- NEVER enter into an agreement where the RAND payment fluctuates depending on the spot exchange rate on day of payment. In this instance, the FX risk is un-manageable.
- If agreed that the supplier will hedge the FX risk, ensure that the agreement is worded as such so that there is no FX risk recourse to Transnet. In this instance, if the supplier needs to roll/extend FX hedges that they have entered into, they will carry the costs associated to such extension/roll over.
- The VAT status of the supplier must be established at the tender phase to assess whether the transaction will be subject to VAT and to assess whether foreign currency invoicing is possible.
- The following standard clause should be included in agreements to enable Transnet to source Export Credit Agency (ECA) financing. "The Contractor acknowledges that Transnet has established with Barclays Capital an export

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credit (ECA) supported umbrella loan facility and the right of the Employer to use ECA supported funding for this project. ECA funding will need to be executed in a manner acceptable to the Employer. If, for whatever reason, ECA support is not in place in a timely manner the Employer reserves the right to make payments from other sources on the full understanding that any payments made by the Employer will still be eligible to be reimbursed from the Export credit facility at a later point in time. Should the Export Credit Agency require the Contractor to assist the Employer in executing the funding application, the Contractor agrees to do so. The Employer reserves the right to use any other source of funding available in the market."

3) **FX HEDGING PROCEDURES**

- 3.1) It is a policy requirement that all FX exposures need to be hedged. The maximum open exposures allowed per Business Unit are R25 million for Opex and R25 million for Capex.
- 3.2) Treasury needs to be approached for hedging as soon as the agreements are signed. Hedging can only be done when a firm and ascertainable exposure exists. This comes into effect when either an agreement or a letter of acceptance has been signed by both parties.
- 3.3) No Reserve Bank (SARB) approval is required to do hedging when the contract is concluded with an overseas registered company. However, in instances where a local joint venture issues an FX invoice, specific SARB approval is required before hedging can be done. There is no guarantee that approval will be granted but Treasury has recently obtained positive approvals from the SARB in respect of local joint ventures (please refer to 2.2.3 above).
- 3.4) Hedging will be done on the FX PAYMENT dates and NOT delivery dates as the currency must be available on date of payment.
- 3.5) **FX hedging requests must be send to the Treasury Middle Office, Floor 43, Carlton Centre for attention Zander Grobler at (Tel = 27 11 308 2611) and or Danie Smit at (Tel = 27 11 308 2622).**

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3.6) The following are required by the Treasury Middle Office for hedging purposes:

- The FX currency amount.
- The FX payment date.
- A signed electronic copy of either the letter of acceptance and or agreement. *(signed by both parties)*.
- Which business unit is involved.
- The cash flows must either be signed off by the CFO of Transnet Projects and or the CFO of the Business Unit involved.
- Even if the cash flows are signed off by the CFO of Transnet Projects, Treasury will discuss the hedging process with the Business Unit involved as the Business Units involved still has to pass the relevant entries in their books.
- Most of the FX hedges are hedge accounted for and it is imperative to make the BU involved as they have to record the assets.
- Treasury will perform an analysis and decide, which hedging instrument best mitigates the risk exposure and after taking into account the accounting implications.
- Treasury will obtain the necessary approvals as stipulated in the approved Delegations Framework before hedging can be executed. The approvals are linked to both tenor and amounts.
- Treasury requires a quarterly update of all FX exposures as per a required template that will be provided to the Business Units on a quarterly basis.
- In instances where foreign currency is involved and hedge accounting is applied to a project, the GCFO has requested that the CFO of the respective Business Unit provides Treasury with a monthly updated signed off foreign currency cash flow to enable Treasury to align the FX hedges with the cash flows of the commitments.

3.7) The following are required by the Treasury Front Office for funding purposes:

A synopsis of the project where the value of the project is more than R50 million to enable Treasury to consider funding alternatives. This will include i.e.

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- A description of the project
- The total amount of the project.
- The country of export.
- Expected foreign currency cash flows involved.
- Expected rand cash flows involved

4) Exchange Control Applications and Forex Payments

4.1) Letter of Acceptance and Contract Inclusions:

When a tender is awarded to a foreign supplier, the following wording should be included when the letter of acceptance is concluded: **"Subject to the approval of the South African Reserve Bank"**. This inclusion will protect Transnet against possible interest claims for any delay of payment should the contract be signed but SARB approval not be obtained timeously.

4.2) Waiting Period for an Application to be approved by SARB:

This process takes anything **between 4 to 6 weeks**, provided that the **final draft** or **signed copy** of the contract has been forwarded to Treasury Exchange Control Department, together with all the **projected FX cash flows** indicating the payments dates and the currency of payment. It must be noted that these applications are forwarded to Transnet's Authorised Dealer and they would then forward our SARB application onto the Reserve Bank. It is therefore imperative that the process be finalised taking into consideration these timelines.

4.3) What Needs SARB approval:

- a) All international contracts in foreign currency that have "ADVANCED PAYMENTS" of more than 33 1/3% that are of a "CAPITAL" nature.

- b) **All "JOINT VENTURES" (JV)**

If a Joint Venture, please note that if "foreign Currency" is to be paid to the supplier, the supplier would need to first obtain SARB's approval to **open a CFC ACCOUNT**. Transnet cannot pay foreign currency into a local account without the approval of the SARB.

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- c) When Milestone payments are to be made and the goods have not been received into the Country as yet.
- d) Any "**ADVANCE PAYMENTS**" in foreign currency that are "**SERVICE RELATED**" i.e Consultancy and Technical related services.
- e) If payments are made in ZAR to a Supplier in "**A NON RESIDENT ACCOUNT**"(this is a foreign account held locally).
- f) If payment is for services rendered, the Invoice must clearly stipulate that. The BU must ensure that they forward the Invoice together with supporting documents to their "BANKERS" for endorsement purposes and these documents must be stamped and returned to the BU by the bankers with the wording "Exchange Provided" stamped on the Invoices. This will ensure no problems arise should the Suppliers want to transfer the funds abroad.

ALL OTHER CURRENCIES MUST BE SENT TO TREASURY.

4.4) Documentation to be sent to Treasury:

When a foreign payment needs to be made in terms of Importation of Goods the following documentation must be presented:

- a) Original Invoice
- b) Payment request signed by two authorised signatories
- c) Bill of Lading (seafreight consignments)
- d) Airway Bill (airfreight consignments)
- e) Bill of Entry
- f) SARS Clearance Certificate
- g) Invoice older than 12 months, needs SARB approval.

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h) Above mentioned documents need to be stamped by Customs.

4.5) **Information that is required to appear on all PAYMENT requests:**

- a) Name of the Supplier (Beneficiary) – same as on Invoice
- b) Physical Address of Beneficiary. – same as on Invoice
- c) Beneficiary's Banking Details including SWIFT ADDRESS. – must also appear on invoice.
- d) The reason for payment. i.e (Services Rendered or Purchasing of Goods)
- e) Contact Detail of payment requestor.

The above is a mere guide to assist with foreign payments to suppliers. All FX payments and exchange control applications must be addressed to Treasury Exchange control floor 43, Carlton Centre, for the attention of Malcolm Barnard and or Zacharia Moeti.

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The following checklist is aimed at inducing the core principles of identifying embedded derivatives, into the related process. For further assistance and guidance in this regard, please feel free to contact Group Finance.

EMBEDDED DERIVATIVES IDENTIFICATION CHECKLIST

Embedded Derivative Identification Checklist:

IAS 39 paragraph 10:

An embedded derivative is a component of a hybrid (combined) instrument that also includes a non-derivative host contract-with the effect that some of the cash flows of the combined instrument vary in a way similar to a standalone derivative. An embedded derivative causes some or all of the cash flows that otherwise would be required by the contract to be modified according to a specified interest rate, financial instrument price, commodity price, foreign exchange rate, index of prices or rates, credit rating or credit index, or other variable, provided in the case of a non-financial variable that the variable is not specific to a party to the contract. A derivative that is attached to the contract, but is contractually transferable independently of that instrument, is not an embedded derivative, but a separate financial instrument.

Encompassing the above stated criteria for identification of an embedded derivative, and bearing in mind the business operations of the Transnet Group, the following checklist has been developed to facilitate the identification process of embedded derivatives at a business unit level.

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Question/detail	Yes/No
<p>General Detail:</p> <p>Does the hybrid instrument include a non-derivative host contract?</p> <p>If affirmative to the above, the following contract information would be required:</p> <ul style="list-style-type: none"> • the contract number; • the contract period; and • the type of contract, either an agreement for sale or purchase. 	
<p>Billing Process:</p> <p>Are some or all of the cash flows, that otherwise would be required by the contract, modified due to a difference in the supplier's/customer's domestic currency and the billing currency?</p> <p>If affirmative to the above billing process question or the pricing process question, the following information would be required:</p> <ul style="list-style-type: none"> • the contract value, designated either in the domestic currency of the business unit, or a foreign denomination; • the country in which the supplier/customer operates; • the supplier's/customer's domestic currency; and • the billing currency. <p>NB: <i>In determining whether an embedded derivative exists due to a difference between the domestic currency of the supplier/customer and the billing currency, one must always bear in mind that an exception does exist. An embedded derivative will not arise if the billing currency, though different to the supplier's/customer's domestic currency, is the accepted currency of trade in relation to the underlying assets or services being traded, or is the accepted currency of trade in the supplier's/customer's economy.</i></p>	

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Pricing Process:

Are some or all of the cash flows, that otherwise would be required by the contract, modified according to a *specified interest rate, financial instrument price, commodity price, foreign exchange rate, index of prices or rates, credit rating or credit index, or other variable*?

If affirmative to the above pricing process question or the billing process question, the following information would be required:

1. Specified Interest Rate:

- cash flows modified in line with specified interest rate, **yes or no**;
- the nature of the interest rate; and
- the designation of the rate, either domestic in line with the business unit or a foreign denominated rate.

2. Financial Instrument Price:

- cash flows modified in line with financial instrument price, **yes or no**;
- the nature or description of the financial instrument; and
- the designation of the financial instrument price, either domestic in line with the business unit or a foreign currency.

3. Commodity Price:

- cash flows modified in line with commodity price, **yes or no**;
- the type of commodity; and
- the designation of the commodity price, either domestic in line with the business unit or a foreign currency.

4. Foreign Exchange Rate:

- cash flows modified in line with foreign exchange rate, **yes or no**; and
- the type of currency.

5. Index of Prices or Rates:

- cash flows modified in line with index of prices or rates, **yes**

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<p>or no;</p> <ul style="list-style-type: none"> the nature or description of the index of prices or rates; and the designation of the index of prices or rates, either domestic in line with the business unit or a foreign denominated index of prices or rates. <p>6. Credit Rating or Credit Index</p> <ul style="list-style-type: none"> cash flows modified in line with the credit rating or credit index, yes or no; and the nature or description of the credit rating or credit index; and the designation of the credit rating or credit index, either domestic in line with the business unit or a foreign denominated index of prices or rates. <p>7. Other Variable:</p> <ul style="list-style-type: none"> cash flows modified in line with the other variable, yes or no; and the nature or description of the other variable; and the designation of the other variable, either domestic in line with the business unit or a foreign denominated variable. 	
<p>Conclusion:</p> <p>Has an embedded derivative or multiple embedded derivatives been identified in terms of IAS 39?</p> <p>If affirmative to the above, the following information would be required:</p> <ul style="list-style-type: none"> number of embedded derivative/s; whether the embedded derivative/s qualifies for separate recognition; whether the embedded derivative/s will be separated from the hybrid instrument; or whether the entire hybrid instrument shall be designated as a financial asset or liability at fair value through profit and loss. 	

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This checklist is aimed at inducing the core principles of identifying insurance contracts, into the related process. For further assistance and guidance in this regard, please feel free to contact Group Finance.

INSURANCE CONTRACTS IDENTIFICATION CHECKLIST

Insurance Contracts Checklist:

Contracts to be accounted for in terms of IFRS4 are defined as:

*A contract under which one party, (the **insurer**), accepts significant **insurance risk** from another party, (the **policyholder**), by agreeing to compensate the policyholder if a specified **uncertain future event**, (the **insured event**), adversely affects the policyholder.*

Encompassing the above stated criteria for identification of insurance contracts, and bearing in mind the business operations of the Transnet Group, the following checklist has been developed to facilitate the identification process of insurance contracts at a business unit level.

Question/Detail	Yes/No
Insurance Risk Transfer: Has significant insurance risk been accepted by the insurer from the policyholder?	

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<p>Compensation: Is the insurance risk in the form of compensation for the occurrence of an uncertain future event that will adversely affect the policyholder?</p>	
<p>Uncertain Future Event: Uncertainty (or risk) is the essence of an insurance contract.</p> <p>Accordingly, Is at least one of the following outcomes uncertain at the inception of the contract?</p> <ul style="list-style-type: none"> (a) whether an <i>insured event</i> will occur; (b) when it will occur; or (c) how much the insurer will need to pay if it occurs. 	

This checklist is aimed at inducing the core principles of identifying financial guarantees, into the related process. For further assistance and guidance in this regard, please feel free to contact Group Finance.

FINANCIAL GUARANTEES IDENTIFICATION CHECKLIST

Financial Guarantees Checklist:

Transnet Limited
Registration Number
1990/000900/06

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Carlton Centre
150 Commissioner Street
Johannesburg
2001

P.O. Box 72501
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South Africa, 2122
T +27 11 308 2309
F +27 11 308 2312

Directors: FTM Phaswana (Chairman) M Ramos* (Group Chief Executive) Dr I Abedian Prof GK Everingham NBP Gcaba Dr ND Haste OBE*
Dr SE Jonah KBE* PG Joubert NNA Matyumza BT Ngcuka S Nicolaou NR Ntshingila KC Ramon CF Wells* (Chief Financial Officer)
*Executive *Ghanaian *British

Group Company Secretary: Z Stephen

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GUIDELINES AS PROVIDED BY TRANSNET TO EXPLAIN AND ASSIST IN ESTABLISHING SUPPLIER AGREEMENTS, FX PAYMENTS, THE HEDGING PROCESS AND EXCHANGE CONTROL



IAS 39 *Financial Instruments: Recognition and Measurement* (as amended) defines a financial guarantee contract as follows:

A contract that requires the issuer to make specified payments to reimburse the holder for a loss it incurs because a specified debtor fails to make payment when due in accordance with the original or modified terms of a debt instrument.

Encompassing the above stated criteria for identification of issued financial guarantee contracts, and bearing in mind the business operations of the Transnet Group, the following checklist has been developed to facilitate the identification process of financial guarantees at a business unit level.

Question/Detail	Yes/No
Specified Reimbursement Payments: Has the reporting entity (i.e. the issuer) entered into a contract whereby it will make specific payments to a third party as reimbursement for losses incurred by that third party?	
Default by a Specified Debtor: Is the reporting entity only required to make these reimbursement payments if a specified debtor has defaulted on its payments to the third party?	

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*Executive *Ghanaian *British

Group Company Secretary: Z Stephen

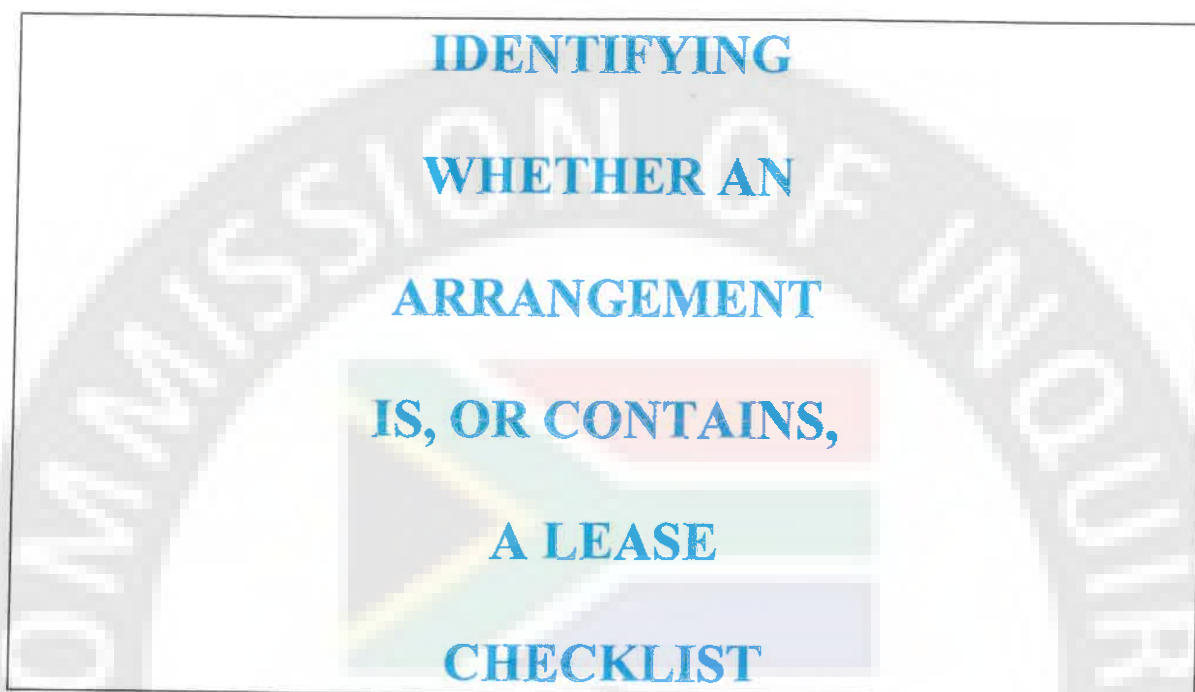
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GUIDELINES AS PROVIDED BY TRANSNET TO EXPLAIN AND ASSIST IN ESTABLISHING SUPPLIER AGREEMENTS, FX PAYMENTS, THE HEDGING PROCESS AND EXCHANGE CONTROL

TRANSNET



This checklist is aimed at inducing the core principles of identifying whether an arrangement is, or contains, a lease, into the related process. For further assistance and guidance in this regard, please feel free to contact Group Finance.



Determining whether an arrangement is or contains, a lease

IFRIC 4 Paragraph 6:

Determining whether an arrangement is, or contains, a lease shall be based on the substance of the arrangement and requires an assessment of whether:

- (a) fulfillment of the arrangement is dependent on the use of a specific asset or assets (the asset); and*
- (b) the arrangement conveys a right to use the asset.*

Encompassing the above stated criteria of IFRIC 4 in identifying whether an arrangement is or contains, a lease, and bearing in mind the business operations of the Transnet Group, the following checklist has been developed to facilitate the identification process.

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Dr SE Jonah KBE⁴ PG Joubert NNA Matyumza BT Ngcuka S Nicolaou NR Ntshingila KC Ramon CF Wells⁵ (Chief Financial Officer)

¹Executive ²Ghanaian ³British

Group Company Secretary: Z Stephen

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GUIDELINES AS PROVIDED BY TRANSNET TO EXPLAIN AND ASSIST IN ESTABLISHING SUPPLIER AGREEMENTS, FX PAYMENTS, THE HEDGING PROCESS AND EXCHANGE CONTROL

TRANSNET



Question/Detail	Yes/No
<p>Dependence on a specific or specified assets: Is fulfillment of the arrangement dependant on the use of an asset or assets, and is this fact not necessarily explicitly stated by the contract but rather implied?</p> <p>NB: <i>Although a specific asset may be explicitly identified in an arrangement, it is not the subject of a lease if fulfillment of the arrangement is not dependent on the use of the specified asset.</i></p>	
<p>Right of use: The arrangement conveys a right to use the asset, if one of the following conditions is met:</p> <ul style="list-style-type: none"> • Does the purchaser have the ability or right to operate the asset or direct others to operate the asset, (while obtaining or controlling more than an insignificant amount of the output of the asset)? • Does the purchaser have the ability or right to control physical access to the asset, (while obtaining more than an insignificant amount of the output of the asset)? • Is there only a remote possibility that parties other than the purchaser will take more than an insignificant amount of the output of the asset, and the price that the purchaser will pay is neither fixed per unit of output nor equal to the current market price at the time of delivery? 	
<p>Assessment or Reassessment of whether an arrangement is or contains, a lease:</p>	

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*Executive *Ghanaian *British

Group Company Secretary: Z Stephen

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GUIDELINES AS PROVIDED BY TRANSNET TO EXPLAIN AND ASSIST IN ESTABLISHING SUPPLIER AGREEMENTS, FX PAYMENTS, THE HEDGING PROCESS AND EXCHANGE CONTROL



The assessment of whether an arrangement contains a lease is made at the inception of the arrangement, with reassessment occurring only if any one of the following conditions is met:

Has there been a change in the contractual terms, unless the change only renews the arrangement?

Has a renewal option been exercised or an extension agreed to by the parties to the arrangement, unless the term of the renewal or extension had initially been included in the lease term in accordance with the definition paragraph of *IAS 17 Leases*?

Has there been a change in the determination of whether fulfilment is dependent on a specified asset?

Has there been a substantial change to the specified asset?

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Transnet Limited
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Dr SE Jonah KBE* PG Joubert NNA Matyumba BT Ngcuka S Nicolaou NR Ntshingila KC Ramon CF Wells* (Chief Financial Officer)
*Executive *Ghanaian *British

Group Company Secretary: Z Stephen

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Annexure “MM3”



TRANSNET



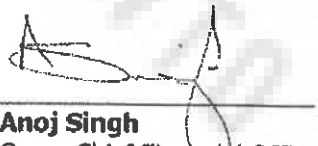
McKinsey Incorporated
88 Stella Street
Sandown Mews East
Sandton
2196

19 November 2013
Reference: LOI/GSM/12/05/0447

Dear Mr. Michael Kloss

RE: LETTER CONFIRMING A CONFLICT OF INTEREST (NEDBANK CAPITAL) AND THE RECOMMENDED ALTERNATIVE (REGIMENTS CAPITAL) IN REGARDS TO ADVISORY SERVICES TO ACQUISITION OF THE 1064 LOCOMOTIVES TENDER OVER A PERIOD OF 9 MONTHS. REFERENCE NO: GSM/12/05/0447

1. McKinsey Incorporated (McKinsey) and other members of the consortium was awarded the business to provide advisory advice to Transnet for the Acquisition of the 1064 locomotives.
2. McKinsey was awarded the business and Nedbank Capital (Nedbank) was its partner to provide financing, funding options and deal structures for the acquisition of the 1064 locomotives tender.
3. In May 2013 a potential conflict of interest was raised with McKinsey concerning Nedbank to which a response from McKinsey confirmed the conflict and an alternative solution to provide the services to Transnet was proposed in terms of Regiments Capital to provide the services.
4. The 1064 locomotives tender is entering Phase 2 which will now include the funding and deal structuring work envisaged by Transnet for the Acquisition of the 1064 Locomotives.
5. It is thus in the best interest of Transnet and McKinsey to confirm the proposed alternative of Regiments Capital.
6. This letter serves to confirm Transnet's agreement to McKinsey's request for Regiments Capital to provide the required services in place of Nedbank .


Anoj Singh
Group Chief Financial Officer
Date 19/11/13

Transnet SOC Ltd
Registration Number
1990/000900/30

Carlton Centre
150 Commissioner
Street
Johannesburg
2001

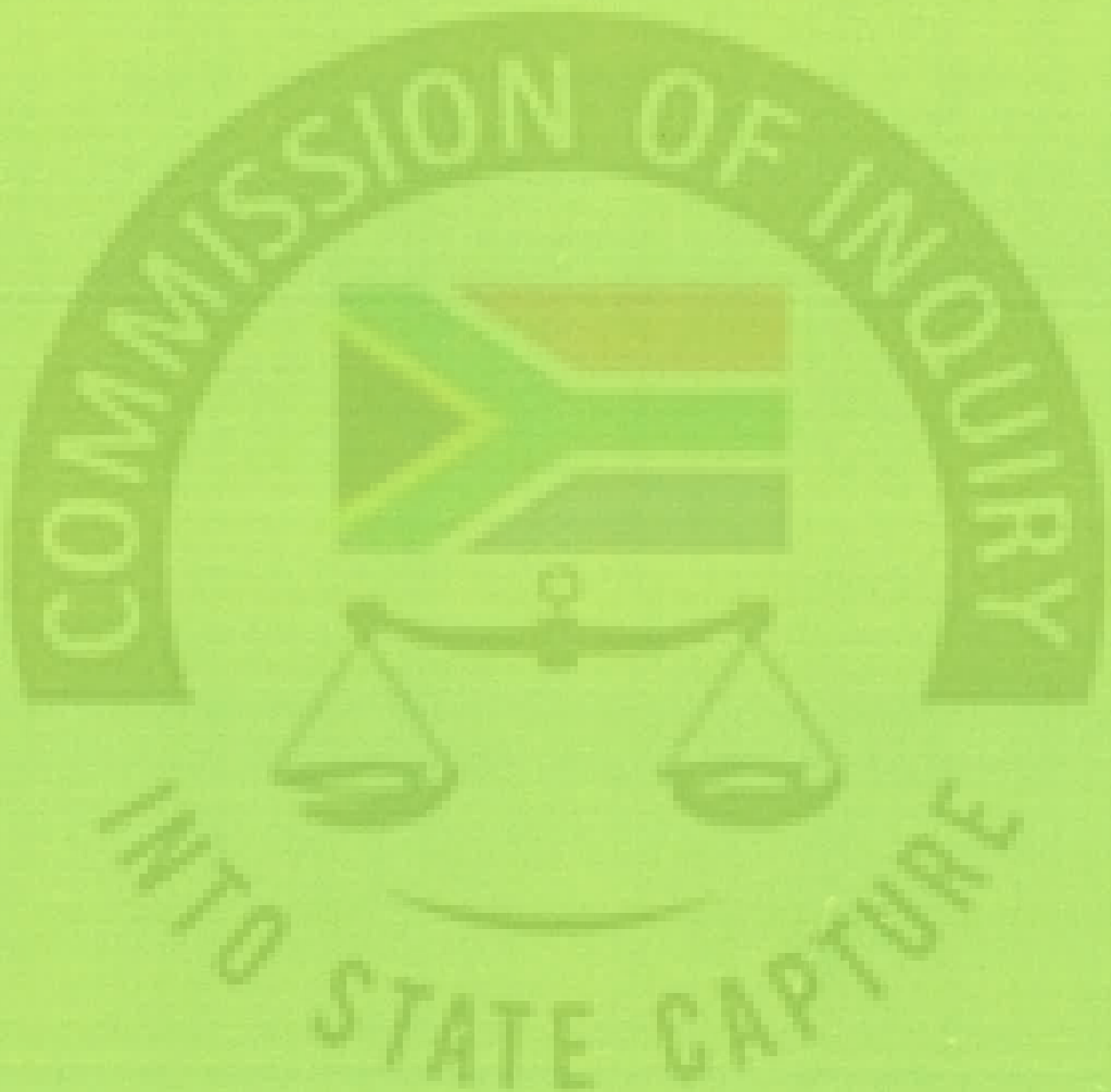
P.O. Box 72501
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Directors: ME Mkwazi (Chairman) S Molefe* (Group Chief Executive) NK Choubey* MA Fanucchi Y Forbes HD Gazendam N Moolo NR Ntshingila IM Sharma
B Skosana E Tshabalala DL Tshepo A Singh* (Chief Financial Officer)
*Executive *Indian

www.transnet.net

Group Company Secretary: ANC Ceba

Annexure “MM4”



Letter of Intent between Transnet and McKinsey Incorporated for the provision of Advisory Services related to the Acquisition of the 1064 Locomotives Tender

TRANSNET



McKinsey Incorporated
88 Stella Street
Sandown Mews East
Sandton
2196

30 November 2012
Reference: LOI/GSM/12/05/0447

Dear Mr Michael Kloss

RE: LETTER OF INTENT for the provision of Advisory Services Related to the Acquisition of the 1064 Locomotives Tender over a period of 9 months. LOI/Proposal Reference No: GSM/12/05/0447 ("the Mandate")

Pursuant to our Request for Proposal (RFP Number 12/05/0447), we wish to inform you that your offer has been accepted and that your consortium has been awarded the contract for the provision of **Advisory Services related to the Acquisition of the 1064 Locomotives Tender (the Services)** to Transnet, subject to the conditions precedent set out in section 1 below.

The Parties to this agreement are:

- (1) **Transnet SOC Ltd (Transnet)**, a State Owned Company and the procurer of the services. (Registration Number 1990/000900/30); together with
- (2) **McKinsey Incorporated (the Supplier)**, (Registration Number 1995/002398/10) and the other members of the consortium, namely, **Regiments Capital (refer to 1.5), Advanced Rail Technologies, Nedbank Capital and Utho Capital.**

Transnet wishes to contract with the Supplier for the provision of **the Services** as outlined in clause 3.3 below, which, if mutually agreed by the Parties, will be documented and effected in accordance with a **9 (nine) month Agreement** between the Parties. It is agreed that the Supplier will play the lead role and take overall responsibility for the entire Mandate. This condition also applies to services specified in 1.5 and 1.6 herein.

The Parties are desirous of successfully concluding negotiations and thereafter executing a contract (**the Agreement**) to enable the Supplier to provide the Services detailed in section 3.3 below in a timely manner.

The Parties have identified the Services which Transnet would wish the Supplier to provide in the interim while execution of an Agreement between the Parties is being finalised. Conditions of this requirement are specified in sections 2 and 3 below.

The purpose of this Letter of Intent (**LOI**) is to document the intention of the Parties in respect of the required Services for **the provision of Advisory Services related to the Acquisition of the 1064**
LOI Reference No: GSM 12/05/0447

Letter of Intent between Transnet and McKinsey Incorporated for the provision of Advisory Services related to the Acquisition of 1064 Locomotives Tender

Locomotives Tender and it will remain in effect until the Agreement is signed by both Parties, or until 90 (ninety) days have elapsed from date of issue of this LOI, whichever event should occur first.

NOW THEREFORE IT IS AGREED

1. Conditions Precedent

With reference to the Supplier's offer (07 June 2012), Transnet wishes to finalise pricing, the details of the Service to be provided and other matters in order to conclude the Agreement with the Supplier. In the interim, the under-mentioned conditions precedent will apply:

- 1.1 The Parties agree to work towards concluding the Agreement for the **provision of Advisory Services related to the Acquisition of the 1064 Locomotives Tender**, over a period of 9 (nine) months, commencing **15 January 2013** and expiring **15 October 2013** (or sooner if completed). Please note that contract timeline may be for a longer period, at no extra cost to Transnet if the deliverables are not executed for whatever reason as this engagement is output based, as opposed to time based.
- 1.2 The Parties agree to use this document as a proxy for the binding legal Agreement and under its authority Transnet intends to request that the Supplier commences the provision of such Services as required, during which period the detailed Agreement will be negotiated and finalised between the Parties.
- 1.3 During this interim period Transnet wishes to gain an enhanced degree of comfort in terms of provision of the Services and would wish to reflect such in the Agreement in the form of a Service Level Agreement agreed by the Parties.
- 1.4 Transnet will discuss with the Supplier and agree the terms and conditions of the Agreement.
- 1.5 The Supplier agrees to partner with Regiments Capital, for the procurement and supplier development elements of this project.
- 1.6 The Supplier agrees to relinquish all legal services to Webber Wentzel (WW), a firm that was not part of the original consortium but appointed by Transnet for the delivery of legal services. Notwithstanding the appointment of WW by Transnet, the Supplier will oversee all work and deliverables supplied by WW and manage the deliverables of the entire Transaction Advisory services in an integrated manner.



2. Interim Service Requirement

- 2.1. The Supplier agrees to promptly commence with the provision of the Services as detailed in section 3.3 below, after this LOI's confirmation date, and in compliance with Transnet's interim purchase order.
- 2.2. Should negotiations between the Parties break down for any reason, the Supplier may immediately invoice **Transnet Group Finance** for all reasonable, actual costs incurred up until that date and such amount shall become due and payable by Transnet against presentation to Transnet of an undisputed Tax Invoice.

3. Contract Fees and Deliverables (inclusive of 2.1 above)

The proposed fees for the Services to be rendered, which the Parties in the interim accept, are understood by both Parties (subject to signing of the Agreement) and are as tabled in Annexure A hereto.

- 3.1. **Fees** and related costs are quoted in South African currency and are exclusive of Value-Added Tax (VAT). Expenses will be capped at 10% of the value of the engagement for the Supplier and its sub-contractors and billed on an actual basis capped at R35,2 million excluding disbursements.
- 3.2. **Payment** will be effected by Transnet, against presentation by the Supplier of undisputed Tax Invoices, within 30 (thirty) days from date of month-end statement for deliverables effected during that month.
- 3.3. **Key deliverables and project timescales.**

The key project deliverables for a period of 9 (nine) months are for the provision of **Advisory Services related to the Acquisition of the 1064 Locomotives Tender**. Please note that contract timeline maybe for a longer period, at no extra cost to Transnet if the deliverables are not executed for whatever reason as this engagement is output based, as opposed to time based.

The objective is to award the loco tender by the end of the third quarter of the calendar year 2013 on the back of

- a robust and de-risked business case that is fully supported and approved by the Board and the Shareholder
- a fully capacitated and flawless transaction process
- a commercial negotiation that maximises the value delivered to Transnet and South Africa.

The deliverables are covered in detail in annexure B, and include:

- **Developing and augmenting the business case for the approval of the locomotives by the Transnet Board of Directors and Department of Public Enterprises;**



- **TFR GFB 7 year end to end business case understanding impact of the following based on validated volume expectations:**

- Wagons
- Locomotives
- Infrastructure
- Optimisation
- Profitability of each sector- link into efficiencies and capacity
- Clear capital volume link;

Any work done in relation to the above is to be carried forward and used as part of the SWAT team's project.

- **Procurement and Legal – Supplier Development and Localisation strategy:**

- Design and Setting up tendering process in line with requirements applicable to State-owned-companies (SOCs)
- Request for proposal documentation;
- Supplier evaluation criteria
- Request for Information / Quotation documentation
- Short listed selection of bidders based on criteria
- Template contract for awarding of the tender
- Negotiation fact packs and capability building
- Claims procedure and OEM management approach post award
- creation of a loco industry in South Africa
- Integrate this into the transaction and commercial process
- Execution of transaction process (RFP, process orchestration, adjudication capacity)
- Develop contracting strategy for programmatic approach;

- **Technical/Operations:**

- Reduce loco lifecycle costs through technical (specifications) and commercial lever optimisation with short-listed suppliers
- Technical evaluation levers and estimated value
- Optimisation approach for joint value optimisation between Transnet and the selected suppliers
- Improved outcome through value engineering with shortlisted suppliers – optimising for main objectives of procurement strategy (e.g., highest local content at best value for money);



Letter of Intent between Transnet and McKinsey Incorporated for the provision of Advisory Services related to the Acquisition of 1064 Locomotives Tender

- **Financial:**

- Developing finance and funding options
- Develop deal structure (financing, hedging and de-risking options);

- **Project Management Office:**

- Proactive stakeholder engagement throughout process to ensure all are granted on time (e.g. PFMA)
- Manage overall process to ensure all parts come together
- Provide oversight of legal aspects from a project management perspective.

4. Miscellaneous

4.1. Neither Party shall reveal the content of this LOI or anything disclosed to the other Party in pursuance hereof to any third party, except with the prior express written consent of the other Party, and then only to the extent required to facilitate progression of the startup procedures.

4.2. This LOI may only be amended or modified in writing by the authorised signatories of the LOI.

Thus duly signed at SAB, South Africa on this 04 day of
..... December 2017... on behalf of:

Transnet SOC Ltd

WITNESSES

1

2


NAME: Anoj Singh

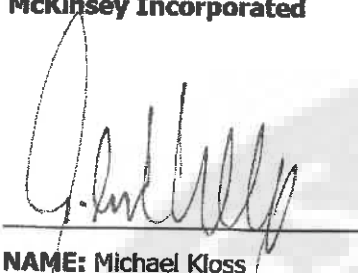
Designation: Group Chief Financial Officer



Letter of Intent between Transnet and McKinsey Incorporated for the provision of Advisory Services related to the Acquisition of 1064 Locomotives Tender

Thus duly signed atJohannesburg....., South Africa on this06..... day of
.....December....., 2012.. on behalf of:


McKinsey Incorporated



NAME: Michael Kloss

Designation: Director

WITNESSES

1 

2 



Letter of Intent between Transnet and McKinsey Incorporated for the provision of Advisory Services related to the Acquisition of 1064 Locomotives Tender

ANNEXURE A –FEES/COSTS

Deliverables must be executed for a fee of R35.2m as per the fee note below. Any overrun in terms of time will not be for the account of Transnet as the engagement is output based and not time based. McKinsey will take overall responsibility for the deliverables and quality of the end products. Expenses will be capped at 10% of the value of the engagement for the Supplier and its sub-contractors and billed on an actual basis:



Contracting strategy	NB/Utho	R1.4m
Business case validation	Regiments/Burlington	R6.1m
Technical evaluation and execution	McK	R6.6m
PMO, integration and stakeholder management	McK + ART	R13.5m
	Regiments/Burlington + McK	R7.6m
Total Loco		R35.2m

ANNEXURE B: KEY DELIVERABLES

	Key deliverables	Measure of success
Transactional advisory and procurement execution	<p>Led by Mck with deal structuring recommendations from Utho/Nedbank, contracting strategy input recommendations from WW, Regiments/Burlington. Mck responsible. Leading a fair and precise process to maximise socio-economic impact for South Africa and Transnet</p> <ul style="list-style-type: none"> • Designed tendering process in line with requirements applicable to State-owned-companies (SOCs) to ensure award on time • Contracting strategy for programmatic approach and maximised localisation; Contracts that maximise Transnet's flexibility if volume predictions are not met • Supplier evaluation criteria and adjudication process • Recommended deal structuring, financing and funding options to minimise risk for Transnet to be delivered by Nedbank Capital/Utho with Mck guidance and Mck integration • Overall integration of all stakeholder inputs and communication on process progress 	<p>Fair process, professional and transparent to key stakeholders - and in line with requirements applicable to SOCs</p> <p>Deal structure which minimises the financial risk for Transnet</p> <p>Contracting strategy implemented that optimally balances loco demand and supplier development objectives</p> <p>Tender award completed in line with timelines submitted with RFP response)</p>
Technical evaluation and optimisation	<p>Led by Mck and ART</p> <p>Lifecycle cost savings from technical improvement levers, and price reduction of locomotives</p> <ul style="list-style-type: none"> • Technical evaluation levers and direct impact on loco lifecycle costs by ART and Mck • Joint value optimisation between Transnet and the shortlisted suppliers based on levers already identified by ART and implementable in the given timeframe, e.g., highest local content at best value for money 	<p>Estimate of total lifecycle cost for each loco type from short listed suppliers quantified and handed over to Transnet</p> <p>Top 3 technical optimisation levers from ART evaluated and quantified</p> <p>Value from technical lever optimisation negotiated and reflected in contract with selected loco suppliers</p>

LOI Reference No: GSM 12/05/0447

<p>Business case integration and re-write</p>	<p>Led by McK Re-write of the business case, approved by Board and DPE</p> <ul style="list-style-type: none"> • Integrated end-to-end business case across commodities to validate loco quantities with recommendations to adjust ranges in the fleet plan and get ranges for the contracting • Scenario based modeling to inform contracting based on macro-economic scenarios and links to export coal and export iron ore business cases, and different capex outcomes • Adequately address DPE queries. 	<p>Rewritten business case that is approved of by the Transnet Board and DPE</p>
<p>PMO</p>	<p>Led by Regiments/Burlington with McK leadership oversight</p> <ul style="list-style-type: none"> • Monitor overall process timelines against milestones • Setting up and preparing documentation for steering committees and formal reviews • Escalate issues through regular project steercoos • Prepare external stakeholder communications 	<p>Detailed project plan with milestones Clear governance structure that creates an integrated view of the entire process across all advisors Effective steering committee meetings- clear agenda with decisions to be made, all information required for decisions circulated beforehand, issues logged and resolved Aligned external stakeholders</p>

[Handwritten signature]

ANNEXURE C: PREREQUISITES**People required from Transnet****1****Transactional
advisory and
execution**

- 1 full time project manager from Group Legal for 26 weeks planning/projects), business planning
- 1 full time TFR procurement specialist to own the procurement process for 26 weeks
- Ad hoc time from Group finance (treasury), procurement;

2**Technical
evaluation and
optimisation**

- 2 workstream leads (1 diesel and one electric)- full time for 10 weeks and then as needed for adjudication; they will drive technical evaluation and optimisation; from TFR

3**Business case
integration and re-
write**

- 1 planning/ GFB business case lead full time for 16 weeks full time; from TFR
- 1 fleet planning specialist full time for 16 weeks; from TFR

4**PMO and
stakeholder
management**

- 1 full time PMO lead full time for 26 weeks; tracks critical path activities, prepares templates/reporting and action; TFR or Group

CSM

Annexure “MM5”



Mathane Makgatho Corporate JHB

From: Anoj Singh Corporate JHB
Sent: 03 February 2014 07:58 AM
To: Mathane Makgatho Corporate JHB
Subject: Re: Financing 1064 loco's

Thx for the note.

Also good to see that there are good options for us to consider.

Please don't contact any suppliers at this stage.

Also let's discuss the above + regiments issues when we next meet.

Thx

A

From: Mathane Makgatho Corporate JHB
Sent: Friday, January 31, 2014 10:55 AM
To: Anoj Singh Corporate JHB
Subject: Financing 1064 loco's

Dear Anoj

I trust that all is well with you.

I was invited to join the 1064 team for contract negotiations prep work. I reviewed about 75 percent of documents submitted and will finish the rest next week. I would appreciate your guidance on the following matters:

1. Most of the respondents have good financing options that we should consider, but it became very clear to me that we will not be able to make proper decisions without engaging with respondents directly as some of the points are negotiable. *I therefore request permission to discuss directly with preferred bidder's funding partners so that we can discuss face to face and hopefully agree on a solution that is acceptable to both parties.*
2. Our engagement with Regiments - I am not sure how to engage with Regiments on this project given the fact you mentioned during our 15 Jan call that I should not worry about the terms of reference as they are not relevant and should not link the deliverables/output to the budget. I understand your point that they are your advisors and not mine and they are merely advising you through me but without a clear understanding of how our relationship with Regiments Capital is governed and how expected deliverables are supposed to be managed and measured against the TOR, timelines and budget – this makes my job extremely difficult. *I will appreciate clarity on their mandate so that we can proceed smoothly.*

Kind regards

Annexure “MM6”



Makgatho

From: Mathane Makgatho Corporate JHB <Mathane.Makgatho@transnet.net>
Sent: 04 August 2014 02:34 PM
To: Dorothy Kobe Transnet Corporate JHB; makgathom@telkomsa.net
Subject: FW: Regiments and CDB
Attachments: BEIJING-1-63207-v2A-CDB Transnet - Termsheet.doc; BEIJING-1-63207-vATT-CDB Transnet - Termsheet.doc

-----Original Message-----

From: Mathane Makgatho Corporate JHB
 Sent: Monday, August 4, 2014 2:33 PM
 To: Brian Molefe Transnet Corp; Anoj Singh Corporate JHB
 Subject: Regiments and CDB

Dear Brian and Anoj,

I refer to the email below from China Development Bank to Regiments Capital about the proposed facility to finance the CNR and CSR locomotives.

Transnet Group Treasury has been negotiating with CDB since April 2014 regarding the terms and conditions of the facility. This was followed by meetings in Johannesburg and Beijing under the leadership of the GCFO. As part of the normal assessment of a new funding facility, the Treasury team has and is comparing the current terms and conditions with similar facilities.

I would like to seek clarity about the role of Regiments in this matter at this point of the negotiations and what Transnet Treasury's role should be given direct communication of Regiments with CDB.

Your guidance will be appreciated.

Kind regards,

Mathane Makgatho
 Group Treasurer
 Transnet SOC Ltd
 +27 (0)11 308 2613
 +27 (0)83 270 7651
 +27 (0)11 308 2699

Mathane.Makgatho@transnet.net

www.transnet.net

-----Original Message-----

From: 连冠 [mailto:lian_guan@cdb.cn]

Sent: Monday, August 4, 2014 11:37 AM

To: EricW@regiments.co.za

Cc: Anoj Singh Corporate JHB; Mathane Makgatho Corporate JHB; 徐涵; 蒋科涛; 王毅; 刘国强; 任黎涛; 孙小强; 苏战平; 沙苒

Subject: second edition of draft term sheet--CDB

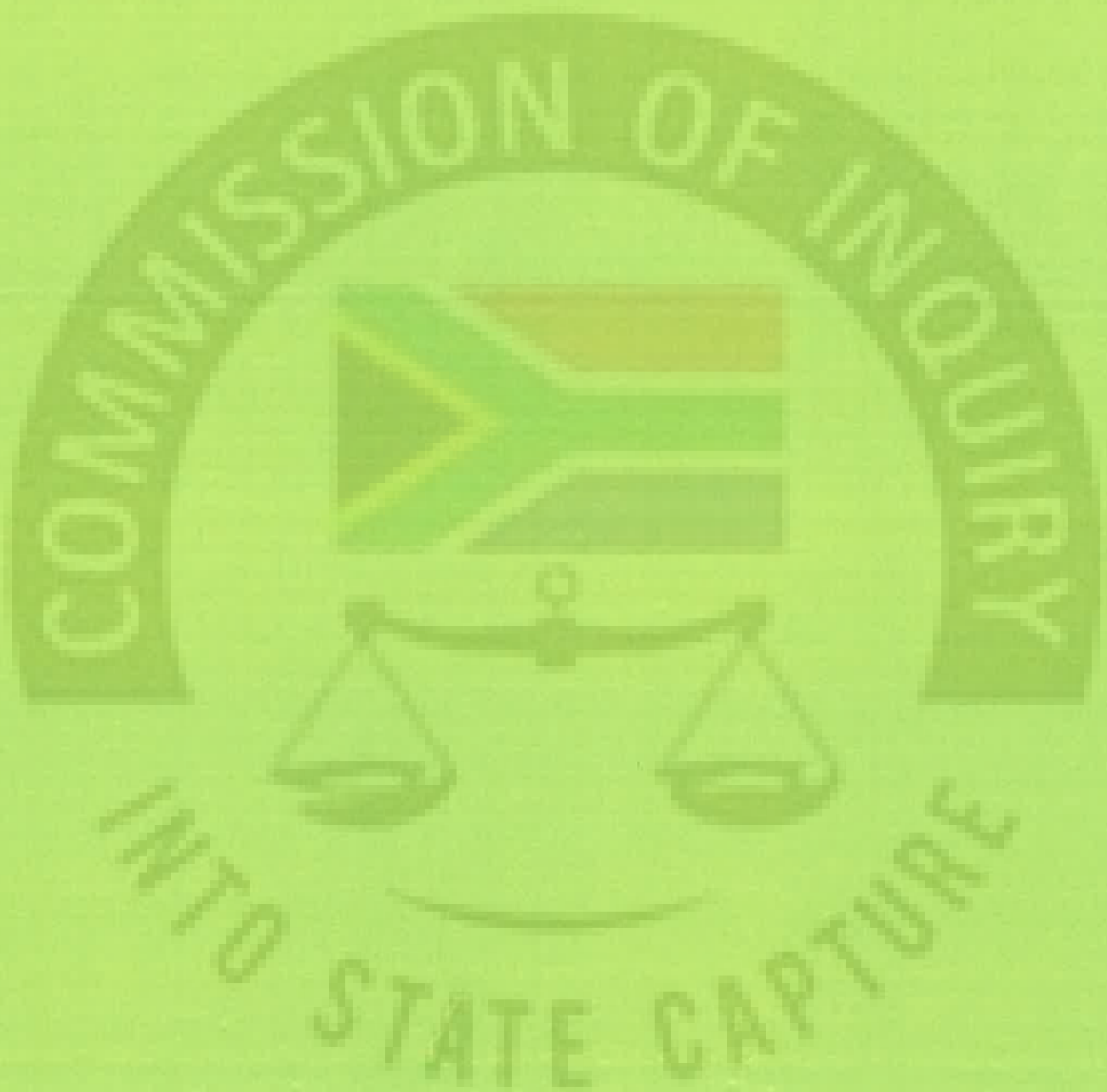
Dear Eric:

According to your feedback and our internal research and discussion, we made further adjustment to the term sheet about proposed CDB Loan Facility to Transnet and the second edition of draft term sheet is attached. Your positive response would be highly appreciated. Thank you very much.

best regards



Annexure “MM7”



13 August 2014

Wednesday

August 2014

Su	Mo	Tu	We	Th	Fr	Sa
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						

September 2014

Su	Mo	Tu	We	Th	Fr	Sa
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30			

WEDNESDAY			Notes
		13	
07 AM			
08			→ supp. materials + mdc
09			→ class
10			→ maintenance
11	1-1 WITH MR ANOJ SINGH 49TH FLOOR Brian Molefe Transnet Corp		
12 PM	GS/Transnet meeting: exim wrapped hybrid issuance Transnet office Prasad, Anant		→ do! Tendency to attend!
01	Group Finance Committee (All GM's to present before FINCO) Boardroom 4425, 44th Floor Carlton Centre		
02	Anoj Singh Corporate JHB	FW: Minister's Engagement with Rating Agencies DPE 3rd Floor Legae Boardroom Mzwandile Radebe	→ presentation?
03			
04			
05			→ clearly?
06			→ vikash?
			→ ERIC?

Annexure “MM8”



WATWAGE / SELLG.

Description	ETC	10% Deposits	Rand Millions	Total
Latest Estimate pre-mitigation				
				25 145

Mitigations

- 60 Class 43 locomotives
- 100 Class ~~101~~ locomotives
- 1 064 Locomotives
- IT Switches

R2 304

230

R3871

387

R 41 969

4200

- IT Switches

Post mitigation LE FY 2014

Actual Capex – FY 2013

Budget FY 2014

Excess of FY2014 LE

- FY 2014 LE vs Prior Year (12/13)
- FY 2014 LE vs Budget FY2014

R'm

2971

1891

Percentage

10%

6%

30 262

27 471

28 581

↑

Percentage

10%

6%

2020-21-14

27

44

✓

Chadwick

Impact 2

100

2000

MEM-080

Annexure “MM9”



Cash forecast year ended 31 March 2014: OPEX and CAPEX as per the Corporate Plan

100% Funding initiatives as at 18 February 2014

FY 13/14 Weekly		Opening Balance	Opex	Capex	Capex Adjustment based on LE	Commercial Paper / Bond Taps / Facilities	Treasury Flows	Call Balance	Structured Finance	Closing Balance	Comments
	18-Feb	107 169 385	13 910 599	-19 195 538		0	-27 794 041	4 830 000 000		4 904 090 405	
	19-Feb		444 817 884	0		143 570 409	-186 301 372			5 306 177 326	
	24-Feb		849 549 281	-305 412 242		0	-86 643 159			5 763 671 206	
	3-Mar		-436 032 494	-42 065 001		150 000 000	0			5 435 573 712	
	10-Mar		39 685 006	-57 185 883		0	-77 847 561			5 340 225 274	
	17-Mar		511 556 947	-57 215 883		0	-1 213 554 491			4 581 011 847	
	24-Mar		744 931 105	-5 268 311 050		0	-212 519 029			-154 887 126	CAPEX adjusted
FY 14/15 Monthly		Opening Balance	Opex	Capex	Other Investing Activities	Commercial Paper / Bond Taps	Treasury Flows (Loan Redemptions)	Call Balance	Structured Finance	Closing Balance	Comments
	1-Apr	-154 887 126	-33 250 569	-303 433 000		75 000 000	-5 089 258			-421 659 953	
	7-Apr	-421 659 953	-262 919 753	-116 800		200 000 000	-4 585 733			-489 282 239	
	14-Apr	-489 282 239	318 744 094	-69 614 473		-200 000 000	-8 375 939			-448 528 557	
	21-Apr	-448 528 557	683 960 036	-346 151 396		150 000 000	-425 265 589			-385 985 505	
FY 14/15 Monthly		Opening Balance	Opex	Capex	Other Investing Activities	Commercial Paper / Bond Taps	Treasury Flows (Loan Redemptions)	Call Balance	Structured Finance	Closing Balance	Comments
	May	-385 985 505	828 340 106	-2 419 799 197		400 000 000	-577 776 912			-2 155 221 508	
	June	-2 155 221 508	1 750 981 475	-2 620 919 399		400 000 000	-358 004 019			-2 983 163 450	
	July	-2 983 163 450	2 010 618 516	-2 504 088 696		400 000 000	-100 000 000			-3 176 633 630	
	August	-3 176 633 630	1 498 376 425	-2 493 250 023		400 000 000	-808 174 935			-4 579 682 164	
	September	-4 579 682 164	1 888 117 705	-2 847 350 906		400 000 000	-87 004 020			-5 225 919 385	
	October	-5 225 919 385	2 002 055 138	-2 787 868 689		400 000 000	-138 273 071			-5 750 006 007	
	November	-5 750 006 007	2 141 375 037	-2 841 330 253		400 000 000	-369 776 912			-6 419 738 135	
	December	-6 419 738 135	1 358 482 316	-2 358 748 695		400 000 000	-211 731 551			-7 231 736 065	
	January	-7 231 736 065	2 151 532 023	-2 366 336 680		400 000 000	-50 000 000			-7 096 540 722	
	February	-7 096 540 722	1 944 111 802	-2 939 690 041		400 000 000	-708 174 935			-8 400 293 895	
	March	-8 400 293 895	1 727 446 950	-4 195 519 828		400 000 000	-78 731 551			-10 547 098 323	

Possible Funding options for 2014/15 Financial Year

R 2 billion with KfW/ RMB/ CCB
R1 billion RMB
\$500 million BTMU

Annexure “MM10”



Transnet – Terms of Reference for
Capital Raising and Risk Management
Transaction Advisory for 1064
locomotive procurement

09 January 2014



REGIMENTS CAPITAL™



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Capital Raising and Risk Management Transaction Advisory Service Offering

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- 1 The transaction advisory mandate scoped herein will deliver the optimal funding structure, funding cost, and financial risk solution for the 1064 locomotives acquisition
- 2 A detailed evaluation of the economic, social and sustainability impact of the acquisition will provide funding structure advantages and cost advantages
- 3 Collateral assessment down to the component level will enable sourcing of concessionary funding and optimisation of the financing structure
- 4 The application of a best practice risk management framework to the transaction will ensure that all relevant risks are identified, quantified and tracked
- 5 The optimal risk management solution embedded in the acquisition agreement, funding structures and/or in separate risk overlays will deliver the right balance between funding cost and risk
- 6 A comprehensive evaluation of all potential funding sources and mechanisms will enable the selection of the most appropriate avenues to pursue and execute
- 7 Structured programme management will ensure seamless integration with the procurement process, opportune capital raising and dynamic risk management
- 8 Success will be assured with appropriate resourcing of five joint Regiments-Transnet work streams focussing on Programme Management, Impact Studies, Collateral Assessment, Capital Raising and Risk Management
- 9 Project timetable will span 12 months but must dovetail with the procurement process and adapt accordingly
- 10 Our fee structure is based on a modest fixed monthly retainer and a performance fee for best alignment of interests

**THE TRANSACTION ADVISORY MANDATE SCOPED HEREIN WILL
DELIVER THE OPTIMAL FUNDING, FUNDING COST, AND
FINANCIAL RISK SOLUTION FOR THE FINANCING OF THE 1064
LOCOMOTIVES**

A proper understanding of the development and sustainability impact of the acquisition will provide funding cost advantages

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Socio-economic impact studies

- Determine the project impact on GDP growth using multipliers analysis
- Understand the impact of the acquisition on poverty alleviation and addressing income inequality.
- Determine the number of direct and indirect jobs created by this project using "social accounting matrix" and other relevant tools.
- Quantify the contribution of this project to supplier development and local content.

Carbon footprint

The project's impact on the environment will be assessed and documented.

- Determine the carbon emission, noise and vibration of the new locomotives.
- Evaluate the environmental impact of the technology used in the new locomotives.
- Compare the environmental impact of the different energy sources (e.g. diesel, electricity, etc) powering modern locomotives.

Contribution to regional integration

- Examine the impact of the acquisition on the intra-regional trade (trade between the different countries in Southern Africa and any other countries that benefit from the use of the new locomotives) using regional and national trade statistics, regression analysis and insights from similar projects on regional integration.
- Assess the efficiency gain and the potential for further cooperation between the different economies.

Proactive analysis and documentation of the project impact will accelerate the funding timetable and improve both funding cost and funding structure.

Collateral assessment down to the component level will enable sourcing of concessionary funding and optimisation of the financing structure

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Component level assessment

Assess the possibility for concessionary funding from export credit agencies and vendor financing:

- Determine the countries of origin of the major components of the locomotives to be acquired.
- Assess the possibility of concessionary funding in the countries supplying these components from agencies such as export credit agencies and investment promotion funds/agencies.
- Assess the possibility of concessionary funding in the form of vendor finance.
- Compare the benefits for Transnet and identify the source that offer the best deal in the event where the same locomotive part with the same performance feature is sourced from two or more countries.
- Present a detailed analysis with specific recommendations to be pursued and executed.

Collateral security assessment

- Investigate life cycle and usage of the total asset and the asset at a component level.
- Investigate how asset/component can be secured in order to optimise balance sheet impact and cost of financing within the context of Transnet policy with respect to asset ownership and control.

Vendor financing and ECA/EXIM backed financing typically yields significant benefits over conventional bilateral or capital market funding structures.

The application of a best practice risk management framework to the transaction will ensure that all relevant risks are identified, quantified and tracked

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Financial risk assessment

A risk assessment framework will be utilised as follows:

Risk Identification – encompasses a detailed list of all financial risks that Transnet could potentially be exposed to.

Risk Assessment – involves the systematic quantification of all identified financial risk exposures .

Risk Response – involves the decision whether to avoid, reduce, share, or accept the relevant risk exposure and, if required, the choice of transaction/s to be implemented

Risk Monitoring – Involves a mechanistic process whereby risk exposures are evaluated against risk appetite and exceptions are reported upon

Performance Measurement – Involves the systematic measurement of performance attributable to risk responses .

Risk Control – Involves the adherence to policies and procedures established and implemented to ensure that risk responses are effectively carried out

Risk Reporting – Involves the production of appropriate management reports based upon reliable data and the timeous dissemination thereof to appropriate personnel, committees and the board.

Compliance – involves effective reporting and compliance with policies, laws and regulations.

Escalation risk management

Develop a macroeconomic driven cost escalation model to more accurately predict escalated cost and mitigate escalation risk. This entails a detailed analysis of risk drivers in the bill of quantities and each risk is driven by an over-arching econometric model.

Legal and regulatory risk

This entails a comprehensive assessment of all legal and regulatory risks incorporating, *inter alia*, registration, jurisdiction, covenants, and tax .

Balance sheet Impact

The balance sheet post acquisition and post financing will be evaluated and any necessary responses will be detailed and executed.

The optimal risk management solution embedded in the acquisition agreement, funding structures and/or in separate risk overlays will deliver the right balance between funding cost and risk

Working in close collaboration with the Procurement Team, we will analyse and locate solutions to financial risk exposures optimally.

**Solutions embedded
in the acquisition
agreement:**

- Fixed ZAR price
- Fixed escalations
- Delivery penalties

**Solutions embedded
in the funding
agreement:**

- Index linked interest rate
- Currency linked interest rate
- Commodity linked interest rate

**Solutions in separate
risk overlays:**

- Cross currency swaps
- Interest rate swaps
- Commodity hedges

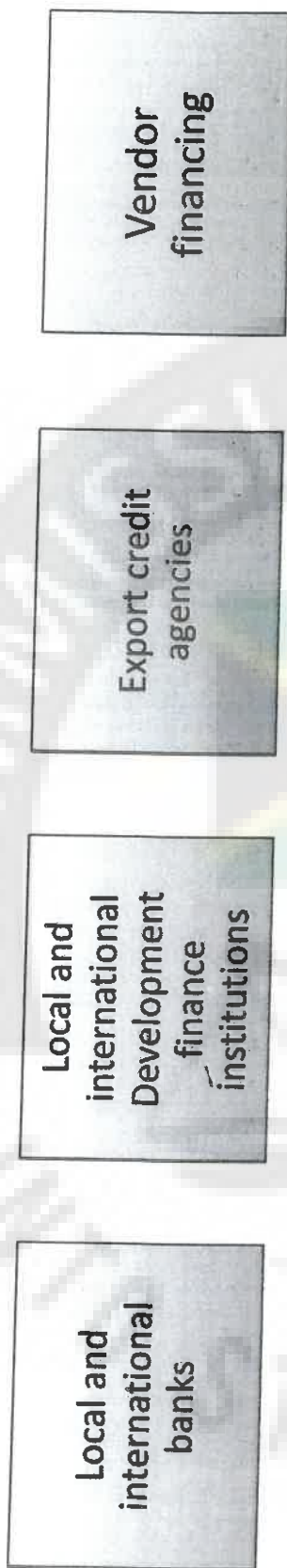
A comprehensive evaluation of all potential funding sources and mechanisms will enable the selection of the most appropriate avenues to pursue and execute

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- The full spectrum of funding opportunities will be evaluated.



- A short list of recommendations will be developed and pursued for execution.
- Execution programme management and support will be provided:
 - Assisting in the preparation and management of capital raising related tenders/RFPs and RFIs.
 - Participating in road shows and assisting with the preparation of information memorandums.
 - Participating in the negotiation of the commercial terms of funding from the shortlisted funders.
 - Participating in the fulfilment of conditions precedent required by the funders.
 - Participating in the due diligence exercise and responding to all credit queries raised by the funders.

Structured programme management will ensure seamless integration with the procurement process, opportune capital raising and dynamic risk management

Programme management

- Unless managed properly, the phased delivery of the 1064 locomotives could be the cause of significant liquidity risk, or alternately, prefunding costs.
- Programme Management will liaise with Procurement Team to proactively identify any changes in the delivery schedule and manage the related potential risks.

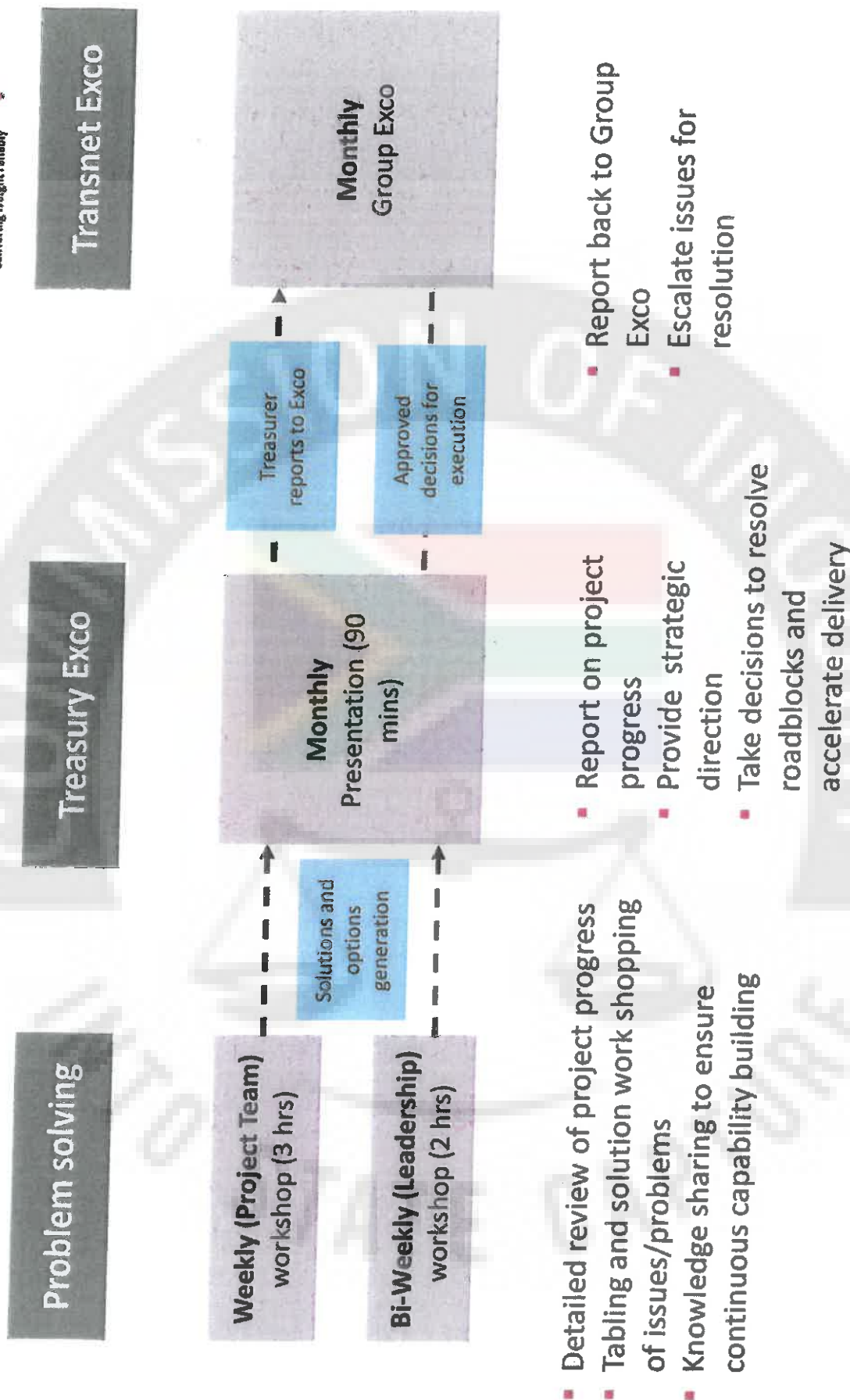
	Months											
	1	2	3	4	5	6	7	8	9	10	11	12
Collateral assessment												
Impact studies												
Design risk management framework												
Detailed risk assessment and risk mitigation strategy development												
On-going risk monitoring and mitigation												
Structuring												
Capital raising												

Regular risk review meetings until full delivery of locomotives.

Procurement Team

Continuous process (liaise with Risk Management Team)

Structured programme management will ensure seamless integration with the procurement process, opportune capital raising and dynamic risk management



Success will be assured with appropriate resourcing of five joint Regiments-Transnet work streams focussing on Programme Management, Impact Studies, Collateral Assessment, Capital Raising

Regiments Resourcing of Work Streams				
Programme Management	Impact Studies	Collateral Assessment	Risk Management	Capital Raising
Work Stream Lead: Senior Consultant	Work Stream Lead: Senior Consultant	Work Stream Lead: Senior Consultant	Work Stream Lead: Senior Consultant	Work Stream Lead: Senior Consultant
2X Consultants	3X Consultants	2X Consultants	3X Consultants	2X Consultants
2X Associates	2X Associates	2X Associates	2X Associates	2X Associates
Transnet Resourcing of Work Streams to be Advised				

Our fee structure is based on a modest fixed monthly retainer and a performance fee for best alignment of interests

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Our fees will comprise of:

- A monthly retainer of R1 000 000 is proposed for the duration of the project. The projected timetable for this project will span 12 months but must dovetail with the procurement process and adapt accordingly, and
- A performance fee equal to 20% of the savings over the interest rate of Transnet's most recent funding secured prior to 1 January 2014.

Annexure “MM11”



[illegible]

Vendor Edit Goto Extras Environment System Help

Display Vendor: Payment transactions

Supplier Statement (BESTAP add-on)

Vendor: 1669969 REGIMENTS CAPITAL SANDTON

Bank Details

City/Bank Key	Bank Account	Acct holder	A. IBAN	B. Cat	Referen.	D. Name of bank
ZA 0091	266477757	REGIMENTS CAPITAL (PTY) LTD				STANDARD BANK SA /

Bank Data

Payment transactions

Alternative payee	DIME indicator	Instruction key	ISR Number

Alternative payee in document

☐ Individual's name
☐ Spec. pay reference

Formatted Name

Prints Window Contents

TFP (1) 100 v Inprdb1 : JNS

Annexure “MM12”



WORKING DRAFT

Last Modified 2013/07/05 09:09 AM South Africa Standard Time

Printed 2013/07/05 09:10 AM South Africa Standard Time

Doc ID

IRANSNET



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Building a world-class Treasury function

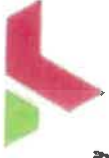
Follow up: discussion and proposal

July 3rd, 2013

Objectives for today

Doc ID

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Last Modified 2013/07/05 09:09 AM South Africa Standard Time

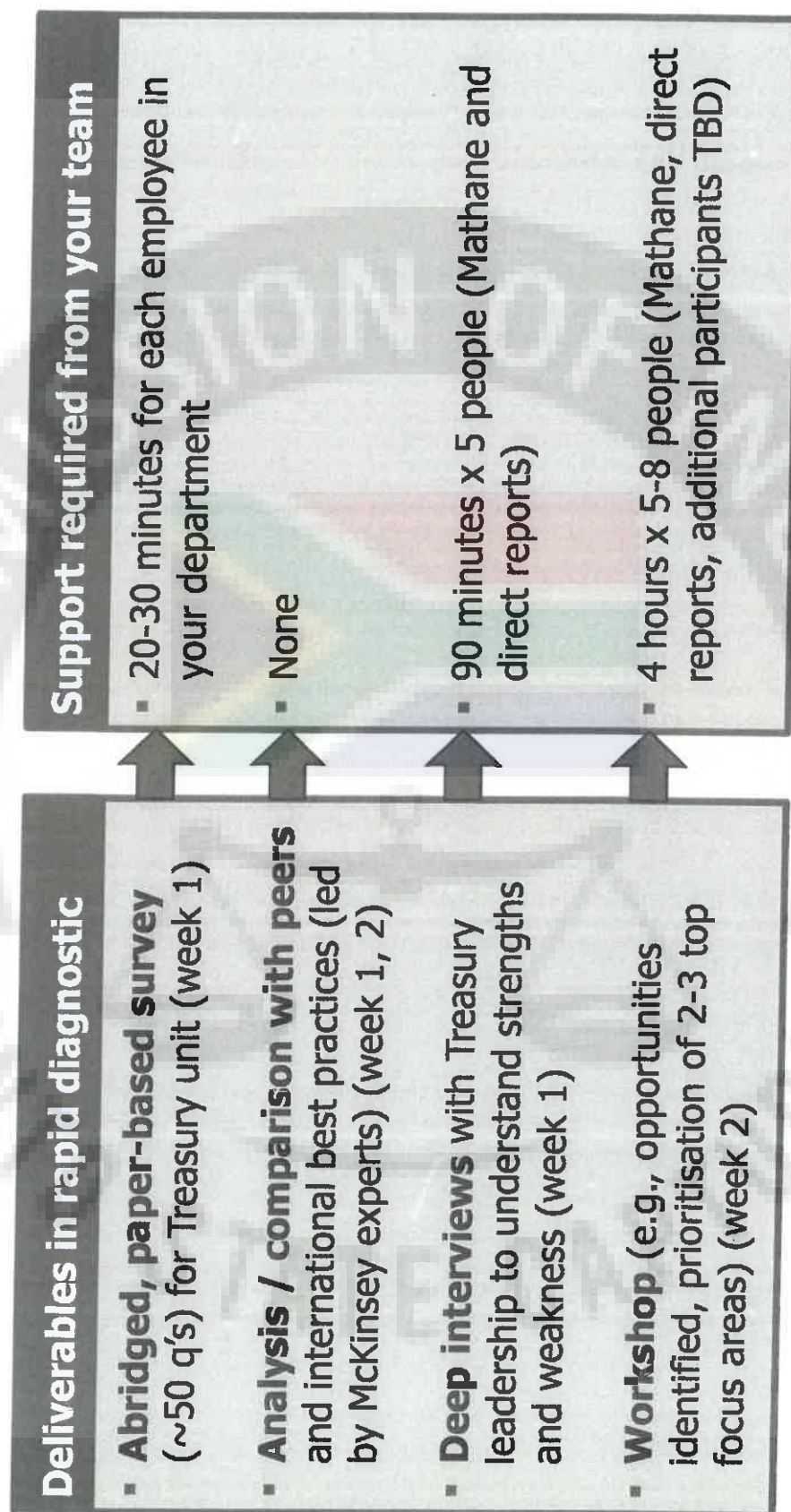
Printed 2013/07/05 09:10 1 St Afr Standard

- Define proposed McKinsey support for Treasury function based on Monday's conversation:
 - Ⓐ 2-week Treasury diagnostic (interviews, web survey and workshop) on investment basis
 - Ⓑ 11 or 14 week Rating management engagement per Monday's discussion
- Share proposed fee structure for engagement, including different options for rating management
- Propose working arrangements including team structure and expert involvement



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a We have streamlined the 2-week diagnostic to offer a quick return on your team's time



Ideal start date July 15th – will give McKinsey Treasury experts time to customize survey



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② There are 2 options for rating management support

Key activities		Option 1 (14 weeks)	Option 2 (11 weeks)
Create transparency on core drivers and gaps (~4 weeks)	Assess rating KPIs and identify core drivers/gaps	✓	✓
	Perform sensitivity/scenario analyses ("what if")	✓	✓
	Review communication and material handed in for recent rating process and feedback (also regarding storyline and communication)	✓	✓
	Assess rating management setup/capabilities	✓	✓
	Build financial model (excel) as a basis for a later shadow-rating tool for Transnet	✓	✓
	Summarize gaps and develop roadmap for required activities	✓	✓
Identify measures (~3 weeks)	Identify potential measures to address identified core drivers/close core gaps, e.g.,	✓	✓
	– Calculation of KPIs		
	– Operational improvements		
	– Adjust growth strategy/ portfolio/capital structure		
	– Setup of rating management		
	Further develop/enhance model to allow for scenario analyses regarding the (needed) effect of the measures	✓	✓
Detail measures and start implementation (~4-7 weeks)	Roughly evaluate and prioritize measures (impact, time, feasibility) valuation of measures	✓	✓
	Detail implementation of identified measures, e.g.,		
	– Enhance rating presentation and preparation of communication	✓	Focus on 2-3 selected measures
	– Establish rating management team		
	Transform model into rating KPI cockpit/shadow-rating tools (excel) for S&P and Moody's	✓	Tool for S&P
	Start implementation of measures	✓	
	Establish monitoring of progress	✓	

SOURCE: Team analysis

6 The rating management engagement would follow a lean structure, leveraging the new ALCO for support

Doc ID

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Steering Committee:

- ALCO / Mathane M.

Project Leadership:

- Mathane Makgatho (Owner)
- Vikas Sagar
- Bernhard Babel²

Joint Working Team:
Transnet

- Tshepo – 40%
- Nontlaza – 100%
- Additional rating team member TBD¹ – 100%

McKinsey & Company

- Engagement Manager (1)
- Experienced Associate (1)

McKinsey expertise:

- 40% time from Bernhard Babel (leader, Ratings Advisory service line)
- 20-30% support from David Perelgritz (Expert, transactions)
- Treasury experts on ad hoc basis

Internal support:

- Group Financial Planning
- Capital Integration
- OD CFOs

All support provided on ad hoc basis, under direction of Mathane Makgatho

¹ To be determined by Mathane – strongly encouraged for capability building

² Engagement Director role – responsible for overall project delivery (40% of time on project, 20% of time in South Africa)

SOURCE: Team analysis



McKinsey credentials and expertise in Rating Management

Doc ID

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McKinsey has a fully independent perspective (no product offering)

Broad Rating advisory project experience

- **Relevant project experience** in Rating Management/Advisory from several engagements, e.g., corporates, major universal banking institutions, public sector entities, commercial real estate banks and insurance companies

Highly qualified and dedicated team

- **Access to dedicated group of experts** in Rating Management (also prior rating industry experience) and potential **operational team** with relevant experience
- **Dedicated research team** developing and
- **Dedicated senior team** with deep experience in topic

Deep expertise in Rating approaches, proprietary diagnostic tools

- **Deep expertise in rating methodology** and rating management approaches, proprietary McKinsey tool for S&P methodology
- **First rating Management Survey providing benchmarks on rating management** (tools, measures, organization, communication)
- **Supporting industry surveys** on best practices such as ERM/Risk Culture Survey, ALM/treasury survey, CFO roundtables

In-depth knowledge

- **Deep understanding of Transnet B/S**, organisation, strategy and governance to help manage prerequisites for required transformational change impersonated by team members

Deep commitment to South Africa and transformation

- **In-country presence since 1995**
- **Successful track record of skills/enterprise development** (e.g., Letsema)
- **BBBEE Level 3** (on track for Level 2 by end of 2013)

Fees of R1.1 million per week for both 11 and 14 week option¹; the 2week diagnostic investment is an effective 12-16% discount

¹ Weekly fees exclude expenses (typically 15% of fees) and VAT
SOURCE: McKinsey

We will draw on experts for Treasury and rating management components

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a



Frank Guse
Expert, Cologne

- Leader of McKinsey's Treasury management service line (7+ years)
- 20+ risk/banking-related projects in past 3 years
- Deep focus on ALM, cash-flow management, funding strategy, Treasury risk
- PhD in Finance

Relevant experience

Role on engagement

- **Leading Treasury diagnostic** (2-3 days conducting interviews, running workshop; directs the analytics)

b



Bernhard Babel
Expert, Cologne

- Core leadership member of McKinsey Rating Advisory, Rating Management Survey
- Has served multiple European banks on topic
- Significant experience in Rating Advisory (5+ years)
- PhD in Statistics; former Associate Professor

- **Engagement Director** (leads project: 40% of time committed to project; 20% in South Africa)



David Peregritz
Senior Expert, London

- Senior expert (capital raising and transactions)
- 10+ years in M&A and corporate finance in London/Paris
- Work in Rating Advisory engagements for European Corporates
- Masters in Finance

- **Expert**, especially regarding development of levers (20-30% of time; in South Africa as needed)

Annexure “MM13”



Transnet State-Owned Corporation Limited
CSR Corporation Limited
China Development Bank Corporation

Financing Cooperation Framework Agreement
upon
Locomotive Procurement and Production
Industrial Park Project
(Draft)

Johannesburg, South Africa

28 March, 2013

WHEREAS:

This financing framework agreement shall be signed by the following three parties (collectively referred to as "Three Parties", and separately referred to as "One Party").

The three Parties include:

1. **China Development Bank Corporation (CDB)**, a development financial institution under the direct leadership of the China State Council and incorporated under the laws of The People's Republic of China in March, 1994. Through decades of Development, CDB has made remarkable achievements in supporting domestic economic development, improving people's livelihood and enhancing international business cooperation, and is presently the biggest development financial institution in the world.
2. **Transnet State-Owned Corporation Limited (Transnet)**, an integrated freight transportation company including large cargo transportation and fully owned by the South African government. Transnet is also responsible for the construction and management of railway infrastructure in South Africa and cargo transportation. Its mission is to construct overall logistics network around South Africa and to provide integrated, safe and reliable logistics service with high efficiency, and thereby promote the economic development in South Africa.
3. **CSR Corporation Limited (CSR)**, a large enterprise group engaged in the research, manufacturing, sales, repair, and lease of rail locomotives; passenger trains, freight trains, motor train units, city rail subways and the key parts of the above. CSR also works on the extended industries of rail transit equipment know-how. CSR is the biggest rail transit equipment maker and solution provider.

The three parties reach the following agreements through friendly negotiations and in the principle of equality and mutual benefit:

I Cooperation background and Purpose

Article 1

South Africa has the most developed railway network among African countries. However, South Africa has large demand for updating its seriously outdated locomotives. As South African state-owned entity and the biggest vehicle operator and manufacturer, Transnet bears the mission of upgrading the whole traffic rail industry in South Africa. CSR has been attaching great importance to African market since one decade ago, has paid close attention to South African

railway recovery and expansion investment plan, and has tackled a number of key technical problems according to South African national and market conditions. China Development Bank Corporation is working to serve the national diplomatic strategy, and positively supporting Chinese large-scale enterprises' investment in and cooperation with South Africa. The three parties agree to push forward the upgrading of rail transit equipment by enhancing cooperation and fully utilizing their advantages for the purpose of creating jobs, and promoting economic development in South Africa and even Southern Africa and multilateral benefits.

II Cooperation Principles

Article 2

The three parties will cooperate under this agreement, centered on the industrial upgrading strategy of South African rail transit equipment, in the principles of equality, multi-benefits, working step by step, consent of three parties, led by early planning, based on projects, and taking financing as the key.

III Cooperation Contents

Article 3

The procurement and refurbishment of Electrical and/or Diesel locomotives and freight wagons; the localized research, production, repair, sales and after-sale service of the parts for the above vehicles;

Article 4

The extended industries of rail transit equipment know-how and relevant technical service and information consultation;

Article 5

The construction of Industrial parks covering locomotives and freight wagons, and its upstream-downstream industries and connecting processing, production, logistics and technology training.

IV Cooperation Amount

Article 6

The first phase of cooperation amount is \$5 billion, and CDB will offer financing support for the projects under this agreement and within this amount.

V Cooperation Mechanism

Article 7

The three parties will set up a joint office, comprised of designated persons separately from Transnet, CSR and CDBC. The joint office aims at strengthening information sharing and daily communication.

Article 8

Transnet and CSR are responsible for carrying out the projects and CDB is responsible for providing financing to projects pursuant to the conditions of CDB's credit policy.

Article 9

The ways of financing offered by China Development Bank Corporation include but not limited to direct loan, syndicated loan and on-lending. The terms of loan shall be finally determined in the loan facility agreement which include the borrower, length of maturity, interest rate, withdrawal conditions, etc.

Article 10

In order to enhance mutual understanding and consensus among the three parties, promote pragmatic cooperation, and cultivate professional talents, the three parties could launch personnel exchange and training in the fields of economy, finance, management, and railway rolling-stock industry technology. The contents, time, expense sharing of personnel exchange and training shall be decided by the three parties through negotiations.

VI Additional Provisions**Article 11**

The three parties shall negotiate in the principles of equality and mutual respect where important issues and disputes occur.

Article 12

The three parties make commitment to each other that all the information associated with the other parties in the course of performing this Agreement must be kept strictly confidential. Without the prior written consent of the parties, the confidential information shall not disclose to any other party except is required for disclosure by laws, regulations and national governments and regulatory authorities of related parties.

Article 13

The agreement only represents the three parties' cooperation intention and does not have law binding force to the participation of any party as indicated above in the agreement in any project. If the related parties agree to cooperate in specific project, they shall enter into the new agreement.

Article 14.

This agreement shall be effective as of the date the three parties all sign it. And the validity is 5 years. Except that any party is willing to terminate this agreement and notify the rest of the two sides by written notice one month before the expiry of this agreement, it shall automatically be renewed for successive periods of one year. The period of validity shall be postponed like this.

Article 15

This agreement shall be in triplicate in the English and Chinese languages, and the three parties shall keep one copy. In case of divergence, the English text shall prevail.



Signature Page

Agreed by the Parties as witnessed by the duly authorised representatives of the Parties hereto

Signed for and on behalf of:
Transnet SOC Limited

Name: xxx

Capacity: xx

Date:

Place:

Signed for and on behalf of:
CSR Corporation Limited

Name: xxx

Capacity: xx

Date:

Place:

Signed for and on behalf of:
China Development Bank Corporation

Name: xxx

Capacity: xx

Date:

Place:

Annexure “MM14”



Brian Molefe, Group Chief Executive



Our Ref No: BM/16032

Mr Fu Jianguo
The Vice-President
CSR Corporation Limited
No 16-5 West 4th-Ring Mid Road
Haidian District, Beijing
CHINA

Dear Mr Fu Jianguo

COOPERATION BETWEEN CHINA SOUTH RAIL AND TRANSNET SOC LTD

As agreed in our meeting, Transnet SOC Ltd ("Transnet") would like to confirm that a team from both Transnet Freight Rail ("TFR") and Transnet Engineering ("TE") was formulated to formally cooperate with China South Rail Corporation Limited ("CSR").

The Transnet team will meet with the CSR team to identify areas of collaboration between the two entities and formulate a process to be followed on achieving the agreed goals.

Transnet committee members comprises of Pragassen Pillay (TFR); Johannes Makhusha (TFR); Ogothe Sathekge (TFR); Sugan Govender (TE); Frederik Potgieter (TE); Thoba Majoka (TE); Zondi Maswanganyi (TE) and Deon Struwig (TE).

We are looking forward to hearing from you.

Kind regards

Brian Molefe
Group Chief Executive

Date: 16.1.13.

Transnet SOC Ltd
Registration Number
1990/000900/30

Carlton Centre
150 Commissioner
Street
Johannesburg
2001

P.O. Box 72501
Parkview, Johannesburg
South Africa, 2122
T +27 11 308 2313
F +27 11 308 2315

Directors: ME Mkwana (Chairman) B Molefe* (Group Chief Executive) NK Choubey* MA Panuchi Y Forbes HD Gazendam N Moola NR Ntshingila IM Sharma
JB Skosana F Tshabalala DLJ Tshape A Singh* (Chief Financial Officer)
*Executive *Indian

www.transnet.net

Group Company Secretary: ANC Ceba

Annexure “MM15”



Transnet SOC Limited
Registration Number
1990/000900/30

160 Lynette Str.
Kilner Park
Pretoria
0186

PO Box 15912
Lynne East
Pretoria, 0039
T +27 12 391 1301
F +27 12 391 1342



MEMORANDUM

www.transnet.net

TO : Brian Molefe: Group Chief Executive

CC : Richard Vallihu: Chief Executive, TE
Siyabonga Gama: Chief Executive, TFR

FROM : Thoba Majoka: GM, Marketing & Strategy

DATE : 20 February 2013

SUBJECT : **COOPERATION BETWEEN CHINA SOUTH RAILWAYS AND TRANSNET SOC LIMITED**

PURPOSE:

1. The purpose of this memorandum is to update and request the Group Chief Executive to approve the specific areas of cooperation between Transnet SOC Limited and China South Rail, which were identified or developed by the committee comprising of delegates from both Transnet Freight Rail and Transnet Engineering.

BACKGROUND:

2. On 12 December 2012, a meeting was convened between Transnet SOC Limited and China South Rail. In the meeting, it was agreed to establish a committee comprising of delegates from both Transnet Freight Rail and Transnet Engineering operating divisions to formally engage China South Rail on the cooperation and also to identify specific areas of cooperation.
3. On 20 February 2013, we communicated the identified and proposed areas of cooperation by both Transnet Freight Rail and Transnet Engineering, and will engage with CSR for feedback in due course.
4. Further to the above, we have commenced drafting the framework Cooperation Agreement between Transnet SOC Ltd and CSR, and anticipate sharing the draft during the course of this week.

Directors: ME Mkwanezi (Chairman) B Molefe* (Group Chief Executive) NK Choubey* NA Fanucchi Y Forbes HD Gazendam N Moola
NR Mtshingile JM Sharma IB Sikosana E Tshabalala DLJ Tshope A Singh* (Chief Financial Officer)
Executive *Indian

Group Company Secretary: ANC Ceba

h

DISCUSSION:

5. Subsequent to the meeting, a committee was established and specific areas of cooperation were identified. The representative of both Transnet Engineering and Transnet Freight Rail were involved in identifying the areas of cooperation. In identifying such areas of cooperation, consideration of future business requirements were taken into account.

Listed below are the identified areas per division:-

Transnet Freight Rail**6. Running of Operations:**

- China South Rail will share their model of controlling the network and train plan in order to run an efficient railway;
- Systems and methodologies which are employed by China South Rail for train planning and operations; and
- China South Rail's methods of operating or managing the yards to ensure a highly efficient train schedule railway.

7. Management of Safety:

- Sharing of information on Safety Standards between Transnet and China South Rail.

8. Cooperation in People Development:

- Look at the introduction of a student exchange program between Transnet and China South Rail which will focus on Engineering (Mechanical, Electrical and Electronics) and Leadership management,
- China South Rail's Management of the Rail related training Institute / Academy, sharing best practice in competence development for Movement, Operations, Engineering, Technical and Artisan fields and;

Look at how China South Rail conducts training evaluation, impact analysis methodology and tools.

Transnet Engineering**9. Supply Chain Synergies:**

- Sharing of information on suppliers of critical components for all Transnet Engineering products;
- Negotiate better prices through joint procurement of critical spares/ components and;
- Supply of components by CSR to meet Transnet Engineering's requirements in compliance with Transnet's governance structures.

10. Development of foundry capacity in South Africa:

- Jointly develop foundry capacity to meet the local needs and;
- Produce foundry products for both domestic and export market.
- Cooperate in developing a market for these products.

11. Development of new products:

Transnet Engineering and China South Rail will;

- Jointly design and develop new products for domestic and export market;
- Share the best practice in rolling stock design.

12. Research and development:

Transnet Engineering and China South Rail to:

- Collaborate in Research and development for innovative solutions,
- Development of R&D capacity through exchange programs.
- Jointly develop new products and solutions for the rail industry.

13. FINANCIAL IMPLICATIONS:

There are currently no financial obligations.

14. RECOMMENDATIONS:

It is recommended that the Group Chief Executive approve the above specific areas of cooperation as identified by the committee.

Compiled by:


.....
Thoba Majoka

General Manager, Marketing and Strategy

Date: 20 February 2013

Approved / Not Approved:

.....
Brian Molefe

Group Chief Executive

Date:

Annexure “MM16”





Memo

www.transnet.net

**To : Mr. Brian Molefe, Group Chief Executive
Mr. Anoj Singh, Group Chief Financial Officer**

From : Ms Mathane Makgatho, Group Treasurer

**SUBJECT : FINANCING COOPERATION AGREEMENT IN RESPECT OF
DEVELOPMENT AND UPGRADE OF INFRASTRUCTURE AND EQUIPMENT
AMENDMENT CLAUSE BETWEEN TRANSNET SOC LTD AND CHINA
DEVELOPMENT BANK**

PURPOSE:

1. The purpose of this memo is to request the GCE to approve and sign the English and Chinese version of the Amendment to the agreement between China Development Bank and Transnet SOC Ltd.

BACKGROUND:

2. The Financing Cooperation Agreement in respect of development and upgrade of infrastructure and equipment was entered into between China Development Bank and Transnet SOC Ltd on the 26th March 2013. The two parties agreed to amend clause 2.2.

MOTIVATION:

3. Further to the Cooperation Agreement the agreed clause has now been amended and signed by the President of China Development Bank. Please refer to the attached agreement dated May 2013.

FINANCIAL IMPLICATIONS:

4. There are no financial Implications.

BUDGET IMPLICATIONS:

5. There are no budget implications.

ME

RECOMMENDATION:

6. It is recommended that the GCE approve and sign the English and the Chinese version of the amendment to the agreement between China Development Bank and Transnet SOC Ltd.

Recommended by:

Ms. Mathane Makgatho

Group Treasurer

Date: 4 July 2013

Recommended/Not Recommended:**Ms. Nkuli Mabandla**

Group Executive Legal

Date:

Recommended/Not Recommended:**Mr. Anoj Singh**

Group Chief Financial Officer

Date:

Approved/Not Approved**Brian Molefe**

Group Chief Executive

Date:

CHINA DEVELOPMENT BANK CORPORATION

TRANSNET SOC LIMITED

**FINANCING COOPERATION AGREEMENT IN RESPECT OF
DEVELOPMENT AND UPGRADE OF INFRASTRUCTURE AND
EQUIPMENT**

AMENDMENT CLAUSE

May 2013

Between

CHINA DEVELOPMENT BANK CORPORATION

AND

TRANSNET SOC LIMITED

The under-signed parties agree that Clause 2.2 of the above Agreement will be amended to read as follows:

2.2 In recognition of CDB's mandate, CDB will identify opportunities, contact and inform potential Chinese companies in respect of Transnet projects and businesses based on publicly available information.

This cooperation agreement is not limited to the MDS.

Signature Page

**Agreed by the Parties as witnessed by the duly authorised representatives
of the Parties hereto**

Signed for and on behalf of:

Transnet

Name: Brian Mofe

Capacity: CEO of Transnet SOC Limited

Date: 2013. 07. 11

Signed for and on behalf of:

China Development Bank Corporation

Name: Zheng Zhijie

Capacity: President of China Development Bank Corporation

Date:

中国国家开发银行股份有限公司

南非 Transnet 国营有限公司

**关于基础设施及设备技术改造升级金融合作协议
补充条款**

二〇一三年五月

双方为：

中国国家开发银行股份有限公司

和

南非 TRANSNET 国营有限公司

双方同意上述协议 2.2 条款更改为：

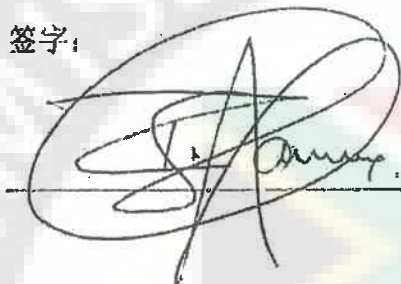
2.2 为遵循国家开发银行使命，国家开发银行可识别商业机会，并联系、告知有潜在意向的中国供应商关于 TRANSNET 的公开的项目及商业信息。双方合作不限于本协议中提出的符合 TRANSNET 市场需求战略（MDS）的项目。

签字页

双方同意该协议并在双方授权代表的见证下

TRANSNET 国营有限公司

签字:



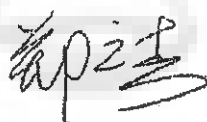
姓名: Brian Molefe

职位: TRANSNET 国营有限公司首席执行官

日期: 2013.07.11

中国国家开发银行股份有限公司

签字:



姓名: 郑之杰

职位: 中国国家开发银行股份有限公司行长

日期:

中国国家开发银行股份有限公司

南非 Transnet 国营有限公司

**关于基础设施及设备技术改造升级金融合作协议
补充条款**

二〇一三年五月

双方为：

中国国家开发银行股份有限公司

和

南非 TRANSNET 国营有限公司

双方同意上述协议 2.2 条款更改为：

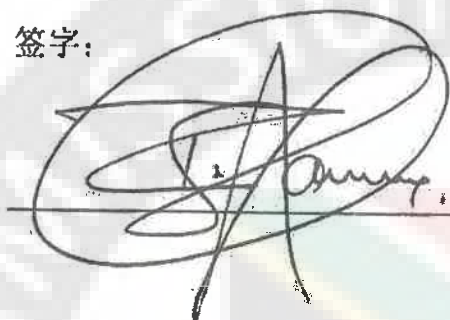
2.2 为遵循国家开发银行使命，国家开发银行可识别商业机会，并联系、告知有潜在意向的中国供应商关于 TRANSNET 的公开的项目及商业信息。双方合作不限于本协议中提出的符合 TRANSNET 市场需求战略（MDS）的项目。

签字页

双方同意该协议并在双方授权代表的见证下

TRANSNET 国营有限公司

签字:

A handwritten signature in black ink, appearing to be 'Brian Molefe', written over a horizontal line. The signature is stylized with loops and a long horizontal stroke at the end.

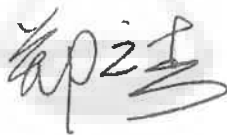
姓名: Brian Molefe

职位: TRANSNET 国营有限公司首席执行官

日期: 2013.07.11

中国国家开发银行股份有限公司

签字:

A handwritten signature in black ink, appearing to be '郑志杰' (Zheng Zhi-jie), written over a horizontal line. The signature is stylized with a large '郑' character and a long horizontal stroke.

姓名: 郑之杰

职位: 中国国家开发银行股份有限公司行长

日期:

Annexure “MM17”



CHINA DEVELOPMENT BANK CORPORATION

TRANSNET SOC LIMITED

**FINANCING COOPERATION AGREEMENT IN RESPECT OF
DEVELOPMENT AND UPGRADE OF INFRASTRUCTURE AND
EQUIPMENT**

Pretoria, South Africa

March 2013

Between

CHINA DEVELOPMENT BANK CORPORATION

(herein referred to as "CDB", a development financial institution under the direct leadership of the China State Council and incorporated under the laws of The People's Republic of China in March 1994 and duly represented by the president of China Development Bank Corporation, Mr. Zheng Zhijie)

AND

TRANSNET SOC LIMITED

(herein referred to as "Transnet", a public company duly incorporated in accordance with the laws of the Republic of South Africa with registration number 1990/000900/30 and duly represented by the Group Chief Executive of Transnet, Mr. Brian Molefe)

Both parties herein referred to as the ("Parties") and ("Party") as the context requires



1. INTRODUCTION

- 1.1 CDB is a development financial institution under the direct leadership of the China State Council and incorporated under the laws of The People's Republic of China in March 1994. Through decades of development, CDB has made remarkable achievements in supporting domestic economic development, improving people's livelihood and enhancing international business cooperation, and is presently the biggest development financial institution in the world.
- 1.2 CDB's mission is to serve China's national diplomatic strategy. CDB positively supports Chinese large-scale enterprises which have advanced technologies to invest and cooperate in South Africa.
- 1.3 Transnet is the continent's largest rail freight transport and logistics company comprising Transnet Freight Rail, Transnet Engineering (the rolling stock and port equipment maintenance business), Transnet National Ports Authority (the landlord function for South Africa's port system), Transnet Port Terminals (managing port and cargo terminal operations in the nation's leading ports and Transnet Pipelines (the fuel and gas pipeline business).
- 1.4 Transnet's mission is to enable the competitiveness, growth and development of the South African economy by providing reliable freight transport and handling services that satisfy customer demand. This mandate underpins Transnet's Market Demand Strategy ("MDS") with expenditure plans that call for investments of approximately R300 billion over the next 7 years.
- 1.5 The Parties, through their respective mandates, agree to explore opportunities to collaborate to provide their skills and expertise as regards both financial and non-financial assistance to progress the development and financing of infrastructure projects within the MDS.



2. COOPERATION PRINCIPLES

- 2.1 The Parties agree to cooperate and jointly explore and identify opportunities for CDB to participate in funding the development and upgrade of infrastructure in line with Transnet's MDS. The cooperation includes but not limited to the construction and upgrade of railway infrastructure and port infrastructure, localization of locomotives and port equipment, research and development, manufacturing and marketing and the construction of cross border infrastructure in Africa.
- 2.2 In recognition of CDB's mandate and subject to the provisions of this Agreement, throughout the term of the MDS, Transnet consents to CDB identifying opportunities, contacting and informing potential Chinese suppliers who are likely to be relevant to participate in whatever open and competitive tender processes prescribed by Transnet.
- 2.3 All of the above will be achieved without compromising on sound governance and effective processes which each Party is required to follow.
- 2.4 The two Parties acknowledge that by entering into this Co-Operation Agreement, they do so in accordance with a system that is fair, equitable, transparent, competitive and cost effective in line with the laws of the Republic of South Africa.

3. COOPERATION LIMIT

- 3.1 Before any of the Parties shall be under an obligation to perform any of the tasks or services required in terms of any Infrastructure development, they shall, if agreed between them, first enter into written agreements in terms of the services or tasks to be provided and/or performed.



- 3.2 Subject to clause 3.1 and the provisions of this Agreement, CDB will offer a cooperation limit of USD 5 billion to Transnet.

4. DURATION

This agreement will commence on date of signature of this Agreement by the Party signing last, and will terminate on the earliest of expiration of 5 (five) years or on two calendar months' written notice to the other Party. Notwithstanding anything to the contrary, this Agreement may be extended by the written consent of the Parties on such terms and conditions as they may deem fit.

5. CONFIDENTIALITY

- 5.1 The Parties agree that the terms of this Agreement and all confidential and proprietary information of the Parties communicated to them in connection with this Agreement will be received in strict confidence and be used only for the purposes of this Agreement. Each Party will use the same means as it uses to protect its own confidential information, but in no event less than reasonable means, to prevent the disclosure and to protect the confidentiality of such information. No such information will be disclosed by the recipient Party, its agents, representatives or employees without the prior written consent of the other Party.

- 5.2 These provisions do not apply to information which is:

- 5.2.1 publicly known or becomes publicly known through no unauthorised act of the recipient Party;
- 5.2.2 rightfully received by the recipient Party from a third party;
- 5.2.3 independently developed by the recipient Party without use of the other Party's information;



5.2.4 disclosed by the other Party to a third party without similar restrictions;

5.2.5 required to be disclosed pursuant to a requirement of a governmental agency or any applicable law, so long as the Party required to disclose the information gives the other Party prior notice of such disclosure; or publicly disclosed with the other Party's written consent in terms of 5.1.

5.3 All media releases, public announcements and public disclosures by any Party or their respective employees or agents relating to this Agreement or its subject matter, including without limitation promotional marketing material, shall be coordinated with and approved by each Party prior to the release thereof. The foregoing will not apply to any announcement intended solely for internal distribution by any Party or to any disclosure required by legal, accounting or regulatory requirements beyond the reasonable control of the Party in question.

6. GOOD FAITH

6.1 The Parties agree to act in good faith and to co-operate with one another in all matters related to, and all rights and obligations arising from this Agreement.

6.2 The Parties record that this agreement is not legally binding to each other.

6.3 The Parties further agree that they shall, once specific opportunities have been identified and agreed between them, enter into and sign all the necessary legal agreements to record their respective agreements.



7. TERMINATION

If one Party reasonably believes that the other Party is not cooperating or is not committed to the Initiatives in terms of this Agreement; the aggrieved Party shall be entitled at any time, to cease all discussions and to terminate this Agreement. In such an event each Party shall be liable for its own costs incurred at the time of the termination.

8. DISPUTES

In the event of a dispute between the two Parties as arising from the provisions of this Agreement, the Parties agree to consult each other about the relevant events and disputes in the principle of equality and mutual respect.

9. GENERAL

9.1 No addition to, variation of, or agreed cancellation of this Agreement shall be of any force or effect unless in writing and signed by or on behalf of the Parties.

9.2 This Agreement constitutes the sole record of the agreement between the Parties with regard to the subject matter hereof. No Party shall be bound by any express or implied term, representation, warranty, promise or the like not recorded herein.

9.3 No relaxation or indulgence which any party may grant to any other shall constitute a waiver of the rights of that Party and shall not preclude that Party from exercising any rights which may have arisen in the past or which might arise in future.

10. NOTICES AND LEGAL PROCESS

10.1 Each Party chooses as its address for all purposes under this Agreement ("chosen address"), whether for serving any court process or documents, giving any notice, or making any other communications

of whatsoever nature and for any other purpose arising from this Agreement ("notice"), as follows:

For CDB:

Address: No. 29 Fuchengmenwai Street,
Xicheng District,
Beijing, 100037

Contact Person: Mr. Gao Guoxi, Chief Representative of Regional
Residential Mission in South Africa, China
Development Bank Corporation

Telephone: +27 (0)79 997 7569/+86 10 8830 9720

Fax: +27 (0)11 783 3763

For Transnet:

Address: 43rd Floor Carlton Centre
150 Commissioner Street,
Johannesburg, 2000

Contact Person: Ms. Mathane Makgatho, The Group Treasurer

Telephone: +27 (0)11 308 2600

Fax: +27 (0)11 308 2613

- 10.2 Any notice required or permitted under this Agreement shall be valid and effective only if in writing.
- 10.3 This Agreement has two formal copies, executed in the English and Chinese languages. Each party shall keep one copy.
- 10.4 In case of divergence, the English text shall prevail.

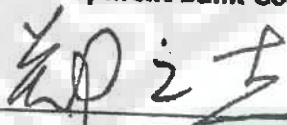


Signature Page

**Agreed by the Parties as witnessed by the duly authorised representatives
of the Parties hereto**

Signed for and on behalf of:

China Development Bank Corporation



Name: Zheng Zhijie

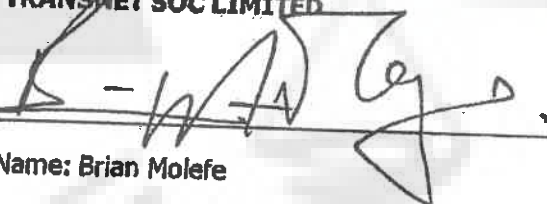
Capacity: President of China Development Bank Corporation

Date:

Place: Pretoria, South Africa

Signed for and on behalf of:

TRANSET SOC LIMITED



Name: Brian Molefe

Capacity: CEO of Transnet

Date: 26.3.13.

Place: Pretoria, South Africa

Brian Molefe, Group Chief Executive

TRANSNET



Mr Weijun Wang
 DG in charge of South African business, China Development Bank (President, Henan Branch,
 China Development Bank)
 NO 276, Jinshui Road
 Zhengzhou
 PRC

Dear Sir

**FINANCING COOPERATION AGREEMENT IN RESPECT OF DEVELOPMENT AND
 UPGRADE OF INFRASTRUCTURE AND EQUIPMENT**

The under-signed parties agree that Clause 2.2 of the above Agreement will be amended to
 read as follows:

**"In recognition of CDB's mandate, CDB will identify opportunities, contact and
 inform potential Chinese companies in respect of Transnet projects and
 businesses based on publicly available information.**

This cooperation agreement is not limited to the MDS."

Kind regards

Brian Molefe
 Group Chief Executive
 Date: 25. 3. 13.

Mr Weijun Wang
 DG in charge of South African Business
 Date:

2013. 3. 25

Transnet SOC Ltd
 Registration Number
 1990/000900/30

Carlton Centre
 150 Commissioner
 Street
 Johannesburg
 2001

P.O. Box 72501
 Parkview, Johannesburg
 South Africa, 2122
 T +27 11 308 3001
 F +27 11 308 2368

Directors: ME Mkwana (Chairman) B Molefe* (Group Chief Executive) NIK Choubey* MA Faruqchi Y Forbes HD Gazendam NP Mxasana N Moola NIR Njeke IM Sharma
 JB Sikosana E Tshabalala DLJ Tshepe A Singh* (Group Chief Financial Officer)
 *Executive *Indian

www.transnet.net

Group Company Secretary: ANC Ceba

Annexure “MM18”





**MINISTER
PUBLIC ENTERPRISES
REPUBLIC OF SOUTH AFRICA**

Private Bag X15, Hatfield, 0028 Tel: 012 431 1118 Fax: 012 431 1030
Private Bag X9079, Cape Town, 8000 Tel: 021 481 6376/7 Fax: 021 405 2381/461 1741

Mr Mafika Mkwanazi
Chairperson
Transnet (SOC) Limited
P.O. Box 72501
Parkview
Johannesburg
2122

Fax: 011 308 2309
Tel: 011 308 2312

Dear Mr Mkwanazi

Cooperation Agreement between Transnet and China Development Bank Corporation ("China Bank")

The above matter refers.

The provisions of the Significance and Materiality Framework (SMF) between the Department and Transnet spell out the mandate to engage in transactions. I wish to note that in order for the Department to carry out its oversight duties, it is necessary for the Department to have some insight into all of the transactions envisaged by the SMF, whether within the threshold or not, as some of them may be material from a qualitative and quantitative perspective.


On 26 March 2013, Transnet informally notified the Department through an email regarding its imminent intention to enter into a Cooperation Agreement with China Bank on 27 March 2013, the following day. The email notification is attached hereto for reference. Although I understand the rationale for the Cooperation Agreement, I believe that Transnet engagements with any of the BRICS countries should not be viewed in isolation. The Cooperation Agreement between Transnet and China Bank is of strategic importance and envisages cross-border transactions and as a result the Department should have been officially notified in advance and afforded an opportunity to express an opinion.

Furthermore, the Department is concerned with certain provisions of the Cooperation Agreement which may pose risks for Transnet and or the Department with respect to the implementation of the Supplier Development and Localisation drive. The Department, as Government Shareholder representative, intends to embark on several initiatives aimed at growing the country's industries by implementing certain initiatives in connection with the Preferential Procurement Policy Framework Act, 2000 and the Competitive Supplier Development Programme. Clauses 2.1 and 2.2 of the Cooperation Agreement pose certain risks and may hinder the Department's initiatives as they may be misconstrued as granting China Bank the right of first refusal in respect of Transnet's Market Demand Strategy.

To this end, I hereby request Transnet to reopen negotiations with China Bank with a view to amend the Cooperation Agreement and address the Department's concerns, failing which the Cooperation Agreement in its current form must be terminated.

In the meantime, Transnet must schedule a briefing with the Department to explain the salient terms and the objectives of the Cooperation Agreement and the extent of the contemplated exclusive rights to China Bank and Chinese suppliers. As has been the practice in the past, Transnet must adhere to the relevant section 54 provisions of the PFMA and the SMF in relation to any contemplated significant transactions.

Yours sincerely


MR. MALUSI GIGABA, MP
MINISTER OF PUBLIC ENTERPRISES
DATE: 2013/08/15

Annexure “MM19”



Mafika Mkwanezi, Chairman

TRANSNET



Our Ref No: MM/17122

Mr Malusi Gigaba, MP
Minister of Public Enterprises
Private Bag X15
HATFIELD
0028

Fax : (012) 431 1039

Dear Minister Gigaba

COOPERATION AGREEMENT ENTERED BETWEEN TRANSNET SOC LTD AND CHINA DEVELOPMENT BANK

Your letter dated 15 August 2013 refers.

On 24 January 2013 Transnet SOC Ltd (Transnet") received an e-mail (see attached) from the Department of Public Enterprises ("DPE") inviting Transnet to an inter-departmental meeting convened by the Department of International Relations and Cooperation to be held on 4 February 2013. As a follow-up to this meeting Transnet met with China Development Bank ("CDB") delegation on 20 February 2013. The aim of the meeting was to explore possible collaboration between the two entities ahead of the Chinese State visit to the Republic of South Africa ("RSA"). At the meeting, CDB tabled a draft tripartite agreement between Transnet, China Southern Railway Corporation Limited ("CSR") and CDB and included the procurement of goods and services. We requested that CSR and procurement related activities be excluded from the cooperation agreement as Transnet has robust procurement governance processes that have to be followed before any supplier contract can be entered into with any company.

It was also felt that the current contract with CSR for the 95 locomotives has been awarded after following a robust, fair and transparent tender process and a supplier agreement has been entered into between the two parties and there is no need for additional agreement outside of the signed supplier contract.

CDB then proposed a bilateral cooperation agreement. This was negotiated and changed to ensure that all financial, reputational, legal and other risks are identified and eliminated. To that extent, the agreement records in clause 2.3 and 2.4 that Transnet is required to follow a fair, equitable and transparent process in its tender processes. We also noted the Department of Public Enterprises' discomfort on clause 2.2 and amended the clause as per the Department's request. We have attached the agreement as amendment for ease of reference. The amendment was signed ahead of the official signing ceremony in the presence of Ms Kgomo Modise, Deputy Director General: Transportation, DPE.

Transnet SOC Ltd
Registration Number
1990/000900/30

Carlton Centre
150 Commissioner Street
Johannesburg
2001

P.O. Box 72501
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Directors: ME Mkwanezi (Chairman) B Molefe* (Group Chief Executive) MA Fanucchi Y Forbes HD Gozendam NP Mxasana N Mooli NR Njike IM Sharma IB Skosana
E Tshabalala DLJ Tshepe A Singh* (Group Chief Financial Officer)
*Executive

www.transnet.net

Group Company Secretary: ANC Ceba



Page 2

It is not the intention of the cooperation agreement to give CDB exclusive rights to the procurement of goods and services and neither does it give CDB first right of refusal on the Market Demand Strategy ("MDS"). We agree and acknowledge the importance of the MDS in supplier development and localisation and the role that Transnet's procurement plays in building the manufacturing sector of South Africa. The company's procurement policy is aligned to the country's Preferential Procurement Policy Act and our strategic plans are in support of the National Development Plan.

We take our role as both the enabler and driver of economic growth and competitiveness seriously and our strategy and action plans are in support of Government policies. We see ourselves as an integral part of the government and will not engage in activities that are not in support of the country's priorities. This is reflected in the way we do business with outside parties.

We do acknowledge that entities from abroad carry their national mandates. The information that we share with such entities is similar to the ones that we share with both domestic and international investors on Transnet's future plans. Such investors may at times share the plans with their respective suppliers based on publicly available information and we normally record such a possibility. This should not be construed as Transnet's giving away confidential information as we share information with lenders, banks, development finance institutions and export credit agencies in the normal course of business. Clauses 2.1 and 2.2 merely acknowledge and record such a possibility, without giving any preferential treatment.

I trust that the above explanation will give you comfort that we do not give preferential treatment or first right of refusal to any company.

We are available for further discussions if so required.

Kind regards


Mafika Mkwana

Chairman

Date: 12/09/2013

Annexure “MM20”



Transnet SOC Ltd
Registration
Number
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TRANSNET



www.transnet.net

TO: Mr. Brian Molefe, Group Chief Executive

Mr. Anoj Singh, Group Chief Financial Officer

FROM: Ms. Mathane Makgatho, Group Treasurer

SUBJECT: REQUEST TO PROCEED WITH NEGOTIATIONS WITH CHINA DEVELOPMENT BANK

PURPOSE:

1. The purpose of this submission is to request the Group Chief Executive and Group Chief Financial Officer's approval for Group Treasury to proceed with negotiations with the China Development Bank ("CDB") for the funding of 359 Dual Voltage Electric locomotives from CSR and 232 Diesel locomotives from CNR (the "Locomotives").

BACKGROUND:

2. In March 2013, CDB and Transnet signed a Cooperation agreement that paves the way for CDB to finance part of Transnet's MDS up-to USD5 billion to support procurement from China.
3. Transnet awarded 4 suppliers contracts for the procurement of 1064 locomotives, of which more than 50% is with CNR and CSR. As part of the funding package for the Locomotives, CDB provided indicative pricing of LIBOR + 450bps. Where-after Group Treasury engaged further with CDB to revise their pricing in line with Transnet's current pricing levels and expectations.
4. CDB revised their pricing as follows and for the following tenors for an amount of up to USD 3 billion:

TENOR	10 YEAR	15 YEAR	20 YEAR
RATE	6- month Libor + 240bp	6-month Libor +265bp	6-month Libor +290bp

DISCUSSION:

5. The indicative revised CDB pricing is much better than their initial quote but significantly higher than where Transnet funds itself in the local market. Treasury believes that there is still scope to further negotiate the price down.



6. Group Treasury would like to approach CDB to revise their pricing downwards and negotiate the terms and conditions of the proposed funding for the Locomotives with CDB.

FINANCIAL IMPLICATIONS:

7. None at present.

BUDGET IMPLICATIONS:

8. The proposed facility to be entered into with CDB has been budgeted for in the 2014/15 Finance Cost Budget and a separate memo will follow once the terms and conditions have been agreed.



**RECOMMENDATION:**

9. It is recommended that the Group Chief Executive and Group Chief Financial Officer grant Group Treasury approval to proceed with negotiations with CDB for the funding of the Locomotives subject to acceptable terms and conditions.
10. Given the potential size of the transaction, the Transnet Board will have to approve signing of the transaction. Governance processes around Board approval will only be followed after reaching agreement on terms and conditions.

Compiled by:
Ms. Mathane Makgatho

Group Treasurer

Date: 29 April 2014

Recommended/ ~~Not Recommended~~:
Mr. Anoj Singh

Group Chief Financial Officer

Date: 05/05/14

Approved/ ~~Not Approved~~:
Mr. Brian Molefe

Group Chief Executive

Date: 6.5.14.

Annexure “MM21”



T. S. S. S.

Mathane Makgatho Corporate JHB

From: Deva Sathee Transnet Corporate JHB
Sent: 22 April 2014 04:23 PM
To: Mathane Makgatho Corporate JHB
Cc: Dorothy Kobe Transnet Corporate JHB; Reon Louw Transnet Corporate JHB;
 Mark Tannous Transnet Corporate JHB
Subject: RE: ZAR pricing

Mathane

Hi Mathane,

The indicative ZAR rates are as follows:

update Rx ASAP
Please

10yr		
bullet	6m Jibar + 386bps	12.58 semi annual
linear amort	6m Jibar + 361bps	11.82 semi annual

15yr		
bullet	6m Jibar + 460bps	13.38 semi annual
linear amort	6m Jibar + 417bps	12.71 semi annual

20yr		
bullet	6m Jibar + 542bps	14.40 semi annual
linear amort	6m Jibar + 477bps	13.47 semi annual

From: Mathane Makgatho Corporate JHB
Sent: 22 April 2014 03:23 PM
To: Deva Sathee Transnet Corporate JHB
Subject: ZAR pricing

Hi Deva

Can you pls price the following quotation received from China Dev Bank in both amort and bullet profiles

- 10yrs at 6m libor +240
- 15yrs at 6m libor +265
- 20yrs at 6m Libor +290

Kind regards

Annexure “MM22”





国家开发银行 南非工作组

CHINA DEVELOPMENT BANK SOUTHERN AFRICA WORKING GROUP

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Deputy director

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Development Fund

Ian Leng

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M. Deng Zhige

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CDB Contact

Mengfei Xu

86 10 683 07 345

SA 288

16h 45

Annexure “MM23”



NAME LIST

		DATE	29-10-2013	
NAME	TITLE			
Mr. Yuan Li	Exective Vice President, CDB			
Ms. Feng Dan	Deputy Director General, Treasury&Financial Market Dept,CDB			
Mr. Zhang Yifan	Deputy Director General, Credit Review Dept, CDB			
Mr. Hao Yaohui	Deputy Director General, Project Appraisal Dept, CDB			
Ms. Yang Xinliang	Deputy Director General, International Finance Dept, CDB			
Mr. Jin Tao	Deputy Director General, Global Cooperation Dept, CDB			
Mr. Li Gang	Deputy General Manager, Henan Branch, CDB			

Annexure “MM24”





TRANSNET FINANCIAL RISK MANAGEMENT FRAMEWORK (FRMF)

MARCH 2014
(BOARD APPROVED 28 MAY 2014)

EXCERPT FROM THE DRAFT MINUTES OF THE BOARD OF DIRECTORS OF TRANSNET SOC LTD MEETING
NO. 14/3 HELD ON 28 MAY 2014 AT 09:15 IN BOARDROOM 4901, CARLTON CENTRE OFFICE TOWERS, 150
COMMISSIONER STREET, JOHANNESBURG

"6.9 Treasury Financial Risk Management Framework

RESOLVED that the Board approved the Treasury Financial Risk Management Framework.

14/3/22"

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FINANCIAL RISK MANAGEMENT FRAMEWORK

1. BACKGROUND AND DEFINITIONS

Treasury in Transnet is a centralised division tasked with three main objectives, namely:

- Ensuring that the Group is cost effectively and timeously funded in support of the Group's Market Demand Strategy(MDS), which are mainly executed by the operating Divisions;
- Manage both financial and operational risks; *and*
- Lower the overall cost of doing business and add value to the overall business of Transnet.

All of these objectives are performed in a professional and ethical manner in line with Transnet's governance framework.

It is important that the FRMF is read in conjunction with the approved Delegations of Authority Framework (DOA) as a number of Treasury execution limits are contained in the DOA and are not repeated in the FRMF. The FRMF is supported by procedures within the different areas of Treasury that explain the detail of calculations and processes and this should be updated when processes change.

The following words and expressions bear the following meanings, unless the context indicates otherwise:

- "**ACTSA**" means the Association of Corporate Treasurers of South Africa;
- "**Board**" means the Board of Directors of Transnet;
- "**Operating Division**" means all the operating divisions of Transnet;
- "**CAPIC**" means the Capital Investment Committee, a committee of the Group Executive Committee established to make decisions regarding capital expenditure;
- "**Code**" means Code of Ethics; "**DOA**" means the Transnet Delegation of Authority Framework;
- "**EBITDA**" means Earnings before Interest, Taxes, Depreciation and Amortization;
- "**ERM**" means Enterprise Risk Management;
- "**Group EXCO**" means the Executive Committee established to take responsibility for the day to day execution of strategy and running of Transnet;
- "**FINCO**" means the Transnet Finance Committee;
- "**FRMF**" means the Transnet Financial Risk Management Framework;
- "**GCE**" means the Transnet Group Chief Executive;
- "**GCFO**" means the Transnet Group Chief Financial Officer;
- "**Group**" means Transnet SOC Ltd together with its divisions and any remaining subsidiaries;
- "**Group Risk Co**" means the Group Risk Committee focusing on risk management;
- "**ISDA**" means the "International Swaps and Derivatives Association, Inc"
- "**KING III**" means King Report on Corporate Governance"
- "**Long Term Investment Grade**" means a minimum long term issuer default credit rating (international counterparties), or National Long Term credit rating (local counterparties) of A3 (Moody's), A- (Standard and Poors), A- (Fitch Ratings) or equivalent rating from other rating agencies acceptable to Transnet;
- "**JSE**" means the Johannesburg Securities Exchange;
- "**NGP**" means the National Growth Path;
- "**PCGPS**" means the Protocol on Corporate Governance in the Public sector;
- "**Quantum**" means the Treasury Management System;

"Quantum Q Risk" means the risk management module of the Treasury Management System;

"SARB" means the South African Reserve Bank;

"Shareholder" means the Department of Public Enterprises;

"Short Term Investment Grade" means a minimum short term issuer default credit rating (international counterparties), or National Short Term credit rating (local counterparties) of P-1 (Moody's), A-1 (Standard and Poors), F-1 (Fitch Ratings) or equivalent rating from other rating agencies acceptable to Transnet;

"SOC" means a State Owned Company;

"Transnet" means Transnet SOC Ltd inclusive of its operating divisions, with registration number 1990/000900/30;

"Treasury" means the Transnet Group Treasury;

"Treasurer" means the Transnet Group Treasurer;

"VaR" means Value-at-Risk; *and*

"WACD" means the weighted average cost of debt.

2. RISK MANAGEMENT PHILOSOPHY

The overall risk management philosophy of Transnet is to the extent possible, avoid undue risks and manage business risks effectively. However, given the nature of Transnet's business and its Market Demand Strategy (MDS), it is not always possible to avoid risks all together.

In pursuit of its business, the Group is exposed to a myriad of risks, including but not limited to market, credit, liquidity, and operational risks. The long term viability, continued success and reputation of Transnet are dependent on the credibility of risk management, and commitment to applying leading practice in risk management.

3. SHAREHOLDER MANDATE

Transnet's mandate is to assist in lowering the cost of doing business in South Africa, enabling economic growth and security of supply through providing appropriate port, rail and pipeline infrastructure, as well as operating in an efficient and cost-effective manner, within acceptable benchmark standards. Transnet's mandate and strategic objectives are aligned with the Government's New Growth Path (NGP), National Development Plan (NDP) and Statement of Strategic Intent issued by the Minister of Public Enterprises.

4. STRATEGY

Transnet will continue to refine and roll out the Market Demand Strategy (MDS) with the focus on un-constraining the freight logistics system in South Africa by creating capacity that would meet demand over the medium to long term and beyond. The financial strategy was developed to ensure that the objectives of the MDS will be achieved within the Board approved financial parameters without compromising the long-term financial sustainability of the Company.

The financial strategy takes cognisance of the fundamental freight transport infrastructure principles of which the main focus areas are depicted below:

- Long term infrastructure;
 - o Average life expectancy of port, rail and pipelines
 - o Seven to 30 years planning horizon
 - o Creating capacity ahead of demand
 - o Investing through economic cycles

- **Meeting National Demand**
 - o Meeting existing customer demand
 - o Increase market share – existing business
 - o Capturing new business
 - o Service delivery and customer satisfaction
- **Financial Sustainability**
 - o Financial stability gearing and cash interest cover within norms
 - o Sustainable Business: ROE \geq WACC over the long term
 - o Stable cash flow from operations.

5. TRANSNET CORPORATE GOVERNANCE STRUCTURE

Board of Directors

The Board's purpose is to ensure that the Company is a sustainable organisation capable of fulfilling its objectives, statutory and otherwise. In order to fulfil this purpose, the Board must direct and control the business of the Company.

The Directors owe a fiduciary duty to the Company both under common law and statute, more particularly the PFMA and the Companies Act and are accountable to the Shareholder.

The Directors are also responsible, within the structures of corporate law and legislation, to the other stakeholders of the Company. Directors are required to exercise due care, skill and utmost good faith in the performance of their duties.

The Companies Memorandum of Incorporation provides that the Board shall consist of a minimum of 10 directors and a maximum of 14 directors comprising of not less than 8 independent non-executive directors and not less than 2 executive directors whom shall include the Group Chief Executive and the Group Chief Financial Officer of the Company.

The Board has established the following committees:

- Board Audit Committee;
- Board Risk Committee;
- Remuneration, Social and Ethics Committee;
- Corporate Governance and Nominations Committee; and
- Board Acquisitions and Disposals Committee.

The Group Chief Executive has the authority to manage the Company within the powers delegated to the Group Chief Executive by the Board of Directors. The Group Executive Committee is constituted to assist the Group Chief Executive in the management of the Company. The Group Executive Committee assists the Group Chief Executive to guide and control the overall direction of the business of the Company and acts, through the Group Chief Executive, as the medium of communication with the Board of Directors.

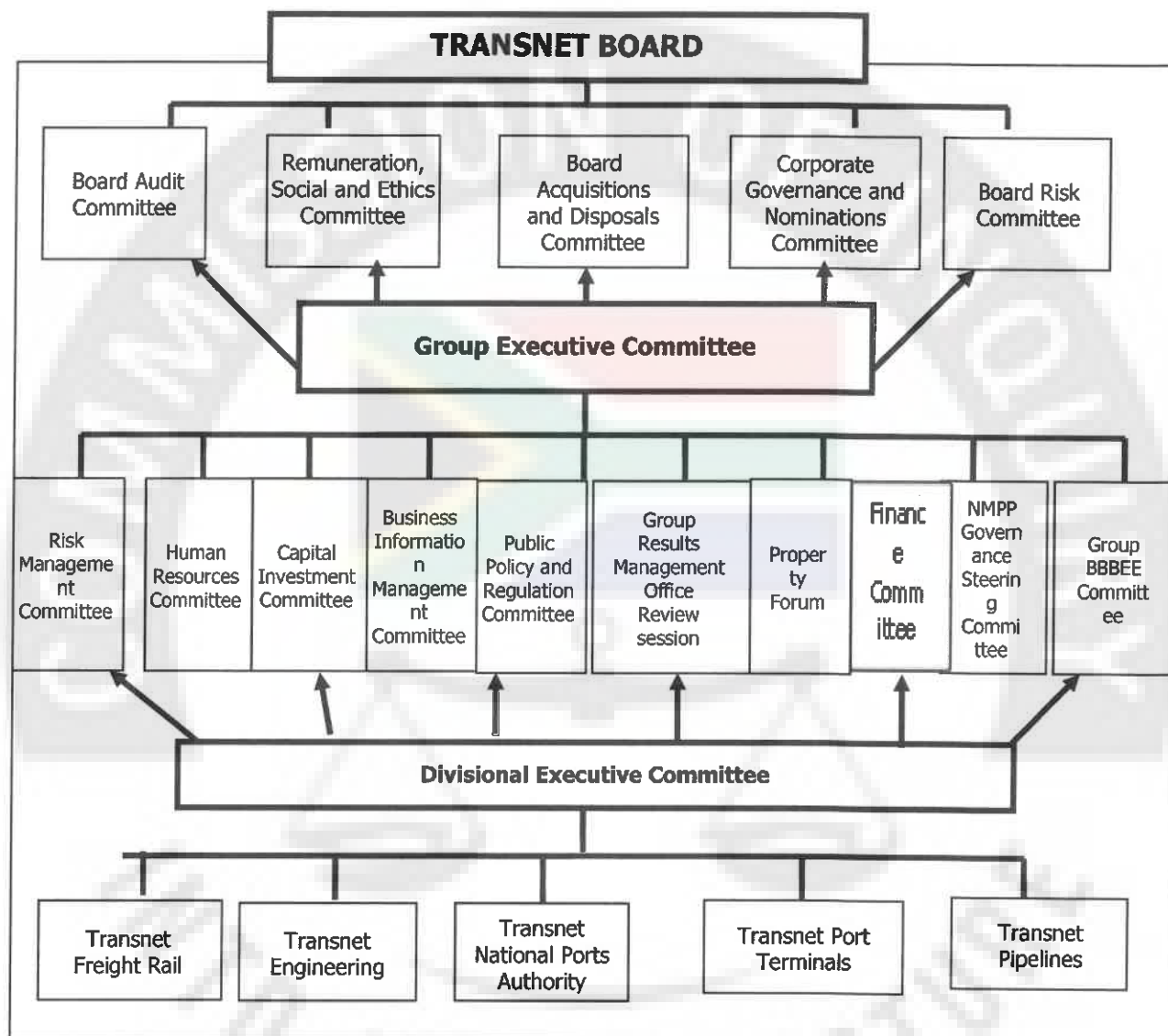
Group EXCO has established subcommittees for the following key functional areas: Finance Committee, Human Resources Committee, Capital Investment Committee, Risk Management Committee, NMPP Governance Steering Committee, Group BBBEE Committee, Policy and Regulation Committee, Business Information Management Committee, Group Results Management Office Review Session and Property Forum.

Guideline Statements on Treasury Best Practice issued by National Treasury states that

"The Board of the company should conduct a periodic (at least every 3 years) review of the effectiveness of the Treasury Risk Management System". It is the responsibility of Group Treasury to initiate the 3 yearly review and inform the Board accordingly of the outcome.

Risk Management is, as set out in the King III code and the PFMA, ultimately the responsibility of the Board and the governance structure is reflected below: The Board has delegated the responsibility for providing assurance on the integrity, quality and reliability of the Group's risk management to the Group Risk Committee and Group Finance Committee.

5.1. The Transnet Governance Structure is as follows:



5.2. Code of Ethics

The Company continues to instil a culture of entrenched values, which form the basis of the expected behaviour of its employees towards all its stakeholders. These values are reflected in the approved and published Code of Ethics (Code). All management employment contracts make reference to this code. The Code is reviewed annually and, commits the Company's Directors and employees to the highest standards of ethical behaviour when engaging with both internal and external stakeholders. The Code applies to all Transnet employees. In instances where an employee breaches the Code, the necessary disciplinary action is instituted in terms of the Company's Disciplinary Code and Procedure. The existence and

adherence to the Code at Company level does not necessitate a requirement to include any additional code of ethic behavioural requirements in the FRMF.

The following seven elements form the core of a Culture Charter which was adopted by employees to steer towards a winning culture.

- We have a safety mindset;
- We are business focussed;
- We deliver on our promises;
- We treat each other with dignity and respect;
- We have good communication;
- We recognise and reward good work; and
- We are empowered to perform in our jobs.

5.3. Summarised Roles and Responsibilities of Risk Committees

5.3.1. Risk Management Committee (Riskmanco)

Terms of reference:

RiskManco is responsible for overall risk management policy setting, monitoring and control, as well as review of compliance.

The specific responsibilities of the Riskmanco:

- Develop, and ensure compliance with risk philosophies, strategies and policies, frameworks and procedures and delegation of risk management responsibility and authority and regulatory requirements;
- Review the adequacy and overall effectiveness of the Group's risk management and its implementation by management; and hence ensure risk is appropriately considered in decision making throughout the Group;
- Review a summary of the Group Risk Committee Minutes and other issues of corporate governance (e.g. compliance with requirements regarding the appointment of directors);
- Determine the structures and systems to be used by the Group to prudently manage risks;
- The specific risks to be reviewed at RiskManco include:
 - Country risks;
 - Technological risks ;
 - Disaster recovery risks;
 - Reputational risks;
 - Legal Risks;
 - Sensitivity risks, e.g., environmental impacts;
 - Human resources risks;
 - Compliance risks;
 - IT risks; and
 - Insurance risks
- The following risks, predominately reviewed by the Finance Committee, may be referred to RiskManco should they become material for the Group:
 - Interest rate risks;
 - Counterparty risk, including provisioning risks;
 - Exchange rate/currency risks;
 - Price risks;
 - Investment risks;
 - Commodity (fuel) risks; and
 - Liquidity risks

5.3.2. Capex Investment Committee (CAPIC)

Terms of reference:

CAPIC shall act as the final point of accountability for:

- Investment decisions within the CAPIC mandate, subject to the Group Delegation of Authority Framework.
- Go/no-go decisions for projects, in excess of the CAPIC Delegation of Authority to proceed to Group Exco, Board Acquisitions and Disposals Committee, Board of Directors and the Department of Public Enterprises.
- Approve individual business cases after matching requirements from operations with:

Funding constraints; and

- Prioritising capital investments to optimise return for available capital.
- Review and amend project expenditure plans where necessary subject to
- Group limits of Authority and the limitations of the Board approved budget.
- Approve the portfolio of planned capital investments annually, including timing of projects;
- Approve changes to the capital portfolio, including acceleration, delay or cancellation of projects/programmes;
- Determine the criteria for prioritizing capital expenditure projects/programmes for optimisation;
- Ensure decisions relating to capital expenditure are consistent with the strategic focus of the Group;
- Provide guidance and make decisions to alter project scope as required to ensure business cases remain robust in the face of changing internal and external factors over time;
- Be responsible for the capital management of the current capital portfolio in order to achieve the short and long term objectives of the company.
- Monitor the implementation of project/programmes plans to ensure that approved capital expenditure projects are:
 - Carried out with minimum delays;
 - Governed appropriately;
 - Fit for purpose and value optimised;
 - Carried out with minimum delays;
 - Expected to deliver agreed business outcomes and socio-economic benefits. -
 - Ensure that capital programmes are executed in a cost and resource efficient way;

5.3.3. Finance Committee (FINCO)

Terms of reference:

- Review overall governance procedures in relation to financial disciplines;
- Identify measures, monitor all financial risks, including but not limited to interest rate, exchange rate, price, liquidity, taxation risks;
- Identify measures, monitor all shared service, procurement and supply chain associated risks;
- Ensure appropriate financial management frameworks, policies and procedures are adopted in the Group;
- Review the accuracy, validity and completeness of financial results; and
- Assess the performance of the financial and business services structures and any supporting service providers reporting into these structures;

Specific responsibilities

FINCO shall ensure that -

- Limits are set for acceptable levels of risk and that no risk exposures are entered into outside these limits without full disclosure to, and the express authority of FINCO;
- The likely effect of risk exposures on the Group's earnings are assessed and appropriate action is taken;
- Financial results and Key Performance Indicators are monitored and reviewed;
- There is an identification of the accuracy of projected cash flow;
- There is proper focus on cash flow risks and the funding structure in order to properly structure liabilities;
- The profile of funding and related liquidity risk is assessed;
- Liquidity and interest rate mismatches are reviewed;
- Boundary conditions are set for the Group's investment strategy, including hurdle rate for investments and funding constraints;
- The reputation of the Group is upheld at all times in the financial markets;
- Asset and liability management frameworks, policies and procedures are periodically audited and reviewed to confirm that they remain appropriate;
- There is a balance sheet strategy that takes account of, amongst others, the assets and liabilities strategy and market share analysis;
- Off-balance sheet activities and contingent liabilities are reviewed;
- Through a process of limits setting, strategic positioning and the continuous monitoring of exposures, determine/control the amount of earnings at risk and how the risk appetite of the Group is split among the Operating Divisions of the Group.
- Appropriate financial and operational controls are designed and implemented throughout the Group;
- Review progress reports produced by Internal Audit and by management internal control function and in doing so ensure Transnet and its operating divisions comply with the expected timelines for addressing all control issues;
- Develop the one year operational and three year strategic internal control plan which cover all areas of focus including internal audit, forensic (prevention, detection and investigation) as well as enhancement activities;
- Provide the Internal Control department and Transnet Internal Audit with guidance to ensure that the focus of Internal Control is aligned to the Group strategy;
- Comment on and recommend documents that will govern the Internal Audit activities for approval by the Audit Committee; Review the effectiveness of Critical Financial Reporting Controls (CFRC's) and the Business Critical Controls (BCC's) and recommend actions where these are not operating effectively;
- Provide guidance and direction to line management via Operating Division ICSC's as to how to resolve identified control issues;
- Escalate, as appropriate, control issues and other information to the Group Executive Committee and Audit Committee;
- Provide guidance on the management and implementation of the PFMA including compliance thereof, review the outcome of the PFMA compliance assessments and request corrective action including the initiation of disciplinary action against officials where there are instances of non-compliance;
- Review the disciplinary and other actions taken against employees where there has been a breach of control;
- Provide guidance to the Internal Control Department and Transnet Internal Audit regarding possible Group wide enhancement projects to address control breakdowns that are prevalent across the Group;
- Provide guidance and direction on the forensic process, including reviewing the outcomes of fraud prevention, detection and investigation elements;
- Formally review Internal Audit performance at least twice a year;
- Advise Internal Audit and management on the best way to resolve any conflicts that may have arising through the course of their work;

- Produce appropriate reports for the Group Executive Committee, Board of Directors and the Audit Committee when requested to do so;
- Review Transnet's quarterly selfassessment (CSA), after service questionnaire results and ICSC effectiveness ratings;
- Review the half yearly and annual process of certification of the adequacy and proper application of internal controls by line management;
- ;
- Recommend the overall certification of Transnet's internal financial and operational controls for approval by the Group Chief Financial Officer and Group Chief Executive with or without qualification; and
- With regards to the Scrap metal virtual team, approve the mandate of the team, the governance process to be followed for engaging with the market, the Delegation of Authority for entering into and signing of contracts to dispose of Scrap metal, the disposal framework (rules of how scrap metal can be disposed of), the Scrap metal strategy, and projects and initiatives that support the approved strategy.

5.3.4. Group Risk Management Function

Development and or review of the ERM framework and strategy across the Group; facilitating and monitoring the implementation of the ERM policies frameworks and strategies; analysing operating risk reports and compiling monthly, quarterly and annual risk reports for Group Risk Committee and the Group Executive Committee; and embedding the ERM culture within the Group.

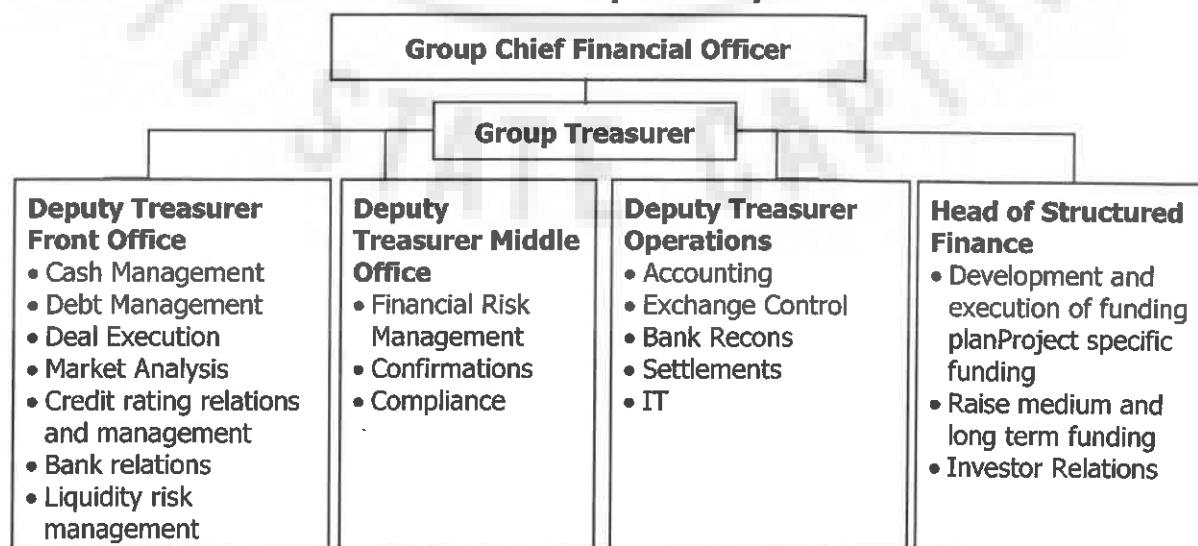
5.3.5. Group Chief Financial Officer (GCFO)

The Group Chief Financial Officer is responsible for the development and implementation of the financial strategy; the management of corporate finance; management of compliance with legislative requirements i.e. Companies Act, Public Finance Management Act and IFRS; The GCFO contributes towards the content and finalisation of the financial statements and corporate plan; manages the strategic funding and capital investment process of the Group; manages audit and internal control processes and the Group's taxation position.

5.3.6. Reporting line of Group Treasury

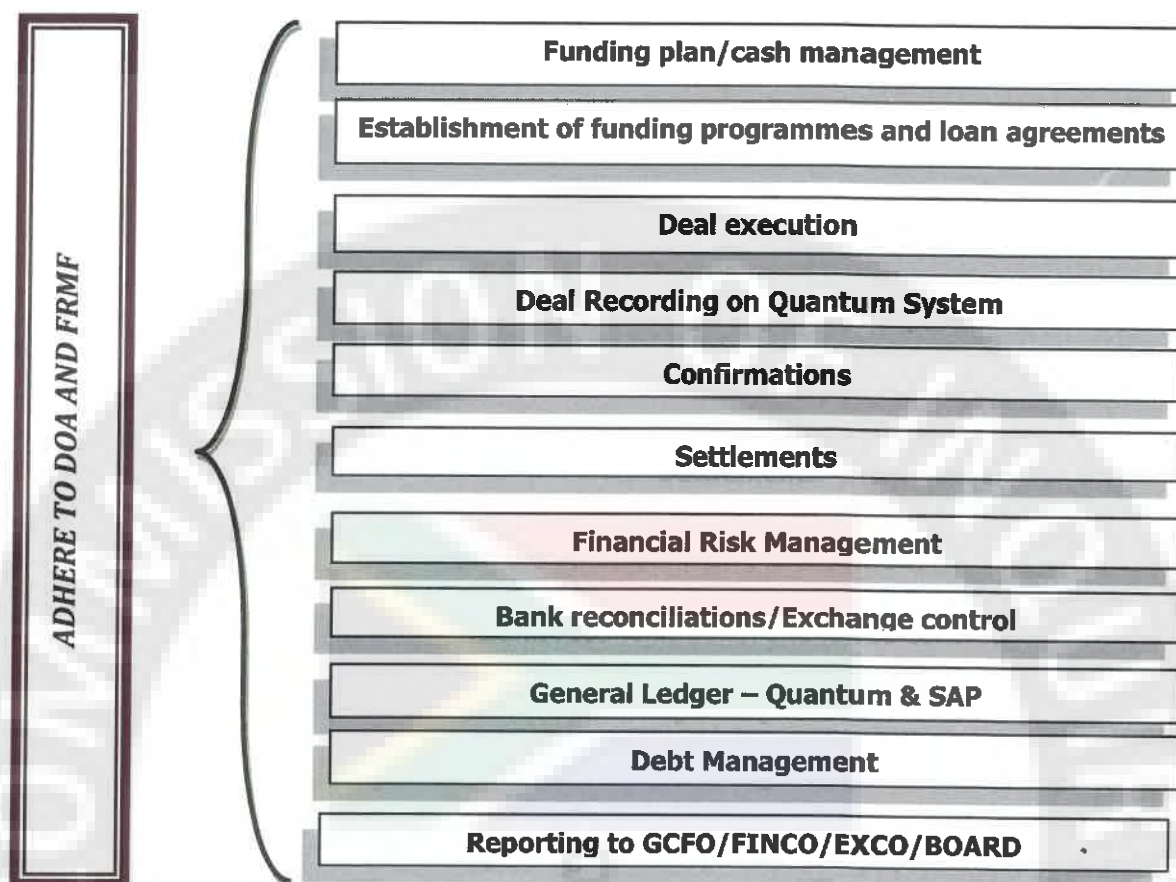
Group Treasury has a direct reporting line to the GCFO as per diagram below and the GCFO oversees all the activities of Treasury. Treasury reports the status of the Group's financial risks and all other reporting as required by the FRMF to FINCO, EXCO and the BOARD at scheduled meetings through the office of the GCFO in line with the reporting structure. Financial risks are escalated to RISKMANCO if they become material for the Group.

5.3.7. Structure and Functions of Group Treasury



5.3.8. Segregation of Duties

Segregation of duties within a Treasury environment is essential and all financial market transactions entered into should always be executed in this manner. The high level processes below provide guidance of the roles and activities in the different areas of responsibilities:



6. BEST PRACTICE IN RISK MANAGEMENT

As an SOC, Transnet must comply with the PFMA and the PCGPS. This framework was updated with the intention of promoting adherence to these by aligning the guidelines contained within this framework to the aforementioned.

6.1. Public Finance Management Act (PFMA)

Section 51 (1) a (i) of PFMA states that: "An accounting authority for public entity must ensure that the public entity has, and maintains effective, efficient and transparent systems of financial and risk management and internal control."

In addition the Treasury Regulations paragraph 27.2.2 further states "The accounting authority must ensure that a risk assessment is conducted regularly so as to identify emerging risks of the public entity. A risk management strategy must include a fraud prevention plan, must be used to direct internal audit effort and priority and to determine the skills required of managers and staff to improve controls and manage the risks. The strategy must be clearly communicated to all employees to ensure that the risk management strategy is incorporated into the language and culture of the public entity."

6.2. Protocol on Corporate Governance in Public Sector (PCGPS)

Item 5.2.18.1 of PCGPS: "Directors must ensure that the SOC has and maintains effective, efficient, and transparent systems of financial, risk management and internal control. Directors should therefore establish processes and practices within the SOC to manage all risks associated with the SOC's operations."

Item 5.2.18.2 of PCGPS: "Directors should keep the Executive Authority informed of risk management strategies by outlining them in corporate plans and progress reports, and other reports when necessary. In addition, and unless otherwise qualified because of circumstances applying to a particular SOC, corporate plans and progress reports should contain a statement from the Board that the Board has appropriate risk management policies and practices in place and that adequate systems and expertise are being applied to achieve compliance with those policies and procedures."

Item 5.2.18.3 of PCGPS: "The Government, as a shareholder, is sensitive to commercial risk. In some circumstances, it may therefore choose to set limits on the activities of particular SOC's: for example on liabilities, financial exposures, use of derivatives instruments, etc."

Item 5.2.18.4 of PCGPS: "Subject to the relevant provisions of PFMA, as a general rule, Government will not provide formal guarantees in respect of SOC liabilities. Accordingly, Directors should take this policy into account when making decisions that affect an SOC's operations and performance."

In addition to the above requirements, the Financial Risk Management Policy must be aligned to the country's laws and regulations and must follow best practice standards as set out in the following bodies and risk management standards;

- The King III Code and the Protocol on Corporate Governance;
- Public Finance Management Act of 1999, as amended;
- The Association of Corporate Treasurers of South Africa (ACTSA Charter of Best Practice);
- Treasury Regulations in terms of the PFMA; and
- All relevant laws and regulations of The Republic of South Africa and all the Countries in which Transnet do business.

6.2.1. King III Recommended Practices

- Item 4.4.1, – The Board's risk strategy should be executed by management by means of risk management systems and processes.
- Item 4.4.2 – Management is accountable for integrating risk in the day-to-day activities of the Company.
- Item 4.5.1 – The Board should ensure effective and ongoing risk assessments are performed.
- Item 4.5.2 – A systematic, documented, formal risk assessment should be conducted at least once a year.
- Item 4.5.3 – Risks should be prioritised and ranked to focus responses and interventions.
- Item 4.5.7 – The Board should ensure that key risks are quantified where practicable.
- Item 4.8.1 – The Board should ensure that effective and continual monitoring of risk management takes place.

7. RISK MANAGEMENT METHODOLOGY AND MEASUREMENT

7.1. Introduction

The overall financial risk exposure of the Group is defined as the potential exposure of the business to normal market conditions, over a specified period of time, and within a specified confidence interval, this exposure is known as either Market Value-at-Risk (**VaR**) or Cash flow at-Risk (**CfAR**) against the approved budgets or Income Statement volatility at risk (**ICSaR**). Financial market risk tolerance levels are typically defined in terms of one or more of the following: Net cash flows or earnings expressed as a percentage of EBITDA

Transnet's individual financial risk tolerance levels are defined as a percentage of earnings (EBITDA) not greater than that which can threaten the achievement or maintenance of strategic financial ratios of the Group, but not less than that which the business planning and risk management practices can support.

Due to the unique nature of the Group's asset and liability portfolios, the huge importance of cash flow, liquidity, budgets and income statement volatility, the Board therefore approves the individual and collective financial risk exposure tolerances as reflected in paragraphs 7.2.1 and 7.3. The Boards' mandate defines risk tolerance relative to the latest budget or forecast, which are the maximum limits on the exposure of Transnet over a defined time horizon and within a certain confidence interval. It is the responsibility of management to ensure that the potential exposure (**CfAR**, **ICSaR** and **VaR**) of Transnet does not exceed the individual and or collective risk tolerances set by implementing risk management measures and mitigating strategies.

The Group is exposed to the following financial risks; interest rates, commodity prices (e.g. Brent crude oil), foreign exchange and income statement volatility. Different measurement tools are used to measure changes to these risks on all treasury transactions and these include limits and sensitivity scenarios against approved budget inclusive of stress testing. The measurements can either be operational or tactical. These risks are not necessarily correlated and their degree of impact also differs proportionally.

7.2. Operational and Tactical Risk Measures

These measures are used in the day-to-day analysis of financial risk exposures and determine the pricing of risk management strategies used for hedging. Treasury Middle Office produces a range of risk measures and reports that are appropriate to the requirements of Transnet. These measurements include the following for the respective risk exposures:

- Fair Value or Marked-to-Market of existing risk management instruments;
- Sensitivity Analysis;
- Stress Testing under extreme and volatile market conditions
- Duration;
- FX exposure hedged/unhedged; *and*

A range of tactical risk measures are used to generate scenarios that quantify and illustrate the effect of various market fluctuations on the range of underlying Transnet exposures and on Transnet's Operating Divisions as a whole. A range of risk scenarios are used as critical input into the financial risk management decision-making process.

7.2.1. Financial Risk Tolerance:

7.2.1.1. Interest Rate Risk

Sensitivity analysis is used to determine the impact of interest rate movements on approved external finance cost budget per financial year (existing liability portfolio plus new funding to be raised). Stress testing is included to show extreme market movements. Corrective action should be implemented if there is a high possibility that the negative cash flow impact against the latest approved annual external finance cost budget (including capitalised borrowing cost) is more than **5%** (14/15 budget: R8 867m * 5% = **R445 m**). The limit includes the actual YTD performance as recorded in the General Ledger and should be updated when new budgets are approved.

7.2.1.2. Commodity Risk (fuel)

Sensitivity analysis is used to determine the negative impact of commodity (like Brent Crude oil) and exchange rate movements (including fuel levy income) on the approved fuel budget. Stress testing is included to show extreme market movements. Corrective action should be implemented if there is a high possibility that the negative cash flow impact against the latest approved Fuel budget is more than **12.5 %** (14/15 budget: R3 161 m * 12.5 % = **R 400 m**). This limit includes the actual YTD performance as recorded in the General Ledger and should be updated when new budgets are approved.

7.2.1.3. Value at Risk (FX)

The emphasis at Transnet is mainly on cash flow, liquidity and budget management and hence ***VaR will only be used on a limited basis and calculated on committed, unhedged FX risk exposures.***

The calculation of **VaR** is a risk management tool and will not necessarily have a direct visible impact on the bottom line of the Group's income statement. Corrective action should be taken if **VaR** is more than **0.5%** of the latest approved budgeted EBITDA (14/15 budget: R 29 477 m*0.5% = **R150m**). This should be updated when new budgets are approved.

7.2.1.4. Fair Value Analysis (ICSaR)

Sensitivity analysis is used to determine the impact on the net fair market values of all financial instruments. Stress testing to be included to show extreme market movements. Corrective action should be implemented if there is a high possibility that the negative impact on the fair value line of the income statement, is more than **4 %** of latest approved budgeted EBITDA (14/15 budget: R 29 477 m*4% = **R1 180 m**). This should include actual numbers recorded per financial year and should be updated when new budgets are approved. The major reasons could be ineffective hedges (hedge accounting).

7.3. Collective Financial Risk Management Tolerance

The Board approves the overall financial risk tolerance which is defined as **2.50% of the latest annual budgeted EBITDA**. The table below defines the calculation.

Parameter	Value
Underlying exposure	12-month Budgeted exposures
Confidence Interval	95%
Risk Horizon	90 days
Maximum Risk Tolerance (Collectively)	14/15 budget: R 29 477 m * 3 % = R 885m
Exposures included	par7.2.1.1, par 7.2.1.2 and par 7.2.1.3

The performance against the **Financial Risk Tolerance** limits as well as the **Collective Financial Risk Management Tolerance** limits must be reported to FINCO and Audit Committee at their scheduled meetings.

8. FINANCIAL RISK MANAGEMENT LANDSCAPE

8.1. Introduction

Transnet's ERM approach rests on three pillars, namely; the King III, COSO framework, and PFMA. The Board has entrusted the responsibility of robust risk management processes to the GCE.

Risk management, as defined in the ERM approach, focuses on operational risks, business/commercial risks, financial/market risks as well as Asset and Liability management. The focus of this FRMF is on market risk (which includes credit risk) as described in detail below.

8.2. The Objective of the Policy

The objective of this policy is to provide clear guidelines to effective risk management by ensuring that:

- Risks are independently identified, assessed, quantified, mitigated and monitored regularly;
- Mitigating hedging strategies are developed and implemented;
- The effectiveness of hedging strategies are monitored monthly; and
- Risk exposures are performance measured and formally reported to appropriate authorities.

8.3. Credit Risk

Credit Risk is defined as the risk that a counterparty will fail to honour its financial obligations to the Transnet Group.

Credit risk arises in many of Transnet's business activities through the services rendered by the Operating Divisions to customers and Treasury's hedging and investments activities. The financial risk owing to credit extension could have a profound impact on earnings, capital reserves as well as profitability.

The management of credit risk is undertaken through the setting of Counterparty risk limits in terms of the policy, taking into consideration the relationship amongst all the risks to which Transnet is exposed to and Transnet's risk appetite.

Credit risk consists of the following types:

8.3.1. Country Risk

The risk that a counterparty is unable to meet its foreign financial and or contractual obligations because the country is either unable to or unwilling to meet its financial obligations.

8.3.2. Settlement/Delivery Risk

Is the risk that a counterparty cannot deliver on its contractual commitment on the contracted maturity date. This includes settlement of cash, and or the delivery of securities (Notes).

8.3.3. Investment Risk

The risk of losing the nominal value plus accrued interest on an investment done with a counterparty in the event of default by that counterparty.

8.3.4. Price Risk

The risk that the price of a market security, investment or any financial instrument changes as a result of changes in the underlying economic market conditions like interest rates, exchange rates, credit risk, commodity prices, volatility etc before maturity date, and thereby forcing the underlying transaction to be closed-out at a market value loss (this includes bonds and derivative financial instruments) due to the inability of the counter party to honour the transaction.

8.4. Market Risks

Market risk consist of trading and investment risk, interest rate risk, liquidity risk, foreign exchange risk, commodity risk and to a limited extent, gap (mismatches in maturities and interest rates) risk.

8.4.1. Interest Rate Risk

Interest rate risk refers to the potential variability in Transnet's financial condition owing to changes in interest rate levels. The standard measure of interest rate risk includes the repricing of floating rate debt and interest rate shocks on liability portfolio to determine potential impact on the external finance cost budget.

8.4.2. Liquidity Risk

Liquidity risk is the risk that Transnet is not able to generate sufficient cash to honour its financial commitments. In essence liquidity risk is due to a weak balance sheet structure, which has no cushion of resources to provide cash to cope with unexpected events. Cash flow management and quick access to additional cash through committed bank facilities are therefore crucial to liquidity risk management. In Transnet it refers particularly to the risk of Transnet's inability to advance funds for capital expenditure, redeem and service loans in money and capital markets, finance operational costs and generate cash for unanticipated financial commitments.

Liquidity Risk Management Includes:

- Prudent asset and liability management;
- Setting up high target of accuracy on actual versus forecasted cash flows;
- Diversification of funding sources;
- Maintaining sufficient levels of funds in cash or near-cash investments; and
- Adequate committed bank facility lines.

8.4.3. Commodity Risk

Commodity risk refers to the potential variability in Transnet's financial conditions owing to the changes in commodity prices such as Brent crude oil, steel, iron ore, electricity and others used in the operations of Transnet. The strategic emphasis on commodity risk management is to protect budgeted levels at both capital expenditure and operational level.

9. Counterparty Risk Management Policy

9.1. Purpose of Policy

The purpose of the counterparty risk policy is:

- To mitigate counterparty risk exposures;
- To diversify counterparty risk exposures;
- To set limits for the different types of counterparty risk exposures; and
- To ensure that financial transactions are done with approved high credit quality counter parties.

9.2. Background and Terms of Reference

ACTSA best practice charter principle # 14 – Creditworthiness, states that "EXCO should be responsible for the evaluation of customer and counterparty credit worthiness and the setting of individual credit limits".

In Transnet, this requirement is achieved by:

9.3. Determining Limits for Rated Institutions

9.3.1. Selection of Counterparties through Credit Risk Analysis

A rated counterparty is defined as a counterparty that is rated by a reputable rating agency such as Moody's Investor Services, Standard & Poor's, Fitch Ratings, Global Credit Ratings or any other rating agency acceptable to Transnet. When selecting rated financial institutions for the allocation of investment and price risk limits for ***Treasury related financial instruments***, the following minimum criteria applies:

- Minimum net equity of **R5 billion**.
- Long term Investment Grade credit rating.

Exceptions to the above will be allowed to accommodate operational bank account balances in foreign jurisdictions (which is very limited in Transnet's case).

The following **second tier** limit structures are applied to diversify counterparty risk exposures.

- Limit the cash exposures to **40%** of overall cash available in respect of counterparties where the long term credit ratings are single A* ratings.

- Only invest cash with counterparties that have a **Short Term Investment Grade** credit rating (excluding bank account balances in foreign jurisdictions).
- No more than 33% of total cash available may be invested with a single counterparty within the approved limits. This excludes overnight operational bank balances as a one day grace period is allowed to enable Treasury to move funds. As a result of the unpredictability of daily cash balances, this will be monitored per investment category.

9.3.2. Establishment of Investment Limits per Institution

Transnet uses a credit risk scoring model to calculate the limits. The basic principles of the model are to calculate an overall credit score per counterparty by using a number of variables like long and short term credit ratings and financial ratios across the balance sheet and income statement.

The credit score is then applied to the net worth and adjusted by a factor (haircut), to calculate the overall limit per counterparty. The purpose of the haircut is to determine the limits required to accommodate cash on hand, also taking into account the impact of a pre-funding strategy as well as the Group's normal hedging and funding programmes.

Domestic counterparties are allocated a higher haircut than international counterparties due to the huge difference in balance sheet sizes. The haircut may be reduced for individual banks in instances where a new relationship is established or where there are clear indications that the bank have a limited credit risk appetite for Transnet or is only willing to transact in certain instrument types.

A maximum haircut of **18%** for local banks and **3%** for international banks should be applied. This will be reviewed during the annual update of the FRMF and may change due to a result of overall limit requirements for the successful execution of MDS.

Detail of the application of the credit risk scoring model and the haircut application will be recorded in a procedure manual for reference and audit purposes. Limits are established at Company level for both international and domestic counterparties.

Price risk limits in respect of derivative financial instruments for international banks may only be established if the international bank is a local authorised dealer unless specific approval has been obtained from the SARB. This is in line with SARB's rules on these transactions.

9.3.3. Establishment of Investment Limits per Investment Instrument

To manage and control investments per investment instrument, the following limits will be applicable per investment category.

Fixed limits are not feasible as the total amount of cash on hand cannot be controlled by Transnet Treasury. As a result of the unpredictability of daily cash balances, (ii) and (iii) below are calculated on the day when the investments are done and Traders will have a grace period of 10 business days to rectify positions, before a limit breach is deemed to have occurred.

Investment Category	Limit
(i) Call investments and operational bank balances.	A maximum of 100% of overall cash available.
(ii) Fixed Deposits.	A maximum of 80% of overall cash available.
(iii) Liquid Tradable Assets i.e. NCD's, BA's, Promissory notes etc.	A maximum of 10% of overall cash available.
(iv) Money Market Funds in total	A maximum of R8 billion
(v) Money market funds (individual)	A maximum of R3 billion per single fund limited to 33% of cash available or 10% of the size of the fund.
(vi) Repo's on Funding Portfolio	R3 billion

9.3.4. Monitoring of Investments against Limits

All exposures are monitored against approved limits on a daily basis. The only exception is bank balances in foreign jurisdictions, which are only available on a monthly basis, and are monitored as such.

9.3.5. Re-Assessment of Counterparty Credit Risk Based on Credit Ratings

Counterparty credit risk is reviewed and assessed on a regular basis, and if any material financial deterioration is detected on any approved counterparty, like a credit down grade, the Treasury Middle Office assesses and scales down the limits (if necessary), to reduce any possible risk.

Any downscaling of limits needs to be reported to the Treasurer, GCFO and to FINCO as and when it occurs, but no later than one month (due to monthly reporting to Committees). Treasury should perform a formal analysis and review of counterparties at least twice a year or as necessary.

9.3.6. Assessment of Investment Instruments Based on Liquidity Requirements

All new investments and financial instruments must go through a testing and approval process before they can be utilised. Liquidity requirements need to be considered before entering into the transaction to ensure the availability of cash as and when required.

9.3.7. Determining Limits for Unrated Institutions

Transnet strives to apply best efforts to open bank accounts with rated counterparties in foreign jurisdictions.

Exceptions will only be allowed if rated counterparties are not available in the particular foreign jurisdiction and or if a rated bank is not located in close proximity to the operations of the Operating Division.

Minimum balances must be maintained for operational purposes and excess cash should be repatriated on a monthly basis. The only exception to this rule will be regulatory constraints and explicit approval for this arrangement must be obtained from the GCFO. No investments with unrated counterparties are allowed.

A formal risk credit risk assessment may not be possible in respect of unrated counterparties due to the lack or unavailability of audited financial information. All efforts should be made to obtain as much information as possible and to compare results amongst unrated counterparties for benchmarking purposes.

Counterparty risk limits are formulated by Treasury Middle Office and presented for approval in terms of the approved DOA. Where limit types are not included in the approved DOA, the Deputy Treasurer Operations, Middle Office and or Treasurer (Or other delegates formally mandated by the Group Treasurer) can approve all types of counterparties where limits are not necessary i.e. investors in bonds and commercial paper, lenders, suppliers of goods and services etc.

9.3.8. Determining limits for issuers of guarantees

Where credit risk arises due to guarantees issued by external parties (banks, financial institutions, insurance companies etc) as a risk mitigation in supplier agreements (advance

payment guarantees (APG), performance bonds (PB), retention bonds (RB) etc, the following criteria will apply:

9.3.8.1. Issuers with limits for Treasury related financial transactions

Where counterparty limits have been approved for Treasury related financial transactions in accordance with DOA, the credit risk will be offset against the overall approved limit.

9.3.8.2. Issuers for non-Treasury related financial transactions

When an Issuer requires a limit for non-Treasury related financial transactions, (i.e APG's, PB's RB's etc) only the credit rating requirement will apply. Issuers must have a long term investment grade rating as defined in the definitions.

- Limits will be calculated based on financial and credit rating information and
- Allocated limits will be reviewed annually or adjusted downwards, should adverse information become available.

9.4. Settlement Risk Limits

The settlement limits for approved counterparties should be set at **1.5 times** of the approved credit limits in line with authority as stipulated in the DOA.

Settlement limits will not apply to settlements relating to guarantees issued in relation to "9.3.8 Determining limits for issuers of guarantees" above.

9.5. Bond Issue and Bond Issuer Risk Limits for the Investment of surplus cash on repo portfolio.

Only bonds and bond issuers approved in terms of the DOA may be used as the underlying instrument/issuer when surplus cash is invested for short periods with JSE members.

9.6. Repo Limits for JSE Members

One annual limit in respect of all JSE members will be calculated for the repo portfolio as listed bonds and members of the exchange are protected by the JSE Guarantee Fund.

9.7. Repo Limits for JSE Clients (Price Risk)

Repo trades will not be allowed with JSE clients (Non – JSE members) due to the outsourcing of the market making function to the external market making panel. Repo transactions may only be done with JSE members.

9.8. Money Market Funds

Money market funds have been in existence for about thirteen years in South Africa and these funds create an opportunity for Transnet to earn a higher return relative to the other investment types, like call and fixed deposits. There are approximately R242 billion of assets managed by Money Market Funds in South Africa. Money Market Funds further diversify the risk of default as the assets of the funds are spread amongst a number of issuers, instruments, banks and or financial institutions.

Some money market funds are rated, whilst the assets and or issuers of the paper in others are rated. Treasury can invest in Money Market funds under the following approved criteria:

- The Money Market fund must be governed by the Financial Services Board (FSB).
- The Money Market fund must be regulated by the Collective Investment Scheme Control Act (CISCA).
- The fund must be in existence for at least three years.
- The fund must have a policy limit that prohibits investments of more than 30% with a single counter party.
- The fund's objective should be capital preservation.
- Either the Fund must have a **Long Term Investment Grade** credit rating or
- The assets of the Fund must be rated with a minimum **Short Term Investment Grade** rating or the Fund may only invest in assets where the issuers/banks/financial institutions, have a minimum **Long Term Investment Grade** credit rating. The Fund should have approved limits either per instrument, per counter party or per rating category.

9.9. Master Agreements

ISDA master agreements shall be concluded before any derivative financial instruments can be traded with an approved counter party. The approval of ISDA and ISMA master agreements, where applicable, should be done in line with the DOA and all efforts must be made to ensure standardisation across these legal agreements. ISDA covenants must be monitored at least on a quarterly basis to mitigate the risk of potential breaches.

9.10. Margining and Collateral

Transnet is not allowed to post any type of collateral and or margining as security with banks and or financial institutions in respect of any hedging transactions. This also prohibits Treasury to sign Credit Support Annex Agreements (CSA) with any of its counter parties that require such posting of collateral. The main reason is to ensure that cash is not utilised ineffectively during a prolonged period when Transnet is a net borrower of funds. Transnet must always strive to enter into hedging arrangements without any break clauses. Any ISMA agreements entered into with Repo counterparties should exclude any margining arrangements.

As a result of the implementation of Basle III, financial institutions may provide hedging and lending facilities to Transnet at a reduced cost should posting of collateral and the resultant signing of a CSA be considered. Any such consideration can only be approved by the GCFO after careful consideration of the benefits and risks involved, with specific reference to liquidity risk.

9.11. Breaching of Counterparty Limits

All counterparty limit breaches should be reported to the Treasurer and GCFO as and when they occur and monthly to FINCO and the Audit Committee. When the limit is breached, the Treasurer shall decide whether the position should be closed immediately or, be maintained for a limited period within the authority as outlined below.

LIMIT TYPE	TREASURER	GCFO	GCE
Investment Risk Limits	≤ 1 Week	≤ 1 Month	> 1 Month
Marginal Risk Limits	≤ 1 Week	≤ 1 Month	> 1 Month
Bond Issue and Issuer Limits	≤ 1 Week	> 1 Week	-
Settlement Risk Limits	≤ 1 Day	> 1 Day	-
Investment limits per investment instrument	≤ 1 Week	> 1 Week	-
2 nd Tier limits	≤ 1 Week	> 1 Week	-

9.12. Credit Risk Assessment of Debtors

The credit risk assessment of commercial debtors is done at Operating Division level and these limits are approved in terms of the DOA.

10. LIQUIDITY RISK MANAGEMENT POLICY

10.1. Objectives

The main objective of the liquidity risk management policy is to ensure adequate availability of funds in all currencies, to enable Transnet to meet all expected and unexpected financial commitments cost effectively through the achievement of the following:

- To manage the contractual maturity gap between assets and liabilities;
- To manage current and projected cash flows;
- To maintain an adequate level of cash holdings;
- To diversify funding sources and have funding programmes available to reduce reliance on particular sources to support effective liquidity risk management;
- To spread the maturity of debt issues to reduce refinancing risk;
- To do pre-funding of major capital redemptions to mitigate liquidity risk; and
- Where needed, extend the debt portfolio to match the underlying assets.

10.2. Level of Liquidity

The appropriate level of liquidity requires a balancing of two conflicting objectives, namely maintaining an adequate level of liquidity holdings, while minimising financial risks, such as credit risk, interest rate risk, re- investment risk and cost of carry.

The role of committed credit lines in addition to surplus liquidity levels is crucially important to ensure credit rating is not negatively impacted. It is therefore critical to establish an appropriate mix of credit/investment alternatives to meet liquidity demands. Multiple use of credit facilities that can be used for overdraft, and/or term capital transfers provide this flexibility without incurring unnecessary credit line or commitment expenses. Transnet has banking credit facilities (committed and uncommitted) available with a number of banks.

10.3. Liquidity Risk Thresholds

10.3.1. Threshold 1

Strive to maintain a minimum of 1.2 times sources versus uses ratio (A/B) on a rolling 12 month basis to meet Standard and Poor's liquidity requirement.

10.3.2. Threshold 2

Available/surplus funds can only be invested in capital market instruments under the following conditions;

- A requirement to invest ring fenced cash for longer periods in the capital markets, where the cash is dedicated for utilization on a specific project. Transnet's intention is to match the maturity of the capital market instrument with the requirements for cash to avoid capital loss.
- Surplus cash that is available for periods longer than three months can be invested in capital market instruments issued by Issuers with a long term investment grade credit rating by utilising approved instruments in paragraph 19.1 with the intention to maintain the investment until maturity to avoid any capital losses.
- The result of an investment condition as stipulated by a Regulator.

Where circumstances beyond Transnet's control, forces Transnet to liquidate the portfolio before its original maturity date, the GCFO's approval should be sought for any possible

capital loss that may be incurred as a result of this premature liquidation. The purpose of investing in these instruments is to enhance return.

10.3.3. Threshold 3

Maximum tenor of money market investments not to exceed **365 days** to ensure that cash is not tied up for long periods of time and defeat liquidity risk management principles.

10.3.4. Threshold 4

Treasury will strive to maintain a cash liquidity buffer of approximately **R1 000 million** during the current phase of intensive capital investments. The buffer will fluctuate over month ends as a result of debtor receipts and creditor payments. The buffer should be included in all cash forecasts. A minimum of **R150 million** should be kept in accounts that are available for same day value to cater for unforeseen disbursements.

10.3.5. Threshold 5

Available (committed) short term facilities of **R 8 billion** during the MDS phase. Committed facilities include cash on hand and short term investments that can be used to meet working capital and debt redemption obligations.

10.3.6. Threshold 6

Available (committed) medium term facilities of **USD 250 million** to cover any expected foreign currency commitments. This can be covered by a revolver credit facility.

10.3.7. Threshold 7

Diversify committed facilities between different global markets to act as buffer when economic stress is encountered in certain regions.

10.3.8. Threshold 8

All major capital redemptions of a single maturity which are more than **R2 billion** should be fully funded six weeks in advance to minimise liquidity risk.

10.4. Liquidity Crisis Process

Guideline Statements on Treasury Best Practice issued by National Treasury states under liquidity risk reporting, "In the event where a liquidity crisis becomes likely it is the duty of the Treasurer immediately to notify the Board officially of the situation".

In the Transnet context and in line with the reporting structure, the Group Treasurer will inform the Board through the office of the GCFO when a liquidity crisis becomes likely. Full disclosure should be done of the possible impact in reports to FINCO, EXCO and Board at scheduled meetings. The CFO will construct a task team with immediate effect to consider alternatives and recommend appropriate action to the Board. If the crisis is of a serious nature, the Board need to inform the Shareholder accordingly.

11. CASH MANAGEMENT

11.1. Background

Cash management activity is driven by the cash needs of underlying business.

The main activities being:

- Working capital; *and*
- Capital expenditure.

11.2. The Objective of the Cash Management Policy

- Maximise liquidity and control cash flows by ensuring that;
 - the operational cash requirements of the Group are adequately met;
 - short-term financing requirements are satisfied by means of approved short-term financing products;
- Maximize the value of funds while minimizing the cost of those funds;
- Ensure that unplanned cash surpluses or shortages are kept to a minimum; *and*
- Monitor and report on the overall cash flow of the Group.

To achieve the above objectives Treasury requires efficient short, medium and long-term cash forecasting and planning. This implies that Treasury must have direct interface with the Operating Divisions in order to understand the sources of cash generation and cash consumption and the underlying drivers of both. This data is then synthesised into a cash management strategy which is executed and performance-managed by Treasury. The integration of cash management strategy and liquidity management solutions remains a paramount objective.

11.3. Centralisation of Bank Balances

The aggregate of all transactions arising in RSA based bank accounts for the Group (the end of day balance) except petty cash accounts and benevolent accounts, are transferred (rolled up) daily to a Group account managed by Treasury.

The main characteristics therefore are that the cash resources and the cash requirements of the Group are managed on a central, pooled basis by Treasury. The balances are posted to the inter-group current accounts of the businesses, which are operated as an exact replica of an external bank account.

11.4. Cash Flow Forecasting

Cash flow forecasting is paramount to prudent and effective cash management. Forecasts are split into inflows and outflows. The forecasts are then consolidated at the Division's head office level and passed through to Treasury once a week for a rolling ninety (90) day forecast. These are further reviewed daily for any substantial movements/adjustments, which are communicated to Treasury to enable funding and investment decisions to be made by Treasury timeously.

Accurate cash forecasting is an essential tool to the cash management process, but reliability of the data is paramount for each of the processes.

A range of forecasts with different time horizons are required by Treasury to reflect different cash management decisions i.e., short-term, medium-term and long-term horizons.

Short Term Forecast

Short-term forecasts (3 months rolling) are used to support day-to-day decisions on cash management. A one day forecast is used to identify actual cash flows through the company's bank accounts to inform funding and investment decisions.

11.4.1. Medium Term Forecast

Medium term forecast is the twelve month rolling cash flow forecast (by month), used to plan major draw-downs and repayments of funding or investment of short/medium-term surpluses. This is used for the annual funding/borrowing plan.

Although the budgeting process information is used, the receipts and disbursement method is the basis of calculating the forecasts.

11.4.2. Long Term Forecast

This is a five year forecast per annum, which is used to manage overall funding requirements in line with the Corporate Plan. These forecasts are based on the corporate budgeting and planning system and are incorporated into the corporate plan projections submitted annually to the Shareholder. There is a close relationship between all these forecasts and the projected Income Statement and Balance Sheet.

11.4.3. Cash Flow Variances

Divisions compare their updated forecasts to actual on a monthly basis and any variances are explained, reported to FINCO and used to enhance the cash management processes. Targets of variances and accuracy levels that need to be achieved are recorded in the Group's cash management policy number CM1/2009 of which the last version was approved by EXCO during April 2010.

In addition to the processes outlined above, the businesses are also expected to maintain constant daily dialogue with Treasury regarding expected changes to the timing of their cash flows.

12. INTEREST RATE RISK POLICY

12.1. Policy Objectives

The main objective of the Interest Rate Risk policy is to minimise the Group's external finance cost through the following:

- Manage the ratio of floating rate exposures versus fixed rate exposures;
- Reduce the WACD to ensure the gap to prevailing market rates is reduced;
- Take advantage of interest rate cycles;
- Support the business strategy in so far as interest rates are concerned;
- Minimize the negative impact of adverse interest rate movements on the Group's net income, cash flows and external finance cost within an acceptable risk profile;
- Minimize the market making cost on the repo facilities granted to the external market making panel under the DMTN programme;
- Manage the basis risk exposure where interest rate risk is netted between investments and borrowings; and
- Manage the duration of the debt portfolio (including derivatives) to try and achieve alignment with the duration of the average payback periods of the assets.

12.2. Interest Rate Risk Exposures

Interest rate risk exposures at Transnet are primarily the result of the Group's financing agreements entered into at either a fixed and or a floating rate that attracts an interest rate risk exposure and needs to be managed. Apart from the existing liabilities, all new funding requirements and or investments are exposed to interest rate risk and negative movements in interest rates can have a material impact on external finance charges. Furthermore movements in swap and or yield curves will have an impact on the fair values of all types of derivatives and loans/investments that are fair valued.

12.3. Investments

The surplus funds of the Group are invested in the short-term liquidity portfolio with prices mainly in a floating rate form and fixed for short periods of time (money market).

12.4. Fixed Versus Floating Interest Rate Composition

The correct interest rate mix is different for each company, industry, differing leverages, acquisitive versus stable entities and differing credit quality companies.

To enable Treasury to manage interest rate trends in both a rising and falling environment, the fixed portion of interest rates may be managed between **70% and 90%**. The floating interest rate portion can therefore vary between **10% and 30% (after hedging)**. The calculation of the composition will include debt of all currencies translated into Rand. The rationale for setting these limits is the result of the long term nature of Transnet's assets. When reporting, Treasury will report on both pre and post hedged debt. The fix/float composition will be reviewed annually as part of this policy review.

12.5. Hedging of Interest Rate Risk

Both floating and fixed rate exposures carry an interest rate risk as fixed rates that are higher than prevailing markets rates create an opportunity loss and need to be managed.

Interest rate hedges entered into over long periods can create volatility in the income statement of the Group if not hedge accounted for. The preferred option will be to enter into a loan with the fix/floating characteristics as required. Interest rate risk hedges can be done at a later stage when markets or trends have changed. Where ever possible Treasury will incorporate interest rate hedging instruments as part of the original funding agreements. Input and review of the proposed loan and or hedging structure should be made by Accounting and the Hedge Accounting specialist to ensure alignment to accounting standards and avoid unacceptable volatility in the Group's financials.

The market conditions (interest rate cycles) play an important role in determining the timing of interest rate risk hedges. Yield curves shapes normally do not support the hedging of interest rate risks over very short periods and it is for this reason that relative long tenors are allowed. Interest rate risk hedges are approved in terms of the DOA.

Although no limits are set in respect of the duration of the overall funding portfolio, the duration should be calculated on a monthly basis and reported to FINCO since short versus longer durations react differently in a high versus low interest rate environment.

13. BREACHING OF LIMITS

Calculation of exposures is measured against exposure limits and breaches of limits are reported to the Treasurer and the GCFO as and when they occur and monthly or in the next meeting of FINCO and the Audit Committee. The breach of any interest rate limit may only be approved by the higher level of authority as outlined in the DOA.

14. MARKET MAKING

14.1. Objective of a Market Making Policy

The objective of the Market Making Policy is to:

- Guide the management of the variability of the spread between the Transnet curve and the Government benchmark curve.
- Improve overall liquidity of Transnet's notes under the DMTN programme.
- Monitor the activities of external market makers closely.
- Ensure limited risk is carried by Transnet as a result of repo - facilities that will be offered by Transnet to the external market makers and or JSE Members.

14.2. Background

External Market Makers were appointed during 2007 to do market making on bonds issued by Transnet under the DMTN programme, to improve the marketability, liquidity and tradability of Transnet bonds so as to optimise financing costs over the long term. The external market makers and or JSE members are used to facilitate the bond auction processes under the DMTN programme. The Dutch auction methodology is used for bond auctions where all bids allocated are cleared at the same spread/all in rate.

The outsourcing arrangement has reduced the risk for Transnet from a balance sheet perspective and this will continue until maturity of the bonds or until such time there is a clear indication that the spreads on bonds issued under DMTN programme has increased only as a result of the inability of the Market Making Panel to assist Transnet in containing the spreads above Government benchmark.

Market Makers are remunerated on an auction participation and performance fee basis. Transnet is only required to make available short term repo facility (buy & sellbacks and sell & buy backs) on Transnet bonds issued under DMTN, with limited risk to Transnet.

14.3. Market Making in Transnet Bonds

14.3.1. Annual Loss on repo portfolio.

The maximum annual loss to accommodate repo trades with the external market making panel and or JSE members should not exceed **R2.5 million** per financial year. This includes the net result of all activities on the repo portfolio, inclusive of carry costs.

Transactional limits applicable on market making spot and repo transactions are defined in the DOA.

14.3.2. Procedure when Breaching of Limit Occurs

Any limit breaches on the repo portfolio should be reported to the Treasurer and GCFO as it happens and to FINCO and the Audit Committee on a monthly basis, or in the next meeting, whichever comes first.

The following approvals are applicable in respect of any repo limit breaches:

	Deputy Treasurer Front Office	Treasurer	GCFO
Amount	< 5%	< 20%	>20%
Tenor	< One week	< Two weeks	> Two weeks

14.3.3. Investments in Transnet Commercial Paper

Investments by Transnet in Transnet Commercial Paper are not allowed as it defeats the utilisation purpose of the funding instrument.

14.3.4. Commercial Paper Auctions

Commercial paper auctions under the DMTN programme are facilitated by the Treasury dealing team and are allocated on a best bid, ascending basis.

15. FOREIGN EXCHANGE (FX) RISK POLICY

15.1. Objectives of the Policy

The main objectives of the FX risk management policy are:

- To mitigate foreign currency risk exposures;
- To bring certainty about future Rand cash flows where FX is involved; and
- To insulate the Groups' income statement against exchange rate fluctuations.

15.2. Foreign Exchange Risk Management

The following principles should be applied within the Group when supplier agreements are concluded. These are critical to ensure that foreign currency risk exposures are minimised on the day of origin.

- Whenever possible foreign currency risk exposures should be eliminated by entering into **fixed RAND** contracts/funding agreements with both local and/or international based suppliers/lenders. Where an international and or local supplier/lender/arranger does the hedging, the pricing needs to be compared with Treasury's pricing to ensure that the hedge is reasonable and market related. The acceptance of pricing needs to be done in accordance with the DOA.
- Where the cost of the hedge by the international supplier/lender/arranger is deemed excessive, Transnet will accept the FX risk and hedge itself accordingly. This will ensure that Transnet has a fixed RAND liability. If foreign currency funding is used, the foreign exchange rate risk will be hedged to Rand as soon as the exposure is committed or the Treasurer can obtain approval from the GCFO if there is a need to delay hedging for a short period of time due to un-favourable market conditions.
- If locally registered suppliers are used where imported components are involved, invoices can only be issued in RAND as exchange control regulations prohibit local suppliers from invoicing Transnet in a foreign currency. BU's must request the local supplier to hedge the imported portion where ever practical, possible and or to fix the price in RAND for minimum periods as these indirect FX exposures cannot be hedged by Transnet due to SARB regulations. There will be some exceptions where small business enterprises do not have sufficient credit lines to accommodate FX hedging on their balance sheet and or if their cost of hedging is unacceptable to Transnet. For these exceptions, specific SARB approval needs to be obtained by the local supplier to allow them to issue FX invoices to Transnet, after which Transnet will hedge on it's own balance sheet.
- If locally registered incorporated/un-incorporated joint ventures (JV) are utilised, SARB's approval should be obtained by the JV for permission to issue invoices in a foreign currency. This approach should be followed if RAND contracting cannot be achieved.
- All contracts/funding agreements with a foreign currency component of more than **R50m** should be reviewed by Treasury, Group Finance and Group Tax during the establishment process and Operating Divisions should get the sign off from all the

respective sections before agreements are concluded. Contracts with a foreign currency component of more than **R100m** should also get the sign off by the GCFO.

- Embedded derivatives in supplier/funding agreements must be identified, risk analysed and avoided before agreements are concluded, as this can add to volatility in the Group's financials. All embedded derivatives should be declared to Treasury and Group Financial Reporting on a monthly basis.

Foreign exchange risk should be managed on a net basis including operating and capital exposures (both income and expenditure), although the FX income for Transnet is minute. FX exposures are determined from budgeted FX Exposures, FX quarterly updates from Operating Divisions, and FX cash flows directly submitted by the Operating divisions to Treasury and or obtained by Treasury as a result of their involvement during the contracting process. The net FX position should be monitored on a monthly basis. Foreign currency risk exposures should be updated on at least a quarterly basis and or earlier if new/additional information is available from capital contracts. The accuracy of the foreign currency risk exposures is of critical importance when hedging strategies are designed.

The accounting and financial risk implications should be fully analysed before a hedging strategy is implemented. The purpose of hedging strategies should be to bring certainty of future Rand payments and receipts and to minimise volatility in the Groups' income statement. The correct application of hedge accounting on all major hedges is paramount as hedges can create material volatility in the Group's financials if not hedge accounted for. Hedging also enables Operating Divisions and Treasury to prepare more accurate cash flow budgets.

The foreign versus domestic currency funding decision (loans/leases) should be executed within the approved annual borrowing plan and the DOA.

Foreign exchange hedging should match specific cash flow requirements if there is relative certainty of payment dates. If cash flows are uncertain as a result of uncertain delivery schedules, hedging may be dealt in quarterly/ semi-annual, and/ or in annual buckets and early take ups allowed to facilitate the actual payments. No pooling of hedging over various exposure types is allowed as it defeats the object of hedging specific foreign cash flows per project.

The decision to manage capital FX exposures (such as leases and loans on the Transnet balance sheet) should be combined with the business strategy and funding decisions to ensure that funding and FX risk management strategies are complimentary to the business strategy.

No speculative foreign exchange transactions are allowed and Treasury is the only approved participant on behalf of Transnet in the currency markets.

A foreign currency exposure will arise once an agreement/letter of acceptance and or purchase order has been concluded and signed by both parties and agreement on FX cash flows and delivery dates have been agreed upon. With specific approval from the GCFO, pre FX hedging up to **70%** can be approved on future purchase orders on "as and when" based supply agreements over a twelve month period to bring cost certainty in RAND. The approval must be accompanied by evidence from the OD that there is a high certainty that exposures will realise over such period. Furthermore such pre-hedging must be within exchange control regulations.

The Operating Division is expected to submit approved FX cash flows to Treasury within 10 business days after the agreement/purchase order are signed to enable Treasury to arrange hedging within the approvals of DOA.

15.3. Foreign Exchange Hedging

15.3.1. Operational Exposures

All direct committed foreign currency operational expenses (Opex) should be hedged, subject to the limits below. The limits are based on **0.5%** of the latest annual Opex budgeted (excluding depreciation and amortisation) with a **minimum of R20 million**.

The cumulative committed un-hedged position in respect of Opex shall not exceed the following limits per Operating Division.

In cases where an Operating Division has submitted approved FX cash flows to Treasury with a request to hedge, the exposure will be considered hedged for reporting purposes. This is to not penalise operating divisions unfairly since hedge approvals can take time and might not have gone full circle before reporting at month end, especially where requests are submitted just before reporting date. All other un-hedged positions will however be reported to FINCO on a monthly basis.

The amounts below are based on the 2014/2015 budgets and will be updated once approved budgets for the new financial year become available.

Core Operating Division	Net Budgeted Operating Expenses (excluding depreciation and amortisation)	Committed Un-hedged Limit
Transnet Freight Rail	R21 771 m	R109 m
Transnet Engineering	R12 106 m	R60 m
Transnet Port Terminals	R6 917 m	R35 m
Transnet Corporate Centre	R3 954 m	R20 m
Transnet National Ports Authority	R3 419 m	R20 m
Transnet Capital Projects	R3 534 m	R20 m
Transnet Pipelines	R972 m	R20 m

15.3.2. Capital Exposures

All direct committed foreign currency exposures in respect of capital projects should be hedged as soon as the exposure is committed, subject to the aggregate limits below. The cumulative committed un-hedged position in respect of capex should not exceed the following limits per Operating Division. The limits are based on **1%** of the annual budgeted capital expenditure programme, including capitalised borrowing costs with a minimum of **R25 million**.

In cases where an Operating Division has submitted approved FX cash flows to Treasury with a request to hedge, the exposure will be considered hedged for reporting purposes. This is to not penalise operating divisions unfairly since hedge approvals can take time and might not have gone full circle before reporting at month end, especially where requests are submitted just before reporting date. All other un-hedged positions will however be reported to FINCO on a monthly basis.

The amounts below are based on the 2014/2015 budgets and will be updated once approved budgets for the new financial year become available.

Core Operating Division	Budgeted Capex (excluding capitalised borrowing costs)	Committed Un-hedged Limit
Transnet Freight Rail	R21 555 m	R216 m
Transnet Pipelines	R 1 865 m	R19 m
Transnet National Ports Authority	R2 369 m	R24 m
Transnet Port Terminals	R1 909 m	R25 m
Transnet Engineering	R1 094 m	R25 m
Transnet Corporate Centre	R1 469 m	R25 m
Transnet Property	R322 m	R25 m
Transnet Capital Projects	R29 m	R25 m

All foreign currency hedging and operational transactions will be executed in terms of the approvals in the DOA.

Monthly feedback should be given to FINCO on the status and performance of the hedges executed by Treasury against the underlying exposure. The cumulative un-hedged position should be reported to FINCO on a monthly basis.

The Operating Division which creates a foreign creditor on their balance sheet should take the responsibility for FX hedging arrangements through Transnet Treasury. This is also applicable in so far as inter group transactions are concerned.

15.3.3. Exchange Control

In the past foreign exchange hedging could only be implemented once a firm and ascertainable commitment was established as required by Exchange Control Regulations. A commitment, from an exchange control perspective, is established once a purchase order/supplier contract/letter of acceptance has been signed by both Transnet and the supplier. During the middle of 2010 the SARB granted permission to allow local companies/residents/corporates to actively manage currency hedging facilities, in line with international best practice. The SARB now allows the pre hedging of future commitments, the hedging of balance sheet translation risk, foreign investment risk and the restructuring of economically inefficient hedges with residual maturities shorter than six months. These changes can only be considered and implemented by Transnet Treasury once there is a high degree of certainty that the hedge accounting process will still be highly effective, the FX risk is not jeopardised and with the specific approval from the GCFO and in line with the DOA.

All foreign currency hedges may only be entered into with local authorised dealers unless specific approval has been obtained from the SARB to deviate from this ruling. Proof of documentation is now only required by the bank doing the cross-border pay away and not the bank that establishes the contract. Currency contracts that do not result in a physical pay away under existing exchange control rulings, or contracts that are cancelled, may only be settled locally in RAND.

Transnet Treasury is the only Business Unit within the Group that is allowed to action foreign currency payments.

All requests from Operating Divisions to the SARB to obtain certain approvals/exemptions should only be done by Treasury.

15.3.4. Procedure in Limit Breaches

All foreign currency limit breaches are to be approved by the higher level of authority as stipulated in the DOA and should be reported to the Treasurer and the GCFO on a daily basis as they happen as well as to FINCO and the Audit Committee.

16. FUNDING POLICY

16.1. Objectives

Transnet's funding strategy aims to ensure that the Group has sufficient liquidity to meet all its operational and capital investment funding requirements by raising its required funding ahead of demand cost-effectively from diverse funding sources.

16.2. ACTSA Charter of best Practice Principle No 16: Funding Strategies

The above principle states the following: "Alternative strategies to meet liquidity needs arising from either a loss of market liquidity or market access should be incorporated into the company's contingency planning process".

16.3. Transnet will execute its Borrowing Programme on the following broad Principles:

Government Guarantees- Transnet will raise its required funding on the strength of its own balance sheet without any Government Guarantees.

Matching Assets and Liabilities – Wherever possible matching the payback period of the asset (not the economic life) with the liability. The tenor of funding will generally be between 7 and 25 years depending on the asset being financed as well as the availability of credit lines and investor appetite for different yield curve maturities. Long term debt will be used for capital expenditure and short term debt for operational cash flow requirements.

Flexibility of Markets and Instruments - Movements in interest rates, characteristics of the different markets, the shape of the yield curves, all in cost achieved, swapping of foreign funding to RAND are factors that will be considered when deciding on the appropriate funding instrument. Treasury must ensure that the funding instruments used should enable them to achieve alignment with the Group's overall strategy as approved in the Corporate Plan. Treasury will take advantage of any window of opportunity offered by the interest rate environment and the yield curve.

Execution of Funding Plan - Transnet will ensure funding is acquired ahead of demand within the guidelines as stipulated in this FRMF of ensuring that all financial risks exposures are mitigated such as liquidity, refinancing, interest rate and foreign exchange rate risk. All loans or borrowings denominated in a foreign currency will be hedged to Rand. Preference will be to fund in Rand where possible.

Diversify the Investor Base – Treasury will endeavour to diversify its investor base through deal, non-deal road shows and market making (locally), not only locally but also abroad in markets and countries where Treasury is of the opinion that they can successfully issue debt instruments at cost effective rates.

Cost Effectiveness of Funds - Transnet's strategy of reducing the WACC by reducing the WACD will be the primary objective to utilising the most cost effective funding instrument.

Debt/Equity and cash interest cover ratios – Transnet will manage these ratios within the pre-agreed thresholds as agreed with Shareholder in Shareholder's Compact. **Extend Duration of Debt Portfolio** – The funding strategy will include the extension of the duration of the debt portfolio due to the long term nature of the Group's assets and payback periods.

Innovative funding solutions

Treasury will explore innovative funding solutions with the aim to reduce WACD as well as impact on gearing and cash interest cover ratios.

Building the Transnet Yield Curve – Treasury will continue building Transnet's yield curve at the lowest possible spread above the Government benchmark for fixed rate funding and the lowest possible spread above the floating rate benchmark for floating rate funding (JIBAR, LIBOR, EUROBOR etc) and smooth out the maturity profile along the curve to reduce re-financing risk.

Credit Rating - Maintain or improve Transnet's long term investment grade credit rating as this is imperative to ensure availability of credit lines and lower cost of funding. A non-investment grade long term credit rating will have serious implications for Transnet and will trigger certain loan covenants causing a possible cross default across Transnet's loans.

Funding strategies - Will be affirmed on an annual basis through the Corporate Plan.

Reputational risk – To be considered when availability of credit lines are considered.

16.4. Funding Requirement

The size of the funding requirement is driven principally by five factors, namely; capital expenditure programme, loan redemptions, debt service, cash flows from operations, investment activities and an adequate cash buffer necessary for prudent liquidity risk management.

16.5. Diversify Funding Sources

Transnet will seek to expand and diversify its funding sources through the funding initiatives as listed below.

- Bank credit lines.
- Commercial paper for short term funding under DMTN programme.
- Domestic capital markets for note issuance under the R55 billion DMTN programme in order to complete the Transnet yield curve: Tapping existing note issues which have not reached a self-imposed capped limit (to manage re-financing risk) New bond issues to supplement existing issues.
- Long dated project specific bonds to fund designated projects.
- Tied/Untied ECA supported financing for imports.
- Development Finance Institutions (DFI's) and International Finance Institutions (IFI's)/ multi-lateral organisations to create further alternative funding base.
- Issuing bonds in other markets either as public or private placements such as the YEN, US\$, Euro, Australian Dollar, Swiss Franc and Sukuk markets thereby ensuring further diversification of funding sources. The cost of possible funding to be raised will be compared with Rand funding.
- Index linked notes under the DMTN programme.
- Asset-backed finance and other related finance solutions.
- Exploring ways of working with customers and or interested parties to part fund certain of the capital investments.
- Offshore borrowing programmes (Global Medium Term Note Programme (GMTN)).
- Bonds guaranteed by ECA's/DFI's.
- Domestic and International bank loans.
- Syndicated loan markets in both local and international markets.
- Innovative forms of project finance (including PPP's and others), to create additional capacity on the Transnet balance sheet.
- Working with customers and/or interested parties to part fund certain of the capital investments using private sector participation mechanisms.

- Re-payment and or re-financing and or re-structuring of existing old expensive debt and implementing more economically viable financing structures.
- Sharia compliant funding.
- Leasing as an alternative funding solution.
- Global infrastructure and sovereign wealth funds.
- Hybrid funding structures including equity.
- Debt redemption fund ensuring Transnet's large loan redemptions are met, thus minimising refinancing risk.

The approvals required for signing of loan documentation and drawdown notices per funding category/instrument per financial year are defined in the DOA and the aggregate total may not exceed the total funding amount as approved by the Board through the annual Corporate Plan.

16.6. Pricing in Illiquid Markets

Where markets are illiquid Treasury should stress test pricing of funding requirements to determine the subsequent impact on external finance costs per financial year.

16.7. Reporting

Monthly feedback should be given to Finco and EXCO on the portfolio duration, the amount of funding executed, spreads achieved and ultimate funding levels obtained as well as an overall WACD for the funding portfolio.

17. DEBT MANAGEMENT

17.1. Letters of Credit

Letters of credit (LC) in a Transnet context are normally requested by certain suppliers of goods and services to ensure payment is received as contractually agreed. Any LC in a foreign currency should be hedged by Treasury and not the issuer of the LC. LC's may only be issued by Treasury in line with the approvals as stipulated in the DOA.

The Issuer of the LC must at have **Long Term Investment Grade** credit rating. The issuance of an LC should not be promoted as it will increase cost for the Group, but is then acceptable if supplier is not willing to contract without an LC. All endeavours must be put in place to obtain an LC at the lowest possible cost for the Group.

17.2. Borrowing Powers and Guarantees

In terms of section 66 of the PFMA a Schedule 2 Public Entity such as Transnet may only borrow money and or issue guarantees through its Accounting Authority, which is the Transnet Board. The Accounting Authority may not delegate this without prior written approval from the Minister. Transnet received written approval on 28 March 2001 (borrowing powers) and on 28 February 2002 (guarantees) from the Minister to enable the Board to sub delegate its borrowing powers and its ability to issue guarantees.

The limits applicable in respect of borrowing powers and the issuing of guarantees are defined in the DOA.

The Issuer of the Guarantee must have a **Long Term Investment Grade** credit rating.

17.3. Standard Loan Documentation

The loan documentation should be aligned with the funding strategy. Transnet Treasury negotiates for terms and conditions that support financial stability, risk reduction, flexibility and cost effectiveness of funding instruments. All funding agreements entered into by Treasury should get sign off from Group Legal, Tax, and all the respective areas within Treasury to ensure that financial risks are effectively analysed and mitigated.

17.4. Advance Payment Guarantees and Performance Bonds

Operating Divisions should approach Treasury to provide sign off and acceptance on the "Issuer" of Advance Payment Guarantees and Performance Bonds in supplier agreements to manage the counter party risk exposures. The Group should endeavour to always ensure that the issuers of these bonds have a "long term investment grade credit rating". Exceptions to the above may only be approved by the GCFO.

17.5. Relationships with Financial Institutions

Treasury's ability to successfully raise funding and hedging depends mainly on Transnet's credit rating and the strength of its relationships with investors and other stakeholders. It is therefore imperative to communicate Transnet's business and funding strategy to these institutions effectively and timeously. Road shows by Transnet Executives serve an important role in keeping the investor community/funders abreast of Transnet's strategic objectives. The relationship with financial institutions is important, and it should focus on institutions from which mutual benefit is to be achieved.

17.6. Financial Covenants

Monitoring of key financial ratios i.e. cash interest cover and gearing are important especially during the market demand strategy phase. Treasury needs to monitor the impact of financial covenants in loan agreements, funding and hedging programs at least on a quarterly basis to try and determine in advance the likelihood of breaching and the resultant cost implication thereof. The outcome of the analysis should be reported to FINCO and Group Audit Committee at least quarterly. Stress scenarios should be performed to cover different market events and when early redemption of debt is considered, when information is requested from Group and impact on covenants are assessed. The following ratios should be monitored:

- Maximum gearing of 50% and
- Minimum cash interest cover of 3 times.

17.7. Asset and Liability Management

Although Treasury will always endeavour to match liabilities with pay back periods of the assets as reflected above, the Treasury function will not incorporate full ALCO (Asset and Liability Committee) responsibilities where liability matching is done against assets, inclusive of re-pricing gap analysis, scenario analysis, stress testing and duration management.

17.8. Treasury Compliance

The formulation of the Compliance Risk Management Framework and Policy is the responsibility of Transnet Group Compliance. The Board approved Policy and Framework are adopted and applied at Group Treasury. A dedicated Compliance Officer is resident within Treasury who assists Treasury Management in complying with the

laws/regulations/directives/rules/standards that are relevant to Treasury (The Treasury Universe).

17.9. Contractual Compliance

Contractual compliance in respect of supplier agreements is managed at Operating Divisional level.

17.10. Regulatory Compliance

The management and monitoring of regulatory compliance within the Group is managed by Group Economic Regulation.

17.11. Intergroup Financing

17.11.1. Objective

The objective of the Intergroup Financing policy is to provide guidelines and directives within which Treasury can establish inter group loans to Operating Divisions.

17.11.2. External Funding

The Operating Divisions of Transnet are not allowed to obtain direct funding from external sources except for operational leases. Treasury is the only Business Unit mandated and authorised to enter into external financing agreements.

17.11.3. Back to Back Intergroup Loans

To enable Treasury to recover the costs from the Operating Divisions, back-to-back loans between Treasury and the Operating Divisions are concluded. As Transnet Treasury is not a profit centre, no margins should be added by Treasury to ensure that the pricing remains cost effective. It is not practical to establish inter group loans on an occasional basis and the Operating Division can utilise their current account facility to fund operational expenses and small capital expenses on a daily basis. Short, medium and long term inter group loans can be established quarterly as more clarity will then be available on the cash flow stream of capital projects.

17.11.4. Approval of Intergroup Loans

Operational and capital budgets of all the Operating Divisions are approved by the Board on an annual basis and this approval enables Treasury to provide funding to the Operating Division in amounts equal to the approved budgets as the consolidated results of the budgets are incorporated into the annual borrowing plan. Increases in estimated total cost per project are approved in terms of the DOA.

The granting of interest bearing inter group loans can only be done in line with the approvals as defined in the DOA.

17.11.5. Operational Leases in Foreign Currency

Any operational leases that are not Rand denominated need specific approval from the GCFO before it can be concluded. This should only be allowed in exceptional cases where Rand denominated operational leases cannot be utilised as with over-border activities.

18. COMMODITY RISK POLICY (FUEL)

18.1. Objective of the Policy

The objective of this policy is to set specific risk management directives and guidelines within which Treasury should manage the Commodity (fuel) risk exposure of the Group and to create more certainty in terms of cash flows to allow the Operating Division to establish tariffs on sound principles and still be competitive.

18.2. Basis Risk

Basis risk is important when commodity fuel hedges are entered into. It can be defined as the relationship between the underlying products used in the hedges versus the actual commodity consumed by Transnet. The products underlying the hedging transactions could be ICE Gasoil or Brent crude oil, for example, whilst the basic fuel price (BFP) is based on Mediterranean and Arab Gulf based products.

Basis risk will always be part of a fuel hedging program and a tool available to mitigate basis risk is to ensure that the historic price correlation over a twelve-month period between the underlying products utilised in the hedges and the petroleum products consumed by Transnet has a historic correlation greater than **80%** at the outset of the hedge.

18.3. Margining and Collateral

The majority of commodity-hedging transactions are subject to daily/monthly margining agreements, which are governed by credit support annex (CSA's) to the main ISDA agreements. Transnet will not enter into any CSA's with counterparties as there should be counterparties available who are willing to enter into fuel hedging transactions without margining arrangements.

To ensure that no unnecessary pressure is put on the cash resources of the Group; fuel-hedging transactions may only be executed with approved counterparties who do not require margining agreements. This is to avoid the posting of any collateral and the tying up of cash for extended periods of time. Position will be reviewed on an annual basis.

18.4. Compliance and Exchange Control Regulations

The South African Reserve Bank only allows RAND based fuel hedges as Transnet is not a natural generator of foreign currency income. Fuel hedges in any foreign currency are not allowed. In addition to this the SARB does not allow the USD/RAND component of fuel to be hedged separately from the commodity component.

18.5. Hedging Program

RAND based fuel hedging products simultaneously hedge both the commodity and exchange rate risk of fuel exposures. Available hedging instruments only allow the hedging of the basic fuel price (BFP) as add-ons, such as taxes, levies and margins and these cannot be hedged. Although it varies from month to month, the basic fuel price constitutes around 60% of the overall price of diesel and petrol, and it is this portion that is exposed to movements in oil prices and the USD/ZAR exchange rate.

The ultimate product chosen for a specific strategy will depend on pricing, best mitigation of the risk exposure and after consideration of the accounting and tax treatment. For effective hedging the following are imperative:

- No speculative transactions may be entered into and transactions can only be used for hedging purposes.
- The liquidity of the financial instrument and the underlying commodity must be high with transparent and accessible pricing.
- Only vanilla type of instruments is allowed and no exotic instruments like extendibility of structures in terms of volumes and tenor by choice of the counterparty and double-up functionality are allowed.
- No physical exchange of the commodity is allowed and all hedges must be cash settled.
- The tenor of fuel hedges may not exceed eighteen months on a rolling basis.
- The hedges may not exceed **75%** of annual budgeted consumption to allow for variability in actual consumption.
- The natural hedge in the form of the energy levy that is incorporated into certain customer agreements at TFR will be used to mitigate part of the fuel risk exposures and this should be considered when hedging strategies are developed to ensure that both the hedges and the energy levy do not exceed the **75%**.
- Should hedging be done and the levels have not been set for the energy levy per the financial year (as this is only done on 01 April annually), energy levy should be excluded. Any hedges done after levy has been set, should include impact of energy levy.
- The hedging programme's main emphasis is to ensure that the risk limits as contained in paragraph 7.2.1.2 are not exceeded per financial year to maintain fuel costs due to commodity and exchange rate movements.

18.6. Hedging Instruments

The type of instruments utilised in the hedging programme will determine the level of possible volatility in the Group's income statement due to monthly fair value movements. The utilisation of swaps and zero cost structures will add to volatility in the financials as a result of movements in currencies, oil prices and volatilities.

Buying Call options limit the volatility to the premium paid over the life of the option, but depending on market conditions, may be expensive to utilise. Volatility in the financials can be experienced over reporting periods if hedge accounting is not applied or fully effective.

It should be noted that an offsetting value would be achieved through the actual purchase of the physical fuel by the Operating Divisions. This will be recorded as part of operating expenditure.

The application of hedge accounting on fuel hedging structures will be considered for implementation after adoption of IFRS9 due to the complex nature of commodity driven hedging requirements as contained in IAS39.

FINCO will be informed on a monthly basis of the fair value movements and the subsequent impact on the income statement to enable them to monitor this impact and the overall performance of the hedges.

The hedging of commodity risk (fuel must be done in accordance with the limits stipulated in the DOA.

18.7. Transfer Pricing and Transactional Requirements

Hedging transactions entered into on behalf of the Operating Division will be recorded in the Treasury system under the dedicated Operating Divisional entities.

Treasury is the only authorised participant in the financial markets to enter into fuel hedging transactions with external counterparties. Sufficient monthly information on fuel hedges will be provided to the respective Operating Divisions to facilitate proper disclosure in general ledger.

18.8. System Requirements

Commodity transactions need specialised systems to calculate the correct fair market values on a daily/weekly/monthly basis and as such this can only be done by Treasury. The Treasury operational system can price vanilla commodity transactions. In practice where Treasury is not capable of using its systems to price accurately, it is common practise to outsource such services and Transnet will explore using the services of a reputable bank/financial institution to provide such services to it, should it be necessary.

19. OTHER COMMODITY RISKS (SUPPLY AGREEMENTS)

The MDS will require continuous establishment and conclusion of supply agreements to procure goods and services for both capital and operational risk purposes. The majority of supply agreements will contain price escalation clauses that need to be managed as part of the procurement process.

The following processes should be followed to mitigate the financial risk exposures as a result of price escalation clauses:

- Wherever possible the preference should always be to establish a fixed rate Rand contract to avoid any price escalation over the tenor of the contract.
- This should be done by transferring the cost of price escalation to the balance sheet of the supplier.
- The above should not be done at all cost to Transnet and an analysis should be done to establish reasonability of difference between the variable price quoted and by fixing the price with the supplier.
- Only if no agreement can be reached with supplier to fix the pricing and or the cost of fixing appears to be unacceptable high, a floating price should be accepted and the potential expected variable costs over the duration of the contract should be disclosed under the risk analysis and included under the estimated total cost of the project.

20. NEW FINANCIAL INSTRUMENTS

Treasury can only transact in instruments listed in this FRMF. This list is reviewed from time to time. The Treasurer can motivate the use of new financial instruments that are not included under par 18.1 to the Group CFO for approval and inclusion in the FRMF. Any new instrument that was not utilised by Treasury before in the production environment, needs to go through a formal and detailed system testing process.

The testing process should at least include the following; Instrument description, deal execution, confirmation, financial risks, operational risks, cash flows, accounting, hedge

accounting (if applicable), legal (including confirmation and master agreements), taxation, controls, systems, settlements, limit structures, and pricing.

An official test pack should be prepared, providing evidence that all the disciplines within Treasury have tested the detailed impact of the new financial instrument in their area of responsibility. The test pack should be structured in such a way that it follows the normal transactional flow with full segregation of duties through the Front Office, Middle Office, Operations, Hedge Accounting and finally Group Tax.

The Treasury information system should be able to accurately price all the financial instruments in paragraph 0 below. If any new financial instrument is considered for approval and the pricing cannot be accurately determined by the Group Treasury system, a detailed workaround of the processes to be followed, should be included in the test pack.

All the Deputy Treasurers, the Head of Structured Finance and the Group Treasurer should sign off the test pack before the instrument can be utilised in the production environment.

20.1. Approved Financial Instruments

The following financial instruments can be utilised for funding, hedging, investments and or market making purposes (depending on portfolio type)

- Commodity (fuel) swaps (Asian style option, averaged daily and settled monthly/quarterly) in ZAR;
- Commodity (fuel) options in ZAR;
- Commodity (fuel) collar structures in ZAR;
- Commodity (fuel) call spread options in ZAR;
- Commodity (fuel) put spread options in ZAR;
- Bonds in Rand and or a foreign Currency (Domestic or International);
- Transnet commercial paper;
- Interest rate options, including bond options;
- Repurchase agreements (buy and sell back, sell and buy back and repo's);
- Index linked bonds;
- Term loans in foreign currency and Rand;
- Banking facilities i.e. overdrafts;
- Operational bank balances;
- Structured finance transactions;
- Financial Leases;
- Operational leases;
- All instruments included under the DMTN programme;
- All instruments included under the ECA umbrella facility;
- All instruments included under the GMTN programme;
- Letters of credit;
- Bonds/notes issued by Government and major banks in South Africa.
- Commercial paper/notes issued by Government and major banks in SA.
- Treasury bills of the SA Government;
- Bonds/notes issued by State Owned Companies in SA;
- Commercial paper/notes issued by State Owned Companies in SA.
- Negotiable certificates of deposits issued by banks if an approved counter party for investment purposes;
- Call and term deposits;
- Interest rate swaps;
- Rand overnight deposit swaps;
- Interest rate options, caps and collars;
- Forward rate agreements;
- Foreign currency spot transactions;
- Foreign currency forward transactions;
- Participation foreign currency forward transactions;

- Cross currency interest rate swaps;
- Foreign currency options and collars;
- Foreign currency deposits; and
- Foreign currency operational bank accounts.
- Hybrid funding structures including equity.

It can be seen from the list above that the intention is always to utilise vanilla type financial instruments. "Naked" short (written) option positions are not allowed on any instrument type, unless the notional amount is offset with a long option position within a hedging structure as approved by the GCFO.

21. HEDGING AND ACCOUNTING IMPLICATIONS

21.1. Background

Transnet is required to report in ZAR under IFRS accounting standards. Certain costs (fuel, operational and capital expenditure, leases and loans) are directly or indirectly foreign currency denominated. Transnet is therefore exposed to the balance sheet and income statement effects of exchange rate, interest rate and commodity price movements for items denominated in foreign currency. The following accounting statements apply to financial instruments:

IAS 39 - Financial Instruments: Recognition and Measurement

IAS 21 - The Effects of Changes in Foreign Exchange Rates

IAS 32 - Financial Instruments: Presentation

IFRS 7 - Financial Instruments: Disclosures

IFRS 9 – Financial Instruments (partially released)

IFRS 13 – Fair Value Measurement

21.2. Objective of the Policy

The objective is to show the economic effect of hedging activities, whilst complying with IFRS. A further objective is to minimise income statement volatility. To this end, the use of hedge accounting is required on all large capital projects which expose the company to significant currency risk over extended periods of time.

21.3. Hedge Accounting

Transnet hedges its risk exposures by using financial derivatives. In terms of IAS39, derivatives used for hedging are marked to market, and changes in market value are recognised in profit or loss. Hedge accounting enables Transnet to reduce income statement volatility caused by changes in the fair value of derivatives that are used for hedging.

Transnet's accounting policy allows for both fair value and cash flow hedge accounting. Hedge Accounting is only permitted if all the conditions prescribed in IAS 39 for Hedge Accounting have been complied with. Furthermore, hedge accounting must be approved by the General Manager Group Finance, who approves on behalf of the Transnet Hedge Accounting Committee, (a sub-committee of the Finance Committee). The Hedge Accounting Committee will determine the threshold that will be utilised for the enforcement of hedge accounting on individual projects.

21.4. Fair Value Hedge Accounting

Fair value hedges are hedges of an exposure to changes in the fair value of a recognised asset or liability or an unrecognised firm commitment attributable to a particular risk that could affect profit or loss. The application of hedge accounting results in both the exposure(s) being hedged and the hedging instrument(s) being recognised on the balance sheet at fair value with changes in their fair value recognised in profit or loss. If the hedge is perfectly effective, the net effect in the income statement should be nil. Deviations from 100% effectiveness (i.e. hedge ineffectiveness) are automatically recognised in the income statement on a monthly basis as long as the effectiveness stays within the 80% to 125% range. Hedge accounting is discontinued prospectively when the hedge effectiveness moves outside the 80% to 125% range. One exception to this rule is the law of small numbers where the ineffectiveness results from small and immaterial amounts being used in the hedge effectiveness calculation for a certain period which is provided for in the hedge documentation.

21.5. Cash Flow Hedge Accounting

Cash flow hedges are hedges of an exposure to variability in cash flows attributable to a particular risk associated with a recognised asset or liability or a highly probable forecast transaction that could affect profit or loss. To the extent that the hedge is effective in terms of IAS 39, the change in the fair value of the derivative is booked to Equity, thus reducing Income Statement volatility. For hedges of forecast transactions to acquire capital assets, the amount recognised in equity is subsequently included in the initial cost of the asset on the invoice date. For hedges of recognised financial assets or liabilities (e.g. foreign currency denominated loans) the amount recognised in equity is reclassified to the income statement in the same period that the asset or liability affects profit or loss. Over effectiveness i.e. amounts in excess of 100% hedge effectiveness are recognised in the income statement on a monthly basis as long as the effectiveness stays within the 80% to 125% range. Hedge accounting is discontinued prospectively when the hedge effectiveness moves outside the 80% to 125% range. One exception to this rule is the law of small numbers as explained under fair value hedges above.

21.6. Hedge Accounting Criteria

The following criteria are applied by Treasury:

- The hedged risk must be an exposure to changes in fair value or variations in cash flows attributable to a particular financial risk and that could affect profit or loss.
- At inception, the hedge relationship is formally designated and documented in accordance with Transnet's risk management objectives and strategy for undertaking the hedge.
- The hedge is expected to be highly effective in achieving offsetting changes in fair values or cash flows attributable to the hedged risk.
- For cash flow hedges, the forecast transaction that is subject to the hedge must be highly probable and must present an exposure to variations in cash flows that could ultimately affect profit or loss.
- Hedge effectiveness can be reliably measurable.
- The hedge must remain highly effective during the whole period of the hedge.

21.7. Hedge Accounting Documentation

Formal hedge documentation is required at inception of the hedge and must include the following:

- Identification of the hedging instrument and the hedged item or transaction.
- The nature of the risk being hedged.
- The risk management objective and strategy for undertaking the hedge.
- How effectiveness will be assessed and at what intervals.

21.7.1. Assessment of Hedge Effectiveness

Prospective Assessment - must be done at inception and throughout the life of the hedge. It must be highly effective in offsetting changes in fair value or cash flows. Testing methods to be used include dollar offset (including the hypothetical derivative method and ratio analysis) critical terms match, regression analysis, risk-reduction test, etc. The hedging results must be within the range of **80% to 125%**.

Retrospective Assessment - must be done at each reporting date and throughout the life of the hedge. Testing methods to be used include the dollar offset method, regression analysis etc. The hedging results must be within the **80% to 125%** range.

21.8. Hedge Accounting and Hedge Documentation

To qualify for hedge accounting designation, the hedged item should create an exposure to risk that ultimately affects profit or loss.

The following can be designated as hedged items:

- A single or group of recognised assets or liabilities.
- Unrecognised firm commitments or highly probable forecast transactions.
- A portion of the cash flows or fair value of a financial asset or liability.
- Net investment in foreign operations.

Net positions cannot be designated as hedged items.

The following **hedge able risks** are normally found in Transnet associated with financial assets/liabilities:

- Interest rate risk;
- Foreign currency risk;
- Commodity risk; or
- Credit risk.

The following can be designated as hedging instruments:

- All derivative financial instruments with third parties.
- Non derivatives for a hedge of foreign currency risk i.e. receivables, debtors etc.
- Combination of the above two except for net written options.

A portion of the hedging instrument can be used in the designation but a hedging instrument cannot be designated for only a portion of its life.

21.9. The Role of Treasury and Group Finance

Treasury must record both the hedging instrument and the hedged item on the Treasury Management system, maintain them on a regular basis, ensure correctness of data, adhere to all the conditions of this FRMF and provide the Operating Divisions with all the required information on a monthly basis to enable them to properly account for the value of the assets/liabilities, including the fair values of the hedging instrument (derivative). Group Finance should provide the fair values of the hedged item as well as the amounts on the journal entries that need to be passed by the Operating Divisions.

21.10.Valuation of Financial Instruments

ACTSA Charter of Best Practice Principle No 11: Valuation

"All positions should be independently valued at fair value using approved policies and procedures at least daily/weekly"

Guideline Statements on Treasury Best Practice issued by National Treasury – Formally documented and approved policies and procedures should be used for the revaluation of positions. Valuations should be based on an appropriate bid or offer level obtained from a recognised provider of market data. This should be in compliance with internationally accepted accounting standards. Prices and rates used for revaluation should be taken from independent sources. Where in-house prices are used, independent review procedures should be in place, including independent models".

22. TAX RISK POLICY

- The tax consequences of the deal must be evaluated and quantified before any financing or hedging deal is concluded.
- Group Tax must sign off on the deal before any financing transaction is concluded.
- Transnet will not enter into any structures that have a high probability of breaching the provisions of sections 80A and 103 of the Income Tax Act, no 58 of 1962 or any equivalent legislation that may be promulgated in the future.
- Transnet will not accept any tax risk being transferred from the counterparty to Transnet.
- Transnet will not accept any risk of a structure being queried by SARS and this risk will be for the account of the counterparty.
- The risk of future changes in tax laws making a structure less attractive than what it initially was is for the account of the counterparty or Transnet must have a cost-effective exit strategy.
- Tax implications must be taken into account in the budgeting process.
- Financial and Performance reporting must be done pre-tax and post-tax.
- Proposed funding strategies must be analysed, and the results must be tabled pre-tax and post tax.
- The funding plan should be formulated pre-tax and post-tax.
- Transnet will not provide security or accept liability in respect of foreign tax jurisdictions.
- Transnet will not provide or accept so-called evergreen security or liability.

23. FINANCIAL RISK MANAGEMENT PERFORMANCE AND EVALUATION

In adopting a Financial Risk Management policy framework and setting limits structures surrounding the effect of changes in counterparty risks and market rates which have an effect on net income, Transnet has a dual objective. Firstly, to optimize performance relative to its long-term financial goals including net income in the expected rate environment. Secondly, to contain variance in net income, ROA and ROE to a level acceptable to its Board and one that will ensure a continuing acceptable return to its shareholder.

24. PERSONAL ACCOUNT TRADING POLICY

24.1. Purpose

This policy is designed to regulate and control the trade in financial instruments by Transnet employees in particular those employees who are employed in the Treasury Department as they can access financial market information that would give them an undue advantage over other financial market participants.

24.2. Objectives

Transnet recognises that in executing its trading business it cannot totally forbid its employees from engaging in "personal account" trading. Transnet also recognises that a balance must be maintained between Transnet's rights as an employer and the employee's rights to manage their personal investments in a manner they deem fit. Transnet further recognises that if "personal account" trading is permitted, certain internal control procedures must be put in place and that the Board of Directors through the Executive Management and

Treasury Management must accept responsibility for the establishment of the systems and controls to avoid:

- Conflict of interest;
- Prejudice towards clients; and
- Prejudice towards Transnet .

The primary objectives of this policy are

- To provide guidance to Treasury Employees on how personal account trading is to be conducted.
- To promote transparency, integrity, honesty, and objectivity of judgement and avoid conflict of interest.
- To ensure that no financial prejudice will be suffered by Transnet when a Treasury Employee engages in "personal account" trading.
- To ensure that no financial prejudice will be suffered by any of the clients of Transnet when an affected employee conducts "personal account" trading.
- To avoid personal account trading that prevents an employee from discharging his or her employment obligations as expected of him or her by Transnet .

24.3. Scope

This policy applies to all Transnet Treasury employees.

24.4. Definitions

"Front Running" means trading for one's own account where the employee has insider knowledge of sizeable orders and uses this information to trade to his or her personal advantage.

"Insider Information" means specific or precise information, which has not been made public and which;

- is learned or obtained as an insider and
- if it were made public would likely to have a material effect on the price or value of any security listed on a regulated market.

"Insider" means a person who has inside information through;

- being a director, employee or shareholder of an issuer of securities listed on a regulated market to which the inside information relates, or
- having access to such information by virtue of employment, office or profession.

“Regulator” means the Johannesburg Securities Exchange.

24.5. Principles

No Transnet Treasury employee shall;

- For his or her account or for an account in which such employee has a beneficial interest, trade in any Transnet bonds and or any financial instruments that are issued by Transnet.
- For his or her own account or for an account in which such employee has a beneficial interest, trade in any bonds and or any financial instruments issued by other state owned companies;
- Trade in any financial instrument whatsoever without having signed and acknowledged to be bound by the conditions of this policy;
- Engage in “front running”;
- Engage in any “insider trading”; *or*
- Use Transnet’s equipment and resources excessively to conduct personal account trading.

Treasury employees may trade in equities for their own personal account subject to the conditions of paragraphs 23.2.1 and 23.5 and need not disclose these trades to the Compliance Manager.

All “personal account” trades by Treasury employees shall be reviewed and signed off by both the Line Manager and respective functional Deputy Treasurer before it is reported to the Compliance Manager. The frequency of trades and values will be subject of the review process.

All “personal account” trades by Treasury employees shall be reported to the “Compliance Manager” within 10 business days after execution of the trade.

All “personal account” trades by Treasury employees shall be reported by the Compliance Officer;

- Monthly in the Treasury Management Report to the Group Chief Financial Officer and the Transnet Executive Committee.
- Bi- Annually to the Transnet Board of Directors.

All Treasury employees who engage in personal account trading shall disclose the information required in terms of the Personal Account Trading Template which is Annexure “A” hereto to the Compliance Officer.

This policy is acknowledged by every Treasury employee to amend each and every Treasury employee’s contract of employment as if specifically incorporated therein.

24.6. Personal Account Trading Register

- The Treasury Compliance Manager must ensure that a personal account trading register is maintained.
- The personal account trading register shall be kept for a minimum of five years after the conclusion of each trade.

24.7. Contravention Of The Policy

Non compliance with this policy is misconduct and any non compliance will be subject to a disciplinary process.

Non compliance with this policy shall be deemed to be a contravention of an employees' contract of employment.

25. REVIEW OF POLICIES

Financial risk management policies should be reviewed annually and recommended through FINCO and EXCO for ultimate approval by the Transnet Board of Directors.

26. CONCLUSIONS

Transnet recognizes that no policy can anticipate all the conditions, situations and opportunities that may arise in the normal course of operations. Management therefore is expected to exercise prudent judgement in the implementation of this policy. All deviations from the guidelines established by this policy will be reported to FINCO, RISCO, EXCO and the Board on a regular basis.

Annexure 'A'**Personal Account Trading Report – template.****Type of Security:****Type of Transaction:****Nominal Value:** R**Unit Price or Yield:****Transaction Date and Time:****Settlement Date:****Settlement Value:** R**Repo: Settlement Date (Leg 2):****Repo: Price or Yield (Leg 2):****Repo Rate:****Agent:****Name of Employee:****Employee Number:****Signature of Employee:****Date Reported:**

Annexure “MM25”



Anoj Singh, Group Chief Financial Officer

TRANSNET



Mr. Zheng Zhijie
Executive President
China Development Bank ("CDB")
18 Fuxingmennei Street
Xicheng District
Beijing
China
100037

Dear Mr. Zheng Zhijie,

PROPOSED CDB LOAN FACILITY TO TRANSNET: DRAFT TERM SHEET

We thank you and your team for the kind hospitality that was afforded to me and my team during our recent visits to Beijing on 2 July 2014. However, I must sadly state that we were not able to fulfill the common objective of concluding the above-mentioned loan facility notwithstanding your good intentions as outlined in your communicate to me. The subsequent draft term sheet received by Transnet on 15 July 2014 also falls short of Transnet's expectations.

The CDB financing offer is extremely expensive and not commercially viable for an entity like Transnet whose mandate is to reduce the cost of doing business in South Africa. Given the developmental mandates of both CDB and Transnet and the basis of the loan being the signed Memorandum of Understanding ("MoU") between Transnet and CDB, supported by our respective Heads of Government as part of our BRICS commitment, we should seriously review the current pricing to enable us to conclude a successful transaction that will benefit both parties and allow us to meet our BRICS mandate.

Transnet has diverse sources of funding that are much more attractive than what is being proposed by CDB recognising Transnet's strong credit fundamentals and implicit South African Government support. An international bank with the size and stature of CDB has to realise that it is competing with other debt capital markets and other debt investors when providing funding to Transnet.

Transnet is willing to provide a secured facility via the locomotives consequently, CDB pricing is way above unsecured lending proposals. Our expectation is to get reduced funding rates as is the case with all secured lending across the globe.

Transnet's contracts with CNR and CSR are in ZAR and therefore a ZAR facility is a natural option for us. Consequently, an additional cost for Transnet is the cost of converting the US\$ leg of the loan to ZAR via the use of cross currency swaps, which makes the facility more expensive.

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E Tshabalala DLJ Tshope A Singh* (Group Chief Financial Officer)
*Executive

Group Company Secretary: ANC Ceba

www.transnet.net

Anoj Singh, Group Chief Financial Officer

TRANSNET



Your colleagues will recall at our meeting in Beijing that we requested that the cross-currency swaps be carried by either CDB or ICBC, providing Transnet with a ZAR loan. Again, an international bank as CDB with a substantial balance sheet and risk appetite should be more than willing to accept currency exposure as is our experience with other international debt investors as we successfully concluded such transactions on a similar basis.

I would also like to highlight the following that relates directly to the draft term sheet which has been tracked with proposed amendments that we believe are appropriate and in line with other funding agreements successfully concluded by Transnet in the recent past.

Transnet has taken a decision not to offer financial covenants to any lender, and all facilities negotiated in the last few years are without financial covenants. The above decision is supported by the robust standalone credit profile of Transnet and credit rating agencies (Moody's and S&P) both use their financial ratios to assess the company's credit profile.

Other fees are also not in line with similar facilities that we have concluded and /or currently under negotiations. We have provided our indicative fees in the proposed term sheet accordingly.

The credit rating covenant and the further conditions precedent are also areas for further negotiation and discussion.

Lastly, I would appeal to CDB to carefully consider the above matters but more particularly the pricing and currency aspects of the proposed loan facility for us to be in a position to continue discussions on this proposed transaction. Time is of the essence as we need to consider other proposals received for the financing of the locomotives. I look forward to your timeous response.

Yours sincerely

Mr. Anoj Singh
Group Chief Financial Officer
Date: 25/07/11

Copy to:

Mr. Yuan Li – Executive Vice President

Mr. Li Gang – Deputy General Manager – Henan Branch

Transnet SOC Ltd
Registration Number
1990/000900/30

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2001

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Directors: ME Mkwana (Chairman) B Motefe* (Group Chief Executive) MA Fanucchi Y Forbes HD Gazendam NP Mxasana N Moola NR Njeke IM Sharma JB Skosana
E Tshabalala DLJ Tshepe A Singh* (Group Chief Financial Officer)
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Group Company Secretary: ANC Ceba

Annexure “MM26”



DRAFT: 157 July 2014

**INDICATIVE TERMS FOR
TERM LOAN FACILITY ARRANGED BY CHINA DEVELOPMENT BANK
CORPORATION FOR TRANSNET SOC LTD FOR THE ACQUISITION OF
LOCOMOTIVES**

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Borrower	Transnet SOC Ltd
Group	The Borrower and its subsidiaries
Mandated Lead Arranger	China Development Bank Corporation ("CDB")
Lenders	As selected <u>and appointed</u> by the Mandated Lead Arranger in consultation with the Borrower
Facility Agent	China Development Bank Corporation
Security Agent	[] ¹
Hedge Counterparty	[] ²
Finance Parties	The Mandated Lead Arranger, the Facility Agent, the Security Agent (and any delegate or receiver), the Hedge Counterparty and the Lenders
Facility Type	Secured term loan facility (the "Term Facility")
<u>Term Facility Agreement</u>	<u>The agreement entered into or to be entered into between the Borrower and the Lenders to finance the acquisition of the Locomotives by the Borrower</u>
<u>Currency and Amount</u>	<u>Up to US\$-D (US Dollars) 2,500,000,000³</u>
<u>Facility Amount</u>	<u>Up to USD 2,500,000,000⁴</u>
Commercial Vendors	Friedshelf 1507 Proprietary Limited (and, subject to a name change, to be known and registered as CNR Rolling Stock South Africa Proprietary Limited) ("CNR") (under the CNR Contract) and CSR E-LoCo Supply (Pty) Ltd ("CSR") (under the CSR Contract)
Commercial Contracts	Means the contracts between: <ul style="list-style-type: none"> (a) CSR and the Borrower for the design, manufacture, test and supply of up to 359 new dual voltage electric locomotives ("Electric Locomotives") dated 17 March 2014 (the "CSR Contract"); and (b) CNR and the Borrower for the design, manufacture, test and supply of

¹ CDB to confirm.² CDB to confirm.³ ~~CDB to confirm if there will be a separate rand tranche to be provided by a member of the syndicate.~~⁴ Please note that for transactions of this nature for a borrower of a similar credit rating, CDB usually charges a margin of not less than 350 basis points.

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up to 232 diesel locomotives ("Diesel Locomotives") dated 17 March 2014 (the "CNR Contract"),

(the Electric Locomotives and the Diesel Locomotives, collectively known as the "Locomotives").

Purpose The proceeds of the Term Facility shall be used to finance up to 85% ~~(eighty five percent)~~ of the contract value of each Commercial Contract.

Availability Period Means, the period commencing from the date of the Term Facility Agreement and ending on the day before the date falling 36 ~~(thirty six)~~ months after the date of the Term Facility Agreement.

Any amount not drawn during the Availability Period shall automatically be cancelled on the last day of the Availability Period.

Final Maturity Date 180 ~~(one hundred and eighty)~~ months from the date of the Term Facility Agreement.

Margin ~~2.75% (two comma seventy five per cent) per annum⁵ - The margin is over 400 basis points in ZAR terms which is too expensive~~

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LIBOR

Means, in relation to any loan,

- (c) the 6 ~~(six)~~ month London interbank offered rate administered by the ICE Benchmark Administration Limited (or any other person which takes over the administration of that rate) for USD displayed on the appropriate page of the Reuters screen ("Screen Rate"), or
- (d) (if no Screen Rate is available for the currency or Interest Period of that loan) the arithmetic mean of the rates (rounded upwards to four decimal places) as supplied to the Facility Agent at its request quoted by the agreed reference banks;

and if any such rate is below zero, LIBOR will be deemed to be zero.

Interest Rate Loans under the Term Facility shall bear interest at a rate per annum equal to the aggregate of (a) the Margin and (b) 6 ~~(six)~~ month LIBOR.

Default Interest Rate 1.20 ~~(one comma twenty)~~ per cent per annum above the applicable Interest Rate whilst any Event of Default is continuing.

Minimum amount of each utilisation To be determined at the documentation stage.

Disbursement Subject to compliance with the Conditions Precedent to first utilisation and 10 ~~(ten)~~ business days² prior written notice to the Facility Agent, all loans shall be disbursed directly to the account of the relevant Commercial

⁵ Please note that for transactions of this nature for a borrower of a similar credit rating, CDB usually charges a margin of not less than 350 basis points.

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Vendor under each Commercial Contract, in accordance with the duly submitted disbursement instructions of the Borrower.

Financial Closing Date:	The date on which the Facility Agent (acting on the <u>written</u> instructions of all the Lenders) confirms that the Conditions Precedent to first utilisation of the Term Facility have been satisfied.
Facility agency fee	US\$ <u>D60,000</u> (<u>sixty thousand US Dollars</u>) per annum
Security agency fee	[] ⁶ per annum
Arrangement Fee	<u>4.5</u> per cent. of the amount of the total commitments under the Term Facility Agreement, payable on the earlier of (i) 30 (<u>thirty</u>) business days following the date of the Term Facility Agreement and (ii) the Financial Closing Date.
Commitment Fee	The Borrower shall pay to the Lenders a commitment fee in US Dollars computed at the rate of <u>4.5</u> (<u>one per cent</u>) per annum on each Lender's available commitment under the Term Facility for the Availability Period. For the avoidance of doubt, the commitment fee shall start to accrue from the date of the Term Facility Agreement. The accrued commitment fee is payable in arrears on each successive period of <u>6</u> (<u>six</u>) months which ends during the Availability Period, on the last day of the Availability Period and, if the commitment is cancelled in full, on the cancelled amount of the relevant Lender's commitment at the time the cancellation is effective.
Interest Period	Each loan shall commence on the last day of its preceding Interest Period and end on the immediate following Interest Payment Date, except for the initial Interest Period of each loan which shall commence on the utilisation date and end on the immediate following Interest Payment Date. If two or more loans end on the same date, the loans will be consolidated into, and treated as, a single <u>Loan-loan</u> on the last day of the Interest Period.
Interest Payment Date	12 June and 12 December of each calendar year. If the Interest Payment Date is not a <u>Business-business Dayday</u> , the interest shall be paid on the preceding <u>Business-business Dayday</u> . The final Interest Period shall end on the Final Maturity Date.
Interest Payment	Interest will accrue on the <u>Loans-loans</u> based on the Interest Rate. Interest will be payable on each Interest Payment Date in arrears.
Repayment of Principal	There will be no amortization of the principal payment during the period from the date of the Term Facility Agreement to the day before the date falling 36 (<u>thirty six</u>) months after the date of the Term Facility Agreement (the "Grace Period"). During the Grace Period only interest will be accrued and paid on each Interest Payment Date. After the Grace Period, principal shall be repaid in 25 (<u>twenty five</u>) equal and consecutive

⁶ CDB to confirm.

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semi-annual installments, together with the accrued interest being paid at the same time as each such installment. The first installment shall be made on the date falling 36 months after the date of the Term Facility Agreement, and each subsequent installment shall be made on each Interest Payment Date thereafter. All amounts due or to become due under the Term Facility Agreement shall be paid or repaid in full by the Final Maturity Date.

~~Note: assumed that an amortization schedule will be shared with and agreed to by transnet~~

Mandatory Prepayment

Prepayment (with corresponding reductions to and cancellation of commitments) will be mandatory in full upon a change of control of the Borrower, ~~ratings downgrade (if below investment grade) or sale of all or a material part of the business/assets of the Borrower or the Group (i.e., where the higher of the market value or consideration receivable (when aggregated with other disposals by the Borrower or the Group) is equal to or exceeds an amount equal to US\$40,000,000 (or its equivalent in another currency or currencies) in any financial year of the Borrower). Disposals permitted by the Lenders (to be further defined at documentation stage) shall not trigger the mandatory prepayment provisions.~~

Voluntary Prepayment

The Borrower may prepay the ~~Loan~~ loan in whole or in part (if in part by a minimum of US\$50,000,000) at the end of any Interest Period subject to 30 (thirty) ~~Business-business Days-days~~ of prior written notice to the Facility Agent. All prepayments shall be subject to a prepayment fee of 1% (one percent) of the amount of the prepayment, and if not occurring on an Interest Payment Date, the payment of break costs, if any.

Comment [A1]: We are not happy with a pre-payment fee. Why is CDB charging a pre-payment fee?

We accept that we cannot avoid break costs if pre-payment is not made on an interest payment date.

Set-off

All amounts payable in connection with the Term Facility to be made by the Borrower will be made without set-off or counterclaim.

Taxes

All amounts payable in connection with the Term Facility will be made free and clear of all present and future taxes, other deductions, levies, imposts and withholdings of whatever nature (other than income taxes in the jurisdiction of each Lender's applicable lending office).

The Borrower will be required to gross up in the event that any such withholdings, taxes and/or deductions are required to be made.

Security Documents

The Lenders' security package shall include, but not be limited to the following:

- (a) a security agreement granting a first fixed legal mortgage and a first fixed and floating charge over the Locomotives in favour of the Security Agent (acting on behalf of the Finance Parties) on and from the transfer of title of such Locomotives and each part thereof to the

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Borrower⁷;

- (b) all notices and acknowledgements relating to the security listed in (a) above; and
- (c) [other security requested by the Mandated Lead Arranger as necessary].

Comment [A2]: We do not have the concept of a fixed and floating charge in South African law. This is an English law concept. To achieve what is envisaged here, we would have to register a Special Notarial Bond and a General Notarial Bond over the Locomotives. The Mortgagor would be the Borrower (Transnet). We have to carefully consider cross-default and negative pledge provisions in all other loans, DMTN and GMTN agreements to ensure that the giving of security over the Locomotives is permitted and will not trigger a default in other loan agreements / DMTN / GMTN.

Finance Documents Documentation will be based on the Loan Market Association (the "LMA") provisions customary for facilities of this nature. The documentation will include, but not be limited to the following:

- (a) a ~~Term Facility Agreement~~ entered between, amongst others, the Lenders and the Borrower ~~(the "Term Facility Agreement")~~;
 - (b) an ISDA Master Agreement, any accompanying schedules and each subsequent confirmation between the Borrower and the Hedge Counterparty⁸;
 - (c) the Security Documents; and
 - (d) any Fee Letters,
- (together the "Finance Documents").

Conditions Precedent to first utilisation Satisfaction of certain conditions precedent as are customary for a transaction of this nature or considered appropriate by the Lenders, each in form and substance satisfactory to the Lenders, including but not limited to the following:

- (a) execution and delivery of all of the Finance Documents;
- (b) legal opinions issued by the external legal advisors to the Lenders satisfactory to the Lenders;
- (c) a certified copy of the constitutional documents of the Borrower, board resolutions, authorized signatory certificates and any relevant governmental approvals;
- (d) the latest consolidated financial statements of the Borrower;
- (e) no Event of Default ~~has occurred and is continuing~~ and all repeating representations are true and correct;
- (f) receipt of all relevant approvals and authorizations (corporate, regulatory, governmental and shareholder) in respect of the

⁷ Form of security package subject to confirmation by South African / PRC counsel.

⁸ Please note that this will be in respect of any hedging arrangements relating to the conversion of proceeds under any Loan from USD to rand.

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Commercial Contracts and the Finance Documents);

- (g) payment in full of all fees and expenses due and payable by the Borrower; and
- (h) copies of the executed Commercial Contracts provided to the Lenders.

Further Conditions
Precedent

Each utilisation, when aggregated with the amount of all ~~Loans~~ loans that have been drawn under the Term Facility (whether outstanding or not), shall not exceed 85% (eighty five percent) of the amounts that have been or will be incurred and paid on or prior to the date of such utilization (or will be paid with the proceeds of such utilisation) by the Borrower under each Commercial Contract.

Representations

Representations customarily given for facilities of this nature, in respect of the Borrower, and if appropriate, any member of the Group, including but not limited to the following:

- (a) status;
- (b) binding obligations;
- (c) non conflict with other obligations;
- (d) power and authority;
- (e) validity and admissibility in evidence;
- (f) governing law and enforcement;
- (g) no deduction of tax;
- (h) no filing or stamp taxes;
- (i) no default or insolvency;
- (j) no misleading information;
- (k) financial statements;
- (l) pari passu ranking;
- (m) no material proceedings pending or threatened;
- (n) no immunity;
- (o) compliance with sanctions;
- (p) environmental compliance and no environmental claims; and
- (q) [others].

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Covenants

Covenants customarily given for facilities of this nature, in respect of the Borrower⁹, and if appropriate, any member of the Group, including but not limited to the following:

- (a) authorisations;
- (b) compliance with laws;
- (c) negative pledge subject to agreed exceptions;
- (d) restriction on disposals subject to agreed exceptions;
- (e) restriction on merger;
- (f) maintenance of insurance;
- (g) restriction on loans (subject to agreed exceptions) and guarantees;
- (h) environmental compliance and notification of environmental claims;
- (i) pari passu ranking;
- (j) compliance with sanctions;
- (k) further assurance;
- (l) no change of business; and
- (m) [others].

~~Financial Covenants⁹~~

~~Consolidated Tangible Net Worth at least USD\$[—] at any time; To insert financial covenants~~

~~Consolidated Debt to EBITDA to be less than [—] semi-annual;~~

~~Consolidated Interest Cover Ratio at least [—] semi-annual.~~

Events of Defaults

Events of Default customarily included for facilities of this nature, in respect of the Borrower⁹, and if appropriate, any member of the Group, including but not limited to the following:

- (a) non-payment unless failure to pay is caused by administrative or technical error and payment is made within [35 (fiveinsert-number in word)] Business-business Days-days of its due date;
- (b) any financial covenant not satisfied;
- (c) failure to comply with any other obligations subject to agreed remedy periods if capable of remedy;

⁹ ~~Borrower to propose.~~

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- (d) misrepresentation;
- (e) cross default;
- (f) insolvency;
- (g) insolvency proceedings;
- (h) creditors' process;
- (i) unlawfulness of Finance Documents and Commercial Contracts;
- (j) repudiation/termination of Finance Documents and Commercial Contracts;
- (k) material adverse change; and
- (l) [others].

Grace periods, thresholds and exceptions (as applicable) will be agreed at the documentation stage.

Costs and Expenses:

All costs and expenses (including without limitation travel expenses and legal fees) incurred by the Facility Agent, the Security Agent and the Mandated Lead Arranger in connection with the preparation, negotiation, printing, execution and syndication of the Term Facility Agreement and any other Finance Document shall be paid by the Borrower ~~promptly-on demand~~within 30[-] (thirtyinsert-number-in-words) days (suggested to be in line with PFMA) whether or not the Finance Documents are signed.

Assignments and Transfers

The Lenders may assign any of ~~its~~their rights or transfer by novation any of ~~its~~their rights and obligations to another bank or financial institution or to a trust, fund or other entity which is regularly engaged in or established for the purpose of making, purchasing or investing in loans, securities or other financial assets. Consent of the Borrower is not required for such assignment or transfer provided such entity (the transferee) is not a competitor of the Borrower, but the Lenders shall give written notice to the Borrower of any such assignment or transfer.

Clear market

During the period from the date of ~~the this Term-term Sheet-sheet~~ and the date of the Term Facility Agreement, the Borrower shall not, and shall ensure that no other member of the Group shall ~~not~~ raise or attempt to raise finance in respect of the Commercial Contracts in the international or domestic loan or capital markets without the prior written consent of the Mandated Lead Arranger. Please note that Transnet is currently assessing other cost effective funding proposals to fund the locomotives

Syndication:

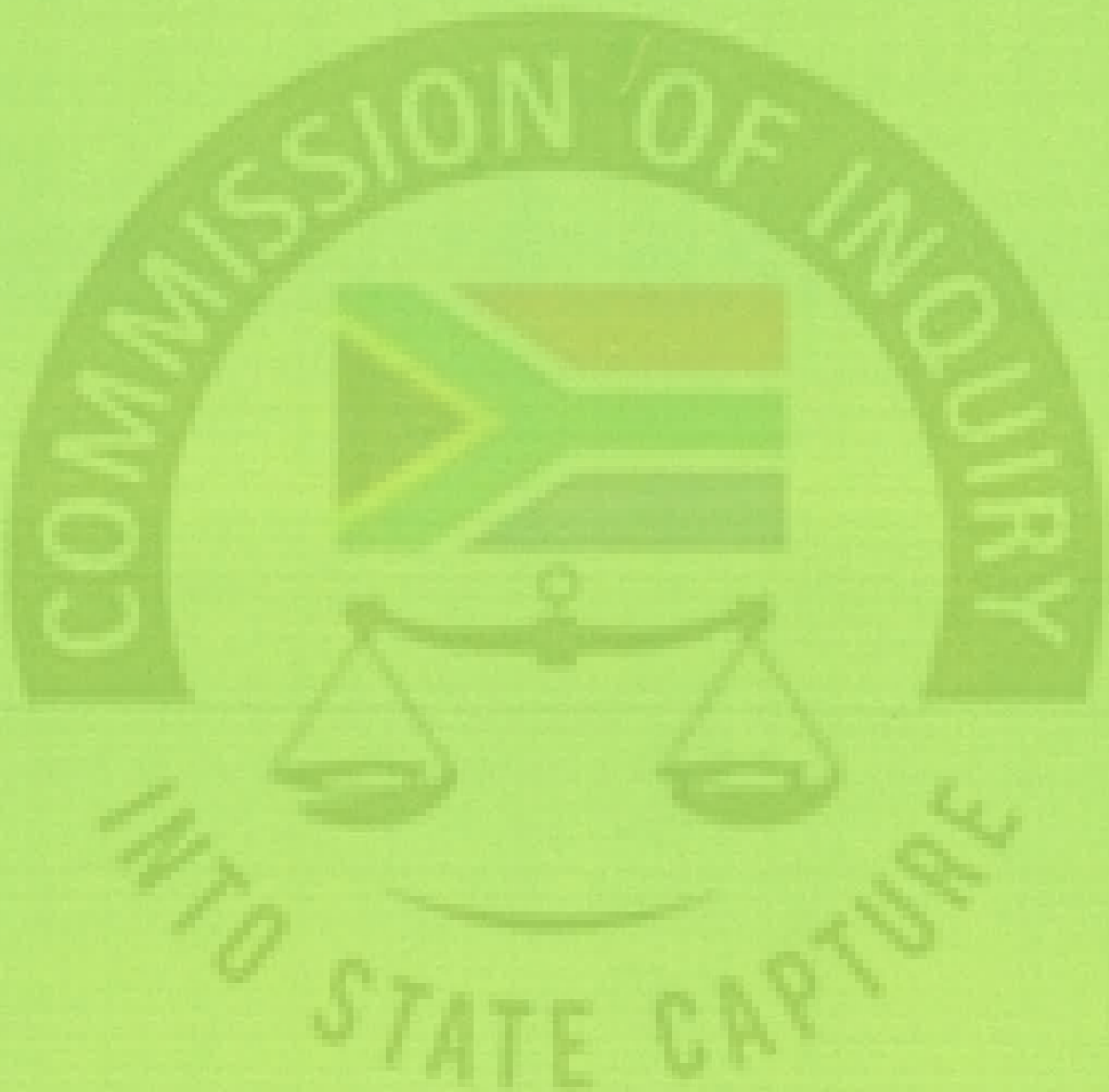
The Mandated Lead Arranger reserves the right to syndicate the Facility Amount in whole or in part to other banks and financial institutions. -The Borrower shall give such assistance as the Mandated Lead Arranger may reasonably require in relation to the syndication of the Facility Amount, including giving of presentations by members of their management and

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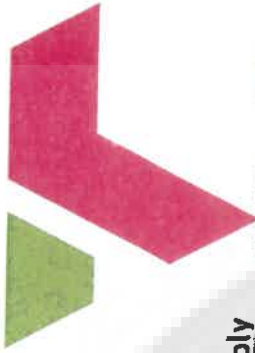
assisting in relation to the preparation of an information memorandum.

Market Flex:	The Mandated Lead Arranger shall be entitled to change <u>in consultation with the Borrower</u> the pricing, terms and/or structure of the Term Facility if the Mandated Lead Arranger determines that such changes are advisable <u>(this word is too subjective)</u> in order to ensure a successful syndication of the Term Facility.
Market Conditions:	The terms set out in this Term-term Sheet-sheet are subject to there being no material adverse change in either (a) the financial condition or the socio-political and economic situation of the Republic of South Africa, or (b) the international or any relevant domestic syndicated loan market, up to the date of the Term Facility Agreement.
Miscellaneous Provisions	The Finance Documents shall also contain standard terms including without limitation in respect of costs and expenses, amendments and waivers, illegality, break costs, market disruption, increased costs, indemnities to the Finance Parties, <u>the Foreign Account Tax Compliance Act (the "FATCA")</u> provisions, reimbursement of stamp duty and VAT payable in connection with the facility documentation.
Waiver of sovereign immunity	The Borrower shall irrevocably waive any immunity from suit, execution, attachment or legal process to the fullest extent permitted by the applicable law.
Governing Law	All agreements will be governed by English law. If there is any dispute arising out of the Finance Documents, the parties shall submit the dispute to <u>the</u> London Court of International Arbitration ("LCIA") for arbitration in accordance with the then applicable LCIA Arbitration Rules.
Validity:	The terms set out in this term sheet are available for acceptance by the Borrower until close of business in Beijing, <u>China</u> on 31 December 2014, after which time they will expire unless extended in writing by the Lenders.

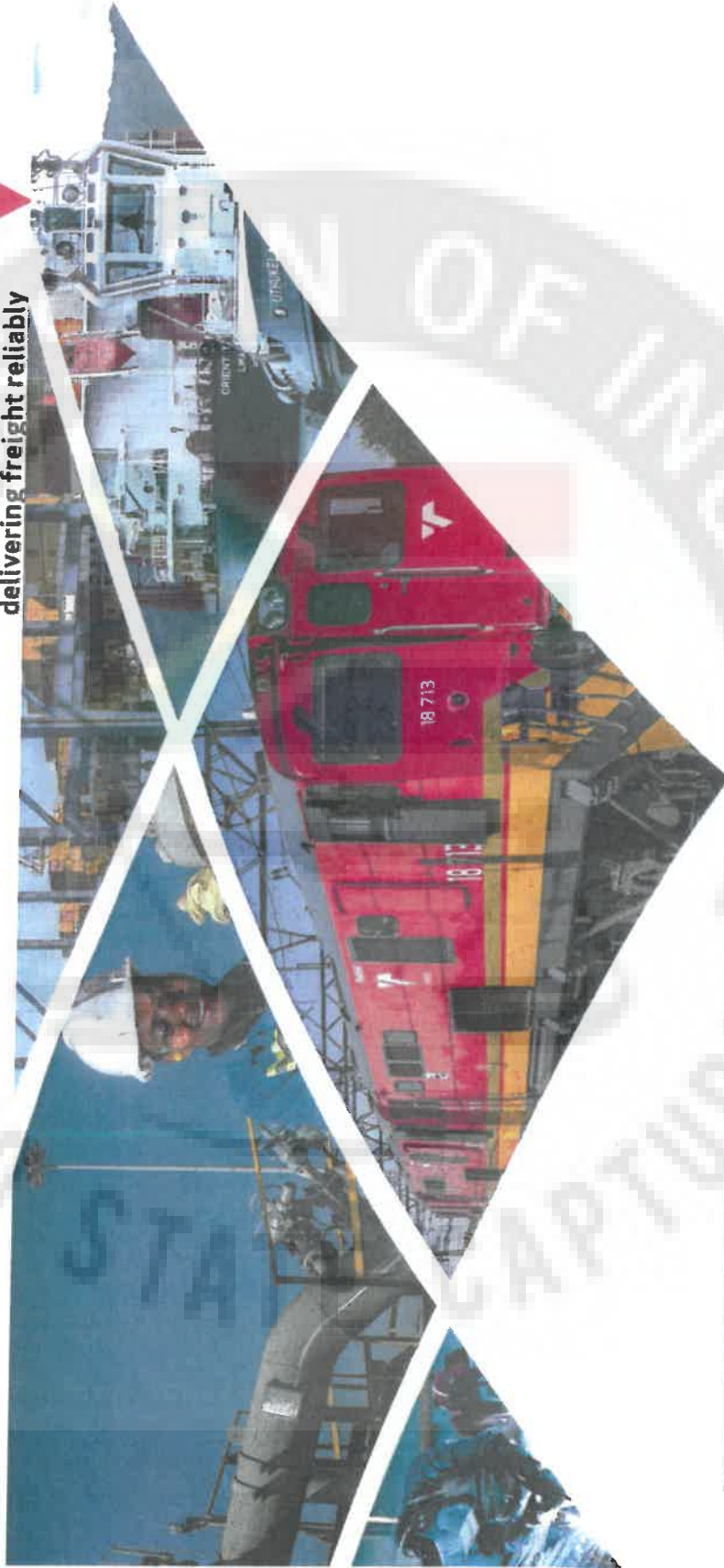
Annexure “MM27”



TRANSNET



delivering freight reliably



Presentation to CDB – 30 July 2014: Funding

Concerns raised by Transnet

Transnet and CDB met in Beijing on the 1st July 2014

The following concerns were raised by Transnet

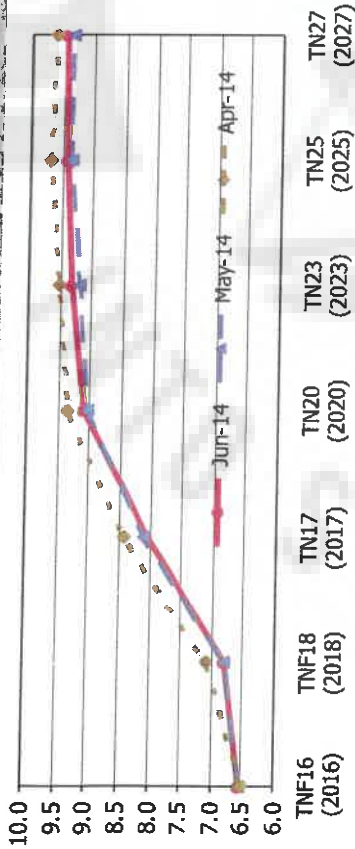
- ❑ Contracts with CSR and CNR are in South African Rands
- ❑ The facility to finance the two contracts should mirror the two contracts both in terms of availability period and currency

Based on the above, Transnet requested the following:

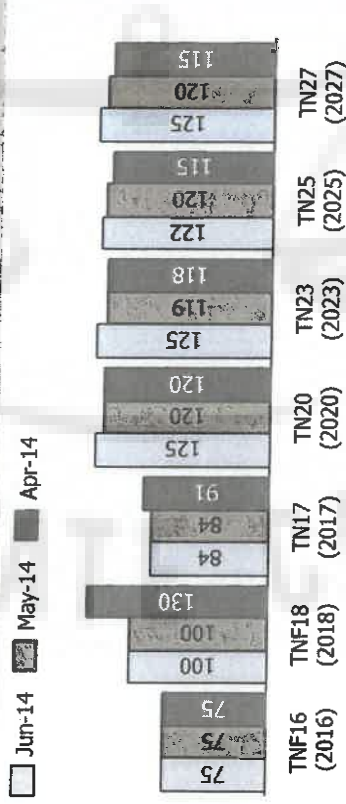
- ❑ Long tenor and are comfortable with 15 year as currently proposed by CDB
- ❑ ZAR facility to mirror the two contracts
- ❑ Cost effective funding in line with other similar facilities



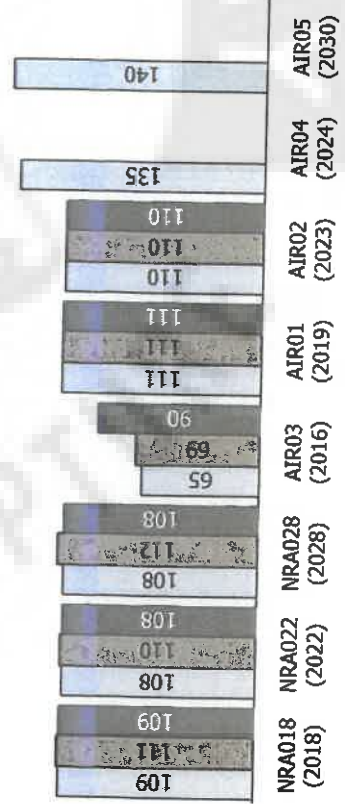
Transnet Yield Curve



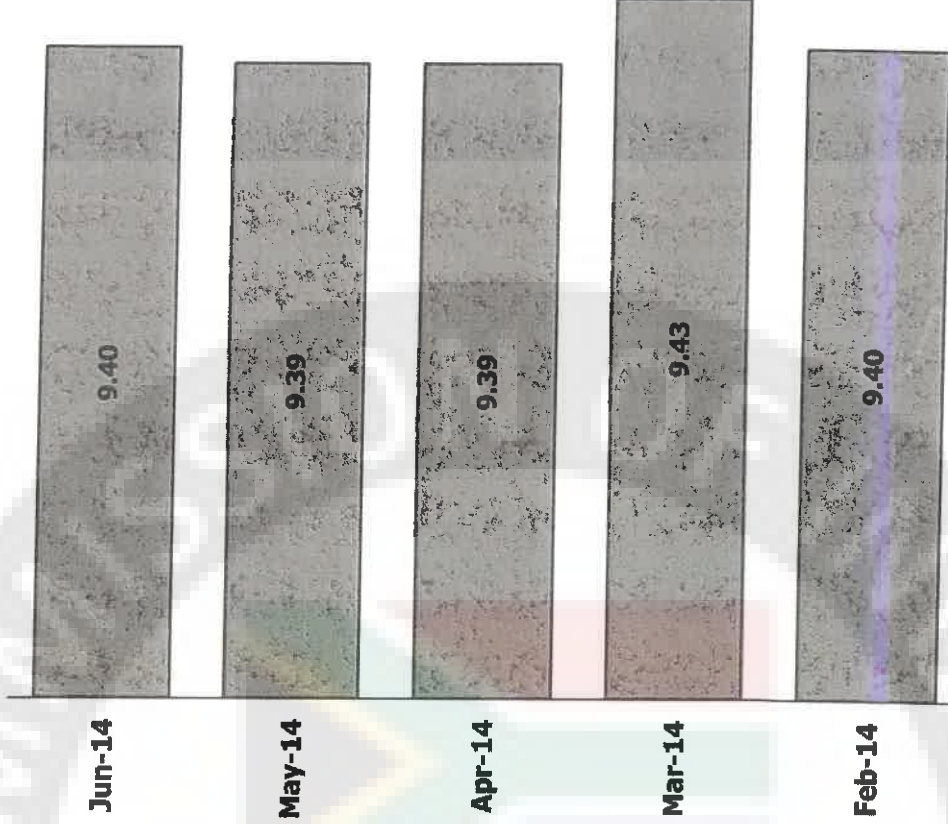
Corporate Bond Spreads: SOE's



Sanral and ACTSA



Weighted Average Cost of Debt (%)



Draft Term sheet

The draft term received on the 15 July 2014, does not take into account considerations discussed at the meeting.

- Pricing over libor is too expensive
- Other fees not in line with similar facilities

Terms sheet contains clauses that are not of “investment grade”

- Transnet does not give financial covenants

CDB compares Transnet to Angola, a country that is rated below investment grade

Comparison of CDB proposal to similar proposals

Concluded

Libfin ZAR R1.75 **18 years** facility @ **Jibar + 175** - **July 2014**

Under negotiations

Export Development Bank Canada – USD 600 mln **13 year** facility at Jibar + **200**

EDC is willing to provide ZAR funding

African Development Bank – USD 250 direct lending **20 years** @ Jibar + **230**

AfDB willing to provide ZAR funding

US Exim supported – 14 years USD 530 mln @ **Jibar + 155**

US Exim willing to provide ZAR supported.

CDB – **15 years** USD 2.5 billion @ libor + 275 which is equivalent to **Jibar + 430**

All of the above facilities including all ECAs, DMTN, EMTN, bank loans and GMTN issuance do not contain financial covenants and Transnet has taken a decision to standardize all its loan/bond covenants to the extent possible.

If CDB is not willing to reconsider the current draft terms and conditions, Transnet will use other cost effective sources of fund to finance the CSR and CNR locomotives



Available sources of funds

If CDB is not willing to reconsider the current draft terms and conditions, Transnet will use other cost effective sources of finance the CSR and CNR locomotives

The following sources of funds are available to Transnet

- Domestic bonds under the DMTN program
- Global bonds under the GMTN program
- Standard Bank and ICBC - USD 1 billion
- African Development Bank
- Sumitomo Mitsui Banking Corporation
- Transnet has short term facilities amounting to R13 billion that are available at 24 hour notice

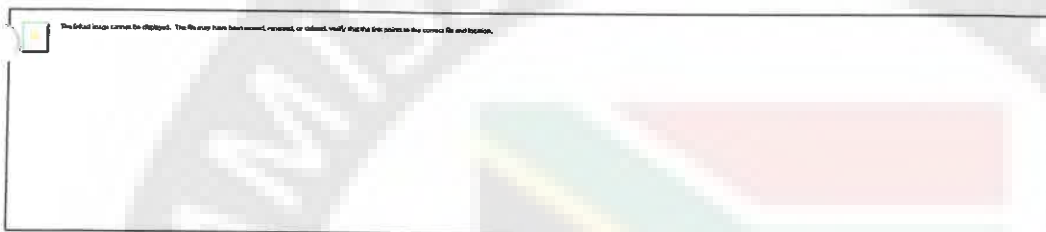
Annexure “MM28”



Makgatho

From: Mathane Makgatho Corporate JHB <Mathane.Makgatho@transnet.net>
Sent: 15 August 2014 02:46 PM
To: Mathane Makgatho Corporate JHB; makgathom@telkomsa.net
Subject: FW: Transnet indicative cross currency swap pricing
Attachments: RSIimage.jpeg

From: Mngadi, M. (Masotsha) [mailto:MMngadi@Nedbankcapital.co.za]
Sent: 14 August 2014 11:08 AM
To: Mathane Makgatho Corporate JHB
Cc: Mngadi, M. (Masotsha); Kennedy, B. (Brian); McCarthy, N. (Neil); Lane, P. (Peter); Brickman, M. (Moss); Sibiya, T. (Terence)
Subject: Re: Transnet indicative cross currency swap pricing



Hi Mathane,

I trust that you had a restful evening.

As our priority client, we as Nedbank value highly our partnership with Transnet and commit to continuously provide the best possible.

Thanks and kindest regards.

Masotsha

Sent from my iPad

On 14 Aug 2014, at 8:14 AM, "Mathane Makgatho Corporate JHB" <Mathane.Makgatho@transnet.net> wrote:

Dear Masotsha

Thank you for your kind assistance. I trust that we will continue to nurture the relationship between Transnet, trust, honesty and integrity.

Kind regards

Mathane

Sent from my iPad

On 13 Aug 2014, at 5:20 PM, "Mngadi, M. (Masotsha)" <MMngadi@Nedbankcapital.co.za> wrote:

<[RSImage.jpeg](#)>

Hi Mathane,

Further to the indicative pricing under cover hereof that Nedbank Capital sent to you last Friday as per your accurate indicative pricing based on these parameters.

I further confirm that at our recent internal meeting that included Brian Kennedy, the Nedbank Capital managing executive on compliance and governance, Peter Lane, the Nedbank Capital executive that heads our treasury or in writing, issued any pricing quotation on the parameters as per the indicative pricing under cover hereof.

Thanks, kindest regards.

<image003.jpg>

Masotsha Mngadi

Investment Banker: Public Sector | Coverage & Origination | Nedbank Capital | N
Third Floor Block F 135 Rivonia Road Sandown Sandton 2196 South Africa | PO Box
t +27 (0)11 294 3435 f +27 (0)11 295 3435 c +27 (0)82 902 9490 @ [mmngadi@ne](mailto:mmngadi@nedbankcapital.co.za)
Website: www.nedbankcapital.co.za

<image002.gif>

SAVE TREES, SAVE PAPER – THINK BEFORE YOU PRINT Nedbank is proud to be Africa's first carbon-neutral bank

From: Etsane, M. (Mak)

Sent: 08 August 2014 11:23 AM

To: Mngadi, M. (Masotsha); mathane.makgatho@transnet.net

Cc: Erasmus, T. (Thea); Lippiatt, C. (Chantal); Mnguni, S. (Sne)

Subject: Transnet indicative cross currency swap pricing

Good Morning Mathane and Masotsha,

I trust all is well with you.

Please find attached the updated pricing including the fixed rates as requested.

Feel Free to contact us should there be any queries or require anything further in this regard.

Kind Regards,

<image001.jpg>

Makako Etsane

Derivative Sales and Structuring | Global Markets | Nedbank Capital

Sixth Floor Block F 135 Rivonia Road Sandown Sandton 2196 South Africa | PO Box 1

t +27 (0)11 535 4021 d +27 (0)11 294 4638 f +27(0)86 528 2576 @ [make@nedbank](mailto:make@nedbankcapital.co.za)

Website: www.nedbankcapital.co.za

Annexure “MM29”



Makgatho

From: Mathane Makgatho Corporate JHB <Mathane.Makgatho@transnet.net>
Sent: 15 August 2014 02:36 PM
To: Mathane Makgatho Corporate JHB; 'makgathom@telkomsa.net'
Subject: FW: Transnet indicative cross currency swap pricing
Attachments: RSIImage.jpeg; ATT00001.htm; image003.jpg; ATT00002.htm; image002.gif; ATT00003.htm; image001.jpg; ATT00004.htm; image002.gif; ATT00005.htm; Indicative Pricing CCS_8Aug2014.xlsx; ATT00006.htm

From: Mathane Makgatho Corporate JHB
Sent: 14 August 2014 08:04 AM
To: Anoj Singh Corporate JHB
Subject: Fwd: Transnet indicative cross currency swap pricing

Dear Anoj

Please see below a response from Nedbank which indicates that they did not discuss any pricing with them. I will forward you the official Nedbank pricing which is in line with our internal calculations.

Thank you.
 Mathane

Sent from my iPad

Begin forwarded message:

From: "Mngadi, M. (Masotsha)" <MMngadi@Nedbankcapital.co.za>
Date: 13 August 2014 at 5:18:43 PM GMT+2
To: "Mathane Makgatho Corporate JHB" <Mathane.Makgatho@transnet.net>
Cc: "Kennedy, B. (Brian)" <BrianKe@Nedbankcapital.co.za>, "McCarthy, N. (Neil)" <NeilMc@Nedbankcapital.co.za>, "Lane, P. (Peter)" <peterl@Nedbankcapital.co.za>, "Brickman, M. (Moss)" <MossB@Nedbankcapital.co.za>, "Sibiya, T. (Terence)" <TerenceS@nedbankcapital.co.za>
Subject: FW: Transnet indicative cross currency swap pricing

Makgatho

From: Mathane Makgatho Corporate JHB <Mathane.Makgatho@transnet.net>
Sent: 15 August 2014 02:38 PM
To: Mathane Makgatho Corporate JHB; makgathom@telkomsa.net
Subject: FW: China Dev Bank pricing

From: Mathane Makgatho Corporate JHB
Sent: 24 July 2014 05:21 PM
To: Anoj Singh Corporate JHB
Cc: Yusuf Mahomed Transnet Corporate JHB
Subject: RE: China Dev Bank pricing

Hi A, its just the spread translated into ZAR. I will send you the workings tomorrow

MM

From: Anoj Singh Corporate JHB
Sent: Thursday, July 24, 2014 4:45 PM
To: Mathane Makgatho Corporate JHB
Cc: Yusuf Mahomed Transnet Corporate JHB
Subject: Re: China Dev Bank pricing

Hi M

Can I please have a break down of the 435 bps in its various components.

Thx

A

Sent from my iPad

On 21 Jul 2014, at 12:36 PM, "Mathane Makgatho Corporate JHB" <Mathane.Makgatho@transnet.net> wrote:

Dear Anoj

Indicative pricing for CDB as follows:

Floating: 6m Jibar + 115bps
 Fixed: 12.15 nacs

Based on 15yr tenor with 3yr grace period and funding at 6m USD Libor + 275bps
 And 25 equal repayments

This price should be compared to EDC which has indicated a 13yr facility at Jibar + 700 and African Dev Bank's 20 yr at Jibar + 700 to 800

Regards

Mathane



Indicative Pricing: Cross Currency Swap

Start Date: 02-Jan-15
End Date: 02-Jan-30
USD/ZAR Exchange Rate: 10.7700

Day count

Transnet Receives	Option 1	Option 2	Option 3	NACQ (USD)	Actual/360	Subject to preceding business day convention	
	3M Libor + 2.55%	3M Libor + 2.65%	3M Libor + 2.75%				
	Floating Rate						
Transnet Pays: \$250 Million	3M Jibar + 4.23%	3M Jibar + 4.37%	3M Jibar + 4.51%	NACQ (ZAR)	Actual/365	Subject to preceding business day convention	
	\$500 Million	3M Jibar + 4.38%	3M Jibar + 4.52%	3M Jibar + 4.66%	NACQ (ZAR)	Actual/365	Subject to preceding business day convention
	\$1 Billion	3M Jibar + 4.58%	3M Jibar + 4.72%	3M Jibar + 4.86%	NACQ (ZAR)	Actual/365	Subject to preceding business day convention
Transnet Pays: \$250 Million	Fixed Rate			Fixed NACQ (ZAR)	Actual/365	Subject to preceding business day convention	
	12.65%	12.79%	12.93%				
	\$500 Million	12.86%	12.99%				13.13%
\$1 Billion	13.16%	13.26%	13.43%	Fixed NACQ (ZAR)	Actual/365	Subject to preceding business day convention	
Exchange of Principal Start:	YES						
Exchange of Principal End :	As per below profile						

Period Start Date	Period End Date	Days	Payment Date	USD Opening Balance	USD Repayments	ZAR Opening Balance	ZAR Repayments
02-Jan-15	01-Apr-15	89	01-Apr-15	\$250 000 000.00		R 2 692 500 000.00	
01-Apr-15	01-Jul-15	91	01-Jul-15	\$250 000 000.00		R 2 692 500 000.00	
01-Jul-15	01-Oct-15	92	01-Oct-15	\$250 000 000.00		R 2 692 500 000.00	
01-Oct-15	04-Jan-16	95	04-Jan-16	\$250 000 000.00		R 2 692 500 000.00	
04-Jan-16	01-Apr-16	88	01-Apr-16	\$250 000 000.00		R 2 692 500 000.00	
01-Apr-16	01-Jul-16	91	01-Jul-16	\$250 000 000.00		R 2 692 500 000.00	
03-Oct-16	03-Jan-17	92	03-Jan-17	\$250 000 000.00		R 2 692 500 000.00	
03-Jan-17	03-Apr-17	90	03-Apr-17	\$250 000 000.00		R 2 692 500 000.00	
03-Apr-17	03-Jul-17	91	03-Jul-17	\$250 000 000.00		R 2 692 500 000.00	
03-Jul-17	02-Oct-17	91	02-Oct-17	\$250 000 000.00		R 2 692 500 000.00	
01-Jul-16	03-Oct-16	94	03-Oct-16	\$250 000 000.00		R 2 692 500 000.00	
02-Oct-17	02-Jan-18	92	02-Jan-18	\$250 000 000.00		R 2 692 500 000.00	
02-Jan-18	03-Apr-18	91	03-Apr-18	\$250 000 000.00	\$5 208 333.33	R 2 692 500 000.00	R 56 093 750.00
03-Apr-18	02-Jul-18	90	02-Jul-18	\$244 791 666.67	\$5 208 333.33	R 2 636 406 250.00	R 56 093 750.00
02-Jul-18	01-Oct-18	91	01-Oct-18	\$239 583 333.33	\$5 208 333.33	R 2 580 312 500.00	R 56 093 750.00
01-Oct-18	02-Jan-19	93	02-Jan-19	\$234 375 000.00	\$5 208 333.33	R 2 524 218 750.00	R 56 093 750.00
02-Jan-19	01-Apr-19	89	01-Apr-19	\$229 166 666.67	\$5 208 333.33	R 2 468 125 000.00	R 56 093 750.00
01-Apr-19	01-Jul-19	91	01-Jul-19	\$223 958 333.33	\$5 208 333.33	R 2 412 031 250.00	R 56 093 750.00
01-Jul-19	01-Oct-19	92	01-Oct-19	\$218 750 000.00	\$5 208 333.33	R 2 355 937 500.00	R 56 093 750.00
01-Oct-19	02-Jan-20	93	02-Jan-20	\$213 541 666.67	\$5 208 333.33	R 2 299 843 750.00	R 56 093 750.00
02-Jan-20	01-Apr-20	90	01-Apr-20	\$208 333 333.33	\$5 208 333.33	R 2 243 750 000.00	R 56 093 750.00
01-Apr-20	01-Jul-20	91	01-Jul-20	\$203 125 000.00	\$5 208 333.33	R 2 187 656 250.00	R 56 093 750.00
01-Jul-20	01-Oct-20	92	01-Oct-20	\$197 916 666.67	\$5 208 333.33	R 2 131 562 500.00	R 56 093 750.00
01-Oct-20	04-Jan-21	95	04-Jan-21	\$192 708 333.33	\$5 208 333.33	R 2 075 468 750.00	R 56 093 750.00
04-Jan-21	01-Apr-21	87	01-Apr-21	\$187 500 000.00	\$5 208 333.33	R 2 019 375 000.00	R 56 093 750.00
01-Apr-21	01-Jul-21	91	01-Jul-21	\$182 291 666.67	\$5 208 333.33	R 1 963 281 250.00	R 56 093 750.00
01-Jul-21	01-Oct-21	92	01-Oct-21	\$177 083 333.33	\$5 208 333.33	R 1 907 187 500.00	R 56 093 750.00
01-Oct-21	03-Jan-22	94	03-Jan-22	\$171 875 000.00	\$5 208 333.33	R 1 851 093 750.00	R 56 093 750.00
03-Jan-22	01-Apr-22	88	01-Apr-22	\$166 666 666.67	\$5 208 333.33	R 1 795 000 000.00	R 56 093 750.00
01-Apr-22	01-Jul-22	91	01-Jul-22	\$161 458 333.33	\$5 208 333.33	R 1 738 906 250.00	R 56 093 750.00
01-Jul-22	03-Oct-22	94	03-Oct-22	\$156 250 000.00	\$5 208 333.33	R 1 682 812 500.00	R 56 093 750.00
03-Oct-22	03-Jan-23	92	03-Jan-23	\$151 041 666.67	\$5 208 333.33	R 1 626 718 750.00	R 56 093 750.00
03-Jan-23	03-Apr-23	90	03-Apr-23	\$145 833 333.33	\$5 208 333.33	R 1 570 625 000.00	R 56 093 750.00
03-Apr-23	03-Jul-23	91	03-Jul-23	\$140 625 000.00	\$5 208 333.33	R 1 514 531 250.00	R 56 093 750.00
03-Jul-23	02-Oct-23	91	02-Oct-23	\$135 416 666.67	\$5 208 333.33	R 1 458 437 500.00	R 56 093 750.00
02-Oct-23	02-Jan-24	92	02-Jan-24	\$130 208 333.33	\$5 208 333.33	R 1 402 343 750.00	R 56 093 750.00
02-Jan-24	02-Apr-24	91	02-Apr-24	\$125 000 000.00	\$5 208 333.33	R 1 346 250 000.00	R 56 093 750.00
02-Apr-24	01-Jul-24	90	01-Jul-24	\$119 791 666.67	\$5 208 333.33	R 1 290 156 250.00	R 56 093 750.00
01-Jul-24	01-Oct-24	92	01-Oct-24	\$114 583 333.33	\$5 208 333.33	R 1 234 062 500.00	R 56 093 750.00
01-Oct-24	02-Jan-25	93	02-Jan-25	\$109 375 000.00	\$5 208 333.33	R 1 177 968 750.00	R 56 093 750.00
02-Jan-25	01-Apr-25	89	01-Apr-25	\$104 166 666.67	\$5 208 333.33	R 1 121 875 000.00	R 56 093 750.00
01-Apr-25	01-Jul-25	91	01-Jul-25	\$98 958 333.33	\$5 208 333.33	R 1 065 781 250.00	R 56 093 750.00
01-Jul-25	01-Oct-25	92	01-Oct-25	\$93 750 000.00	\$5 208 333.33	R 1 009 687 500.00	R 56 093 750.00
01-Oct-25	02-Jan-26	93	02-Jan-26	\$88 541 666.67	\$5 208 333.33	R 953 593 750.00	R 56 093 750.00
02-Jan-26	01-Apr-26	89	01-Apr-26	\$83 333 333.33	\$5 208 333.33	R 897 500 000.00	R 56 093 750.00
01-Apr-26	01-Jul-26	91	01-Jul-26	\$78 125 000.00	\$5 208 333.33	R 841 406 250.00	R 56 093 750.00
01-Jul-26	01-Oct-26	92	01-Oct-26	\$72 916 666.67	\$5 208 333.33	R 785 312 500.00	R 56 093 750.00
01-Oct-26	04-Jan-27	95	04-Jan-27	\$67 708 333.33	\$5 208 333.33	R 729 218 750.00	R 56 093 750.00
04-Jan-27	01-Apr-27	87	01-Apr-27	\$62 500 000.00	\$5 208 333.33	R 673 125 000.00	R 56 093 750.00
01-Apr-27	01-Jul-27	91	01-Jul-27	\$57 291 666.67	\$5 208 333.33	R 617 031 250.00	R 56 093 750.00
01-Jul-27	01-Oct-27	92	01-Oct-27	\$52 083 333.33	\$5 208 333.33	R 560 937 500.00	R 56 093 750.00
01-Oct-27	03-Jan-28	94	03-Jan-28	\$46 875 000.00	\$5 208 333.33	R 504 843 750.00	R 56 093 750.00
03-Jan-28	03-Apr-28	91	03-Apr-28	\$41 666 666.67	\$5 208 333.33	R 448 750 000.00	R 56 093 750.00
03-Apr-28	03-Jul-28	91	03-Jul-28	\$36 458 333.33	\$5 208 333.33	R 392 656 250.00	R 56 093 750.00
03-Jul-28	02-Oct-28	91	02-Oct-28	\$31 250 000.00	\$5 208 333.33	R 336 562 500.00	R 56 093 750.00
02-Oct-28	02-Jan-29	92	02-Jan-29	\$26 041 666.67	\$5 208 333.33	R 280 468 750.00	R 56 093 750.00
02-Jan-29	03-Apr-29	91	03-Apr-29	\$20 833 333.33	\$5 208 333.33	R 224 375 000.00	R 56 093 750.00
03-Apr-29	02-Jul-29	90	02-Jul-29	\$15 625 000.00	\$5 208 333.33	R 168 281 250.00	R 56 093 750.00
02-Jul-29	01-Oct-29	91	01-Oct-29	\$10 416 666.67	\$5 208 333.33	R 112 187 500.00	R 56 093 750.00
01-Oct-29	02-Jan-30	93	02-Jan-30	\$5 208 333.33	\$5 208 333.33	R 56 093 750.00	R 56 093 750.00

Annexure “MM30”



Mathane Makgatho Corporate JHB

From: Anoj Singh Corporate JHB
Sent: 21 August 2014 05:14 PM
To: Mathane Makgatho Corporate JHB
Cc: Brian Molefe Transnet Corp; Yusuf Mahomed Transnet Corporate JHB; Dorothy Kobe Transnet Corporate JHB
Subject: Re: China Development Bank

Hi M

Thx you for the analysis below.

I will consider the comments and respond accordingly.

Thx

A

Sent from my iPhone

On 21 Aug 2014, at 12:53 PM, "Mathane Makgatho Corporate JHB" <Mathane.Makgatho@transnet.net> wrote:

Dear Brian and Anoj

I trust that all is well with both of you.

This email is a follow up of various discussions I had with yourselves and in some instances with Regiments included where I had indicated my discomfort and disagreement on how the China Development bank facility negotiations are being handled, Regiment's pricing methodology as well as my disagreement of the appointment of Regiments as the Transaction advisor for the facility. For the avoidance of doubt I would like to bring the following to your attention:

1. Overall governance

I respect your Executive Authority and powers that go with it, but I also believe that it is my responsibility as the current Transnet Group Treasurer to advise you on matters relating to Treasury activities. As I indicated, I was not consulted nor was I aware that Regiments was appointed as the Transaction advisor and lead negotiator for the facility as I believe there was no need for them to be appointed given progress that we had made. I do not support that a R26 billion facility be negotiated and led by a transaction advisor, as we cannot and should not negotiate a loan facility in isolation of Transnet's current R90 billion debt portfolio. When we negotiate and enter into agreement with lenders and investors, we make certain undertakings and covenants that should apply to future facilities as well. The fact that Transnet's biggest ever transaction, is negotiated and decided by outsiders (Regiments) is a cause for concern as it exposes the Company to undue risk. When we negotiate a facility of this magnitude, we assemble a multi-disciplinary team that includes legal, tax, accounting, structured finance and risk management team members. This is to ensure that all potential risks relating to the facility are identified and mitigated to the extent possible.

2. Fees

a. Interest expense

60	159 300 000.00
50	132 750 000.00

3. Conclusion

It is my believe that the CDB facility in its current form is not in the best interest of the Company or the country given potential capital leakage of up to R3.7 billion in excessive interest expense and excessive arrangement fees which may be classified as PFMA violation given information at our disposal. The additional interest expense will have a negative impact on the already fragile cash interest cover ratio. I therefore recommend that we terminate discussions with China Development Bank and explore other sources of funds. Transnet has proved its ability to raise funds from diverse funding sources even under trying circumstances. In 2008-09, we were able to raise over R22 billion even when the market was "closed" for other issuers. The latest example is our ability to raise R8 billion for the locomotive deposit at short notice. As indicated in the Company's June 14 going concern document, the Company has sufficient facilities to meet all its obligations as they fall due. The resuscitation of Transnet's domestic bond program and availability of short term facilities will assist in alleviating any potential cash flow problems. Even if domestic spreads can widen, overall pricing will still be much better than the CDB facility.

Sincerely;

<image001.gif>

Mathane Makgatho
Group Treasurer
Group Treasury
Transnet SOC Ltd

<image002.gif> +27 11 308-2613

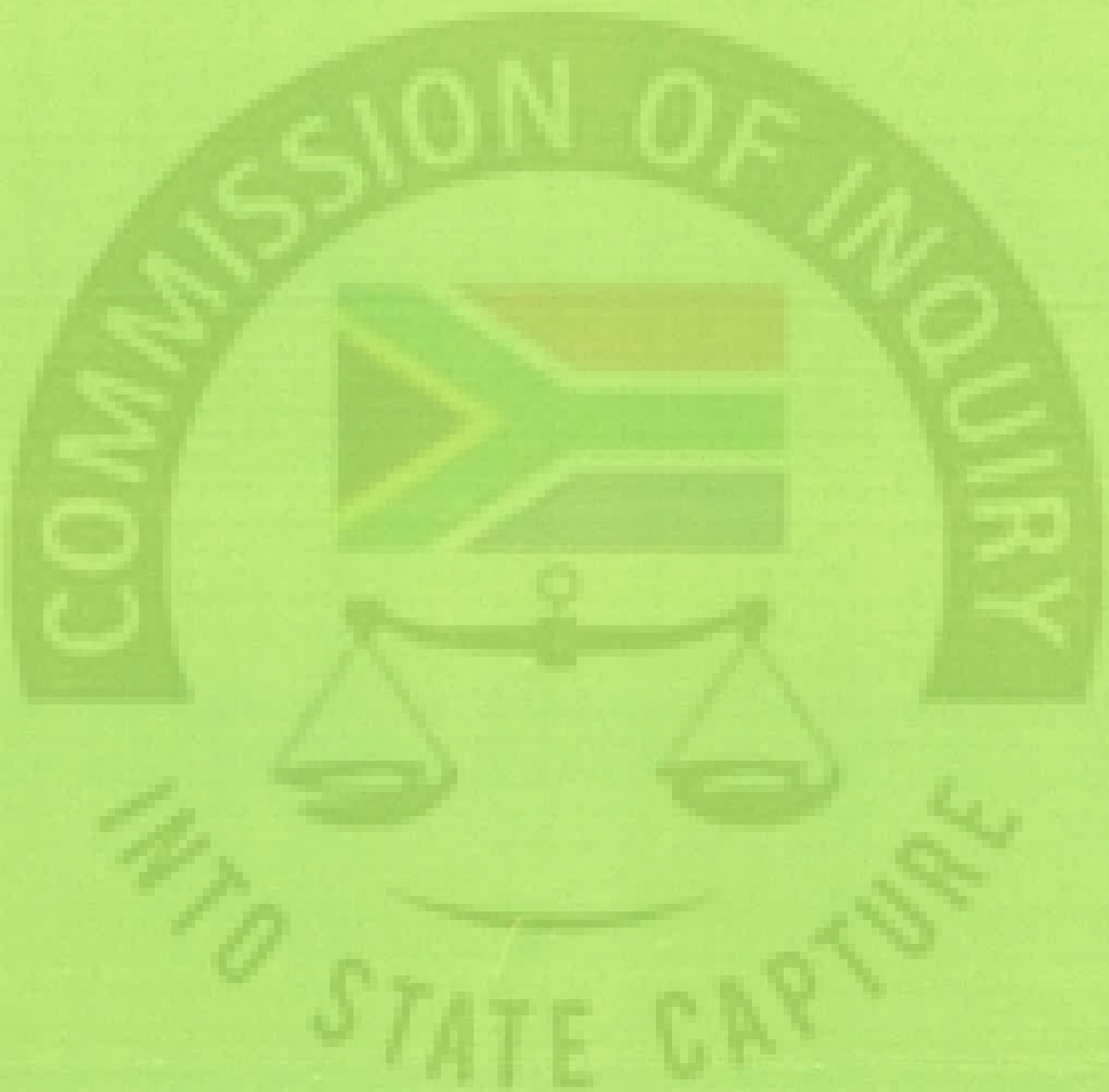
<image003.gif> +27 83 270 7651

<image004.gif> +27 11 308-2699

<image005.gif> Mathane.Makgatho@transnet.net

www.transnet.net

Annexure “MM31”



Discussion

Discussion (Continued)

- The point that was discussed last relates to the pricing. All the pricing components were put on the table to bridge the gap between Transnet's and CDB's proposals.

	Transnet's position	CDB's position	Proposed by CDB and Regiments
Margin	+ 255 bps	+ 260 bps	+ 257 bps
Base	3 month LIBOR	6 month LIBOR	3 month LIBOR
Arrangement fee	1.10%	1.10%	1.18%
Commitment fee	0.80%	0.80%	0.80%

Analysis

- The NPV of the 3 bps concession by CDB (from 260 bps to 257 bps) is calculated to be US\$ 8.1 million (represent a direct cost saving to Transnet)
- The increase in the arrangement fee (8 bps) is calculated to cost Transnet US\$ 2 million in NPV terms.
- The improved repayment profile along with the longer grace period has increased the duration from the original 7.78 years to 8.67 years, which will better suit Transnet asset liability profile.
- The net financial benefit for Transnet would further increase by virtue of the combined positive impact on the NPV of the increase in the grace period (from 36 months to 54 months) and the improved loan repayment profile.

Recommendation



We advise Transnet to take up the proposed loan with the above negotiated terms due to the following reasons:

- ✓ The loan is fairly priced in comparison to foreign issuance of a US\$ denominated loan under the GMTN, which is expected to have a pricing point of about 307 above US Treasuries (bearing in mind the mark-to-market rate of 285 bps above US Treasuries on Transnet existing US\$ bond that will mature in 7.9 years);
- ✓ Longer capital grace period of 54 months
- ✓ The starting date of the capital grace period to be the first drawdown date as opposed to the date of signing of the loan agreement as originally suggested
- ✓ An improved capital repayment profile with increasing capital repayments towards the end of the loan tenure, which has the impact of extending the duration of the loan as opposed to the duration associated with the original equal capital repayment schedule;
- ✓ Volume consideration; and
- ✓ CDB agreed to transact cross currency swaps such that Transnet will have ZAR denominated loan in its books.

Annexure “MM32”



Theo Takane Corporate JHB

From: Eric Wood <EricW@regiments.co.za>
Sent: 12 August 2014 09:26 AM
To: Anoj Singh Corporate JHB
Subject: FW: the second mail about TRANSNET loan from the CDB
Attachments: Transnet CDB term sheet (marked up).doc

Hi Anoj

This is my latest response to CDB regarding their latest information request. (I have purposely not cc'd you as discussed)

Regards

Eric



Eric Wood
Executive Director

91 Central Street, Houghton 2198 Postnet Suite 25, Private Bag X12, Bryanston 2015
 Tel: +27 11 715 0300 Direct: +27 11 715 0339 Fax: +27 11 715 0352
 Mobile: +27 83 626 0857 E-mail: ericw@regiments.co.za www.regiments.co.za
 Regiments Capital (Pty) Ltd is an authorised financial services provider FSP Number 34831 Reg No. 2004/023794/07

From: Eric Wood
Sent: 12 August 2014 09:18 AM
To: Stephanie S. Zhou
Subject: FW: the second mail about TRANSNET loan from the CDB

Thank You for your e-mail response and further requests for information. I understand the time pressures on this transaction and I am happy to assist in this regard. I am happy to facilitate a face to face meeting with Transnet, however they have indicated to me that we should have agreement on the outstanding matter on the term sheet (the loan pricing) before we meet with them again. I wish to make the following points in response to your request for information:

- I have marked up and attached the term sheet in accordance with our agreement last week (agreement on the loan pricing remains outstanding)
- Transnet is regulated in terms of the 'Public Finance Management Act' (PFMA), which lays down the delegations of authority and corporate governance requirements of public entities. I suggest that your legal counsel appraise you of this legislation, and the relevant requirements in terms of the act. The approval of the CDB loan by the required levels of authority by Transnet should be incorporated in the loan documents as a condition precedent prior to the draw-down of the loan.
- Any further statutory documents required should be dealt with between the appointed legal teams (CDB and Transnet), as they will know exactly which documents, and signed resolutions they will need.
- The suggested grace period of 54 months (four and a half years) is accepted and will suit the Transnet asset/liability profile
- Transnet have confirmed to me that the CNR and CSR locomotive contracts were taken by CFO on his visit to Beijing and supplied to Helen (CDB Beijing office). The contract for the CSR additional 100 locomotives has not yet been supplied, and I have asked Transnet to supply this. In addition I will update the spreadsheet with the locomotive types (in addition to the locomotive numbers and cash-flows), and I will send the updated spreadsheet to you later in the day.
- Apart from the locomotive types, the number, purchase price and delivery time of the locomotives has been supplied to yourselves (as contained in the spreadsheet, which you can reconcile to the signed contracts).
- Transnet has agreed to provide you with a pledge of the locomotives acquired from CNR and CSR, and this security has not been granted to any other party (your lawyers can request official written confirmation of this as a condition precedent in the loan agreement)
- Regiments is preparing the proposed draw down schedule for the CDB loan, which will be provided to yourselves later today. The draw down schedule will take into account the term sheet condition that CDB

does not wish to allow for a draw down in excess of 85% of the payments made to CNR and CSR. The proposed draw down schedule will therefore be compliant with the conditions of the term sheet.

- Notwithstanding the fact that the CNR and CSR locomotive contracts were supplied to CDB (Helen), I have asked Transnet for additional copies which I will forward to you as soon as I have received them

I look forward to the successful conclusion of this transaction with CDB, and continue to offer my support and assistance to the transaction.

Thank You
Eric Wood



Eric Wood
Executive Director

91 Central Street, Houghton 2128 Postnet Suite 25, Private Bag X11, Burnham Park 2015
Tel: +27 11 715 0300 Direct: +27 11 715 0339 Fax: +27 11 715 0351
Mobile: +27 03 625 0657 Email: eric@regiments.co.za www.regiments.co.za
Regiments Capital (Pty) Ltd is an authorised financial services provider FSP Number 15031 Reg. No. 2004/02350/07

From: 任黎涛 [<mailto:rlt79@cdb.cn>]

Sent: 11 August 2014 09:54 PM

To: Eric Wood; Stephanie S. Zhou

Cc: 孙小强; 连冠; 苏战平; 刘国强; 沙菁; 任黎涛

Subject: the second mail about TRANSNET loan from the CDB(Please notice and give answer to us)

周女士和ERIC先生:

感谢今天您给我们的回信。同时,我随后针对贵方的回信,通过邮件又提出了一个确认请求和明确用款计划的建议,请您关注和答复。

另外,CDB方面也在深入研究贷款事宜,今天国内总部与我们召开了电话会议。现还有几个必须明确的事项,我方通过本邮件提出,请TRANSNET一并研究考虑:

1.为了让CDB提前做好贷款评审的相关必要准备,现需要TRANSNET方面就我方提供的第二版TERM-SHEET,并结合上周双方的谈判情况,请在第二版TERM-SHEET上提出贵方的最新的主要融资条件,并反馈CDB。

2.因本次融资金额大、期限长,从规范角度和《公司法》角度讲,TRANSNET应在其内容公司章程或其他重要公司文件中,规定有其对外融资的内部决策程序或授权决策程序(含对外借款和提供担保决策这两个方面)等规定。这也是银行给客户提供贷款时,银行需要的重要基础支持性文件。因此,请TRANSNET方面提供公司章程,并给出本次融资事项的内部决策程序规定依据。

3.正如上次会谈所讲,CDB为降低TRANSNET进入还款期后的压力,我们愿意结合贵方向中国南、北车的机车采购合同付款计划,CDB愿意讲目前双方确定的宽限期3年延长至4年6个月。我们认为,这是非常合理且利于TRANSNET方面的。

4.感谢通过EXCEL向我方提供机车采购款支付计划,但CDB的贷款明确针对本次中国企业机车采购事项,中国银行业监督管理部门(政府管理部门)要求贷款必须专款专用,而且贷款评审需要相关依据,机车采购商务合同是我们贷款评审必需的重要基础性依据。否则,肯定会影响贷款后期审查和顺利审批。当然,CDB方面也会严格尊重商业惯例和保密要求,请贵方放心。如TRANSNET认为有必要,CDB愿意就相关事项及提供材料的合作,与TRANSNET签订保密协议。因此,请TRANSNET做好相关方的解释和协调,向我方提供机车采购商务合同。

5.根据TRANSNET愿意提供机车抵押的安排,请抓紧向TRANSNET方面确认,如果CDB提供贷款,TRANSNET方面将计划提供哪方面的机车向CDB提供抵押担保?例如:机车的类型、数量、原始采购价格、采购时间、是否已为其他主体设定其他相关权利、目前机车状态等等因素都是银行方面关注的。如果TRANSNET计划将本次从中国南车、北车采购的机车,根据款项支付和机车交付进度,全部向CDB提供融资抵押,CDB将考虑此项安排。如果抵押率测算达到CDB评审要求,CDB也会接受此抵押安排。

因本阶段双方时间都很紧张，希望REGIMENETS和ERIC先生继续发挥重要积极作用。上述，建议请最晚在本周三上午10点之前反馈我方。还请周女士将中、英文两版，发我方。

根据贵方研究和反馈，如需要，CDB希望也愿意在本周三下午（可根据贵方反馈情况而灵活确定时间计划）与贵方和TRANSNET当面交换意见。

保持联系和沟通！

任黎涛

Dear Ms. Zhou and Mr. ERIC:

Thank you for timely response today. Please pay attention to my follow-up email and reply.

Moreover, CDB is conducting research on the facility and a telephone conference was held today. Now there are still several issues and suggestions which Transnet needs to evaluate and consider:

1 To make CDB complete its related preparation work for loan appraisal, Transnet needs to provide its latest proposed term sheet basing on CDB's second edition term sheet and last week's negotiations between the two sides.

2. Because of the large amount and long tenor of this facility, relevant provisions about internal or authorized decision-making procedures for external financing and providing guarantee should be prescribed in Transnet's Articles of Association or other important company documents (in accordance with incorporation law). The document is one of most fundamental documents required by banks before a loan is provided. So please provide Transnet's articles of association and relevant provisions about internal decision-making procedures.

3. As discussed in last week, CDB tends to reduce Transnet's pressure in repayment period and match grace period with Transnet's payment schedule by adjusting it to four and half years. We believe this suggestion is reasonable and beneficial to Transnet.

4. Thank your for kindly providing the EXCEL-version payment schedule, but clearly CDB's loan must be used to pay locomotive procurement, which is also the regulation of China's Banking Regulatory authorities. Moreover, locomotive procurement contract is one of the fundamental documents when CDB conducts loan appraisal. Lack of the locomotive procurement contract will have an adverse impact on the loan approval. Of course, CDB fully understand the code of business practices and privacy requirements, we are willing to sign a confidentiality agreement with Transnet if necessary. Please do explain to Transnet and provide locomotive procurement contract to us.

5. In terms of locomotives mortgage, we want to confirm with Transnet: the type, number, original purchase price and purchase time of the locomotives the Transnet is going to pledge, whether security over the locomotives has been granted to other parties, and current status of the locomotives. If Transnet plans to use the locomotives it purchased from CSR and CNR as guarantee (according to the delivery and payment schedule), CDB will only accept when mortgage rate reaches level required by internal appraisal.

Due to huge time pressure, we hope REGIMENETS and Mr. ERIC continue to play an important role in this transaction. Please provide feedback in both English and Chinese to us before 10:00am Wednesday.

CDB is willing to discuss with you and Transnet face-to-face on Wednesday afternoon if necessary (or meeting time to be determined and flexible plan based on feedback from your side).

Please keep in touch.
Best regards

Litao Ren

任黎涛 Litao Ren

国开行南非工作组 China Development Bank Southern Africa Working Group

南非电话(South Africa): +27-0714597116

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Annexure “MM33”



Theo Takane Corporate JHB

From: Anoj Singh Corporate JHB
Sent: 12 August 2014 10:18 AM
To: Theo Takane Corporate JHB
Subject: Fwd: Transnet CDB term sheet (marked up)
Attachments: image001.png; ATT00001.htm; Transnet CDB term sheet (marked up).doc; ATT00002.htm

Sent from my iPhone

Begin forwarded message:

From: Eric Wood <EricW@regiments.co.za>
Date: 12 August 2014 at 8:18:36 AM SAST
To: Anoj Singh <anoj.singh@transnet.net>
Subject: Transnet CDB term sheet (marked up)

Hi Anoj
I have attached the marked up term sheet as discussed
Regards
Eric

DRAFT: 4530 July 2014

**INDICATIVE TERMS FOR
TERM LOAN FACILITY ARRANGED BY CHINA DEVELOPMENT BANK CORPORATION
FOR TRANSNET SOC LTD FOR THE ACQUISITION OF LOCOMOTIVES**

Borrower	Transnet SOC Ltd
Group	The Borrower and its subsidiaries
Mandated Lead Arranger	China Development Bank Corporation ("CDB")
Lenders	As selected <u>and appointed</u> by the Mandated Lead Arranger in consultation with the Borrower
Facility Agent	China Development Bank Corporation
Security Agent	[] ¹
Hedge Counterparty	[] ²
Finance Parties	The Mandated Lead Arranger, the Facility Agent, the Security Agent (and any delegate or receiver), the Hedge Counterparty and the Lenders
Facility Type	Secured term loan facility (the "Term Facility")
<u>Term Facility Agreement</u>	<u>The facility agreement entered into or to be entered into between the Borrower and the Lenders to finance the acquisition of the Locomotives by the Borrower.</u>
<u>Currency</u>	<u>US Dollars (USD)</u>
<u>Currency and Facility Amount</u>	Up to <u>US\$2,500,000,000</u> ³
Commercial Vendors	Friedshelf 1507 Proprietary Limited (and, subject to a name change, to be known and registered as CNR Rolling Stock South Africa Proprietary Limited) ("CNR") (under the CNR Contract) and CSR E-LoCo Supply

¹ CDB to confirm.

² CDB to confirm.

³ ~~CDB to confirm if there will be a separate rand tranche to be provided by a member of the syndicate.~~ ³ Please note that CDB is only able to fund in USD and repayment obligations are also in USD. However CDB or one of the other members of the syndicate are able to act as a hedge counterparty to convert the proceeds of the USD loan into rand pursuant to an ISDA Master Agreement, with the economic terms of each trade to be negotiated separately at the time of each such trade (given that the times of payment for the Locomotives (and hence the timing of each drawdown) cannot be pre-determined at the date of the Term Facility Agreement. Another alternative may be for a member of the syndicate to fund a separate rand tranche.

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	(Pty) Ltd ("CSR") (under the CSR Contract)
Commercial Contracts	Means the contracts between: <ul style="list-style-type: none"> (a) CSR and the Borrower for the design, manufacture, test and supply of up to 459 new dual voltage electric locomotives ("Electric Locomotives") dated 17 March 2014 (the "CSR Contract"); and (b) CNR and the Borrower for the design, manufacture, test and supply of up to 232 diesel locomotives ("Diesel Locomotives") dated 17 March 2014 (the "CNR Contract"), (the Electric Locomotives and the Diesel Locomotives, collectively known as the "Locomotives").
Purpose	The proceeds of the Term Facility shall be used to finance up to 85% (eighty five percent) of the contract value of each Commercial Contract.
Availability Period	Means, the period commencing from the date of the Term Facility Agreement and ending on the day before the date falling 36 (thirty six) months after the date of the Term Facility Agreement. ⁴ Any amount not drawn during the Availability Period shall automatically be cancelled on the last day of the Availability Period.
Final Maturity Date	180 180 (one hundred and eighty) months from the date of the Term Facility Agreement.
Margin	2.75 per cent 55% 65% (two point fivesixty five percent) per annum ⁵
LIBOR	Means, in relation to any loan, <ul style="list-style-type: none"> (c) the 36 (threesix) month London interbank offered rate administered by the ICE Benchmark Administration Limited (or any other person which takes over the administration of that rate) for USD displayed on the appropriate page of the Reuters screen ("Screen Rate"), or (d) (if no Screen Rate is available for the currency or Interest Period of that loan) the arithmetic mean of the rates (rounded upwards to four decimal places) as supplied to the Facility Agent at its request quoted by the agreed reference banks; and if any such rate is below zero, LIBOR will be deemed to be zero.

⁴ Please confirm that the Availability Period of 36 months corresponds to the period when payment becomes due for the Locomotives under the Commercial Contracts.

⁵ Please note that for transactions of this nature for a borrower of a similar credit rating, CDB usually charges a margin of not less than 350 basis points.

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Interest Rate	Loans under the Term Facility shall bear interest at a rate per annum equal to the aggregate of (a) the Margin and (b) 36 (threesix) month LIBOR.
Default Interest Rate	1.20 per cent (one point twenty) percent per annum above the applicable Interest Rate whilst any Event of Default is continuing.
Minimum amount of each utilisation	To be determined at the documentation stage.
Disbursement	Subject to compliance with the Conditions Precedent to first utilisation and 10 (ten) business days ² prior written notice to the Facility Agent, all loans shall be disbursed directly to the account of the relevant Commercial Vendor under each Commercial Contract, in accordance with the duly submitted disbursement instructions of the Borrower.
Financial Closing Date:	The date on which the Facility Agent (acting on the <u>written</u> instructions of all the Lenders) confirms that the Conditions Precedent to first utilisation of the Term Facility have been satisfied.
Facility agency fee	US\$60,0000 USD60,000 (sixty thousand) per annum
Security agency fee	[] ⁶ per annum
Arrangement Fee	1.5 per cent 1.105% (one point one five percent) of the amount of the total commitments under the Term Facility Agreement, payable on the earlier of (i) 30 (thirty) business days following the date of the Term Facility Agreement and (ii) the Financial Closing Date. ⁷
Commitment Fee	The Borrower shall pay to the Lenders a commitment fee in US Dollars computed at the rate of 1 per cent 0.8% (zero point eight percent) per annum on each Lender's available commitment under the Term Facility for the Availability Period. For the avoidance of doubt, the commitment fee shall start to accrue from the date of the Term Facility Agreement. The accrued commitment fee is payable in arrears on each successive period of 6 (six) months which ends during the Availability Period, on the last day of the Availability Period and, if the commitment is cancelled in full, on the cancelled amount of the relevant Lender's commitment at the time the cancellation is effective.
Interest Period	Each loan shall commence on the last day of its preceding Interest Period and end on the immediate following Interest Payment Date, except for the

⁶ CDB to confirm.⁷ Please note that this fee is likely to be shared with other members of the syndicate as an upfront fee for their participation. CDB requires this rate of arrangement fee to provide it with flexibility during the syndication process.

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initial Interest Period of each loan which shall commence on the utilisation date and end on the immediate following Interest Payment Date. If two or more loans end on the same date, the loans will be consolidated into, and treated as, a single Lloan on the last day of the Interest Period.

Interest Payment Date 12 March, 12 June, 12 September and 12 December of each calendar year. If the Interest Payment Date is not a Business-Daybusiness day, the interest shall be paid on the preceding Business-Daybusiness day. The final Interest Period shall end on the Final Maturity Date.

Interest Payment Interest will accrue on the Lloans based on the Interest Rate. Interest will be payable on each Interest Payment Date in arrears.

Repayment of Principal There will be no amortization of the principal payment during the period from the date of the Term Facility Agreement to the day before the date falling 36 (thirty six) months after the date of the Term Facility Agreement (the "Grace Period"). During the Grace Period only interest will be accrued and paid on each Interest Payment Date. After the Grace Period, principal shall be repaid in 25 (twenty five) equal and consecutive semi-annual installments, together with the accrued interest being paid at the same time as each such installment. The first installment shall be made on the date falling 36 months after the date of the Term Facility Agreement, and each subsequent installment shall be made on each Interest Payment Date thereafter. All amounts due or to become due under the Term Facility Agreement shall be paid or repaid in full by the Final Maturity Date.

Mandatory Prepayment Prepayment (with corresponding reductions to and cancellation of commitments) will be mandatory in full upon a change of control of the Borrower, ratings-downgrade or sale of all or a material part of the business/assets of the Borrower or the Group (i.e., where the higher of the market value or consideration receivable (when aggregated with other disposals by the Borrower or the Group) is equal to or exceeds an amount equal to US\$40USD40,000,000 (or its equivalent in another currency or currencies) in any financial year of the Borrower).⁸ Disposals permitted by the Lenders (to be further defined at documentation stage) shall not trigger the mandatory prepayment provisions.

Voluntary Prepayment The Borrower may prepay the Lloan in whole or in part (if in part by a minimum of US\$50USD50,000,000) (fifty million) at the end of any Interest Period subject to 30 Business-Days(thirty) business days of prior written notice to the Facility Agent. All prepayments shall be subject to a

⁸ Please note that these mandatory prepayment provisions were set out in Transnet's precedent facility agreement provided to CDB.

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prepayment fee of 1% (one percent) of the amount of the prepayment, and if not occurring on an Interest Payment Date, the payment of break costs, if any.⁹

Set-off All amounts payable in connection with the Term Facility to be made by the Borrower will be made without set-off or counterclaim.

Taxes All amounts payable in connection with the Term Facility will be made free and clear of all present and future taxes, other deductions, levies, imposts and withholdings of whatever nature (other than income taxes in the jurisdiction of each Lender's applicable lending office).

The Borrower will be required to gross up in the event that any such withholdings, taxes and/or deductions are required to be made.

Security Documents The Lenders' security package shall include, but not be limited to the following:

- (a) a security agreement granting a first ~~fixed legal mortgage and a first fixed and floating charge~~ ranking security over the Locomotives in favour of the Security Agent (acting on behalf of the Finance Parties) on and from the transfer of title of such Locomotives and each part thereof to the Borrower¹⁰;
- (b) all notices and acknowledgements relating to the security listed in (a) above; and
- (c) *[other security requested by the Mandated Lead Arranger as necessary]*.

Finance Documents Documentation will be based on the Loan Market Association (the "LMA") provisions customary for facilities of this nature. The documentation will include, but not be limited to the following:

- (a) a ~~term facility agreement~~ Term Facility Agreement entered between, amongst others, the Lenders and the Borrower ~~(the "Term Facility Agreement")~~;;

⁹ Please note that it is standard for CDB to charge a prepayment fee in deals of this nature.

¹⁰ Form of security package subject to confirmation by South African / PRC counsel.- Please note that security over the locomotives is imperative for CDB to provide this facility.

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- (b) an ISDA Master Agreement, any accompanying schedules and each subsequent confirmation between the Borrower and the Hedge Counterparty¹¹;
 - (c) the Security Documents; and
 - (d) any Fee Letters,
- (together the "Finance Documents").

Conditions Precedent to first utilisation Satisfaction of certain conditions precedent as are customary for a transaction of this nature or considered appropriate by the Lenders, each in form and substance satisfactory to the Lenders, including but not limited to the following:

- (a) execution and delivery of all of the Finance Documents;
- (b) legal opinions issued by the external legal advisors to the Lenders satisfactory to the Lenders;
- (c) a certified copy of the constitutional documents of the Borrower, board resolutions, authorized signatory certificates and any relevant governmental approvals;
- (d) the latest consolidated financial statements of the Borrower;
- (e) no Event of Default has occurred and is continuing and all repeating representations are true and correct;
- (f) receipt of all relevant approvals and authorizations (corporate, regulatory, governmental and shareholder) in respect of the Commercial Contracts and the Finance Documents);
- (g) payment in full of all fees and expenses due and payable by the Borrower; and
- (h) copies of the executed Commercial Contracts.

Further Conditions Precedent Each utilisation, when aggregated with the amount of all Loans that have been drawn under the Term Facility (whether outstanding or not), shall not exceed 85% (eighty five percent) of the amounts that have been or will be incurred and paid on or prior to the date of such utilization (or will be paid with the proceeds of such utilisation) by the Borrower under each Commercial Contract.

¹¹ Please note that this will be in respect of any hedging arrangements relating to the conversion of proceeds under any Loan from USD to rand.

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- (d) restriction on disposals subject to agreed exceptions;
- (e) restriction on merger;
- (f) maintenance of insurance;
- (g) restriction on loans (subject to agreed exceptions) and guarantees;
- (h) environmental compliance and notification of environmental claims;
- (i) pari passu ranking;
- (j) compliance with sanctions;
- (k) further assurance;
- (l) no change of business; and
- (m) [*others*].

Financial Covenants¹²

Consolidated Tangible Net Worth at least US\$[] at any time;

Consolidated Debt to Revenue to be less than 80% of annual turnover or EBITDA to be less than [] semi annual;

Consolidated Interest Cover Ratio at least [1.5 times] semi annual.

Events of Defaults

Events of Default customarily included for facilities of this nature, in respect of the Borrower, and if appropriate, any member of the Group, including but not limited to the following:

- (a) non-payment unless failure to pay is caused by administrative or technical error and payment is made within [3] Business Days (three) business days of its due date;
- (b) any financial covenant not satisfied;
- (c) failure to comply with any other obligations subject to agreed remedy periods if capable of remedy;
- (d) misrepresentation;
- (e) cross default;

¹²~~Borrower to propose.~~ Borrower to propose. Pursuant to funding plan provided by the Borrower to CDB, we understand that Transnet has provided loan covenants to other lenders, for example gearing ratio is 50% and cash interest cover ratio is 3:1. Please note that CDB requires compliance with certain financial covenants by the Borrower as a standard credit requirement.

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- (f) insolvency;
- (g) insolvency proceedings;
- (h) creditors' process;
- (i) unlawfulness of Finance Documents and Commercial Contracts;
- (j) repudiation/termination of Finance Documents and Commercial Contracts;
- (k) material adverse change; and
- (l) [others].

Grace periods, thresholds and exceptions (as applicable) will be agreed at the documentation stage.

Costs and Expenses: All costs and expenses (including without limitation travel expenses and legal fees) incurred by the Facility Agent, the Security Agent and the Mandated Lead Arranger in connection with the preparation, negotiation, printing, execution and syndication of the Term Facility Agreement and any other Finance Document shall be paid by the Borrower promptly on within 30 (thirty) days of demand whether or not the Finance Documents are signed.

Assignments and Transfers The Lenders may assign any of ~~its~~their rights or transfer by novation any of ~~its~~their rights and obligations to another bank or financial institution or to a trust, fund or other entity which is regularly engaged in or established for the purpose of making, purchasing or investing in loans, securities or other financial assets. Consent of the Borrower is not required for such assignment or transfer, [provided such entity (the transferee) is not a competitor of the Borrower¹³], but the Lenders shall give written notice to the Borrower of any such assignment or transfer.

Clear market During the period from the date of ~~the Term Sheet~~this term sheet and the date of the Term Facility Agreement, the Borrower shall not, and shall ensure that no other member of the Group shall raise or attempt to raise finance in respect of the Commercial Contracts in the international or domestic loan or capital markets without the prior written consent of the Mandated Lead Arranger.

Syndication: The Mandated Lead Arranger reserves the right to syndicate the Facility in whole or in part to other banks and financial institutions. The Borrower shall give such assistance as the Mandated Lead Arranger may reasonably

¹³ Please clarify what this means. Would a financial institution constitute a competitor of the Borrower?

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require in relation to the syndication of the Facility, including giving of presentations by members of their management and assisting in relation to the preparation of an information memorandum.

Market Flex: The Mandated Lead Arranger shall be entitled to change, in consultation with the Borrower, the pricing, terms and/or structure of the Term Facility if the Mandated Lead Arranger determines that such changes are advisable in order to ensure a successful syndication of the Term Facility.

Market Conditions: The terms set out in this ~~Term Sheet~~term sheet are subject to there being no material adverse change in either (a) the financial condition or the socio-political and economic situation of the Republic of South Africa, or (b) the international or any relevant domestic syndicated loan market, up to the date of the Term Facility Agreement.

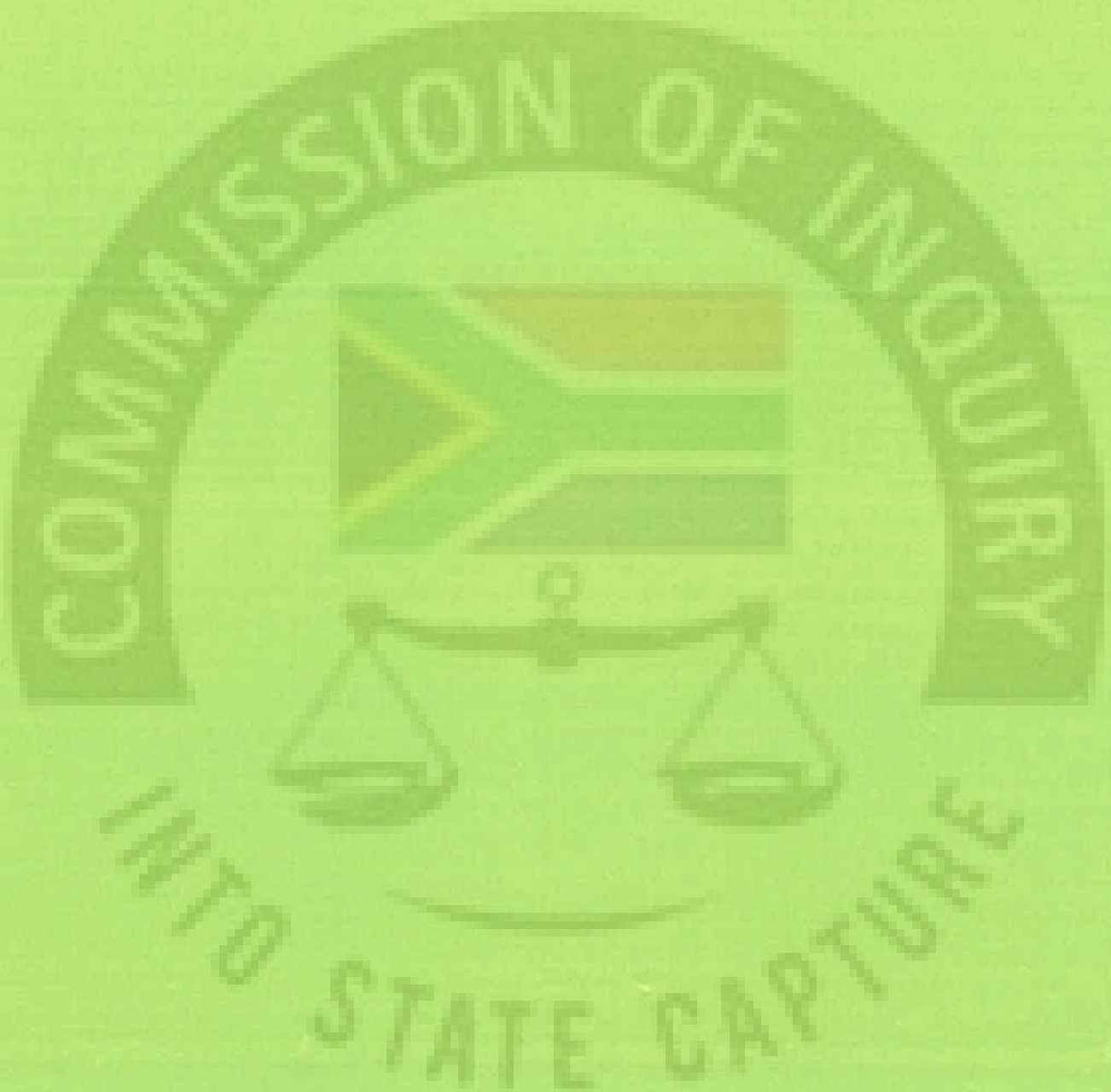
Miscellaneous Provisions The Finance Documents shall also contain standard terms including without limitation in respect of costs and expenses, amendments and waivers, illegality, break costs, market disruption, increased costs, indemnities to the Finance Parties, ~~FATCA~~the Foreign Account Tax Compliance Act (the "FATCA") provisions, reimbursement of stamp duty and VAT payable in connection with the facility documentation.

Waiver of sovereign immunity The Borrower shall irrevocably waive any immunity from suit, execution, attachment or legal process to the fullest extent permitted by the applicable law.

Governing Law All agreements will be governed by English law. If there is any dispute arising out of the Finance Documents, the parties shall submit the dispute to the London Court of International Arbitration ("LCIA") for arbitration in accordance with the then applicable LCIA Arbitration Rules.

Validity: The terms set out in this term sheet are available for acceptance by the Borrower until close of business in Beijing, China on 31 December 2014, after which time they will expire unless extended in writing by the Lenders.

Annexure “MM34”



Mathane Makgatho Corporate JHB

From: Anoj Singh Corporate JHB
Sent: 21 August 2014 04:24 PM
To: Yousuf Laher Transnet Freight Rail JHB
Cc: Mathane Makgatho Corporate JHB; Danie Smit Transnet JHB; Tewodros Gebreselasie; Eric Wood
Subject: Re: Mandatory documents for application for opening foreign exchange accounts with CDB by an overseas institution(NRA)

Dear All

No documents will be completed until the Board has approved the facility and a final agreement has been concluded.

Thx

Sent from my iPhone

> On 21 Aug 2014, at 4:04 PM, "Yousuf Laher Transnet Freight Rail JHB" <Yousuf.Laher@transnet.net> wrote:

> Dear Mathane, refer mail below, please could you assist Regiments.

> Best Regards

> Yousuf Laher CA (SA)

> Transnet Freight Rail

> From: Tewodros Gebreselasie [mailto:TewodrosG@regiments.co.za]

> Sent: 21 August 2014 03:50 PM

> To: Yousuf Laher Transnet Freight Rail JHB

> Cc: Anoj Singh Corporate JHB; Eric Wood

> Subject: FW: Mandatory documents for application for opening foreign exchange accounts with CDB by an overseas institution(NRA)

> Dear Yousuf,

> We would appreciate if you (or someone from the CFO's office) help us in completing the attached document necessary for Transnet to open a foreign exchange account with CDB.

> Your usual cooperation is greatly appreciated.

> Regards

> Tewodros Gebreselasie

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> <境外机构在国家开发银行开立外汇账户所需资料清单.doc>



开户资料清单:

- 1、 国家开发银行境外机构开立外汇账户申请书 (NRA) -见附件 1
- 2、 国家开发银行境外机构外汇账户印鉴卡 (NRA) -见附件 2
- 3、 各国注册公司应具备的材料-见附件 3
- 4、 国家开发银行境外机构外汇账户变更申请书 (NRA) -见附件 4 (需要时提供)
- 5、 国家开发银行境外机构外汇账户关闭申请书 (NRA) -见附件 5 (需要时提供)

注: 开户资料为非中文的, 还应提供对应的中文翻译。

Mandatory documents for application for Opening a Foreign Exchange Account with CDB by an Overseas Institution (NRA)

1. Application Form for Opening a Foreign Exchange Account with CDB by an Overseas Institution (NRA)-seen in appendix 1
2. Specimen Seal and Signature Sheet for Foreign Exchange Account Opened with CDB by an Overseas Institution (NRA)- seen in appendix 2
3. Documents required to be submitted for incorporating a company in various jurisdictions- seen in appendix 3
4. Application Form for Change of Information regarding the Foreign Exchange Account Opened by an Overseas Institution with CDB (NRA) -seen in appendix 4 (submit when needed)
5. Application for Closing the Foreign Exchange Account Opened by an Overseas Institution with CDB (NRA) -seen in appendix 4 (submit when needed)

Notes: The Chinese translation of the above documents should also be submitted to CDB if the original documents are not in Chinese.

声

明

本公司向银行声明：

- 1、本公司在 合法注册成立，已向贵行提供了全套合法注册的证明文件；
- 2、列于印鉴卡内的本公司印章和签署式样真实；
- 3、本申请书内容全属正确；
- 4、本公司已采取一切措施，确保本申请书合法、有效及对本公司有约束力；
- 5、本账户的操作适用中华人民共和国法律（不包括香港、澳门特别行政区和台湾地区）。凡与本账户有关的任何争议，双方应友好协商解决，协商不成的，任何一方均有权向开户行住所地人民法院提起诉讼解决；
- 6、一旦本公司名称、联系信息（包括且不限于联系人、联系地址、电话、手机、传真、电邮等联系渠道）、印鉴卡片等发生变化，将及时通知贵行。否则，由此造成的一切损失皆由本公司承担；
- 7、为使任何通信生效，同意贵行有权使用其认为合适的任何支付或清算系统或中介银行、以及合适的支付路径。我公司充分了解：交易对手及交易物项如涉及联合国安理会或中国政府缔约认可的其他国际组织的制裁决议、制裁清单范围内的实体（组织或个人）和相关物项时，可能产生交易和清算风险，我公司自行承担可能导致的一切不利后果包括但不限于资金冻结、扣留、扣罚等损失。同时我公司同意对与之相关的任何业务纠纷及损失，银行不承担任何责任；且承诺将赔偿因此导致的争端或纠纷给银行造成的损失。
- 8、同意贵行在如下情况内，对外披露本公司信息：（1）为进行交易和处理付款，以及为与银行可能向客户提供的服务直接有关的其他目的，银行有权不时向银行合作方、数据服务提供者、代理人或其他第三方提供关于客户、其账户和交易的资料或从以上各方取得关于客户、其账户和交易的资料；（2）在适用法律、诉讼程序、条例、命令、判决或法令允许或要求下，或与银行有关的诉讼程序，银行有权披露资料；（3）银行有权向政府及监管机构和信贷评级机构披露资料；（4）即使与客户订立的任何协议终止或停止向客户提供任何服务，转移和披露资料的许可依然有效。
- 9、本公司确认贵行须从中国关于反洗钱的法律及银行的内部政策。本公司同意向贵行提供因相关法规、政策和内部管理制度而要求我公司提供的任何资料。
- 10、本公司知悉：未经国家外汇管理部门批准，本账户不能存取外币现钞，账户内资金不能结汇。

申请单位预留印鉴：

申请单位公章：

年 月 日

Appendix 1

Application Form for Opening a Foreign Exchange Account with CDB by an Overseas Institution (NRA)

Applicant Information	Name (in English)* Name (in Chinese) Country of Incorporation* Company Registration No.* Registered address and postal code* Code (if any) for overseas institution in the declaration of the Balance of Payments:
Contact Information	(the following contact information will be used for communication between the bank and its customer, and the applicant is recommended to provide local contact information, please fill in complete information) Name of the Contact Person* Contact Telephone No.* Facsimile No.* Mobile Phone No. Address* Postal code*: E-mail address
Account Information	Account Type: NRA Demand Deposit Account Currency: <input type="checkbox"/> USD <input type="checkbox"/> HKD <input type="checkbox"/> EUR <input type="checkbox"/> GBP <input type="checkbox"/> AUD <input type="checkbox"/> JPY <input type="checkbox"/> SGD <input type="checkbox"/> CAD <input type="checkbox"/> CHF <input type="checkbox"/> Others:
Exhibits	<input type="checkbox"/> Certificate of Incorporation <input type="checkbox"/> Business Registration Certificate <input type="checkbox"/> Certificate of Good Standing <input type="checkbox"/> Registration Agent Certificate <input type="checkbox"/> Annual report form <input type="checkbox"/> Share Certificate <input type="checkbox"/> A copy of the ID certificate of the director and the authorized signatory <input type="checkbox"/> Specimen Seal and Signature Sheet (in triplicates) <input type="checkbox"/> Other documents (please specify in detail):

The following is for bank use only

Customer No.: _____

A/C No.: _____

Effective Date: _____

Processed by: _____ Reviewed by: _____ Bank Seal: _____ Date: _____

Representations

The Overseas Institution represents and warrants to the Bank as follows:

1. The Overseas Institution is duly incorporated in _____, and has provided the Bank with a complete set of documents evidencing its due incorporation;
2. The seal and signature as provided in the Specimen Seal and Signature Sheet are true and authentic;
3. The information in this Application Form is true in all respects;
4. The Overseas Institution has taken all measures to ensure that the Application Form is legal, valid and binding over the Overseas Institution;
5. The operation of this account shall be subject to the laws of the People's Republic of China (which for this purpose exclude such regions as HKSAR, Macau SAR and Taiwan). Any dispute in connection with this account shall be resolved by the parties through friendly consultation, failing which, either party has the right to bring a legal action before the people's court at the location where the bank account is opened;
6. The Overseas Institution shall immediately notify the Bank when there is any change of its name, contact information (including, without limitation, contact person, and means of contact, such as address, telephone, mobile phone, facsimile and e-mail), and information related to the Specimen Seal and Signature Sheet, otherwise, the Overseas Institution shall be fully responsible for any and all losses and/or consequences arising therefrom;
7. To enable valid communication, the Overseas Institution agrees that the Bank is entitled to use any payment or settlement system or intermediary banks and suitable route of payment as it deems fit. The Overseas Institution is fully aware that there may be transactional and settlement risks when a counterparty or the subject matter of a transaction involves any entity (organization or individual) or any subject matter covered in the resolution or list of sanctions by the Security Council of the United Nations or any other international organizations recognized by the Chinese government through ratification of treaties and, the Overseas Institution agrees to be solely responsible for all adverse effects that may arise therefrom, including, without limitation, losses or consequences due to freezing of funds, deduction of fines and attachment of funds. The Overseas Institution also agrees that the Bank shall not be liable for any business disputes or losses related to the Overseas Institution, under which circumstance, the Overseas Institution undertakes to indemnify and hold the Bank harmless from any losses and/or consequences due to any dispute or controversy arising therefrom.
8. The Bank is permitted to disclose the following information of the Overseas Institution to others in any of the following circumstances: (1) the bank is entitled to provide from time to time its partners, data service providers, agents and other third parties with information about its customers, their accounts and transactions, or to receive such information from such partners, data service providers, agents and other third parties, for transactional and payment processing purposes, or any other purposes directly related to the Bank's service provided to the customer; (2) the Bank is entitled to disclose information as permitted or requested under applicable laws, procedural laws, regulations, decrees, judgment or order, or in any litigation proceedings related to the Bank; (3) the Bank is entitled to disclose information to government and regulatory agencies and credit rating agencies; (4) such permission regarding disclosure and transfer of information shall remain valid and survive the termination of any agreement with the customer and any cessation of services to the customer.
9. The Overseas Institution confirms that the Bank is subject to the relevant PRC anti-money laundering laws and the Bank's internal policies. The Overseas Institution agrees that it will provide the Bank with any information as the Overseas Institution may be required to provide under any relevant laws, regulations, and policies and internal administrative rules of the bank.
10. The Overseas Institution is aware that no foreign currency cash deposits or withdrawal may be made into or from this account, and the balance in this account may not be used to settle foreign currency payments.

Specimen seal and signature of the Overseas Institution: _____

Official seal of the Overseas Institution: _____

Date: _____

附件 2

国家开发银行境外机构外汇账户印鉴卡（NRA）

客户中文名称：_____

客户英文名称：_____

申请开户银行：_____

请列明本印鉴卡授权签署人为_____人

姓名正楷	签署式样	签署方式
		<input type="checkbox"/> 独立签署所有业务 <input type="checkbox"/> 与_____联名签署所有业务
		<input type="checkbox"/> 独立签署所有业务 <input type="checkbox"/> 与_____联名签署所有业务
		<input type="checkbox"/> 独立签署所有业务 <input type="checkbox"/> 与_____联名签署所有业务
客户印章 <input type="checkbox"/> 需要 <input type="checkbox"/> 不需要		

以下由银行填写：

客户号：_____

账 号：_____

生效日：_____

经办：

复核：

银行盖章：

年 月 日

Appendix 2

Specimen Seal and Signature Sheet for Foreign Exchange Account Opened with CDB by an Overseas Institution (NRA)

Customer Name (in Chinese): _____

Customer Name (in English): _____

Opening Bank: _____

Please specify the number _____ of persons serving as authorized signatories in this Specimen Seal and Signature Sheet.

Name in Block Letters	Specimen Signature	Signing Arrangements
		<input type="checkbox"/> All transactions to be signed off by him/her alone <input type="checkbox"/> All transactions to be signed off by him/her jointly with _____
		<input type="checkbox"/> All transactions to be signed off by him/her alone <input type="checkbox"/> All transactions to be signed off by him/her jointly with _____
		<input type="checkbox"/> All transactions to be signed off by him/her alone <input type="checkbox"/> All transactions to be signed off by him/her jointly with _____

Customer Seal ☐ required ☐ not required

The following is for bank use only

Customer No.: _____

A/C No.: _____

Effective Date: _____

Processed by: _____ Reviewed by: _____ Bank Seal: _____ Date: _____

附件 3

各国注册公司应具备的材料

※香港注册公司应具备的材料：

- 1) 政府文件（商业登记证、公司注册证书）（每个注册公司均有公司注册号 7 位）
- 2) 公司组织大纲及组织细则
- 3) 公司印章 3 个（1 个钢印，1 个小圆章，1 个签字章）
- 4) 股本证明
- 5) 法定股东、董事会议记录册一本
- 6) 绿盒一个（存放上述文件物品之用）
- 7) 本公司提供香港公司注册秘书
（需香港公司或香港永久公民，提供法定职务，公司法委意见及会计税务建议）
- 8) 本公司提供香港本土注册地址

※英属维尔京群岛注册公司应具备的部分材料：

- (1) B.V.I 公司注册证书；
- (2) 公司组织大纲
- (3) 空白股票；
- (4) 会议记录；
- (5) 公司原子签名章及金属钢印各 1 枚；

(6) 公司股东、董事及秘书资料文件 1 份。

※澳门注册公司应具备的材料：

- ① 公司商业登记证
- ② 公司纳税证明 ME
- ③ 公司公章

※英国注册公司应具备的材料（公司名称必须以「 Limited」或其缩写「Ltd」作为结束语）：

- 1) 注册证书 (Certificate of Incorporation) - 1 张（每个注册公司均有公司注册号 8 位）
- 2) 公司组织章程大纲及章程细则 (Memorandum and Articles of Association) - 7 份副印本
- 3) 放弃权利文件 (Renunciation documents)
- 4) 公司纲印 (Company seal)
- 5) 法定表格 (Statutory forms)
- 6) 证书格式 (Certificate frame)

英国注册公司查询可通过英国政府公司服务网站（大部分公司均可在此网站查询）：

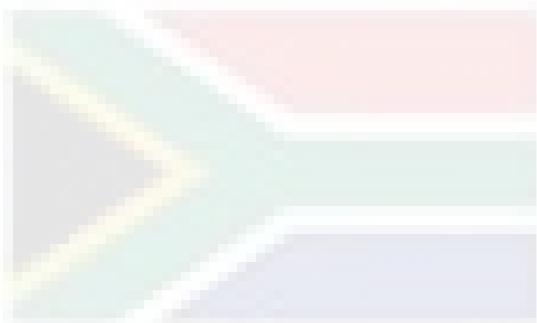
※美国注册公司应具备的材料：

- 1 . 美国公司州政府颁发的公司特许证；

- 2 . 美国公司组建法规;
- 3 . 美国公司构成法规;
- 4 . 美国公司股票;
- 5 . 美国公司印章;
- 6 . 美国公司有关决议表格。

※萨摩亚注册公司应具备的材料:

1. 注册证书
2. 公司章程
3. 股票
4. 公司签印章
5. 公司钢印



※开曼群岛注册公司应具备的材料:

- 1) 公司注册证书
- 2) 公司会议记录
- 3) 股东、董事、秘书名册
- 4) 公司大纲及章程
- 5) 公司股票
- 6) 公司签名印章及钢印

资料来源: 外汇账户信息交互平台北京外汇管理部发布的《各国注册公司应具备的材料》

Appendix 3

Documents required to be submitted for incorporating a company in various jurisdictions

Hong Kong

※ Documents required to be submitted for incorporating a company in Hong Kong:

- 1 Documents containing in minutes book1 Business Registration Certificate (if applicable) and Certificate of Incorporation
- 2 Printed copy of Memorandum and Articles of Association
- 3 1 common seal and 1 company chop
- 4 Share certificate book
- 5 Minutes of shareholders' meetings and board meetings
- 6 Registers of members, directors, secretaries, transfer and charges
- 7 Statutory returns filed with Hong Kong Companies Registry

※British Virgin Island (B.V.I.)

- 1 Certificate of Incorporation
- 2 Printed copy of Memorandum and Articles of Association
- 3 Share certificate book
- 4 Meeting records of shareholders' meeting and directors' meeting
- 5 One company chop and one common seal
- 6 Copy/original of registers of members, directors, secretaries, transfers and charges

Macau

※ Documents required to be submitted for incorporating a company in Macau:

- 1 Company's Business Registration Certificate
- 2 Company Tax Payment Certificate (ME)
- 3 Official company seal

United Kingdom (UK)

※ Documents required to be submitted for incorporating a company in United Kingdom (UK) (the company name must end with [Limited] or its abbreviation [Ltd.])

- 1 One copy of the Certificate of Incorporation (**8-digit registration number** assigned to each incorporated company)
- 2 Seven copies of the Memorandum and Articles of Association
- 3 Waiver documents
- 4 Company seal
- 5 Statutory forms
- 6 Certificate forms

Inquiries regarding company incorporation in the UK may be made via the UK government's service website (most of the companies could search via this website)

the United States (US)

※ Documents required to be submitted for incorporating a company in the United States (US):

- 1 The License issued by the State in which the Company is incorporated;
- 2 US Company Incorporation Statute
- 3 US Company Formation Statute
- 4 Company share certificate
- 5 Company seal
- 6 Relevant resolution forms of the Company

Samoa

※ Documents required to be submitted for incorporating a company in Samoa:

- 1 Certificate of Incorporation
- 2 Articles of Association of the Company
- 3 Share certificate

- 4 Company signature seal
- 5 Company common seal

the Cayman Islands

※ Documents required to be submitted for incorporating a company in the Cayman Islands:

- 1 Certificate of Incorporation of the Company
- 2 Company's meeting records
- 3 Registry of shareholders, directors and secretary
- 4 Memorandum and Articles of Association
- 5 Company share certificate
- 6 Company's signature seal and common seal

Source: "Documents required to be submitted for incorporating a company in various jurisdictions" published by Beijing Administration of Foreign Exchange on the Foreign Exchange Account Information Interactive Platform

附件 4

国家开发银行境外机构外汇账户变更申请书 (NRA)

致：国家开发银行_____分行

客户号/账号*		户名*	
变更事项 (请在合适的□中勾选)			
□ 联系方式变更 (各选项仅限提供一个, 电话、传真请加国家、区号)	联系人*: _____		
	联系地址及邮编*: _____		
	联系电话*: _____	手机: _____	
	电子邮件: _____	传真: _____	
□ 公司更名	公司更名决议书、公司更名注册文件、		
□ 新增账号	<input type="checkbox"/> 美元 USD <input type="checkbox"/> 港币 HKD <input type="checkbox"/> 欧元 EUR <input type="checkbox"/> 日元 JPY <input type="checkbox"/> 英镑 GBP <input type="checkbox"/> 澳元 AUD <input type="checkbox"/> 加拿大元 CAD <input type="checkbox"/> 瑞士法郎 CHF <input type="checkbox"/> 新加坡元 SGD		
□ 预留印章变更	公司决议书、印鉴卡正本随附		
其他变更填写本栏			
<p style="text-align: center;">我确认上述变更自贵行受理并接受之日起在贵行生效。</p> <p>客户名称: _____</p> <p>授权签署人签章 (预留印鉴): _____</p> <p style="text-align: right;">年 月 日</p>			

银行专用栏

账号:		账户变更日期:	
客户经理审核意见	<input type="checkbox"/> 同意办理 <input type="checkbox"/> 不同意办理		
签字:			
账户管理部门意见	<input type="checkbox"/> 同意办理 经办: _____	<input type="checkbox"/> 不同意办理 复核: _____	负责人: _____
备注:			

Appendix 4

Application Form for Change of Information regarding the Foreign Exchange Account Opened by an Overseas Institution with CDB (NRA)

To: China Development Bank _____ Branch

Customer No./A/C No.*		Account Name*	
Changes (please check off in the relevant <input type="checkbox"/>)			
<input type="checkbox"/> Change of contact information (only one should be provided, please insert the country and region code before the telephone and facsimile number)	Contact person*: _____		
	Contact address and postal code*: _____		
	Contact telephone*: _____		Mobile phone: _____
	E-mail: _____		Facsimile: _____
<input type="checkbox"/> change of name	Company resolution regarding change of name, Company certificate of registration regarding change of name		
<input type="checkbox"/> opening a new account	<input type="checkbox"/> USD <input type="checkbox"/> HKD <input type="checkbox"/> EUR <input type="checkbox"/> JPY <input type="checkbox"/> GBP <input type="checkbox"/> AUD <input type="checkbox"/> CAD <input type="checkbox"/> CHF <input type="checkbox"/> SGD		
<input type="checkbox"/> change of the specimen seal and signature	Attached with the company resolution and the original of the Specimen Seal and Signature Sheet		
If there is any other change, please specify it here: _____			
I confirm that the above change will take effect with the Bank on the date it is processed and accepted by the Bank.			
Customer Name: _____			
Seal and Signature of the Authorized Signatory (specimen seal and signature): _____			
Date: _____			

For Bank Use Only

A/C No.:		Date of Information Change:	
Reviewed by the account manager	<input type="checkbox"/> approve <input type="checkbox"/> not approve		
Signature:			
Comment of the account management department	<input type="checkbox"/> approve <input type="checkbox"/> not approve		
	Processed by:	Reviewed by:	Officer in charge:
Note:			

附件 5

国家开发银行境外机构外汇账户关闭申请书（NRA）

致：国家开发银行股份有限公司_____分行

我公司申请关闭在贵行开立的外汇账户，具体信息如下：

户名：_____

币种：_____

账号：_____

账户余额：_____

请贵行将我司外汇账户余额原币汇至（汇款路径）：

收款人开户银行：_____

收款人名称及账号：_____

申请单位预留印鉴：

年 月 日

（回 执）

以下部分由银行填写

_____：

根据贵公司申请，我行已关闭贵公司在我行开立的外汇账户，账号是：_____，外汇账户余额已按贵公司提供的汇款路径汇出。

银行盖章：

年 月 日

Appendix5**Application for Closing the Foreign Exchange Account Opened by an Overseas Institution with CDB (NRA)**

Re: China Development Bank _____ Branch

We hereby apply to close our foreign exchange account opened with the Bank. The A/C details are as follows:

Account Name: _____

Currency: _____

A/C No.: _____

Account Balance: _____

Please remit the balance of our foreign exchange account in the original currency to (route of remittance):

The Payee Bank: _____

Name of the Payee and the Payee A/C No.: _____

Applicant's specimen seal and signature: _____

Date: _____

(Acknowledgement Receipt)**The Following are to be Completed by the Bank**

_____:

At your request, the Bank has closed your foreign exchange account opened with the Bank, A/C No.: _____, and the balance of the said foreign exchange account has been remitted according to the route of remittance provided by you.

Bank Seal: _____

Date: _____

Annexure “MM35”



Anoj Singh, Group Chief Financial Officer



Mr. Eric Wood
Regiments Capital
91 Central Street
Houghton
Johannesburg
2198

Dear Mr Wood

1064 Locomotive Acquisition Transaction – Advisory Services

This letter serves to confirm that Transnet SOC Ltd "Transnet" has appointed Regiments Capital as the Transaction advisors on the 1064 Locomotive Transaction.

In terms of the aforementioned mandate, Regiments Capital is required to advise on deal structuring, financing and funding options to minimise risk for Transnet.

Accordingly, Regiments Capital will negotiate with CDB to successfully conclude a ZAR funding facility of \$5 billion, at a ZAR cost not exceeding 9,3% for a tenor not less than 15 years.

The successful conclusion of this transaction will help achieve Transnet's strategic objectives as well as benefit CDB and Transnet to meet the BRICS mandate.

Yours Sincerely,

Anoj Singh
Date: 31 July 2014
Group Chief Financial Officer

Transnet SOC Ltd
Registration Number
1990/000900/30

Carlton Centre
150 Commissioner
Street
Johannesburg
2001

P.O. Box 72501
Parkview, Johannesburg
South Africa, 2122
T +27 11 308 2253
F +27 11 308 1269

Directors: ME Mkwana (Chairman) B Molefe* (Group Chief Executive) MA Fanucchi Y Forbes HD Gazendam NP Mnxasana N Moola NR Njeke IM Sharma IB Skosana E Tshabalala DLJ Tshepe A Singh* (Group Chief Financial Officer)
*Executive

www.transnet.net

Group Company Secretary: ANC Ceba

Annexure “MM36”



Transnet SOC Ltd
Registration
Number
1990/000900/30

Carlton Centre
150 Commissioner
Str. Johannesburg
2001

P.O. Box 72501
Parkview
South Africa, 2122
T +27 11 308 2622
F +27 11 308 2699

TRANSNET



www.transnet.net

TO: Brian Molefe, Group Chief Executive

FROM: Anoj Singh, Group Chief Financial Officer

SUBJECT: CHINA DEVELOPMENT BANK LOCOMOTIVE FUNDING RESPONSE

PURPOSE:

- 1 The purpose of the this submission is to request the Group Chief Executive to approve the response to the Group Treasurer for issues raised on the USD 2,5 billion loan facility from China Development Bank (CDB).

BACKGROUND:

- 2 On 21 August the Group Treasurer raised issues on the USD 2,5 billion loan facility from CDB in the following categories. Refer to annexure A:
 - a. Overall Governance
 - b. Interest expense
 - c. Once off arrangement fee
 - d. Conclusion and value leakage

DISCUSSION:

- 3 The detailed responses are covered in the attached presentation. Refer to annexure B. Summarised responses are as follows:

a. Regiments appointment and management

- i. Regiments Capital were appointed as Transaction advisors on the 1064 Locomotive Transaction.
- ii. In terms of the aforementioned mandate, Regiments Capital was required to advise on deal structuring, financing and funding options to minimise risk for Transnet.
- iii. Accordingly, the negotiation with CDB to successfully conclude a ZAR funding facility at a ZAR cost not exceeding 9,3% (depending on Jibar) for a tenor not less than 15 years at no additional fee is part of their mandate.
- iv. In terms of the Delegation of Authority, the appointment of Regiments Capital as Transaction advisors is within the ambit of the GCFO.

b. Interest expense

- v. The margin on the deal is Jibar plus 337 bps which is 9,45% and is subject to the cross currency swap being a maximum of 80bps, which is included in the Term sheet resulting in the cost being controlled.



- vi. If the cross currency swap is too expensive, Transnet is not obliged to execute the loan with CDB.
- vii. HSBC indicative pricing for a 10 year USD1 billion issuance under Regs 144A (GMTN) is Libor + 270 bps.
- viii. Market analysis and peer comparison indicates a spread of upto 340 over UST - Refer to attached presentation for further detail.
- ix. The rate of 9.45% compares favourably to current WACD of 9.35%.
- x. The loan will have a Floating rate which currently supports the fragile cash interest cover ratio.
- xi. Transnet will consider fixing the interest rate exposure in 12-18 months from now, realising potential savings.
- xii. If the rate be fixed now, the pricing proposal translates to a fixed rate of 12.09%.
- xiii. As a result of all the funding initiatives of the locomotives, an amendment to the current fixed vs floating ratio approved split by the Board is required to 45% from the current 30% (floating).

c. Once off arrangement fee

- xiv. The 118bps is high, however on balance taking into account CDB's concessions on the grace period, reduction of the credit margin and the repayment profile, is reasonable.
- xv. In comparison to arrangement fees of US Exim and ICBC of 100bps each for facilities of USD 500 million and ZAR 6 billion respectively, the 118 bps is reasonable given the quantum.
- xvi. The arrangement fee of 118bps is equivalent to 21.1 bps over the yield to maturity of the proposed loan (based on the ZAR amount of the loan).

d. Conclusion and value leakage

- xvii. The loan is fairly priced in comparison to foreign issuance of a US\$ denominated loan under the GMTN, which is expected to have a pricing point of about 307 above US Treasuries (bearing in mind the mark-to-market rate of 285 bps above US Treasuries on Transnet existing US\$ bond that will mature in 7.9 years);
- xviii. There is a longer capital grace period of 54 months.
- xix. The starting date of the capital grace period will be the first drawdown date as opposed to the date of signing of the loan agreement as originally suggested.
- xx. An improved capital repayment profile with increasing capital repayments towards the end of the loan tenure, which has the impact of extending the duration of the loan as opposed to the duration associated with the original equal capital repayment schedule.
- xxi. The volume of US\$2.5 billion for which there needs to be pricing consideration given that the maximum expected volume for a single issue under the GMTN is USD 1 billion.
- xxii. CDB agreed to transact cross currency swaps such that Transnet will have a ZAR denominated loan in its books.



FINANCIAL IMPLICATIONS:

Quantum	Security offered	Profile and term	Financial covenants'	Arrangement Fee	Commitment Fee	Margin and ZAR pricing
US\$2.5 billion ~ R26,75 billion (translation of R10,70)	Yes - Locomotives will be provided as security	Amortising over 15 years	Gearing ratio not to exceed 80% Cash interest cover not below 1.5 times	118 bps	0,80 bps	3m Libor + 257bps (3m Jibar +337bps) = 9,45%

BUDGET IMPLICATIONS:

- 4 The proposed external funding required to be raised has been budgeted for in the 2014/15 Finance Cost Budget and will be further budgeted for in the 2015/16-2018/19 Finance Cost Budgets respectively.

RECOMMENDATION:

- 5 It is recommended that the Group Chief Executive approve the response to the Group Treasurer for issues raised on the USD 2,5 billion loan facility from China Development Bank (CDB).

Compiled by:

Mr. Anoj Singh
Group Chief Financial Officer
Date: 21/08/14

Approved by:

Mr. Brian Molefe
Group Chief Executive
Date: 27.8.14

Annexure “MM37”





TO: Transnet Board of Directors

FROM: Mr. Brian Molefe, Group Chief Executive

SUBJECT: LOCOMOTIVE FUNDING INITIATIVES

PURPOSE:

- 1 The purpose of the this submission is to request the Board to approve the following funding initiatives that will be undertaken during the year:
 - a. ZAR 6 billion funding supported by guarantee from Export-Import Bank of United States;
 - b. USD600 million loan facility from Export Development Canada and Investec;
 - c. Up to USD1 billion A/B loan facility from African Development Bank;
 - d. USD2.5 billion 15 year Facility with China Development Bank; and
 - e. ZAR 6 billion 15 year funding facility from Industrial and Commercial Bank of China.

All of the above facilities are subject to further negotiations between Transnet and lenders.

BACKGROUND:

- 2 In light of Transnet's Market Demand Strategy to meet volume growth and customer demand, Transnet wishes to increase the capacity of its General Freight Business from 80mt to 176mt.
- 3 Transnet will be acquiring rolling stock in order to meet the increased capacity requirements, to facilitate the anticipated growth and to address Transnet and Government's plan to migrate freight from road to rail.
- 4 In order to facilitate the above objectives, Transnet has entered into Locomotive Supply Contracts to acquire the Locomotives from Bombardier, General Electric, China South Railways (CSR) and China North Railways (CNR).



DISCUSSION:

- 5 The estimated total cost of the Locomotives, after payment of a deposit of R7.4 billion in March 2014, is approximately R53.7 billion for the financial years 2014/15 - 2018/19. The total contract price including deposit paid is R61 billion.
- 6 As the Locomotives and their respective components will be procured from Bombardier; CSR; CNR; GE, they will have "foreign content" and as such, Transnet can make use of both tied and untied ECA-backed funding and Development finance.
- 7 On the 31st July 2014, US Exim Bank approved a USD 563,455,622 Long Term Guarantee for financing of the 293 locomotives manufactured by General Electric Company. As per the new 2014 Sector Understanding on Export Credits for Rail Infrastructure prescribed by the OECD Guidelines, the tenor of the guarantee is up to 14 years, which tenor is favourable for Transnet's asset and liability matching strategy. The premium is 5.97% of the total guaranteed amount and the commitment fee is 0.125% per annum of the non-cancelled and non-disbursed amount. This facility will be structured as an asset backed with locomotives used as security. The current pricing indications are 3m Jibar + 140 to 3m Jibar + 160 basis points, which is cost effective for a 14 year facility.
- 8 Export Development Canada ("EDC") and Investec offered a 13 year unsecured credit facility of up to USD600 million towards the funding of the locomotives procured from Bombardier at a rate of 3m Jibar + 200bps.
- 9 The African Development Bank ("AfDB") has proposed up to USD1000 million A/B loan structure consisting of USD250 million direct lending and USD750 million from a syndicate of banks to Transnet.
- 10 China Development Bank ("CDB") have indicated their willingness to fund the CSR and CNR locomotives and have proposed a 15 year bullet loan of up to USD2.5 billion at a rate of 3m Libor + 257 bps which is equivalent to 3m Jibar + 420 bps . This pricing is above Transnet's weighted cost of debt and Transnet will continue to engage with CDB to further revise their pricing downward. In addition to the proposed uneconomical pricing, CDB is also requesting locomotives to be used as security as well as the inclusion of financial covenants. The current proposal is too expensive and includes covenants that Transnet is not offering to other lenders/investors. Should negotiations fail, Treasury will recommend termination of negotiations and use other cost effective funding sources to finance locomotives procured from China.
- 11 In addition, Transnet has received a proposal from Industrial and Commercial Bank of China ("ICBC") of R6 billion for up to 15 years at a rate of 6m Jibar + 280bps for the financing of locomotives procured from CSR and CNR. ICBC's pricing is also above Transnet's weighted cost of debt but more attractive than the CDB offer. Group Treasury will request ICBC to consider reducing the price.



12 The above funding initiatives will require certain minimum criteria to be met, before any funding is made available to Transnet, these may include inter alia:

- a. Acceptable levels of foreign/local content in the supplier contracts (a key requirement for ECA funders and some DFIs and Multilaterals);
- b. Acceptable legal agreements, covenants and rating downgrade triggers to mitigate any risk on Transnet's business;
- c. Some funders may require a special notarial bond to be registered in their favour over the Locomotives.

FINANCIAL IMPLICATIONS:

	Security offered	Facility Agent Fee	Arrangement Fee	Rate	Commitment Fee
US-Exim	YES	5.97% (once off premium)	100 points	3m Jibar + 160bps	12.5 points
EDC	NO	0	45 points	3m Jibar + 200bps	7 points
AfDB	NO	US\$20 000 pa	80 points	6m Jibar + 200-230bps	60 points
CDB	YES	0.2bps pa of the financed amount	118 points	6m Libor + 257bps (Jibar +420)	80 points
ICBC	YES	0	100 points	6m Jibar + 280bps	60 points

BUDGET IMPLICATIONS:

13 The proposed external funding required to be raised has been budgeted for in the 2014/15 Finance Cost Budget and will be further budgeted for in the 2015/16-2018/19 Finance Cost Budgets respectively.



RECOMMENDATION:

14 It is recommended that the Transnet Board of Directors approve the following funding initiatives:

- a. ZAR 6 billion funding supported by guarantee from Export-Import Bank of United States;
- b. USD600 million loan facility from Export Development Canada and Investec;
- c. Up to USD1 billion A/B loan facility from African Development Bank;
- d. USD2.5 billion 15 year Facility with China Development Bank, subject to further terms and conditions negotiations as their proposed terms and conditions are currently not in line with similar asset backed and development finance institutions;
- e. ZAR 6 billion 15 year funding facility from Industrial and Commercial Bank of China.

15 It is recommended that the Transnet Board of Directors approve the attached Board resolution.

Compiled by:

Mr. Anoj Singh

Group Chief Financial Officer

Date:

Recommended by:

Mr. Brian Molefe

Group Chief Executive

Date:

Annexure “MM38”



Theo Takane **Corporate JHB**

From: Mathane Makgatho Corporate JHB
Sent: 20 August 2014 01:42 PM
To: Anoj Singh Corporate JHB
Cc: Yusuf Mahomed Transnet Corporate JHB; Dorothy Kobe Transnet Corporate JHB
Subject: Locomotive Funding Initiatives 20 Aug 2014
Attachments: Memo -ANNEXUREfor 1064 BOD funding memo.docx; Locomotive Funding Initiatives 20 Aug 2014.docx

Dear Anoj

As per your request, I have amended the locomotive funding memo. Please note that the memo is for Board approval and not for noting and therefore need a specific board resolution. This is due to the following reasons:

- Each of the transactions is significant and material and therefore require specific Board approval;
- The combined amount is more than what has been approved for the financial year and therefore above the Board approved limit for the financial year 2014-15. Please refer to clause 5.2.12 of the DOA as the GCE can only authorise up to 10% of the approved annual limit;
- Three of the transactions include locomotives as security. As all transactions are above the GCE limit of R1 billion, we require specific board approval as per clause 5.2.23 of the DOA that includes delegation to the GCE to give security;
- As part of the fulfilment of the conditions precedent, the lawyers will require a specific board resolution hence the inclusion of Annexure A to ensure that we can fulfil all CP's.

In addition, I have opted to leave our internal pricing of Jibar + 420 as it is a fair price given current market circumstances and the fact that our internal cross currency pricing methodology for plain vanilla CCS has been tried and tested and proved to be correct. For the purposes of Board submission, it is prudent that we use our internal price that has been tried and tested and proved correct even when we compare with external counterparties. Otherwise, we run the risk of misleading the Board.

I trust that you will find all to be in order.

Kind regards
 Mathane

Annexure “MM39”



Annexure A

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Transnet Board of Directors
Locomotive Funding initiatives
28 August 2014

Locomotive Funding summary

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Locomotive contract values

R million	100 locomotives	60 locomotives	599 locomotives	465 locomotives	Total
GE		1 752		8 428	10 180
BT			13 049		13 049
CSR	4 400		18 122		22 522
CNR				9 947	9 947
Total	4 400	1 752	31 171	18 375	55 698

Locomotive indicative funding proposals

R million	100 locomotives	60 locomotives	599 locomotives	465 locomotives	Total
US Exim \$563 m*		60			6 108
China Development bank \$2 500 b*		1 051			26 666
Subtotal - Subject to approval today			17 216	9 450	32 774
Export Development Canada \$600 m #			6 423		6 423
Industrial and Commercial Bank of China #	6 000				6 000
	6 000	1 051	23 639	14 506	45 196

Total Funding secured as a percentage of purchase price

Total Funding still to be secured as a percentage of purchase price

Total Funding from other sources

Total estimated fixed vs floating rate (including funding all locos of R55 billion above)

59%

22%

19%

52% / 48%

* Approval requested at today's meeting

Approval provisionally scheduled for October 2014 Board meeting



Locomotive Funding

Locomotive Contract Values

	100	60	599	465	Total
	locomotives	locomotives	locomotives	locomotives	
GE					
BT		1 752		8 428	10 180
CSR			13 049		13 049
CNR	4 400		18 122		22 522
Total	4 400	1 752	31 171	9 947	\$5 688

Indicative Locomotive Funding Proposals

	100	60	599	465	Total
	locomotives	locomotives	locomotives	locomotives	
US Exim \$563 m*					
China Development bank \$2 500 b*		1 051		5 057	6 108
Subtotal - Subject to approval today			17 216	9 450	26 666
Export Development Canada \$600 m #		1 051	17 216	14 536	\$2 774
Industrial and Commercial Bank of China #			6 423		6 423
Subtotal - Subject to approval October 2014	6 000				6 000
Domestic Bonds	6 000	0	6 423	0	12 423
GNTH Insurance					10 502
Subtotal					10 502
Total Funding Requirement					\$5 688

Total Funding secured as a percentage of purchase price

Total Funding still to be secured as a percentage of purchase price

Total Funding from other sources

59%

22%

19%

* Approval requested at today's meeting

Approval provisionally scheduled for October 2014 Board meeting

Lender	Fixed	Floating
US Exim \$563 m*	6 100	
China Development bank \$2 500 b*		26 666
Export Development Canada \$600 m #	6 423	
Industrial and Commercial Bank of China #	6 000	
Subtotal	18 531	26 666
Subtotal - Funding from other sources	10 502	
Total	29 032	26 666
Split For Locomotives	52%	48%

Current Fixed debt: R70 693 bn

Current Floating rate debt: R20 575 bn

Total Debt

Split including current debt

70 693

20 575

99 725

68%

32%

TRANSNET AUDITED RESULTS 2014

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All-in Funding Cost

Year	Credit spreads	ECI cost	Size premium	Security credit	Uplift/Arrangement cost (%)	Fixed float	Cost to fix	Total ZAR pricing	WCD floating	WCD fixed
6.075	1.60				1.010	8.69	2.55	11.24	1.17%	1.23%
6.075	2.57	0.80	-0.4		0.210	9.26	2.55	11.81	5.46%	5.65%
6.075	2.00				0.080	0.00	2.55	10.71	1.16%	1.23%
6.075	2.80				0.178	9.05	2.55	11.80	1.20%	1.25%
6.075	4.80			0.25	0.050	11.18		11.18	1.20%	2.11%
6.075	3.40	0.80		0.25	0.090	10.62	2.55	13.17	na	na
WACD									10.20%	11.48%

Weighted combined

10.38%



US Exim Salient Features

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Particulars		Comments
Term	14 Years	<ul style="list-style-type: none"> Provides an appropriate match with the useful life of the locomotives which is 20 years Extends Transnet's maturity profile from an average 6,94 years.
Quantum	US\$ 563 million ~ R6 billion (translation of R10,69)	<ul style="list-style-type: none"> Represents 60% of the total purchase price This is due to local content requirements of US Exim
Profile	Amortising	<ul style="list-style-type: none"> The amortising profile will reduce refinancing risk
All-in ZAR pricing	3m Jibar + 160bps = 7.68%	<ul style="list-style-type: none"> Compares favourably to current WACD of 9.35%
Fixed vs Floating	Fixed	
Servicing currency	ZAR	<ul style="list-style-type: none"> Foreign currency exposure eliminated Saving on Transnet credit lines No I/S volatility due to IAS 39 Benefit of having US Exim transact due to their stronger credit rating
Arrangement fee	100bps	<ul style="list-style-type: none"> Reasonable
Commitment fee and exposure fee	12,5 bps commitment and 5.97% exposure fee (once off premium)	<ul style="list-style-type: none"> Reasonable
Grace period	36 Months from the first drawdown	<ul style="list-style-type: none"> This will result in an increased duration for the loan Provides the required flexibility due to potential delivery delays.
Financial covenants'	None	
Security	Locomotives will be provided as security	<ul style="list-style-type: none"> Positive impact on pricing Similar to previous US transactions





	Particulars	Comments
Term	15 Years	<ul style="list-style-type: none"> Provides an appropriate match with the useful life of the locomotives which is 20 years Extends Transnet's maturity profile from an average 6,94 years. Refer to slide 15 for further detail
Quantum	US\$2.5 billion ~ R26,75 billion (translation of R10,70)	<ul style="list-style-type: none"> Represents 95% of the total purchase price.
Profile	Amortising	<ul style="list-style-type: none"> The amortising profile, specifically the equal quarterly repayments as opposed to equal capital repayments, will reduce refinancing risk A roller-coaster payment profile which aligns better to the cash generating ability of the locomotives
Margin	257 bps over Libor	<ul style="list-style-type: none"> HSBC indicative pricing for a 10 year USD1 billion issuance under Regs 144A (GMTN) = Libor + 270 bps Market analysis and peer comparison indicates a spread of upto 340 over UST Refer to slide 11 and 12 for further detail
All-in ZAR pricing	Credit margin (257 bps) plus cross currency swap (80 bps) = 337 bps over Jibar = (6.075) = 9.45%	<ul style="list-style-type: none"> Compares favourably to current WACD of 9.35% Refer to slide 11 for further detail
Fixed vs Floating	Floating ZAR interest rate of 9.45%	<ul style="list-style-type: none"> Floating rate loan currently supports the fragile cash interest cover ratio Market analysis indicates that the market has priced in a premium in the current increasing interest rate environment Transnet should consider fixing the interest rate exposure in 12-18 months from now, realising potential savings Amendment to the current fixed vs floating ratio approved split by the Board to be amended to 45% from the current 30% (floating) If the rate be fixed now, the pricing proposal translates to a fixed rate of 12.09%. Refer to slide 14 for further detail

CDB – continued Salient Features

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	Particulars	Comments
Servicing currency	ZAR by execution of cross currency swaps	<ul style="list-style-type: none"> Foreign currency exposure eliminated Saving on Transnet credit lines No I/S volatility due to IAS 39 Benefit of having CDB transact the cross currency swaps on their balance sheet and a stronger rating
Arrangement fee	118bps	<ul style="list-style-type: none"> Considered high, on balance taking into account CDB's concessions on the grace period, reduction of the credit margin, repayment profile), is reasonable In comparison to arrangement fees of US Exim and ICB of 100bps each for facilities of USD 500 million and ZAR 6 billion respectively, the 118 bps is reasonable The arrangement fee of 118bps is equivalent to 21.1 bps over the yield to maturity of the proposed loan (based on the ZAR amount of the loan)
Commitment fee	0.8 bps	<ul style="list-style-type: none"> Reasonable
Grace period	54 Months from the first drawdown	<ul style="list-style-type: none"> This will result in an increased duration for the loan Provides the required flexibility due to potential delivery delays.
Financial covenants'	Gearing ratio not to exceed 80% Cash interest cover not below 1.5 times	<ul style="list-style-type: none"> Corporate Plan indicates that these level will not be reached
Security	Locomotives will be provided as security	<ul style="list-style-type: none"> Positive impact on pricing Similar to US Exim
The cost of the cross currency swaps has been built into the term sheet and CDB will transact this cross currency swap such that Transnet will service the loan in ZAR.		

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BACKUP – Detailed explanations

1

US EXIM – Annexure A

2

CDB – Annexure B

US EXIM – Annexure A

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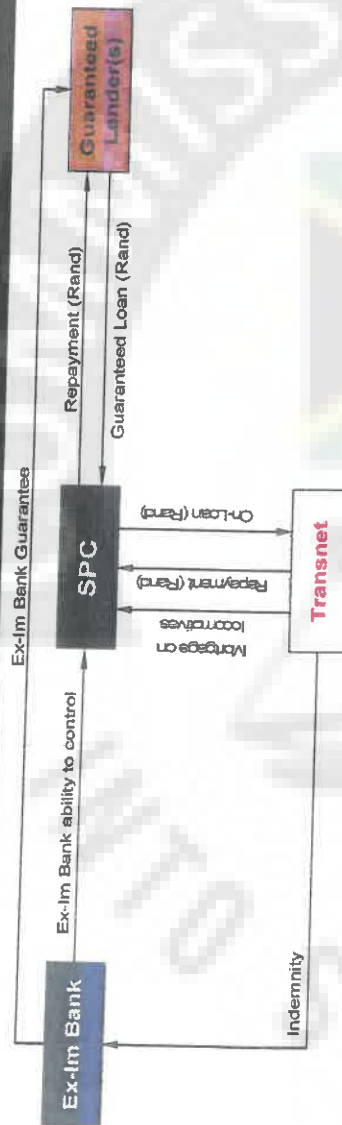
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- Detailed herein is a synopsis of the proposed revised financing structure in respect of the facility agreement (the “Facility”) for the financing of 293 locomotives kits (the “Locomotive Kits”) to be purchased from General Electric South Africa Technologies (Pty) Ltd (“GE”) in accordance with the Locomotive Supply Agreement entered into between Transnet and GE on 17 March 2014 for purposes of Transnet’s general freight business. The Facility will be supported by a 100% political and commercial risk guarantee provided by Export-Import Bank of the United States (“US-Exim”), the export credit agency of the United States of America.
- The Facility will constitute a 14 year guaranteed loan (the “Guaranteed Loan”) in the amount of up to ZAR 6 billion funded by financial institutions (the “Guaranteed Lenders”) and will be used to finance up to 85% of the net contract price of US goods and services and up to 30% of the US contract price for local costs.
- In order for US-Exim to guarantee (the “US-Exim Guarantee”) Transnet’s payment obligations under the Facility, Transnet is required to grant security by way of a first ranking mortgage in the form of a Special Notarial Bond over the Locomotive Kits. Pursuant to the US-Exim Guarantee, US Exim will be obliged to fulfill Transnet’s payment obligations to the Guaranteed Lenders upon Transnet’s payment default under the Facility.
- Further, in order to circumvent the Guaranteed Lenders accelerating the entire Guaranteed Loan upon Transnet’s payment default of any installment, US-Exim will repay the Guaranteed Lenders the defaulted installment/s on an installment by installment basis in Rand. The defaulted installment shall then convert (“crystallize”) into a USD obligation and Transnet will then be obliged to repay its defaulted installment to US Exim in USD/Rand. This process is referred to as “Crystallization by Installment” (refer to the transaction steps detailed under “The On-Lending Structure” below).
- In order for US-Exim to fulfill its obligations by way of Crystallization by Installment and to mitigate the consequential foreign currency contingent liability it poses for US-Exim, US-Exim has proposed an alternative funding structure referred to as the “On-Lending” structure introducing an interposing Special Purpose Company (“SPC”) detailed below.



US EXIM – Annexure A - continued

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- The Guaranteed Lenders will advance the 14 year Guaranteed Loan to a ring-fenced Special Purpose Company ("SPC"). The SPC will be incorporated in South Africa, to mitigate any negative tax consequences, and be ring-fenced and independent from Transnet. The SPC's issued share capital be held by independent trust company which acts as Trustee;
- The SPC shall act as the borrower under the Guaranteed Loan and will on-lend the proceeds of the Guaranteed Loan to Transnet to purchase the Locomotive Kits from GE (the "On-Loan");
- Transnet's payment obligations to the SPC under the On Loan will be secured by a first ranking mortgage/s in the form of a Special Notarial Bond/s over the Kits. Transnet would also guarantee the obligations of the SPC under the Guaranteed Loan which would too be secured by the mortgage/s over the Kits. If so required by South African law, a separate Security SPC may be incorporated to hold the security in favour of US-Exim and the Guaranteed Lenders;
- Transnet will make all repayments (either quarterly or semi-annually in arrears) under the On-Loan to the SPC, which in-turn will distribute these repayments to the Guaranteed Lenders under the Guaranteed Loan. The terms of the On-Loan, including but not limited to repayment flows thereunder, will broadly match the terms of the Guaranteed Loan;
- A default by Transnet under the On-Loan will trigger a contemporaneous default under the Guaranteed Loan;



US EXIM – Annexure A - continued

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- Should Transnet default on its installment/s, the Guaranteed Lenders would make installment by installment demands under the US- Exim Guarantee and US-Exim would then be obliged to repay the Guaranteed Lenders via the SPC on a installment by installment basis in Rand in accordance with the original agreed repayment schedule;
- The defaulted installment/s shall then convert (“crystallize”) into a USD obligation at the spot rate of exchange applicable at the time US-Exim repaid the defaulted installment;
- Transnet will then be obliged to repay its USD obligation as a result of its defaulted installment to US Exim in USD or in Rand at the spot rate of exchange applicable at the time of Transnet’s repayment;
- Upon payment of the first defaulted installment by US- Exim, US-Exim would have the right to step in and control the SPC in order to manage the On-Loan to Transnet, thereby controlling any restructuring/acceleration/liquidation of the On-Loan. Upon exercising the control of the SPC, US-Exim shall from that point forward have the benefit of all the SPC’s rights, title and interest in the On-Loan to Transnet;





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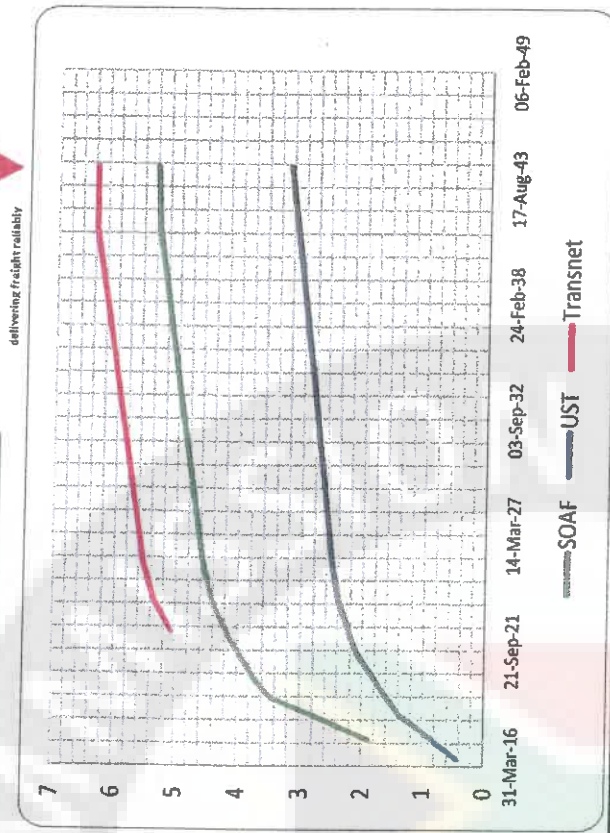
BACKUP – Detailed explanations

1

US EXIM – Annexure A

2

CDB – Annexure B



	Jul-22	Aug-29	Basis Points (BPS)
UST	2.22%	2.66%	
SOAF	4.18%	4.76%	211
Transnet	5.07%	5.73%	96
Spread in BPS	285	307	307

- South African sovereign and US Treasury curves were constructed to examine the possible pricing of a loan under the GMTN.
- US Treasuries from 2 to 30 years maturities were used to construct the UST curve, eight (US denominated) South African Government bonds maturing from June 2017 to July 2044 were used to construct the SOAF sovereign curve in the figure shown. A linear interpolation technique was also used to generate smooth sovereign curves.
- Two Transnet bonds expiring on 26 July 2022 were identified and plotted on the same graph as the SOAF and UST.
- Due to the limited number of data points, the Transnet credit curve was constructed by replicating the increase in the spread between SOAF and UST as follows:
 - There was an 8% increase in the spread between SOAF and UST between July 2022 and Aug 2029;
 - The same 8% increase was assumed in the spread between SOAF and Transnet credit.
- As can be seen above, Transnet's bond that is expiring in about 7.9 years is priced at a spread of 285 bps above the US Treasuries.

Given our experience and the shape of the sovereign curves, it is fair to expect that any US\$ denominated 15 year note being contemplated by Transnet under the GMTN will have a price point that is about 307 bps above the US Treasuries.





- A CDS analysis was carried out on Petrobras, a semi-public multinational energy corporation in Brazil, which is the largest company in the Southern Hemisphere by market capitalisation and the largest in Latin America in terms of revenues.
- According to the Table below, Petrobras and AngloGold could manage to borrow a 10 year loan under the GMTN at about 300 bps over US Treasuries. For a 15 year bond, they are likely to pay higher (in the order of 320 to 340 bps over US Treasuries) in spite of their large revenue in USD which should have a positive impact on lowering their cost of borrowing.
- According to the technical analysis, the estimated pricing of 307 bps for Transnet's 15 year bond under the GMTN is very conservative. Based on the peer and sovereign analysis, the pricing of the 15 year bond is likely to be significantly higher (in the order of 340 bps over the US Treasuries).

CDS spreads over US Treasuries

Period	Sovereign					Corporate		
	South Africa	Brazil	Nigeria	Turkey	Egypt	Petrobras	AngloGold	
6M	45.1	36.4	159.6	64.1	209.6	71.5	67.8	
1Y	53.8	40.1	167.9	77.5	227	97.5	70.9	
2Y	92.3	65.5	187.9	106.1	258.6	145.7	101.6	
3Y	126.1	85.7	209.7	132.8	267.4	178.6	143.2	
4Y	152.5	119.7	220.5	155.3	279.7	225.3	189.2	
5Y	180.7	140.2	226.4	184.3	287.1	245.7	235	
7Y	214.7	172.1	231.4	212.6	295.4	270.1	275.1	
10Y	241.3	198.9	229.9	235.7	302.9	301.7	299.8	

- Comparing the proposed USD loan against ZAR loan is not appropriate. Transnet existing USD loans or firms with similar credit rating and with multiple and comparable size USD loans provide appropriate comparisons to the current Transnet's USD loan. Given Petrobras and AngloGold 10 year USD bond pricing, CDB's proposed USD loan to Transnet is fairly priced (especially considering the quantum) and is regarded as a good deal for Transnet.

CDB – continued

Market Analysis – Comparison of CDB's offer with other existing offers

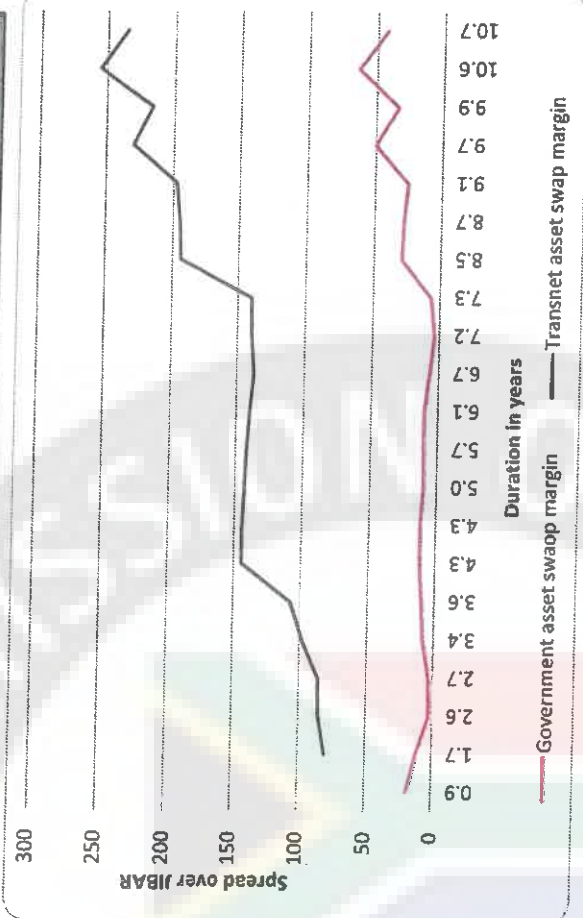
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- There is a difference in pricing when raising hard currency vs ZAR funding. This is the case not only in SA but also in global markets.
- It is easier to raise hard currency funding than ZAR funding because of the liquidity limitations of the local market.
- It is also imperative for Transnet to diversify its funding sources given the quantum of the funding.
- The pricing on ICBC's current offer of R6 billion loan funding at 280 bps over Jibar needs to be adjusted with the margin for quantum in order to compare it with the CDB's current offer.
- In addition to the margin for quantum, other loan terms (such as grace period, repayment profile etc. with the potential to extend the duration of a loan) need to be taken into consideration to make the comparison valid.
- Goldman Sachs has also put an offer; but the merits of which should be analysed to determine if their offer is reasonable.
- In light of the market analysis and the size of the funding, the CDB loan offer for US\$2.5 billion funding appears to be reasonable.

Government and Transnet issues under the DMTN



CDB – Annexure B- continued Market Analysis – Floating vs Fixed rate

TRANSNER



- Economic growth is very subdued in South Africa.
- The SARB expects that the inflation rate will fall back below the upper band in the second quarter of 2015 supporting the notion that rates will stay flat for longer.
- Though the SARB's principal mandate is price stability and not economic growth, it said that it cannot ignore the state of the economy in its decision making and increasing interest rates too soon could further negatively impact growth.

As can be seen in the table, the market appears to have already priced in about three 25 bps rate hikes during a period of 12 to 18 months.

Even though the SARB appears to be in a rate hiking cycle, the overreaction of the market and the overall increase in the yield curve will not be sustainable given the underlying economic fundamentals.

It is therefore expected that rates will come down by a couple of points in the 12 to 18 months period.

This will, therefore, present better rate fixing opportunities in about 12 to 18 months.

If the rate be fixed now, the pricing proposal translates to a fixed rate of 12.09%.

A fixed rate of 12.09% is the rate that results in the same present value as the floating rate (i.e. 3 month Jibar forwards plus the sum of 257 bps, 80 bps and 20 bps for volume)

6 Month Jibar as implied by the SWAP curve			
	Rate	Change against spot in BPS	Number of rate hikes priced in
Spot	6.458%		
1 Month Forward	6.239%	-21.87	0
3 Month Forward	6.470%	1.20	0
6 Month Forward	6.768%	31.00	2
12 Month Forward	7.225%	76.66	3
24 Month Forward	7.854%	139.64	6
36 Month Forward	8.054%	159.59	6
48 Month Forward	8.625%	216.73	9
60 Month Forward	8.736%	227.77	10

CDB – Annexure B- continued Matching of Asset and Liabilities

TRANSNET



- The 1064 locomotives to be acquired will generate revenue over their useful life.
- The average useful life of a locomotive is 20 years.
- Since the acquisition of the locomotives is a large component of Transnet's CAPEX, it is imperative that Transnet achieves an appropriate match between the useful life of the underlying assets and the loan repayment profile to allow for adequate servicing and repayment of the loan from the revenues generated.
- The CDB loan has a 15 year tenor which provides an appropriate match with the useful life of the locomotives.

CDB – Annexure B- continued Financial Risk

TRANSNET



Exchange rate

- The exchange rate risk of the loan with CDB will be addressed by the cross currency swap.
- CDB will transact the cross currency swap such that Transnet will have a ZAR denominated loan.

Interest rate

- Even though we have entered into a rate hiking cycle, the current expected interest rates are still higher than what they should be meaning that the yield curve still has to correct downwards creating room for fixing rates at a level lower than current levels.
- It is, therefore, suggested that Transnet takes a floating interest rate with the view of fixing it in the next 12 to 18 months period when the yield curve corrects back to the normal trend.

Asset – Liability matching

- Matching the useful life of the assets with the repayment profile of the loan will also lower the refinancing risk of the acquisitions.
- The term of the loan appropriately matches the useful life of the locomotives.

Secured vs Unsecured lending

- The GMTN analysis above was done on Transnet's unsecured loans .
- There is an expectation that the pricing should come down for a loan that is secured, however, pricing for entities such as Transnet is based on the credit strength of the entity and not the underlying security.
- The price differential between secured vs unsecured would therefore be in the 25bps range for Transnet (checked independently with a large SA bank).

Cross currency swap market.

- The successful execution of this transaction is highly dependent on a sensitive execution strategy which takes into account the relative illiquidity of the cross currency swap market.
- Otherwise, the cost of the cross currency swap will be significantly higher than the estimated 80 bps and could be as high as 200 bps.



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CDB – Annexure B- continued Summary of CDB structure benefits

	Transnet Benchmark	CDB Structure
Pricing	<ul style="list-style-type: none"> • 307 bps – Based on technical analysis under GMTN • 340 bps – Based on peer and sovereign analysis • 275 bps – Internal indicated CDB rate 	<ul style="list-style-type: none"> • 257 bps on CDB loan • <i>Benefit in terms of NPV ranges between R522 million and R2.4 billion</i>
Structure	<ul style="list-style-type: none"> • Amortising with 36 months grace period • Equal capital repayments (Higher repayment amounts towards capital and interest initially and falling during the latter years) 	<ul style="list-style-type: none"> • Amortising with 54 months grace period • Equal repayments (Equal repayment amounts throughout the term of the loan)
Cross currency swaps	<ul style="list-style-type: none"> • +200 bps 	<ul style="list-style-type: none"> • +80 bps • <i>Benefit to Transnet in the order of R3.5 billion</i>
Interest rate	<ul style="list-style-type: none"> • Fixed rate 	<ul style="list-style-type: none"> • Initial floating rate to be fixed in 12 to 18 months (structure provides +50 bps benefit) • <i>If the market consensus materialise, Transnet is expected to realise a benefit of R1.45bn.</i>
Matching of assets and liabilities	<ul style="list-style-type: none"> • The higher initial loan repayment amounts are not matched with the revenue generated from the underlying assets. 	<ul style="list-style-type: none"> • Relative to the benchmark, the loan repayment profile provides a better match to the revenue generated (self funding model)
Salient features		<ul style="list-style-type: none"> • The cost of the cross currency swaps has been built into the term sheet and CDB will transact this cross currency swap such that Transnet will service the loan in ZAR. • Using CDB's strong credit rating to transact the cross currency swaps will enable Transnet to get better pricing.



CDB – Annexure B- continued Recommendations

TRANSNET



It is recommended that Transnet take up the proposed loan with the above negotiated terms due to the following reasons:

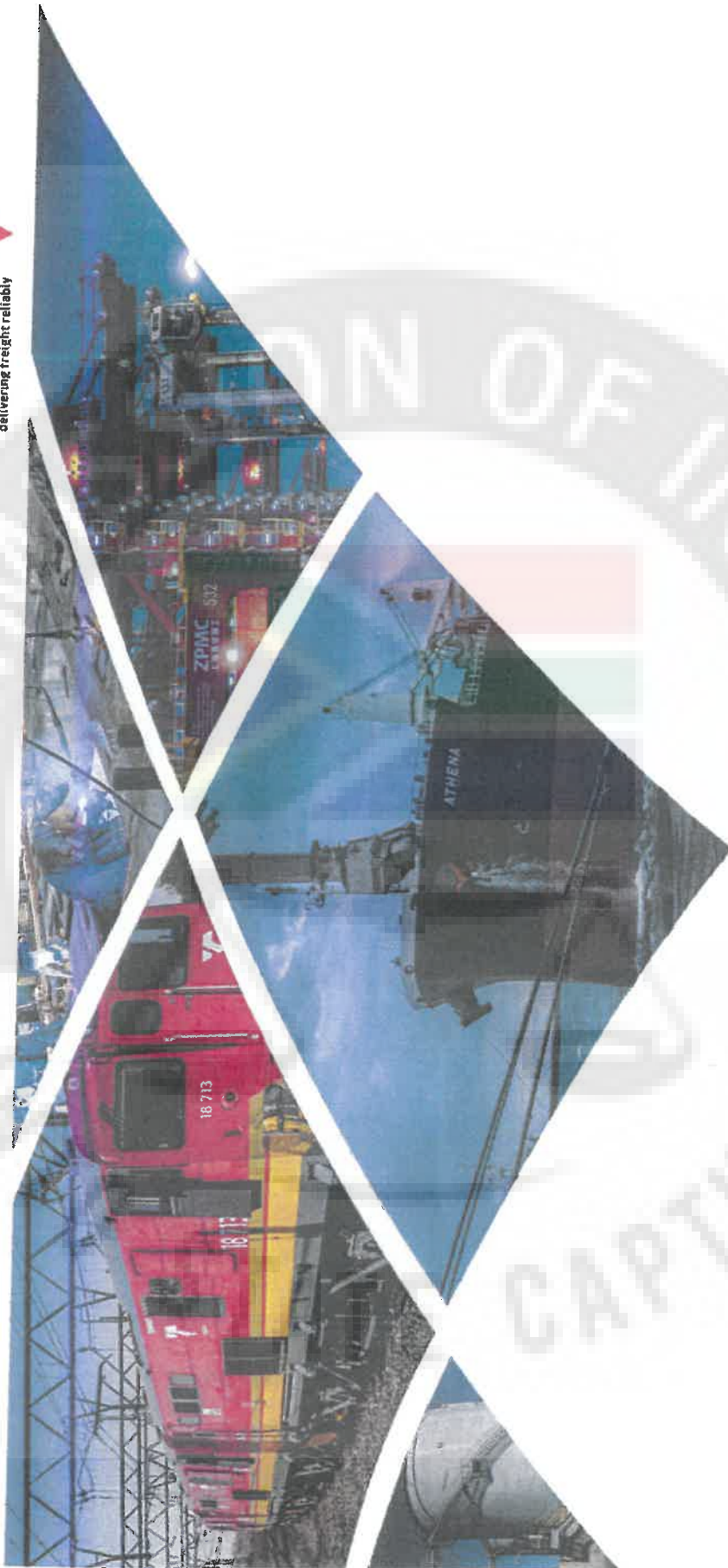
- The loan is fairly priced in comparison to foreign issuance of a US\$ denominated loan under the GMTN, which is expected to have a pricing point of about 307 above US Treasuries (bearing in mind the mark-to-market rate of 285 bps above US Treasuries on Transnet existing US\$ bond that will mature in 7.9 years);
- Longer capital grace period of 54 months;
- The starting date of the capital grace period will be the first drawdown date as opposed to the date of signing of the loan agreement as originally suggested;
- An improved capital repayment profile with increasing capital repayments towards the end of the loan tenure, which has the impact of extending the duration of the loan as opposed to the duration associated with the original equal capital repayment schedule;
- Volume of US\$2.5 billion for which there needs to be pricing consideration given that the maximum expected volume for a single issue under the GMTN is USD 1 billion (pricing estimate for volume is between 30 to 40 bps); and
- CDB agreed to transact cross currency swaps such that Transnet will have a ZAR denominated loan in its books.



TRANSNET



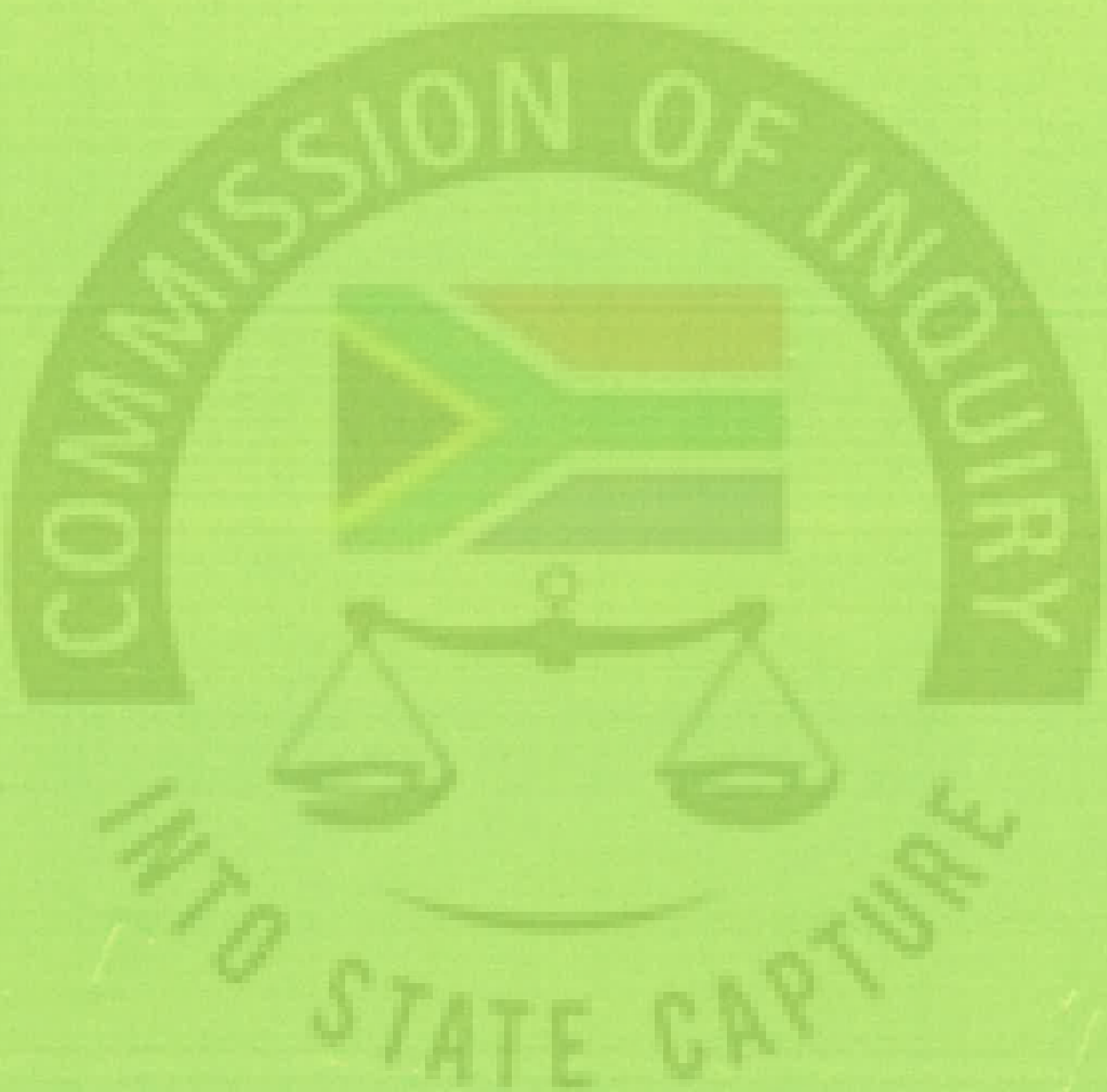
delivering freight reliably



Thank you



Annexure “MM40”



The logo for the law firm ashurst, with the word in a lowercase, sans-serif font.

Execution version
Contract No.: 4110201501100000685

US\$1,500,000,000 Term Facility Agreement

Dated 4 June 2015

For

TRANSNET SOC LTD

as Borrower

and

CHINA DEVELOPMENT BANK CORPORATION

as Lender

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THIS AGREEMENT is dated on the date first stated above and made between:

- (1) **TRANSNET SOC LTD** with registration number of 1990/000900/30 as borrower (the "**Borrower**"); and
- (2) **CHINA DEVELOPMENT BANK CORPORATION** as lender (the "**Lender**").

IT IS AGREED as follows:

SECTION 1 INTERPRETATION

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement:

"Acceptable Bank" means a bank or financial institution which has a rating for its long-term unsecured and non credit-enhanced debt obligations of A- or higher by Standard & Poor's Rating Services or Fitch Ratings Ltd or A3 or higher by Moody's Investors Service Limited or a comparable rating from an internationally recognised credit rating agency.

"Acceptance Certificate" bears the same meaning as ascribed to it in the relevant Commercial Contract.

"Acceptance Instalment" bears the same meaning as ascribed to it in the relevant Commercial Contract.

"Account Agreement" means the agreement entered into between the Borrower, the Lender and the Account Bank on or about the date of this Agreement in respect of the operation of the Hedging Accounts.

"Account Bank" means JPMorgan Chase Bank, N.A., Johannesburg Branch or any other bank or financial institution appointed pursuant to the terms of the Account Agreement.

"Affiliate" means, in relation to any person, a Subsidiary of that person or a Holding Company of that person or any other Subsidiary of that Holding Company.

"Aggregate Contract Price" means the aggregate contract price payable under the Commercial Contracts for the locomotives being ZAR 32,449,324,640 (unless otherwise reduced pursuant to the terms of the Commercial Contracts) but excluding any increase in the contract price as a result of the application of Clause 8.12 (Duties on Importation) or Part 7 (Variations) of Schedule 3 (Agreement Management) of each Commercial Contract.

"Anti-Money Laundering Laws" are the US Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 and the regulations and rules promulgated thereunder, as amended from time to time; the US Money Laundering Control Act of 1986 and the regulations and rules promulgated thereunder, as amended from time to time; the US Bank Secrecy Act and the regulations and rules promulgated thereunder, as amended from time to time; and corresponding laws of (a) the European Union designed to combat money laundering and terrorist financing and (b) jurisdictions in which the Group operates or in which the proceeds of the Loans will be used or from which repayments of the Facility will be derived.

"Authorisation" means an authorisation, consent, approval, resolution, licence, exemption, filing, notarisation or registration.

"Availability Period" means the period from and including the date of this Agreement to and including the day immediately preceding the date falling 54 Months from the first Utilisation Date.

"Available Facility" means the amount of the Facility minus:

- (a) the amount of any outstanding Loans; and
- (b) in relation to any proposed Utilisation, the amount of any Loans that are due to be made on or before the proposed Utilisation Date.

"Break Costs" means the amount (if any) by which:

- (a) the interest (excluding Margin) which the Lender should have received for the period from the date of receipt of all or any part of a Loan or Unpaid Sum to the last day of the current Interest Period in respect of that Loan or Unpaid Sum, had the principal amount or Unpaid Sum received been paid on the last day of that Interest Period;

exceeds:

- (b) the amount which the Lender would be able to obtain by placing an amount equal to the principal amount or Unpaid Sum received by it on deposit with a leading bank in the Relevant Interbank Market for a period starting on the Business Day following receipt or recovery and ending on the last day of the current Interest Period.

"Business Day" means a day (other than a Saturday or Sunday or public holiday) on which banks are open for general business in Beijing, Johannesburg, Republic of South Africa and (in relation to any date for payment or purchase of a currency in Dollars) New York.

"Charged Property" means all of the assets of the Borrower which from time to time are, or are expressed to be, the subject of the Transaction Security.

"Class Action" means the legal proceedings brought against the Borrower under the case name of *Pretorius and Another v Transnet SOC LTD Defined Second Benefit Fund and Others*, 2014 ZAGPPHC 526.

"CNR" means Friedshelf 1507 Proprietary Limited (Registration Number 2014/016892/07) (and, subject to a name change, to be known and registered as CNR Rolling Stock South Africa Proprietary Limited).

"CNR Contract" means the contract between CNR and the Borrower for the design, manufacture, test and supply of up to 232 diesel locomotives dated 17 March 2014.

"Code" means the US Internal Revenue Code of 1986.

"Commercial Contracts" means the CSR 100 Contract, the CSR 359 Contract and the CNR Contract.

"Commercial Vendors" means CNR and CSR and "Commercial Vendor" means any one of them.

"Companies Act" means the Companies Act, No 71 of 2008 of the Republic of South Africa, as amended from time to time.

"Compliance Certificate" means a certificate substantially in the form set out in Schedule 4 (*Form of Compliance Certificate*) or otherwise in form and substance satisfactory to the Lender.

"Confidential Information" means all information relating to the Borrower, the Group, the Finance Documents or the Facility of which the Lender becomes aware in its capacity as, or for the purpose of becoming, the Lender or which is received by the Lender in relation to, or for the purpose of becoming the Lender under, the Finance Documents or the Facility from any member of the Group or any of its advisers in whatever form, and includes information given orally and any document, electronic file or any other way of representing or recording information which contains or is derived or copied from such information but excludes information that:

- (a) is or becomes public information other than as a direct or indirect result of any breach by the Lender of Clause 32 (*Confidentiality*); or
- (b) is identified in writing at the time of delivery as non-confidential by any member of the Group or any of its advisers; or
- (c) is known by the Lender before the date the information is disclosed to it by any member of the Group or any of its advisers or is lawfully obtained by the Lender after that date, from a source which is, as far as the Lender is aware, unconnected with the Group and which, in either case, as far as the Lender is aware, has not been obtained in breach of, and is not otherwise subject to, any obligation of confidentiality.

"Confidentiality Undertaking" means a confidentiality undertaking substantially in a recommended form of the LMA as set out in Schedule 6 (*LMA Form of Confidentiality Undertaking*) or in any other form agreed between the Borrower and the Lender.

"Consolidated Tangible Net Worth" means at any time the aggregate of the amounts paid up or credited as paid up on the issued ordinary share capital of the Borrower and the amount standing to the credit of the reserves of the Group, including any amount credited to the share premium account.

but deducting:

- (a) any debit balance on the consolidated profit and loss account of the Group;
- (b) (to the extent included) any amount shown in respect of goodwill (including goodwill arising only on consolidation) or other intangible assets of the Group;
- (c) any amount in respect of interests of non-Group members in Group subsidiaries;
- (d) (to the extent included) any provision for deferred taxation;
- (e) (to the extent included) any amounts arising from an upward revaluation of assets made at any time after 31 March 2014; and
- (f) any amount in respect of any dividend or distribution declared, recommended or made by any member of the Group to the extent payable to a person who is not a member of the Group and to the extent such distribution is not provided for in the most recent financial statements,

and so that no amount shall be included or excluded more than once.

"Consolidated Total Assets" means at any time, the amount of the total assets of the Borrower, as appearing in the audited consolidated annual financial statements of the Borrower delivered pursuant to Clause 18.1 (*Financial statements*).

"Contract Price" bears the same meaning in each Commercial Contract in respect of the locomotives to be delivered under each Commercial Contract.

"Corporate Plan" means the corporate plan submitted by the Borrower to the Minister of Finance of the Republic of South Africa and the Minister of the Public Enterprises of the Republic of South Africa in terms of section 52 of the PFMA.

"Corrupt Acts" means any offence in respect of the corruption, corrupt activities and money laundering or related activities as contemplated under the laws of the Republic of South Africa.

"CSR" means CSR E-LoCo Supply Proprietary Limited (Registration No. 2012/12805/07).

"CSR 100 Contract" means the contract between CSR and the Borrower for the design, manufacture, test and supply of up to 100 new class 20E locomotives dated 17 March 2014.

"CSR 359 Contract" means the contract between CSR and the Borrower for the design, manufacture, test and supply of up to 359 new dual voltage electric locomotives dated 17 March 2014.

"Default" means an Event of Default or any event or circumstance specified in Clause 21 (*Events of Default*) which would (with the expiry of a grace period, the giving of notice, the making of any determination under a Transaction Finance Document or any combination of any of the foregoing) be an Event of Default.

"Delegate" means any delegate, agent, attorney or co-trustee appointed by the Lender.

"Disruption Event" means either or both of:

- (a) a material disruption to those payment or communications systems or to those financial markets which are, in each case, required to operate in order for payments to be made in connection with the Facility (or otherwise in order for the transactions contemplated by the Finance Documents to be carried out) which disruption is not caused by, and is beyond the control of, any of the Parties; or
- (b) the occurrence of any other event which results in a disruption (of a technical or systems-related nature) to the treasury or payments operations of a Party preventing that, or any other Party:
 - (i) from performing its payment obligations under the Finance Documents; or
 - (ii) from communicating with other Parties in accordance with the terms of the Finance Documents,

and which (in either such case) is not caused by, and is beyond the control of, the Party whose operations are disrupted.

"Environmental Claim" means any claim, proceeding or investigation by any person in respect of any Environmental Law.

"Environmental Law" means any applicable law in any jurisdiction in which any member of the Group conducts business which relates to the pollution or protection of the environment or harm to or the protection of human health or the health of animals or plants.

"Environmental Permits" means any permit, licence, consent, approval and other authorisation and the filing of any notification, report or assessment required under any Environmental Law for the operation of the business of any member of the Group conducted on or from the properties owned or used by the relevant member of the Group.

"Equity Contribution" means, in respect of any proposed Utilisation, an amount equal to (a) 532/2500 multiplied by (b) the aggregate amount in ZAR (using the current spot USD/ZAR spot exchange rate as supplied by the South African Reserve Bank reasonably selected by the Lender) of (i) all outstanding Loans and (ii) any Loans that are due to be made on or before the Utilisation Date of the proposed Utilisation.

"Event of Default" means any event or circumstance specified as such in Clause 21 (*Events of Default*).

"Facility" means the term loan facility in an aggregate amount of US\$1,500,000,000 made available under this Agreement as described in Clause 2 (*The Facility*), to the extent not cancelled or reduced under this Agreement.

"Facility Office" means the office or offices identified with the Lender's signature below or such other office as it may from time to time select by notice to the Borrower as the office or offices through which it will perform its obligations under this Agreement.

"FATCA" means:

- (a) sections 1471 to 1474 of the Code or any associated regulations;
- (b) any treaty, law or regulation of any other jurisdiction, or relating to an intergovernmental agreement between the US and any other jurisdiction, which (in either case) facilitates the implementation of any law or regulation referred to in paragraph (a) above; or
- (c) any agreement pursuant to the implementation of any treaty, law or regulation referred to in paragraphs (a) or (b) above with the US Internal Revenue Service, the US government or any governmental or taxation authority in any other jurisdiction.

"FATCA Deduction" means a deduction or withholding from a payment under a Finance Document required by FATCA.

"FATCA Exempt Party" means a Party that is entitled to receive payments free from any FATCA Deduction.

"FATCA FFI" means a foreign financial institution as defined in section 1471(d)(4) of the Code which, if the Lender is not a FATCA Exempt Party, could be required to make a FATCA Deduction.

"Finance Document" means this Agreement, the Mandate Letter, the Account Agreement, the Security Documents, and any other document designated as such by the Lender and the Borrower.

"Financial Closing Date" means the date on which the Lender gives notice to the Borrower that the requirements under clause 4.1 (*Initial conditions precedent*) have been satisfied.

"Financial Indebtedness" means any indebtedness for or in respect of:

- (a) moneys borrowed;
- (b) any amount raised by acceptance under any acceptance credit facility or dematerialised equivalent;
- (c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;
- (d) the amount of any liability in respect of any lease or hire purchase contract which would, in accordance with IFRS, be treated as a finance lease;
- (e) receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis);
- (f) any amount raised under any other transaction (including any forward sale or purchase agreement) of a type not referred to in any other paragraph of this definition having the commercial effect of a borrowing;
- (g) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price (and, when calculating the value of any derivative transaction, only the marked to market value (or, if any actual amount is due as a result of the termination or close-out of that derivative transaction, that amount) shall be taken into account);
- (h) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution;
- (i) any amount raised by the issue of redeemable shares;
- (j) any amount of any liability under an advance or deferred purchase agreement if one of the primary reasons behind the entry into this agreement is to raise finance; and
- (k) (without double counting) the amount of any liability in respect of any guarantee or indemnity for any of the items referred to in paragraphs (a) to (j) above.

"First Repayment Date" means the date falling 54 Months from the first Utilisation Date.

"Government" means the Government of the Republic of South Africa

"Group" means the Borrower and its Subsidiaries for the time being.

"Hedge Counterparty" means JPMorgan Chase & Co or its Affiliate or any other financial institution agreed to by the Lender.

"Hedging Account (USD)" means the USD account with the same name established and maintained by the Borrower with the Account Bank and operated pursuant to the terms of the Account Agreement and any renewal or re-designation thereof or replacement or substitution therefor.

"Hedging Account (ZAR)" means the ZAR account with the same name established and maintained by the Borrower with the Account Bank and operated pursuant to the terms of the Account Agreement and any renewal or re-designation thereof or replacement or substitution therefor.

"Hedging Accounts" means the Hedging Account (USD) and Hedging Account (ZAR) and **"Hedging Account"** means any of them.

"Hedging Transaction" has the meaning ascribed to it in Clause 20.25 (Hedging Transaction).

"Holding Company" means, in relation to a person, any other person in respect of which it is a Subsidiary.

"IFRS" means international accounting standards within the meaning of the IAS Regulation 1606/2002 to the extent applicable to the relevant financial statements.

"Indirect Tax" means any goods and services tax, consumption tax, value added tax (including any value added tax as provided for in the Value Added Tax Act, 1991 (Act No. 81 of 1991) of the Republic of South Africa) or any tax of a similar nature.

"Interest Payment Date" means:

- (a) 12 March, 12 June, 12 September and 12 December of each year; and
- (b) in relation to any Unpaid Sum, the last day of an Interest Period determined in accordance with Clause 8.3 (*Default Interest*).

"Interest Period" means, in relation to a Loan, each period determined in accordance with Clause 9 (*Interest Periods*) and, in relation to an Unpaid Sum, each period determined in accordance with Clause 8.3 (*Default Interest*).

"Lender Account" means such account of the Lender as notified in writing to the Borrower (with a copy to the Account Bank) pursuant to paragraph (b) of clause 24.1 (*Payments to the Lender*) for payments and repayments under the Finance Documents.

"LIBOR" means, in relation to any Loan:

- (a) the applicable Screen Rate; or
- (b) If no Screen Rate is available for the Interest Period of that Loan, the rate at which the Lender could borrow funds in the Relevant Interbank Market in Dollars and for a period of 3 months were it to do so by asking for and then accepting interbank offers for deposits in reasonable market size,

as of the Specified Time on the Quotation Day and, if that rate is less than zero, LIBOR shall be deemed to be zero.

"LMA" means the Loan Market Association.

"Loan" means a loan made or to be made under the Facility or the principal amount outstanding for the time being of that loan.

"Locomotive Mortgage" means each special notarial mortgage to be registered by the Borrower in favour of the Lender over the locomotives as described in and delivered pursuant to the terms of the Commercial Contracts and owned by the Borrower as

security for the obligations of the Borrower to the Lender under the Transaction Finance Documents substantially in form of Schedule 8 (*Locomotive Mortgage Agreement*).

"Locomotive Mortgage Power of Attorney" means each power of attorney in substantially the form set out in Schedule 10 (*Locomotive Mortgage Power of Attorney*).

"London Business Day" means a day (other than a Saturday or Sunday) on which banks are open for general business in London.

"Mandate Letter" means the mandate letter dated 16 April 2015 between the Lender and the Borrower.

"Margin" means 2.57 per cent. per annum.

"Material Adverse Effect" means a material adverse effect on:

- (a) the business, operations, property, condition (financial or otherwise) or prospects of the Group taken as a whole;
- (b) the ability of the Borrower to perform its obligations under the Finance Documents; or
- (c) the validity or enforceability of the Finance Documents or the rights or remedies of the Lender under the Finance Documents.

"Material Subsidiary" means, at any time, a Subsidiary of the Borrower which:

- (a) has profits before interest and tax representing 10 per cent. or more of the consolidated profits before interest and tax of the Group; or
- (b) has gross assets representing 10 per cent. or more of consolidated gross assets of the Group; or
- (c) has turnover representing 10 per cent. or more of consolidated turnover of the Group,

in each case calculated on a consolidated basis.

Compliance with the conditions set out in the paragraphs above shall be determined by reference to the latest audited financial statements of that Subsidiary (consolidated in the case of a Subsidiary which itself has Subsidiaries) and the latest audited consolidated financial statements of the Group.

A report by the auditors of the Borrower that a Subsidiary is or is not a Material Subsidiary shall, in the absence of manifest error, be conclusive and binding on all Parties.

"Month" means a period starting on one day in a calendar month and ending on the numerically corresponding day in the next calendar month, except that:

- (a) (subject to paragraph (c) below) if the numerically corresponding day is not a Business Day, that period shall end on the next Business Day in that calendar month in which that period is to end if there is one, or if there is not, on the immediately preceding Business Day; and

- (b) if there is no numerically corresponding day in the calendar month in which that period is to end, that period shall end on the last Business Day in that calendar month; and
- (c) if an Interest Period begins on the last Business Day of a calendar month, that Interest Period shall end on the last Business Day in the calendar month in which that Interest Period is to end.

The above rules will only apply to the last Month of any period.

"Operations Disclosure Schedule" means the disclosure schedule set out in Schedule 9 (*Operations Disclosure Schedule*).

"Original Financial Statements" means the audited consolidated financial statements of the Group for the financial year ended 31 March 2014.

"Party" means a party to this Agreement.

"Payment Certificate" has the meaning ascribed to it in any Commercial Contract.

"Permitted Corporatization" means a corporatisation, hive-down, subsidiarisation, demerger, merger or other corporate reconstruction (by whatever name called) of any of the Transnet Divisions required to be implemented by an executive or legislative act of the Government and in respect of which the Borrower has concluded a consultation with the Lender in good faith over a reasonable period of time lasting not less than 30 days and **provided that** such corporatisation, hive-down, subsidiarisation, demerger, merger or other corporate reconstruction does not materially and adversely affect the interests of the Lender under the Finance Documents.

"Permitted Disposal" means any sale, lease, licence, transfer or other disposal which, except in the case of paragraph (b), is on arm's length terms:

- (a) made by any member of the Group in the ordinary course of trading of the disposing entity;
- (b) of any asset by a member of the Group (other than the Borrower) to another member of the Group, including any entity that becomes a member of the Group by a Permitted Corporatization;
- (c) of assets in exchange for other assets comparable or superior as to type, value and quality;
- (d) of obsolete or redundant property, plant and equipment for cash;
- (e) arising as a result of any Security permitted under Clause 20.4(c);
- (f) of assets for cash where the higher of the market value and net consideration receivable (when aggregated with the higher of the market value and net consideration receivable for any other sale, lease, transfer or other disposal, other than any permitted under the foregoing paragraphs or as a Permitted Transaction) does not exceed US\$40,000,000 (or its equivalent in another currency or currencies) in any financial year of the Borrower.

"Permitted Transaction" means:

- (a) a Permitted Corporatization;

- (b) any disposal required, Financial Indebtedness incurred, guarantee, indemnity or Security given, or other transaction arising, under the Transaction Finance Documents;
- (c) the solvent liquidation or reorganisation of any member of the Group (other than the Borrower) so long as any payments or assets distributed as a result of such liquidation or reorganisation are distributed to other members of the Group;
- (d) transactions (other than (i) any sale, lease, license, transfer or other disposal and (ii) the granting or creation of Security or the incurring or permitting to subsist of Financial Indebtedness) conducted in the ordinary course of trading on arm's length terms; or
- (e) transactions other than any permitted under the foregoing sub-paragraphs entered into with the prior written consent of the Lender.

"PFMA" means the Public Finance Management Act 1999 as amended from time to time.

"Qualifying Guarantee" means a guarantee:

- (a) in an amount no less than all amounts that are outstanding under the Finance Documents as at the date of issuance of such Qualifying Guarantee;
- (b) provided by an Acceptable Bank or the Government in favour of the Lender; and
- (c) in form and substance satisfactory to the Lender (acting reasonably).

"Quotation Day" means, in relation to any period for which an interest rate is to be determined, two (2) London Business Days before the first day of that period unless market practice differs in the Relevant Interbank Market, in which case the Quotation Day will be determined by the Lender in accordance with market practice in the Relevant Interbank Market (and if quotations would normally be given by leading banks in the Relevant Interbank Market on more than one day, the Quotation Day will be the last of those days).

"Receiver" means a receiver or receiver and manager or administrative receiver of the whole or any part of the Charged Property.

"Related Fund" in relation to a fund (the **"first fund"**), means a fund which is managed or advised by the same investment manager or investment adviser as the first fund or, if it is managed by a different investment manager or investment adviser, a fund whose investment manager or investment adviser is an Affiliate of the investment manager or investment adviser of the first fund.

"Relevant Interbank Market" means the London interbank market.

"Repayment Date" means:

- (a) the First Repayment Date;
- (b) each 12 March, 12 June, 12 September, 12 December falling after the First Repayment Date but prior to the Termination Date; and
- (c) the Termination Date,

but if any of those dates is not a Business Day, then that Repayment Date shall be deemed to be the immediately succeeding Business Day.

"Repeating Representations" means each of the representations set out in Clauses 17.1 (*Status*) to 17.6 (*Governing law and enforcement*), Clause 17.9 (*No default*), paragraph (c) of Clause 17.10 (*No misleading information*), Clause 17.11 (*Corrupt Acts*), paragraph (c) of Clause 17.12 (*Financial statements*), Clause 17.13 (*Pari passu ranking*), Clause 17.14 (*No proceedings*) and Clause 17.21 (*Ranking*) to Clause 17.24 (*Legal and beneficial owner*).

"Representative" means any delegate, agent, manager, administrator, nominee, attorney, trustee or custodian.

"Republic of South Africa" means the Republic of South Africa as constituted from time to time.

"Sanctioned Country" is a country subject to a sanctions program identified on the list maintained by:

- (a) OFAC (as defined under Sanctions Laws) and currently available at <http://www.treas.gov/offices/enforcement/ofac/programs>, or as otherwise published from time to time, for which the sanctions program extends beyond listed Sanctioned Persons;
- (b) the United Nations Security Council;
- (c) the European Union;
- (d) a member state of the European Union; or
- (e) Her Majesty's Treasury of the United Kingdom.

"Sanctioned Person" is any of the following currently or in the future: (i) an entity, vessel, or individual named on the list of Specially Designated Nationals or Blocked Persons maintained by OFAC (as defined under Sanctions Laws) currently available at <http://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx> or on the consolidated list of persons, groups, and entities subject to EU financial sanctions currently available at http://eeas.europa.eu/cfsp/sanctions/consol-list_en.htm or identified on the list maintained by the European Union, a member state of the European Union or Her Majesty's Treasury of the United Kingdom; or (ii) anyone more than 50-percent owned by an entity or individual described in (i) above; or (iii) (A) an agency or instrumentality of, or an entity owned or controlled by, the government of a Sanctioned Country, (B) an entity located in a Sanctioned Country, or (C) an individual who is a citizen or resident of, or located in, a Sanctioned Country, to the extent that the agency, instrumentality, entity, or individual is subject to a sanctions program administered by OFAC; or (iv) an entity or individual engaged in activities sanctionable under CISADA (as defined under Sanctions Laws), ITRA (as defined under Sanctions Laws), IFCA (as defined under Sanctions Laws below), or any other Sanctions Laws as amended from time to time.

"Sanctions Laws" are the laws, regulations, and rules promulgated or administered by the US Office of Foreign Assets Control of the Department of the Treasury ("OFAC") to implement US sanctions programs, including any enabling legislation or Executive Order related thereto, as amended from time to time; the US Comprehensive Iran Sanctions, Accountability, and Divestment Act and the regulations and rules promulgated thereunder ("CISADA"), as amended from time to time; the US Iran Threat Reduction and Syria Human Rights Act and the regulations and rules promulgated thereunder ("ITRA"), as amended from time to time; the US Iran Freedom and Counter-Proliferation Act and the regulations and rules promulgated thereunder ("IFCA"); the sanctions and other restrictive measures applied by the European Union in pursuit of the Common Foreign and

Security Policy objectives set out in the Treaty on European Union; and any similar sanctions laws as may be enacted from time to time in the future by the U.S., the European Union (and its Member States), or the Security Council, or any other legislative body of the United Nations or the Japanese Ministry of Finance; and any corresponding laws of jurisdictions in which the Group operates or in which the proceeds of the Loans will be used or from which repayments of the Facility will be derived.

"Scheduled Debt Service" means, for any date for which it is being calculated, the aggregate of all scheduled principal and interest payments due and payable under this Agreement on such date.

"Screen Rate" means the London Interbank offered rate administered by ICE Benchmark Administration Limited (or any other person which takes over the administration of that rate) for Dollars for a period of 3 months displayed on pages LIBOR01 or LIBOR02 of the Reuters screen (or any replacement Reuters page which displays that rate) or on the appropriate page of such other information service which publishes that rate from time to time in place of Reuters. If such page or service ceases to be available, the Lender may specify another page or service displaying the relevant rate after consultation with the Borrower.

"Secured Obligations" means all present and future obligations and liabilities at any time due, owing or incurred by the Borrower to the Lender under the Transaction Finance Documents, whether actual or contingent and whether incurred solely or jointly and as principal or surety or in any other capacity.

"Security" means a mortgage, charge, pledge, lien or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect.

"Security Documents" means the Locomotive Mortgages and each Locomotive Mortgage Power of Attorney together with any other document entered into by the Borrower creating or expressed to create any Security over all or any part of its assets in respect of the obligations of the Borrower under any of the Transaction Finance Documents.

"Specified Time" means a time determined in accordance with Schedule 7 (*Timetables*).

"Standby Facility" means the term loan facility in an aggregate amount of up to US\$1,000,000,000 made available under the Standby Facility Agreement, to the extent not cancelled or reduced thereunder.

"Standby Facility Agreement" means the term loan facility agreement in respect of a term loan facility in an aggregate amount of up to US\$1,000,000,000 which the Lender and the Borrower have the option of entering into by 1 September 2015 for the purpose of financing part of the purchase price under the Commercial Contracts.

"Standby Facility Hedging Transaction" means any hedging transaction entered into by the Borrower for the purpose of hedging the interest rate and/or foreign exchange rate risk under the Standby Facility in compliance with the terms of the Standby Facility Agreement.

"Subsidiary" means any person (referred to as the **"first person"**) in respect of which another person (referred to as the **"second person"**):

- (a) holds a majority of the voting rights in that first person or has the right under the constitution of the first person to direct the overall policy of the first person or alter the terms of its constitution; or

- (b) is a member of that first person and has the right to appoint or remove a majority of its board of directors or equivalent administration, management or supervisory body; or
- (c) has the right to exercise a dominant influence (which must include the right to give directions with respect to operating and financial policies of the first person which its directors are obliged to comply with whether or not for its benefit) over the first person by virtue of provisions contained in the articles (or equivalent) of the first person or by virtue of a control contract which is in writing and is authorised by the articles (or equivalent) of the first person and is permitted by the law under which such first person is established; or
- (d) is a member of that first person and controls alone, pursuant to an agreement with other shareholders or members, a majority of the voting rights in the first person or the rights under its constitution to direct the overall policy of the first person or alter the terms of its constitution; or
- (e) has the power to exercise, or actually exercises dominant influence or control over the first person; or
- (f) together with the first person are managed on a unified basis,

and for the purposes of this definition, a person shall be treated as a member of another person if any of that person's Subsidiaries is a member of that other person or, if any shares in that other person are held by a person acting on behalf of it or any of its Subsidiaries.

"Tax" means any tax, levy, impost, duty or other charge or withholding of a similar nature (including any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same).

"Termination Date" means the date falling 180 Months from the first Utilisation Date.

"Transaction Finance Documents" means

- (a) the Finance Documents;
- (b) if executed, the Standby Facility Agreement and any "Finance Document" defined in and used under the Standby Facility Agreement; and
- (c) any other document designated as such by the Lender and the Borrower.

"Transaction Security" means the Security created or expressed to be created in favour of the Lender pursuant to the Security Documents.

"Transnet Divisions" means the Borrower's five operating divisions along which its businesses are organised, namely Transnet Freight Rail, Transnet Engineering, Transnet National Ports Authority, Transnet Port Terminals and Transnet Pipelines.

"Unpaid Sum" means any sum due and payable but unpaid by the Borrower under the Finance Documents.

"US" means the United States of America.

"US Tax Obligor" means:

- (a) the Borrower if the Borrower is resident for tax purposes in the US; or

- (b) the Borrower if some or all of its payments under the Finance Documents are from sources within the US for US federal income tax purposes.

"Utilisation" means a utilisation of the Facility.

"Utilisation Date" means the date of a Utilisation, being the date on which the relevant Loan is to be made.

"Utilisation Request" means a notice substantially in the relevant form set out in Schedule 3 (*Utilisation Requests*).

1.2 Construction

- (a) Unless a contrary indication appears any reference in this Agreement to:
- (i) the **"Lender"**, the **"Borrower"** or any **"Party"** shall be construed so as to include its successors in title, permitted assigns and permitted transferees to, or of, its rights and/or obligations under the Transaction Finance Documents;
 - (ii) **"assets"** includes present and future properties, revenues and rights of every description;
 - (iii) a **"Finance Document"**, a **"Transaction Finance Document"** or any other agreement or instrument is a reference to that Finance Document, Transaction Finance Document or other agreement or instrument as amended, novated, supplemented, extended, replaced or restated;
 - (iv) **"indebtedness"** includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;
 - (v) a **"person"** includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium, partnership or other entity (whether or not having separate legal personality);
 - (vi) a **"regulation"** includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or of any regulatory, self-regulatory or other authority or organisation;
 - (vii) a provision of law is a reference to that provision as amended or re-enacted; and
 - (viii) a time of day is a reference to Beijing time.
- (b) Section, Clause and Schedule headings are for ease of reference only.
- (c) Unless a contrary indication appears, a term used in any other Finance Document or in any notice given under or in connection with any Finance Document has the same meaning in that Finance Document or notice as in this Agreement.
- (d) A Default (other than an Event of Default) is **"continuing"** if it has not been remedied or waived and an Event of Default is **"continuing"** if it has not been waived.

1.3 Currency symbols and definitions

"\$", "USD" and "Dollars" denote the lawful currency of the United States of America.

"ZAR" denotes the lawful currency of the Republic of South Africa.

1.4 Third party rights

- (a) Unless expressly provided to the contrary in a Finance Document, a person who is not a Party has no right under the Contracts (Rights of Third Parties) Act 1999 (the "Third Parties Act") to enforce or to enjoy the benefit of any term of this Agreement.
- (b) Notwithstanding any term of any Finance Document, the consent of any person who is not a Party is not required to rescind or vary this Agreement at any time.



SECTION 2

THE FACILITY

2. THE FACILITY

2.1 The Facility

Subject to the terms of this Agreement, the Lender makes available to the Borrower a dollar term loan facility in an aggregate amount of US\$1,500,000,000.

3. PURPOSE

3.1 Purpose

The Borrower shall apply all amounts borrowed by it under the Facility towards:

- (a) payments to the Commercial Vendors under the Commercial Contracts to finance up to 1500/3032 of the Aggregate Contract Price of the Commercial Contracts; and
- (b) (subject to the consent of the Lender) to the extent that the Borrower has made payments to the Commercial Vendors under the Commercial Contracts which in the aggregate exceed the amount of its required Equity Contribution (and such payments have not been made from the utilisation of any other facility which has been granted to the Borrower for the purpose of financing all or any part of the Borrower's payment obligations under the Commercial Contracts), as reimbursement to itself for payments made in excess of the required Equity Contribution.

3.2 Monitoring

The Lender is not bound to monitor or verify the application of any amount borrowed pursuant to this Agreement.

4. CONDITIONS OF UTILISATION

4.1 Initial conditions precedent

The Borrower may not deliver a Utilisation Request unless the Lender has received all of the documents and other evidence listed in Schedule 2 (*Conditions Precedent*) in form and substance satisfactory to the Lender. The Lender shall notify the Borrower promptly upon being so satisfied.

4.2 Further conditions precedent

The Lender will only be obliged to make a Loan available to the Borrower if on the date of the Utilisation Request and on the proposed Utilisation Date:

- (a) an amount at least equivalent to the Equity Contribution has already been paid by the Borrower to the Commercial Vendors under the Commercial Contracts;
- (b) no Default is continuing or would result from the proposed Loan; and
- (c) the Repeating Representations to be made by the Borrower are true in all material respects.

SECTION 3

UTILISATION

5. UTILISATION - LOANS

5.1 Delivery of a Utilisation Request

The Borrower may utilise the Facility by delivery to the Lender of a duly completed Utilisation Request not later than the Specified Time.

5.2 Completion of a Utilisation Request

(a) Each Utilisation Request is irrevocable and will not be regarded as having been duly completed unless:

- (i) the proposed Utilisation Date is a Business Day within the Availability Period;
- (ii) the currency and amount of the Utilisation comply with Clause 5.3 (*Currency and amount*);
- (iii) the proposed Interest Period complies with Clause 9 (*Interest Periods*);
- (iv) It is accompanied by the relevant invoices, accompanying statement of the Commercial Vendor, Payment Certificates (and in respect of a Utilisation made for the payment of an Acceptance Instalment, the Acceptance Certificate); and
- (v) It specifies the USD/ZAR exchange rate used by the Borrower in computing the amount of the Utilisation, whether under any Hedging Transaction or if no such Hedging Transaction has been entered into, the spot USD/ZAR exchange rate of the South African Reserve Bank on the date of the Utilisation Request, provided that such USD/ZAR exchange rate shall be satisfactory to the Lender.

(b) Only one Loan may be requested in each Utilisation Request.

5.3 Currency and amount

- (a) The currency specified in an Utilisation Request must be Dollars.
- (b) The amount of the proposed Loan must be an amount which is not more than the Available Facility and which is a minimum of US\$5,000,000 or if less, the Available Facility, provided that the amount of such Utilisation shall not at any time exceed the amount (taking into account the USD/ZAR exchange rate used by the Borrower pursuant to paragraph (a)(v) of Clause 5.2 (*Completion of a Utilisation Request*)) set out in the invoice or invoices (excluding any VAT, customs duties or ad valorem duties or any increase in the Contract Price pursuant to the terms of the Commercial Contract) issued by the Commercial Vendors the subject of such Utilisation.

5.4 Making of a Loan

If the conditions set out in this Agreement have been met, the Lender shall advance the requested Loan to the Borrower on the Utilisation Date through its Facility Office.

5.5 Cancellation of Facility

- (a) The amount of the Facility which, at that time, is unutilised shall be immediately cancelled at the end of the Availability Period.



SECTION 4

REPAYMENT, PREPAYMENT AND CANCELLATION

6. REPAYMENT

6.1 Repayment of Loans

- (a) Subject to paragraph (c) below, the Borrower shall repay the Loans advanced to it
 - (i) If the First Repayment Date falls on 12 March, 12 June, 12 September or 12 December, in 43 equal instalments by repaying on each Repayment Date an amount which reduces the amount of the outstanding Loans by an amount equal to 1/43 of the total amount of all the Loans borrowed by the Borrower as at close of business in Beijing on the last day of the Availability Period; or
 - (ii) If the First Repayment Date does not fall on 12 March, 12 June, 12 September or 12 December,
 - (A) in an amount on the First Repayment Date which reduces the amount of the outstanding Loans by an amount equal to 1% of the total amount of all the Loans borrowed by the Borrower as at close of business in Beijing on the last day of the Availability Period; and
 - (B) in 43 equal instalments by repaying on each Repayment Date after the First Repayment Date an amount which reduces the amount of the outstanding Loans by an amount equal to 1/43 of 99% of the total amount of all the Loans borrowed by the Borrower as at close of business in Beijing on the last day of the Availability Period.
- (b) The Borrower may not re-borrow any part of the Facility which is repaid.
- (c) By no later than the date falling 5 Business Days prior to each Interest Payment Date or if different, each Repayment Date, the Borrower shall transfer or procure the transfer of the ZAR equivalent of the Scheduled Debt Service due on such Interest Payment Date or Repayment Date to the Hedging Account (ZAR). The Borrower shall convert such funds standing to the credit of the Hedging Account (ZAR) into US Dollars for deposit into the Hedging Account (USD) which shall be transferred to the Lender Account in discharge of the Scheduled Debt Service due on such Interest Payment Date or Repayment Date.

7. PREPAYMENT AND CANCELLATION

7.1 Illegality

If, in any applicable jurisdiction, it becomes unlawful for the Lender to perform any of its obligations as contemplated by this Agreement or to fund, issue or maintain its participation in any Loan or it becomes unlawful for any Affiliate of the Lender to do so:

- (a) the Lender shall promptly notify the Borrower upon becoming aware of that event;
- (b) upon the Lender notifying the Borrower, the Available Facility will be immediately cancelled ; and
- (c) the Borrower shall repay the Loans made to the Borrower on the last day of the Interest Period for each Loan occurring after the Lender has notified the Borrower

or, if earlier, the date specified by the Lender in the notice delivered to the Borrower (being no earlier than the last day of any applicable grace period permitted by law).

7.2 Change of control and Class Action

- (a) Notwithstanding the terms of any Finance Document, if the Government ceases to control the Borrower or any person or group of persons acting in concert gains control of the Borrower:
- (i) the Borrower shall promptly notify the Lender upon becoming aware of that event;
 - (ii) the Lender shall not be obliged to fund a Utilisation; and
 - (iii) the Lender may, by not less than thirty (30) days' notice to the Borrower, cancel the Facility and declare all outstanding Loans, together with accrued interest and all other amounts accrued under the Finance Documents, immediately due and payable, at which time the Facility will be cancelled and all such outstanding Loans and amounts will become immediately due and payable;
- (b) For the purpose of paragraph (a) above "**control**" means:
- (i) the power (whether by way of ownership of shares, proxy, contract, agency or otherwise) to:
 - (A) cast, or control the casting of, more than one-half of the maximum number of votes that might be cast at a general meeting of the Borrower; or
 - (B) appoint or remove all, or the majority, of the directors or other equivalent officers of the Borrower; or
 - (C) give directions with respect to the operating and financial policies of the Borrower which the directors or other equivalent officers of the Borrower are obliged to comply with; or
 - (ii) the holding of more than one-half of the issued share capital of the Borrower (excluding any part of that issued share capital that carries no right to participate beyond a specified amount in a distribution of either profits or capital).
- (c) For the purpose of paragraph (a) above "**acting in concert**" means, a group of persons who, pursuant to an agreement or understanding (whether formal or informal), actively co-operate, through the acquisition by any of them, either directly or indirectly, of shares in the Borrower, to obtain or consolidate control of the Borrower.
- (d) Notwithstanding the terms of any Finance Document, if the Class Action has been adversely determined against the Borrower:
- (i) the Borrower shall promptly notify the Lender upon becoming aware of that event;
 - (ii) the Lender shall not be obliged to fund a Utilisation; and

- (iii) the Lender may, by not less than thirty (30) days' notice to the Borrower, cancel the Facility and declare all outstanding Loans, together with accrued interest and all other amounts accrued under the Finance Documents, immediately due and payable, at which time the Facility will be cancelled and all such outstanding Loans and amounts will become immediately due and payable,

provided that the Lender shall only exercise its rights in paragraphs (ii) and (iii) above if:

- (iv) the statutory time-limit for the application for leave to appeal has expired without the Borrower making the application to appeal such adverse determination;
- (v) the Borrower has applied for leave to appeal such adverse determination but such application has been declined by the court; or
- (vi) the adverse determination has been made by the Constitutional Court of the Republic of South Africa,

and the Lender determines that such adverse determination of the Class Action has a Material Adverse Effect.

7.3 Change in Rating

- (a) If the rating of the long-term unsecured and non-credit enhanced debt obligations of the Borrower falls below:
 - (i) BBB- as per the ratings provided by Standard & Poor's Rating Services;
 - (ii) Baa1 as per the ratings provided by Moody's Investor Services Limited; or
 - (iii) BBB- as per the ratings provided by Fitch Ratings Inc.,

(each a "**Downgrade Event**"), the Lender shall have the right to require the Borrower to, within 30 days of a Downgrade Event (or such other longer period as may be agreed to in writing by the Lender), agree a remedial plan (the "**Remedial Plan**") to the satisfaction of the Lender. Such Remedial Plan may specify, amongst other terms and conditions, the additional credit support which the Lender may require (including without limitation the procurement of a Qualifying Guarantee).

- (b) If
 - (i) no Remedial Plan has been agreed in accordance with paragraph (a) above; or
 - (ii) a Remedial Plan has been agreed in accordance with paragraph (a) above but the Borrower fails to implement the Remedial Plan in accordance with its terms,

the Lender may require that the Facility shall be immediately cancelled and all Loans, together with accrued interest and all other amounts accrued under the Finance Documents, shall become immediately due and payable.

7.4 Voluntary cancellation

The Borrower may, if it gives the Lender not less than 30 days' (or such shorter period as the Lender may agree) prior written notice, cancel the whole or any part (being a minimum amount of US\$5,000,000) of the Available Facility.

7.5 Voluntary prepayment of Loans

- (a) Provided that all other amounts due and payable by the Borrower under this Agreement shall have been paid in full, the Borrower may, if it gives the Lender not less than 30 days' (or such shorter period as the Lender may agree) prior written notice, prepay the whole or any part of any Loan (but, if in part, being an amount that reduces the amount of the Loan by a minimum amount of US\$5,000,000).
- (b) A Loan may only be prepaid after the last day of the Availability Period (or, if earlier, the day on which the Available Facility is zero).
- (c) Any prepayment under this Clause 7.5 (*Voluntary prepayment of Loans*) shall satisfy the obligations under Clause 6.1 (*Repayment of Loans*) in inverse chronological order.

7.6 Restrictions

- (a) Any notice of cancellation or prepayment given by any Party under this Clause 7 (*Prepayment and Cancellation*) shall be irrevocable and, unless a contrary indication appears in this Agreement, shall specify the date or dates upon which the relevant cancellation or prepayment is to be made and the amount of that cancellation or prepayment.
- (b) Any prepayment under this Agreement shall be made together with accrued interest on the amount prepaid and, subject to any Break Costs, without premium or penalty.
- (c) The Borrower may not re-borrow any part of the Facility which is prepaid.
- (d) The Borrower shall not repay or prepay all or any part of the Loans or cancel all or any part of the Available Facility except at the times and in the manner expressly provided for in this Agreement.
- (e) No amount of the Facility cancelled under this Agreement may be subsequently reinstated.
- (f) If all or part of a Loan is repaid or prepaid, an amount of the Facility (equal to the amount of the Loan which is repaid or prepaid) will be deemed to be cancelled on the date of repayment or prepayment.

SECTION 5

COSTS OF UTILISATION

8. INTEREST

8.1 Calculation of interest

The rate of interest on each Loan for each Interest Period is the percentage rate per annum which is the aggregate of the applicable:

- (a) Margin; and
- (b) LIBOR.

8.2 Payment of interest

On the last day of each Interest Period the Borrower shall pay accrued interest on the Loan to which that Interest Period relates.

8.3 Default interest

- (a) If the Borrower fails to pay any amount payable by it under a Finance Document on its due date, interest shall accrue on the overdue amount from the due date up to the date of actual payment (both before and after judgment) at a rate which, subject to paragraph (b) below, is two per cent. per annum higher than the rate which would have been payable if the overdue amount had, during the period of non-payment, constituted a Loan in the currency of the overdue amount for successive Interest Periods, each of a duration selected by the Lender (acting reasonably). Any interest accruing under this Clause 8.3 (*Default interest*) shall be immediately payable by the Borrower on demand by the Lender.
- (b) If any overdue amount consists of all or part of a Loan which became due on a day which was not the last day of an Interest Period relating to that Loan:
 - (i) the first Interest Period for that overdue amount shall have a duration equal to the unexpired portion of the current Interest Period relating to that Loan; and
 - (ii) the rate of interest applying to the overdue amount during that first Interest Period shall be two per cent. per annum higher than the rate which would have applied if the overdue amount had not become due.
- (c) Default interest (if unpaid) arising on an overdue amount will be compounded with the overdue amount at the end of each Interest Period applicable to that overdue amount but will remain immediately due and payable.

8.4 Notification of rates of interest

The Lender shall promptly notify the Borrower of the determination of a rate of interest under this Agreement.

9. INTEREST PERIODS

9.1 Duration of Interest Periods

- (a) Subject to this Clause 9, the duration of each Interest Period shall be three (3) Months.
- (b) Each Interest Period for a Loan shall start on the Utilisation Date or (if already made) on the last day of the preceding Interest Period for such Loan.
- (c) If any Loan or Loans are outstanding, the first Interest Period in respect of each subsequent Loan shall end on the same day as the then current Interest Period for such Loan or Loans.
- (d) The Interest Period for a Loan that would otherwise extend beyond an Interest Payment Date, a Repayment Date (other than the First Repayment Date) or the Termination Date shall end on such Interest Payment Date, Repayment Date (other than the First Repayment Date) or (as the case may be) the Termination Date, whichever is the earlier.

9.2 Non-Business Days

If an Interest Period would otherwise end on a day which is not a Business Day, that Interest Period will instead end on the next Business Day in that calendar month (if there is one) or the preceding Business Day (if there is not).

9.3 Consolidation and division of Loans

If two or more Interest Periods end on the same date, those Loans will be consolidated into, and treated as, a single Loan on the last day of the Interest Period.

10. CHANGES TO THE CALCULATION OF INTEREST

10.1 Market disruption

- (a) If a Market Disruption Event occurs in relation to a Loan for any Interest Period, then the rate of interest on that Loan for the Interest Period shall be the percentage rate per annum which is the sum of:
 - (i) the Margin; and
 - (ii) the rate notified to the Borrower by the Lender as soon as practicable and in any event by close of business on the date falling 5 Business Days after the Quotation Day (or, in any event no later than the date falling 2 Business Days prior to the date on which interest is due to be paid in respect of that Interest Period), to be that which expresses as a percentage rate per annum the cost to the Lender of funding that Loan from whatever source it may reasonably select.
- (b) In this Agreement:

"Market Disruption Event" means at 5 p.m. on the Business Day immediately following the Quotation Day for the relevant Interest Period, the Borrower receives notifications from the Lender that the cost to the Lender of obtaining matching deposits in the Relevant Interbank Market would be in excess of LIBOR.

10.2 **Alternative basis of interest or funding**

- (a) If a Market Disruption Event occurs and the Borrower so requires, the Lender and the Borrower shall enter into negotiations (for a period of not more than thirty days) with a view to agreeing a substitute basis for determining the rate of interest.
- (b) Any alternative basis agreed pursuant to paragraph (a) above shall, be binding on all Parties.
- (c) For the avoidance of doubt, in the event that no substitute basis is agreed at the end of the thirty day period, the rate of interest shall continue to be determined in accordance with the terms of this Agreement.

10.3 **Break Costs**

The Borrower shall, within five (5) Business Days of demand by the Lender, pay to the Lender its Break Costs attributable to all or any part of a Loan or Unpaid Sum being paid by the Borrower on a day other than the last day of an Interest Period for that Loan or Unpaid Sum.

11. **FEES**

11.1 **Commitment fee**

- (a) The Borrower shall pay to the Lender a fee in Dollars computed at the rate of 0.8 per cent. per annum on the Available Facility for the Availability Period.
- (b) The accrued commitment fee is payable on each Interest Payment Date during the Availability Period, on the last day of the Availability Period and, if cancelled in full, on the cancelled amount of the Available Facility at the time the cancellation is effective.

11.2 **Up-front fee**

The Borrower shall pay to the Lender an up-front fee in the amount of US\$17,700,000 (being 1.18% (one point one eight per cent) of the amount of the Facility as at the date of this Agreement) on the earlier of (i) 30 (thirty) Business Days following the date of this Agreement or (ii) the Financial Closing Date.

SECTION 6

ADDITIONAL PAYMENT OBLIGATIONS

12. TAX GROSS UP AND INDEMNITIES

12.1 Definitions

- (a) In this Agreement:

"Income Tax Act" means the South African Income Tax Act, 1962.

"Tax Credit" means a credit against, relief or remission for, or repayment of any Tax.

"Tax Deduction" means a deduction or withholding for or on account of Tax from a payment under a Finance Document.

"Tax Payment" means either the increase in a payment made by the Borrower to the Lender under Clause 12.2 (*Tax gross-up*) or a payment under Clause 12.3 (*Tax indemnity*).

- (b) Unless a contrary indication appears, in this Clause 12 a reference to "determines" or "determined" means a determination made in the absolute discretion of the person making the determination.

12.2 Tax gross-up

- (a) The Borrower shall make all payments to be made by it without any Tax Deduction, unless a Tax Deduction is required by law.
- (b) The Borrower shall promptly upon becoming aware that it must make a Tax Deduction (or that there is any change in the rate or the basis of a Tax Deduction) notify the Lender accordingly. Similarly, the Lender shall notify the Borrower on becoming so aware in respect of a payment payable to the Lender.
- (c) If a Tax Deduction is required by law to be made by the Borrower, the amount of the payment due from the Borrower shall be increased to an amount which (after making any Tax Deduction) leaves an amount equal to the payment which would have been due if no Tax Deduction had been required.
- (d) If the Borrower is required to make a Tax Deduction, it shall make that Tax Deduction and any payment required in connection with that Tax Deduction within the time allowed and in the minimum amount required by law.
- (e) Within thirty days of making either a Tax Deduction or any payment required in connection with that Tax Deduction, the Borrower shall deliver to the Lender evidence reasonably satisfactory to the Lender that the Tax Deduction has been made or (as applicable) any appropriate payment paid to the relevant taxing authority.

12.3 Tax indemnity

- (a) The Borrower shall (within five (5) Business Days of demand by the Lender) pay to the Lender an amount equal to the loss, liability or cost which the Lender determines will be or has been (directly or indirectly) suffered for or on account of Tax by the Lender in respect of a Finance Document.

(b) Paragraph (a) above shall not apply:

(i) with respect to any Tax assessed on the Lender:

(A) under the law of the jurisdiction in which the Lender is incorporated or, if different, the jurisdiction (or jurisdictions) in which the Lender is treated as resident for tax purposes; or

(B) under the law of the jurisdiction in which the Lender's Facility Office is located in respect of amounts received or receivable in that jurisdiction,

If that Tax is imposed on or calculated by reference to the net income received or receivable (but not any sum deemed to be received or receivable) by the Lender; or

(ii) to the extent a loss, liability or cost is compensated for by an increased payment under Clause 12.2 (*Tax gross-up*).

(c) If the Lender is making, or intending to make a claim under paragraph (a) above, it shall promptly notify the Borrower of the event which will give, or has given, rise to the claim.

12.4 Tax Credit

If the Borrower makes a Tax Payment and the Lender determines that:

(a) a Tax Credit is attributable to an increased payment of which that Tax Payment forms part, to that Tax Payment or to a Tax Deduction in consequence of which that Tax Payment was required; and

(b) the Lender has obtained and utilised that Tax Credit,

the Lender shall pay an amount to the Borrower which the Lender determines will leave it (after that payment) in the same after-Tax position as it would have been in had the Tax Payment not been required to be made by the Borrower.

12.5 Stamp taxes

The Borrower shall pay and, within three Business Days of demand, indemnify the Lender against any cost, loss or liability that the Lender incurs in relation to all stamp duty, registration and other similar Taxes payable in respect of any Finance Document.

12.6 Indirect tax

(a) All amounts set out or expressed in a Finance Document to be payable by the Borrower to the Lender shall be deemed to be exclusive of any Indirect Tax. If any Indirect Tax is chargeable on any supply made by the Lender to the Borrower in connection with a Finance Document, the Borrower shall pay to the Lender (in addition to and at the same time as paying the consideration) an amount equal to the amount of the Indirect Tax.

(b) Where a Finance Document requires the Borrower to reimburse the Lender for any costs or expenses, the Borrower shall also at the same time pay and indemnify the Lender against all Indirect Tax incurred by the Lender in respect of the costs or expenses to the extent the Lender reasonably determines that it is not entitled to credit or repayment in respect of the Indirect Tax.

12.7 FATCA Information

- (a) Subject to paragraph (c) below, each Party shall, within ten Business Days of a reasonable request by another Party:
 - (i) confirm to that other Party whether it is:
 - (A) a FATCA Exempt Party; or
 - (B) not a FATCA Exempt Party;
 - (ii) supply to that other Party such forms, documentation and other information relating to its status under FATCA as that other Party reasonably requests for the purposes of that other Party's compliance with FATCA;
 - (iii) supply to that other Party such forms, documentation and other information relating to its status as that other Party reasonably requests for the purposes of that other Party's compliance with any other law, regulation, or exchange of information regime.
- (b) If a Party confirms to another Party pursuant to paragraph (a)(i) above that it is a FATCA Exempt Party and it subsequently becomes aware that it is not or has ceased to be a FATCA Exempt Party, that Party shall notify that other Party reasonably promptly.
- (c) Paragraph (a) above shall not oblige the Lender to do anything, and paragraph (a)(iii) above shall not oblige any other Party to do anything, which would or might in its reasonable opinion constitute a breach of:
 - (i) any law or regulation;
 - (ii) any fiduciary duty; or
 - (iii) any duty of confidentiality.
- (d) If a Party fails to confirm whether or not it is a FATCA Exempt Party or to supply forms, documentation or other information requested in accordance with paragraph (a)(i) or (ii) above (including, for the avoidance of doubt, where paragraph (c) above applies), then such Party shall be treated for the purposes of the Finance Documents (and payments under them) as if it is not a FATCA Exempt Party until such time as the Party in question provides the requested confirmation, forms, documentation or other information.

13. INCREASED COSTS

13.1 Increased costs

- (a) Subject to Clause 13.3 (*Exceptions*) the Borrower shall, within five (5) Business Days of a demand by the Lender, pay the Lender the amount of any Increased Costs incurred by the Lender or any of its Affiliates as a result of:
 - (i) the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation after the date of this Agreement;
 - (ii) compliance with any law or regulation made after the date of this

Agreement; or

- (iii) the implementation or application of, or compliance with, Basel III or any law or regulation that implements or applies Basel III.

(b) In this Agreement:

(i) **"Increased Costs"** means:

- (A) a reduction in the rate of return from the Facility or on the Lender's (or its Affiliate's) overall capital;
- (B) an additional or increased cost; or
- (C) a reduction of any amount due and payable under any Finance Document,

which is incurred or suffered by the Lender or any of its Affiliates to the extent that it is attributable to the Lender having entered into a commitment in respect of the Facility or funding or performing its obligations under any Finance Document; and

(ii) **"Basel III"** means:

- (A) the agreements on capital requirements, a leverage ratio and liquidity standards contained in "Basel III: A global regulatory framework for more resilient banks and banking systems", "Basel III: International framework for liquidity risk measurement, standards and monitoring" and "Guidance for national authorities operating the countercyclical capital buffer" published by the Basel Committee on Banking Supervision in December 2010, each as amended, supplemented or restated;
- (B) the rules for global systemically important banks contained in "Global systemically important banks: assessment methodology and the additional loss absorbency requirement – Rules text" published by the Basel Committee on Banking Supervision in November 2011, as amended, supplemented or restated; and
- (C) any further guidance or standards published by the Basel Committee on Banking Supervision relating to "Basel III".

13.2 Increased cost claims

If the Lender intends to make a claim pursuant to Clause 13.1 (*Increased costs*), it shall promptly notify the Borrower.

13.3 Exceptions

(a) Clause 13.1 (*Increased costs*) does not apply to the extent any Increased Cost is:

- (i) attributable to a Tax Deduction required by law to be made by the Borrower;
- (ii) compensated for by Clause 12.3 (*Tax indemnity*) (or would have been compensated for under Clause 12.3 (*Tax indemnity*) but was not so

compensated solely because any of the exclusions in paragraph (b) of Clause 12.3 (*Tax indemnity*) applied); or

- (iii) attributable to the wilful breach by the Lender or its Affiliates of any law or regulation.

- (b) In this Clause 13.3, a reference to a "**Tax Deduction**" has the same meaning given to that term in Clause 12.1 (*Definitions*).

14. OTHER INDEMNITIES

14.1 Currency indemnity

- (a) If any sum due from the Borrower under the Finance Documents (a "**Sum**"), or any order, judgment or award given or made in relation to a Sum, has to be converted from the currency (the "**First Currency**") in which that Sum is payable into another currency (the "**Second Currency**") for the purpose of:

- (i) making or filing a claim or proof against the Borrower;
- (ii) obtaining or enforcing an order, judgment or award in relation to any litigation or arbitration proceedings,

the Borrower shall as an independent obligation, within five (5) Business Days of demand, indemnify the Lender against any cost, loss or liability arising out of or as a result of the conversion including any discrepancy between (A) the rate of exchange used to convert that Sum from the First Currency into the Second Currency and (B) the rate or rates of exchange available to that person at the time of its receipt of that Sum.

- (b) The Borrower waives any right it may have in any jurisdiction to pay any amount under the Finance Documents in a currency or currency unit other than that in which it is expressed to be payable.

14.2 Other indemnities

The Borrower shall, within five (5) Business Days of demand, indemnify the Lender against any cost, loss or liability incurred by the Lender as a result of:

- (a) the occurrence of any Event of Default;
- (b) a failure by the Borrower to pay any amount due under a Finance Document on its due date;
- (c) funding, or making arrangements to fund, a Loan requested by the Borrower in a Utilisation Request but not made by reason of the operation of any one or more of the provisions of this Agreement (other than by reason of default or negligence by the Lender alone); or
- (d) a Loan (or part of a Loan) not being prepaid in accordance with a notice of prepayment given by the Borrower.

14.3 Indemnity to the Lender

The Borrower shall promptly indemnify the Lender against:

- (a) any cost, loss or liability incurred by the Lender (acting reasonably) as a result of:

- (i) Investigating any event which it reasonably believes is a Default;
- (ii) acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised; and
- (iii) instructing lawyers, accountants, tax advisers, surveyors or other professional advisers or experts as permitted under this Agreement.

14.4 Indemnity to the Lender, Receiver and Delegate

- (a) The Borrower shall promptly indemnify the Lender and every Receiver and Delegate against any cost, loss or liability incurred by any of them as a result of:
 - (i) any failure by the Borrower to comply with its obligations under Clause 16 (*Costs and Expenses*);
 - (ii) acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised;
 - (iii) the taking, holding, protection or enforcement of the Transaction Security;
 - (iv) the exercise of any of the rights, powers, discretions and remedies vested in the Lender and each Receiver and Delegate by the Finance Documents or by law; and
 - (v) any default by the Borrower in the performance of any of the obligations expressed to be assumed by it in the Finance Documents.
- (b) The Lender and every Receiver and Delegate may indemnify itself out of the Charged Property in respect of, and pay and retain, all sums necessary to give effect to the indemnity in this Clause 14.4 (*Indemnity to the Lender, Receiver and Delegate*) and shall have a lien on the Transaction Security and the proceeds of the enforcement of the Transaction Security for all moneys payable to it.

15. MITIGATION BY THE LENDER

15.1 Mitigation

- (a) The Lender shall, in consultation with the Borrower, take all reasonable steps to mitigate any circumstances which arise and which would result in the Facility ceasing to be available or any amount becoming payable under or pursuant to, or cancelled pursuant to, any of Clause 7.1 (*Illegality*), Clause 12 (*Tax gross-up and indemnities*), or Clause 13 (*Increased costs*) including (but not limited to) transferring its rights and obligations under the Finance Documents to another Affiliate or Facility Office.
- (b) Paragraph (a) above does not in any way limit the obligations of the Borrower under the Finance Documents.

15.2 Limitation of liability

- (a) The Borrower shall promptly indemnify the Lender for all costs and expenses reasonably incurred by the Lender as a result of steps taken by it under Clause 15.1 (*Mitigation*).
- (b) The Lender is not obliged to take any steps under Clause 15.1 (*Mitigation*) if, in the opinion of the Lender (acting reasonably), to do so might be prejudicial to it.

16. COSTS AND EXPENSES

16.1 Transaction expenses

The Borrower shall pay the Lender the amount of all costs and expenses (including legal fees and registration charges) reasonably incurred by it or any Receiver or Delegate in connection with the negotiation, preparation, printing and execution and registration of:

- (a) this Agreement and any other documents referred to in this Agreement and the Transaction Security; and
- (b) any other Finance Documents executed after the date of this Agreement (including the Locomotive Mortgages),

In each case within 30 days after the receipt by the Borrower of the relevant documents evidencing the amount of such costs and expenses, **except that** (X) the costs and expenses incurred prior to the Financial Closing Date shall be paid by the Borrower prior to the first Utilisation Date pursuant to paragraph (c) of Clause 3 (*Other documents and evidence*) of Schedule 2 (*Conditions Precedent*) and (Y) the costs and expenses incurred or to be incurred in connection with the execution and registration of each Locomotive Mortgage shall be paid by the Borrower promptly on demand by the Lender before the registration of each Locomotive Mortgage.

16.2 Amendment costs

If (a) the Borrower requests an amendment, waiver or consent; or (b) an amendment is required pursuant to Clause 24.7 (*Change of currency*), the Borrower shall, within five Business Days of demand, reimburse the Lender for the amount of all costs and expenses (including legal fees) reasonably incurred by it evaluating, negotiating or complying with that request or requirement.

16.3 Enforcement and preservation costs

The Borrower shall, within five Business Days of demand, pay to the Lender the amount of all costs and expenses (including, but not limited to, legal fees) incurred by the Lender in connection with the enforcement of, or the preservation of any rights under, any Finance Document and the Transaction Security and any proceedings instituted by or against the Lender as a consequence of taking or holding the Transaction Security or enforcing these rights.

SECTION 7

REPRESENTATIONS, UNDERTAKINGS AND EVENTS OF DEFAULT

17. REPRESENTATIONS

The Borrower makes the representations and warranties set out in this Clause 17 to the Lender on the date of this Agreement.

17.1 Status

- (a) It is a state owned company duly incorporated and validly existing under the law of the Republic of South Africa.
- (b) It and each of its Subsidiaries has the power to own its assets and carry on its business as it is being conducted.
- (c) It is not a FATCA FFI or a US Tax Obligor.

17.2 Binding obligations

The obligations expressed to be assumed by it in each Finance Document are, subject to any general principles of law limiting its obligations which are specifically referred to in any legal opinion delivered pursuant to Clause 4 (*Conditions of Utilisation*), legal, valid, binding and enforceable obligations.

17.3 Non-conflict with other obligations

The entry into and performance by it of, and the transactions contemplated by, the Finance Documents:

- (a) do not and will not conflict with any law, regulation or official order applicable to it;
- (b) do not and will not conflict with it or any of its Subsidiaries' constitutional documents;
- (c) do not and will not conflict with any agreement or instrument binding upon it or any of its Subsidiaries or any of its or any of its Subsidiaries' assets; or
- (d) will not result in it winding-up or the appointment to it of a receiver, administrator, liquidator, business rescue practitioner or similar person.

17.4 Power and authority

It has the power to enter into, perform and deliver, and has taken all necessary action to authorise its entry into, performance and delivery of, the Finance Documents to which it is a party and the transactions contemplated by those Finance Documents. No limit on its powers will be exceeded as a result of the borrowing, grant of Security or giving of any guarantees or indemnities contemplated by any Finance Document.

17.5 Validity and admissibility in evidence

- (a) All Authorisations required or desirable:
 - (i) to enable it lawfully to enter into, exercise its rights and comply with its obligations in the Finance Documents to which it is a party; and

- (ii) to make the Finance Documents to which it is a party admissible in evidence in its jurisdiction of Incorporation,

have been obtained or effected and are in full force and effect.

- (b) Each Finance Document is in the proper form for its enforcement in the jurisdiction of its Incorporation.

17.6 **Governing law and enforcement**

- (a) The choice of the governing law of each of the Finance Documents will be recognised and enforced in its jurisdiction of Incorporation.
- (b) Any arbitral award made pursuant to the terms of a Finance Document will be recognised and enforced in its jurisdiction of Incorporation.

17.7 **Deduction of Tax**

It is not required to make any deduction for or on account of Tax from any payment it may make under any Finance Documents other than, without prejudice to Clause 12 (*Tax Gross Up and Indemnities*), the interest payable by it under this Agreement which will, from 1 January 2015, be subject to withholding tax under the laws of South Africa at a rate of fifteen per cent. (15%) unless otherwise reduced or exempted from pursuant to the terms of any applicable tax treaty.

17.8 **No filing or stamp taxes**

Other than (i) the filing and registration of and the registration fees payable in respect of the Locomotive Mortgages and (ii) the approval by the Financial Surveillance Department of the South African Reserve Bank, under the laws of the Republic of South Africa:

- (a) it is not necessary that the Finance Documents be filed, recorded or enrolled with any court or other authority in that jurisdiction; or
- (b) that any stamp, registration or similar tax be paid on or in relation to the Finance Documents or the transactions contemplated by the Finance Documents.

17.9 **No default**

- (a) No Event of Default is continuing or might reasonably be expected to result from the making of any Utilisation.
- (b) No other event or circumstance is outstanding which constitutes a default under any other agreement or instrument which is binding on it or any of its Subsidiaries or to which its (or any of its Subsidiaries') assets are subject which might reasonably be expected to have a Material Adverse Effect.

17.10 **No misleading information**

- (a) Any factual information provided by any member of the Group was true and accurate in all material respects as at the date it was provided or as at the date (if any) at which it is stated.
- (b) Nothing has occurred or been omitted and no information has been given or withheld that results in the information provided by the Borrower being untrue or misleading in any material respect.

- (c) All written information supplied by any member of the Group is true, complete and accurate in all material respects as at the date it was given and is not misleading in any respect.

17.11 **Corrupt Acts**

To the best of its knowledge and belief (having made due and proper inquiry), neither the Borrower nor any of its directors, employees or Affiliates has committed any Corrupt Act.

17.12 **Financial statements**

- (a) Its Original Financial Statements were prepared in accordance with IFRS consistently applied.
- (b) Its Original Financial Statements fairly represent the consolidated financial condition as at the end of the relevant financial year and operations of the Group during the relevant financial year.
- (c) There has been no material adverse change in its business or the consolidated financial condition of the Group since the date on which its latest financial statements are stated to have been prepared.

17.13 **Pari passu ranking**

Its payment obligations under the Finance Documents rank at least *pari passu* with the claims of all its other unsecured and unsubordinated creditors, except for obligations mandatorily preferred by law applying to companies generally.

17.14 **No proceedings**

Save to the extent disclosed to the Lender in writing prior to the date of this Agreement but subject always to Clause 7.2 (*Change of control and Class Action*):

- (a) no litigation, arbitration or administrative proceedings of or before any court, arbitral body or agency which, if adversely determined, might reasonably be expected to have a Material Adverse Effect has or have (to the best of its knowledge and belief (having made due and proper inquiry)) been started or threatened against any member of the Group (or against the directors of any member of the Group).
- (b) no judgment or order of a court, arbitral tribunal or other tribunal or any order or sanction of any governmental or other regulatory body which is reasonably likely to have a Material Adverse Effect has (to the best of its knowledge and belief (having made due and proper inquiry)) been made against any member of the Group or its assets (or against the directors of any member of the Group).

17.15 **Environmental compliance**

Each member of the Group has implemented procedures to monitor compliance with and prevent liability under Environmental Law, and performed and observed in all respects all Environmental Law, Environmental Permits and all other covenants, conditions, restrictions or agreements directly or indirectly concerned with any contamination, pollution or waste or the release or discharge of any toxic or hazardous substance in connection with any real property which is or was at any time owned, leased or occupied by any member of the Group or on which any member of the Group has conducted any activity.

17.16 Environmental Claims

No Environmental Claim has been commenced or (to the best of its knowledge and belief (having made due and proper inquiry)) is threatened against any member of the Group or likely to result in any liability for the Lender.

17.17 Taxation

- (a) It has duly and punctually paid and discharged all Taxes imposed upon it or its assets within the time period allowed without incurring penalties (except to the extent that (i) payment is being contested in good faith, (ii) it has maintained adequate reserves for those Taxes and (iii) payment can be lawfully withheld).
- (b) It has filed its Tax returns and is not materially overdue in the filing of any Tax returns.
- (c) No claims are being or are reasonably likely to be asserted against it with respect to Taxes.

17.18 No Immunity

In any proceedings taken in its jurisdiction of incorporation in relation to this Agreement, it will not be entitled to claim for itself or any of its assets immunity from suit, execution, attachment or other legal process.

17.19 Private and commercial acts

Its execution of the Finance Documents constitutes, and its exercise of its rights and performance of its obligations under this Agreement will constitute, private and commercial acts done and performed for private and commercial purposes.

17.20 Security

No Security exists over all or any of the present or future assets of any member of the Group other than any Security permitted under Clause 20.4 (*Negative Pledge*).

17.21 Ranking

The Transaction Security has or will have first ranking priority and it is not subject to any prior ranking or pari passu ranking Security.

17.22 Transaction Security

Each Security Document to which it is a party validly creates the Security which is expressed to be created by that Security Document and evidences the Security it is expressed to evidence.

17.23 Good title to assets

It has good, valid and marketable title to, or valid leases or licences of, and all appropriate Authorisations to use, the assets necessary to carry on its business as presently conducted.

17.24 Legal and beneficial owner

It is the absolute legal owner and beneficial owner of the assets subject to the Transaction Security.

17.25 Insolvency and Financial Distress

No:

- (a) corporate action, legal proceeding or other procedure or step described in Clause 21.7 (*Insolvency proceedings*); or
- (b) creditors' process described in Clause 21.8 (*Creditors' process*),

or any analogous procedure or step has been taken and none of the circumstances described in Clause 21.6 (*Insolvency*) applies to it.

17.26 No Cross default

- (a) No Financial Indebtedness of the Borrower remains unpaid when due (or will remain unpaid upon expiry of the originally applicable grace period).
- (b) No Financial Indebtedness of the Borrower has been declared to be or will otherwise become due and payable prior to its specified maturity as a result of an event of default (however described).
- (c) No commitment for any Financial Indebtedness of the Borrower has been cancelled or suspended by a creditor of the Borrower as a result of an event of default (however described).
- (d) No creditor of the Borrower has become entitled to declare any Financial Indebtedness of the Borrower due and payable prior to its specified maturity as a result of an event of default (however described).

17.27 Sanctions

- (a) Save to the extent disclosed to the Lender in the Operations Disclosure Schedule, to the best of the Borrower's knowledge and belief (having made due and proper inquiry), none of its directors, officers, employees, affiliates, agents or representatives:
 - (i) is, or is owned or controlled by, a Sanctioned Person;
 - (ii) is located, incorporated, organised, or resident in a Sanctioned Country;
 - (iii) has any business affiliation or commercial dealings with, or investments in, any Sanctioned Country or Sanctioned Person; or
 - (iv) is the subject of any action or investigation under any Sanctions Laws or Anti-Money Laundering Laws.
- (b) The Borrower has instituted and maintains policies and procedures designated to prevent violation of any Sanctions Laws or Anti-Money Laundering Laws.
- (c) Neither the Borrower nor any of its subsidiaries, directors or officers, or, to the best knowledge and belief (having made due and proper inquiry) of the Borrower, any Affiliate, agent or employee of it, has engaged in any activity or conduct which would violate any applicable anti-bribery, anti-corruption or Anti-money Laundering Laws or regulations in any applicable jurisdiction, and the Borrower has instituted and maintains policies and procedures designated to prevent violation of such laws, regulations and rules.

17.28 Repetition

The Repeating Representations are deemed to be made by the Borrower (by reference to the facts and circumstances then existing) on the date of each Utilisation Request and the first day of each Interest Period.

18. INFORMATION UNDERTAKINGS

The undertakings in this Clause 18 remain in force from the date of this Agreement for so long as any amount is outstanding under the Finance Documents or any commitment is in force.

18.1 Financial statements

The Borrower shall supply to the Lender:

- (a) as soon as the same become available, but in any event within 180 days after the end of each of its financial years, its audited consolidated financial statements for that financial year and a brief analysis of the Group's cash flows; and
- (b) as soon as the same become available, but in any event within 120 days after the end of each half of each of its financial years, its consolidated financial statements for that financial half year.

18.2 Compliance Certificate

- (a) The Borrower shall supply to the Lender, with each set of financial statements delivered pursuant to paragraph (a) or (b) of Clause 18.1 (*Financial statements*), a Compliance Certificate setting out (in reasonable detail) computations as to compliance with Clause 19 (*Financial covenants*) as at the date at which those financial statements were drawn up.
- (b) Each Compliance Certificate shall be signed by the chief financial officer of the Borrower and, if required to be delivered with the financial statements delivered pursuant to paragraph (a) of Clause 18.1 (*Financial statements*), shall be reported on by the Borrower's auditors in the form agreed by the Borrower and the Lender before the date of this Agreement.

18.3 Requirements as to financial statements

- (a) Each set of financial statements delivered by the Borrower pursuant to Clause 18.1 (*Financial statements*) shall be certified by a director of the relevant company as fairly representing its financial condition as at the date at which those financial statements were drawn up.
- (b)
 - (i) The Borrower shall procure that each set of financial statements delivered pursuant to Clause 18.1 (*Financial statements*) is prepared using IFRS and accounting practices and financial reference periods consistent with those applied in the preparation of the Original Financial Statements unless, in relation to any set of financial statements, it notifies the Lender that there has been a change in IFRS, the accounting practices or reference periods, and its auditors deliver to the Lender:
 - (A) a description of any change necessary for those financial statements to reflect the IFRS, accounting practices and reference

periods upon which the Original Financial Statements were prepared; and

- (B) sufficient information, in form and substance as may be reasonably required by the Lender, to enable the Lender to determine whether Clause 19 (*Financial covenants*) has been complied with and make an accurate comparison between the financial position indicated in those financial statements and the Original Financial Statements.

(ii) If the Borrower notifies the Lender of a change in accordance with paragraph (i) above then the Borrower and Lender shall enter into negotiations in good faith with a view to agreeing:

- (A) whether or not the change might result in any material alteration in the commercial effect of any of the terms of this Agreement; and
- (B) if so, any amendments to this Agreement which may be necessary to ensure that the change does not result in any material alteration in the commercial effect of those terms,

and if any amendments are agreed they shall take effect and be binding on each of the Parties in accordance with their terms.

Any reference in this Agreement to "those financial statements" shall be construed as a reference to those financial statements as adjusted to reflect the basis upon which the Original Financial Statements were prepared.

18.4 Information: miscellaneous

The Borrower shall supply to the Lender:

- (a) as soon as reasonably practicable but in any event within five (5) Business Days of acknowledgement of receipt of the Corporate Plan from the Minister of Finance of the Republic of South Africa, a copy of such acknowledgement of receipt and the Corporate Plan;
- (b) all documents dispatched by the Borrower to its creditors generally at the same time as they are dispatched;
- (c) promptly upon becoming aware of them, the details of any litigation, arbitration or administrative proceedings which are current, threatened or pending against any member of the Group (or against the directors of any member of the Group), and which might, if adversely determined, have a Material Adverse Effect;
- (d) promptly upon becoming aware of them, the details of any judgment or order of a court, arbitral tribunal or other tribunal or any order or sanction of any governmental or other regulatory body which is made against any member of the Group or its assets (or against the directors of any member of the Group), and which is reasonably likely to have a Material Adverse Effect; and
- (e) promptly, such further information regarding the financial condition, business and operations of any member of the Group as the Lender may reasonably request.

18.5 Notification of default

- (a) The Borrower shall notify the Lender of any Default (and the steps, if any, being taken to remedy it) promptly upon becoming aware of its occurrence.

- (b) Promptly upon a request by the Lender, the Borrower shall supply to the Lender a certificate signed by two of its directors or senior officers on its behalf certifying that no Default is continuing (or if a Default is continuing, specifying the Default and the steps, if any, being taken to remedy it).

18.6 "Know your customer" checks

- (a) If:
 - (i) the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation made after the date of this Agreement;
 - (ii) any change in the status of the Borrower or the composition of the shareholders of the Borrower after the date of this Agreement; or
 - (iii) a proposed assignment by the Lender of any of its rights and obligations under this Agreement to a party that is not the Lender prior to such assignment;

obliges the Lender (or, in the case of paragraph (iii) above, any prospective new lender) to comply with "know your customer" or similar identification procedures in circumstances where the necessary information is not already available to it, the Borrower shall promptly upon the request of the Lender supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Lender (for itself or, in the case of the event described in paragraph (iii) above, on behalf of any prospective new lender) in order for the Lender or, in the case of the event described in paragraph (iii) above, any prospective new lender to carry out and be satisfied it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations pursuant to the transactions contemplated in the Finance Documents.

19. FINANCIAL COVENANTS

19.1 Financial definitions

In this Clause 19:

"Borrowings" means, at any time, the outstanding principal, capital or nominal amount and any fixed or minimum premium payable on prepayment or redemption of any indebtedness for or in respect of Financial Indebtedness (other than in respect of paragraphs (g) and (h) of that definition) and any amount raised by the issue of redeemable shares which are redeemable before the Termination Date;

"Consolidated EBIT" means, for any Relevant Period, the consolidated operating profits of the Group for that Relevant Period before taxation:

- (a) **before deducting** any Consolidated Net Finance Charges;
- (b) **before taking into account** any items treated as exceptional or extraordinary items; and
- (c) **after deducting** the amount of any profit of any member of the Group which is attributable to minority interests,

in each case, to the extent added, deducted or taken into account, as the case may be, for the purposes of determining the profits of the Group from ordinary activities before taxation.

"Consolidated EBITDA" means, for any Relevant Period, Consolidated EBIT for that Relevant Period **before deducting** any amount attributable to amortisation of goodwill or depreciation of tangible assets.

"Consolidated Net Finance Charges" means, for any Relevant Period, the aggregate amount of interest, commission, fees, discounts, prepayment penalties or premiums and other finance payments in respect of Borrowings whether accrued, paid or payable and whether or not capitalised by any member of the Group in respect of that Relevant Period:

- (a) **excluding** any such obligations owed to any other member of the Group;
- (b) **including** the interest element of leasing and hire purchase payments;
- (c) **including** any amounts paid, payable or accrued by any member of the Group to counterparties under any interest rate hedging instrument;
- (d) **deducting** any amounts paid, payable or accrued by counterparties to any member of the Group under any interest rate hedging instrument; and
- (e) **deducting** any interest paid, payable to or accrued to the benefit of any member of the Group on any deposit or bank account.

"Consolidated Total Net Debt" means at any time the aggregate amount of long-term borrowings, short-term borrowings, employee benefits, derivative financial liabilities and overdraft less other short-term investments, derivative financial assets and cash and cash equivalents of the Group, each as stated in the relevant financial statements of the Borrower, and so that no amount shall be included or excluded more than once.

"Relevant Period" means each period of twelve months ending on the last day of the Borrower's financial year and each period of twelve months ending on the last day of the first half of the Borrower's financial year.

19.2 Financial condition

The Borrower shall ensure that:

(a) Gearing

Consolidated Total Net Debt shall not at any time exceed 60% of aggregate of the Consolidated Tangible Net Worth and the Consolidated Total Net Debt.

(b) Interest Cover

Consolidated EBITDA in respect of any Relevant Period shall be or shall exceed 2.5 times Consolidated Net Finance Charges for that Relevant Period.

19.3 Financial testing

The financial covenants set out in Clause 19.2 (*Financial condition*) shall be tested by reference to each of the financial statements and/or each Compliance Certificate delivered pursuant to Clause 18.2 (*Compliance Certificate*).

20. GENERAL UNDERTAKINGS

The undertakings in this Clause 20 remain in force from the date of this Agreement for so long as any amount is outstanding under the Finance Documents or any commitment is in force.

20.1 Authorisations

The Borrower shall (and shall ensure that each member of the Group will) promptly:

- (a) obtain, comply with and do all that is necessary to maintain in full force and effect; and
- (b) supply certified copies to the Lender of,

any Authorisation required under any law or regulation of its jurisdiction of incorporation to enable it to perform its obligations under the Finance Documents and to ensure the legality, validity, enforceability or admissibility in evidence in its jurisdiction of incorporation of any Finance Document.

20.2 Compliance with laws

The Borrower shall (and shall ensure that each member of the Group will) comply in all respects with all laws to which it may be subject, if failure so to comply would materially impair its ability to perform its obligations under the Finance Documents.

20.3 Corrupt Acts and anti-money laundering

- (a) The Borrower shall not engage in (and shall not authorise or permit any of its directors, employees or Affiliates or any of their directors or employees to engage in) any Corrupt Act.
- (b) The Borrower must comply with, and must ensure its directors, employees or Affiliates comply with all requirements not to engage in Corrupt Acts.
- (c) The Borrower must promptly submit to the Lender on demand such information and documents as the Lender may reasonably request in order to comply with their obligations to prevent any Corrupt Acts and to conduct on-going monitoring of the business relationship with the Borrower.

20.4 Negative pledge

In this Clause 20.4, "Quasi-Security" means an arrangement or transaction described in paragraph (b) below.

- (a) The Borrower shall not (and shall ensure that no other member of the Group will) create or permit to subsist any Security over any of its assets.
- (b) The Borrower shall not (and shall ensure that no other member of the Group will):
 - (i) sell, transfer or otherwise dispose of any of its assets on terms whereby they are or may be leased to or re-acquired by the Borrower or any other member of the Group;
 - (ii) sell, transfer or otherwise dispose of any of its receivables on recourse terms;

- (iii) enter into any arrangement under which money or the benefit of a bank or other account may be applied, set-off or made subject to a combination of accounts; or
- (iv) enter into any other preferential arrangement having a similar effect,

In circumstances where the arrangement or transaction is entered into primarily as a method of raising Financial Indebtedness or of financing the acquisition of an asset.

- (c) Paragraphs (a) and (b) above do not apply to any Security or (as the case may be) Quasi-Security listed below:

- (i) any Security or Quasi-Security listed in Schedule 5 (*Existing Security*) except to the extent the principal amount secured by that Security or Quasi-Security exceeds the amount stated in that Schedule;
- (ii) any netting or set-off arrangement entered into by any member of the Group in the ordinary course of its banking arrangements for the purpose of netting debit and credit balances ;
- (iii) any payment or close out netting or set-off arrangement pursuant to any hedging transaction entered into by a member of the Group for the purpose of:
 - (A) hedging any risk to which any member of the Group is exposed in its ordinary course of trading; or
 - (B) its interest rate or currency management operations which are carried out in the ordinary course of business and for non-speculative purposes only,

excluding, in each case, any Security or Quasi-Security under a credit support arrangement in relation to a Hedging Transaction or a Standby Facility Hedging Transaction;

- (iv) any lien arising by operation of law and in the ordinary course of trading;
- (v) any Security or Quasi-Security securing indebtedness arising under any short-term funding raised by the Borrower in the ordinary course of business pursuant to the sale or discounting of receivables on recourse terms provided that the indebtedness being secured does not exceed, in the aggregate, 5% of the Consolidated Tangible Net Worth (or its equivalent in any other currency or currencies) at any time during the term of this Agreement;
- (vi) any Security or Quasi-Security over or affecting any asset acquired by a member of the Group after the date of this Agreement if:
 - (A) the Security or Quasi-Security was created in connection with the financing of the acquisition of that asset by a member of the Group; and
 - (B) the principal amount secured does not exceed the acquisition price of that asset;

- (vii) any Security or Quasi-Security over or affecting any asset of any company which becomes a member of the Group after the date of this Agreement, where the Security or Quasi-Security is created prior to the date on which that company becomes a member of the Group, if:
 - (A) the Security or Quasi-Security was not created in contemplation of the acquisition of that company;
 - (B) the principal amount secured has not increased in contemplation of or since the acquisition of that company; and
 - (C) the Security or Quasi-Security is removed or discharged within three months of that company becoming a member of the Group;
- (viii) any Security or Quasi-Security entered into pursuant to any Transaction Finance Document;
- (ix) any Security or Quasi-Security arising under any retention of title, hire purchase or conditional sale arrangement or arrangements having similar effect in respect of goods supplied to a member of the Group in the ordinary course of trading and on the supplier's standard or usual terms and not arising as a result of any default or omission by any member of the Group; or
- (x) any Security or Quasi-Security securing indebtedness the principal amount of which (when aggregated with the principal amount of any other indebtedness which has the benefit of Security or Quasi-Security given by any member of the Group other than any permitted under paragraphs (i) to (ix) above) does not exceed 0.5% of the Consolidated Total Assets of the Borrower; and
- (xi) any Security or Quasi-Security created with the prior written approval of the Lender.

20.5 Disposals

- (a) The Borrower shall not (and shall ensure that no other member of the Group will), enter into a single transaction or a series of transactions (whether related or not) and whether voluntary or involuntary to sell, lease, transfer or otherwise dispose of any asset.
- (b) Paragraph (a) above does not apply to any sale, lease, transfer or other disposal, which is:
 - (i) a Permitted Disposal; or
 - (ii) a Permitted Transaction.

20.6 Merger

The Borrower shall not (and shall ensure that no other member of the Group will) enter into any amalgamation, demerger, merger or corporate reconstruction other than a Permitted Transaction.

20.7 Change of business

The Borrower shall procure that no substantial change is made to the general nature of its business or the business of the Group from that carried on at the date of this Agreement.

20.8 Insurance

The Borrower shall (and shall ensure that each member of the Group will) maintain insurances on and in relation to its business and assets with reputable underwriters or insurance companies against those risks and to the extent as is usual for companies carrying on the same or substantially similar business.

20.9 Environmental Compliance

The Borrower shall (and shall ensure that each member of the Group will) comply in all respects with all Environmental Law and obtain and maintain any Environmental Permits, implement procedures to monitor compliance with and prevent liability under any Environmental Law and take all reasonable steps in anticipation of known or expected future changes to or obligations under the same.

20.10 Environmental Claims

The Borrower shall inform the Lender in writing as soon as reasonably practicable upon becoming aware of, but by no later than 5 Business Days upon becoming aware of:

- (a) any Environmental Claim that has been commenced or (to the best of its knowledge and belief (having made due and proper inquiry)) is threatened against any member of the Group; or
- (b) any facts or circumstances which will or are reasonably likely to result in any Environmental Claim being commenced or threatened against any member of the Group,

where the claim would be reasonably likely, if determined against that member of the Group, to have a Material Adverse Effect or is likely to result in any liability for the Lender.

20.11 Taxation

The Borrower shall (and shall ensure that each member of the Group will) duly and punctually pay and discharge all Taxes imposed upon it or its assets within the time period allowed without incurring penalties (except to the extent that (a) such payment is being contested in good faith, (b) adequate reserves are being maintained for those Taxes and (c) such payment can be lawfully withheld).

20.12 Acquisitions

The Borrower shall not (and shall ensure that no other member of the Group will) acquire any company, business, assets or undertaking outside the ordinary course of business of the Borrower if the amount of the acquisition cost, when aggregated with the aggregate acquisition cost of any other companies, business, assets or undertaking acquired by members of the Group outside the ordinary course of business of the Borrower during that financial year exceeds 10% of the Consolidated Tangible Net Worth.

20.13 Loans and Guarantees

- (a) The Borrower shall not (and shall ensure no member of the Group will) make any loans, grant any credit or give any guarantee or indemnity to or for the benefit of

any person or otherwise voluntarily assume any liability, whether actual or contingent, in respect of any obligation of any person.

- (b) Paragraph (a) above does not apply to any loans, grant of any credit or any guarantee or indemnity:
 - (i) made in the ordinary course of trading of the member of the Group;
 - (ii) to be granted by a member of the Group in relation to the obligations of another member of the Group in favour of a judicial or governmental authority if required pursuant to any applicable law; and
 - (iii) where the amount of loans, credit, guarantees or indemnities made or granted (when aggregated with the aggregate loans, credit, guarantees or indemnities made or granted by any member of the Group, other than any permitted under the paragraphs above) does not exceed 1% of the Consolidated Tangible Net Worth in any financial year.

20.14 **Pari Passu Ranking**

The Borrower shall ensure that at all times any unsecured and unsubordinated claims of the Lender against it under the Finance Documents rank at least *pari passu* with the claims of all its other unsecured and unsubordinated creditors except those creditors whose claims are mandatorily preferred by laws of general application to companies.

20.15 **Preservation of Assets**

The Borrower shall, and the Borrower shall ensure that each member of the Group will, maintain and preserve all of its assets that are necessary or desirable, in the opinion of the Lender, for the conduct of its business, as conducted at the date of this Agreement, in good working order and condition, ordinary wear and tear excepted.

20.16 **Access**

The Borrower shall:

- (a) on request of the Lender, provide the Lender with any information the Lender may reasonably require about its business and affairs, the Charged Property and its compliance with the terms of the Security Documents;
- (b) permit the Lender, its representatives, Delegates, professional advisers and contractors, access at all reasonable times and on reasonable notice at the cost of the Borrower, (i) to inspect and (to the extent not prohibited by applicable laws or the policies of the Group provided that such policies have not been deliberately instituted to frustrate the Lender's request) take copies and extracts from the books, accounts and records of the Group and (ii) to view the Charged Property (without becoming liable as mortgagee in possession); and
- (c) furnish the Lender with such information as the Lender may reasonably require about the Charged Property.

20.17 **Further assurance**

- (a) The Borrower shall promptly do all such acts or execute all such documents (including assignments, transfers, mortgages, charges, notices, instructions and any Locomotive Mortgage Power of Attorney) as the Lender may reasonably specify

(and in such form as the Lender may reasonably require in favour of the Lender or its nominee(s));

- (i) to perfect the Security created or intended to be created under or evidenced by the Security Documents (which may include the execution of a mortgage, charge, assignment or other Security over all or any of the assets which are, or are intended to be, the subject of the Transaction Security) or for the exercise of any rights, powers and remedies of the Lender provided by or pursuant to the Finance Documents or by law;
 - (ii) to confer on the Lender Security over any property and assets of the Borrower located in any jurisdiction equivalent or similar to the Security intended to be conferred by or pursuant to the Security Documents; and/or
 - (iii) to facilitate the realisation of the assets which are, or are intended to be, the subject of the Transaction Security.
- (b) The Borrower shall take all such action as is available to it (including making all filings and registrations) as may be necessary for the purpose of the creation, perfection, protection or maintenance of any Security conferred or intended to be conferred on the Lender by or pursuant to the Finance Documents.

20.18 Application of proceeds

The proceeds of the facility shall not be applied in contravention of Clause 3 (*Purpose*) of this Agreement.

20.19 Application of FATCA

The Borrower shall procure that the Borrower shall not become a FATCA FFI or a US Tax Obligor.

20.20 Sanctions

- (a) Save as disclosed in the Operations Disclosure Schedule, the Borrower and its Affiliates have taken, and during the term of this Agreement shall take, reasonable measures to ensure compliance with Sanctions Laws and Anti-Money Laundering Laws.
- (b) During the term of this Agreement, neither Borrower nor its Affiliates shall become a Sanctioned Person.
- (c) No proceeds from the Facility have been or will be used, directly or indirectly, to lend, contribute, provide, or have otherwise been or will be made available to fund, any activity or business with or related to any Sanctioned Person or Sanctioned Country, or in any other manner that will result in any violation or breach by any person of Sanctions Laws.
- (d) The Borrower and its Affiliates will ensure that no funds used to pay the Facility:
 - (i) constitute the property of, or are beneficially owned, directly or indirectly, by any Sanctioned Person;
 - (ii) are derived from any transactions or business with any Sanctioned Person or Sanctioned Country.

Job	3462
Sender	Pierre
Title	Memo from Anoj to BM re MM concerns on CDB. pdf
Interface	Parallel
Language	PDF
Date	13:16:57 7 MAY 2019



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TRANSNET



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TO: Brian Molefe, Group Chief Executive

FROM: Anoj Singh, Group Chief Financial Officer

SUBJECT: CHINA DEVELOPMENT BANK LOCOMOTIVE FUNDING RESPONSE

PURPOSE:

- 1 The purpose of this submission is to request the Group Chief Executive to approve the response to the Group Treasurer for issues raised on the USD 2,5 billion loan facility from China Development Bank (CDB).

BACKGROUND:

- 2 On 21 August the Group Treasurer raised issues on the USD 2,5 billion loan facility from CDB in the following categories. Refer to annexure A:
 - a. Overall Governance
 - b. Interest expense
 - c. Once off arrangement fee
 - d. Conclusion and value leakage

DISCUSSION:

- 3 The detailed responses are covered in the attached presentation. Refer to annexure B. Summarised responses are as follows:

a. Regiments appointment and management

- i. Regiments Capital were appointed as Transaction advisors on the 1064 Locomotive Transaction.
- ii. In terms of the aforementioned mandate, Regiments Capital was required to advise on deal structuring, financing and funding options to minimise risk for Transnet.
- iii. Accordingly, the negotiation with CDB to successfully conclude a ZAR funding facility at a ZAR cost not exceeding 9,3% (depending on Jibar) for a tenor not less than 15 years at no additional fee is part of their mandate.
- iv. In terms of the Delegation of Authority, the appointment of Regiments Capital as Transaction advisors is within the ambit of the GCFO.

b. Interest expense

- v. The margin on the deal is Jibar plus 337 bps which is 9,45% and is subject to the cross currency swap being a maximum of 80bps, which is included in the Term sheet resulting in the cost being controlled.



- vi. If the cross currency swap is too expensive, Transnet is not obliged to execute the loan with CDB.
- vii. HSBC indicative pricing for a 10 year USD1 billion issuance under Regs 144A (GMTN) is Libor + 270 bps.
- viii. Market analysis and peer comparison indicates a spread of upto 340 over UST - Refer to attached presentation for further detail.
- ix. The rate of 9.45% compares favourably to current WACD of 9.35%.
- x. The loan will have a Floating rate which currently supports the fragile cash interest cover ratio.
- xi. Transnet will consider fixing the interest rate exposure in 12-18 months from now, realising potential savings.
- xii. If the rate be fixed now, the pricing proposal translates to a fixed rate of 12.09%.
- xiii. As a result of all the funding initiatives of the locomotives, an amendment to the current fixed vs floating ratio approved split by the Board is required to 45% from the current 30% (floating).

c. Once off arrangement fee

- xiv. The 118bps is high, however on balance taking into account CDB's concessions on the grace period, reduction of the credit margin and the repayment profile, is reasonable.
- xv. In comparison to arrangement fees of US Exim and ICBC of 100bps each for facilities of USD 500 million and ZAR 6 billion respectively, the 118 bps is reasonable given the quantum.
- xvi. The arrangement fee of 118bps is equivalent to 21.1 bps over the yield to maturity of the proposed loan (based on the ZAR amount of the loan).

d. Conclusion and value leakage

- xvii. The loan is fairly priced in comparison to foreign issuance of a US\$ denominated loan under the GMTN, which is expected to have a pricing point of about 307 above US Treasuries (bearing in mind the mark-to-market rate of 285 bps above US Treasuries on Transnet existing US\$ bond that will mature in 7.9 years);
- xviii. There is a longer capital grace period of 54 months.
- xix. The starting date of the capital grace period will be the first drawdown date as opposed to the date of signing of the loan agreement as originally suggested.
- xx. An improved capital repayment profile with increasing capital repayments towards the end of the loan tenure, which has the impact of extending the duration of the loan as opposed to the duration associated with the original equal capital repayment schedule.
- xxi. The volume of US\$2.5 billion for which there needs to be pricing consideration given that the maximum expected volume for a single issue under the GMTN is USD 1 billion.
- xxii. CDB agreed to transact cross currency swaps such that Transnet will have a ZAR denominated loan in its books.



FINANCIAL IMPLICATIONS:

Quantum	Security offered	Profile and term	Financial covenants	Arrangement Fee	Commitment Fee	Margin and ZAR pricing
US\$2.5 billion ~ R26,75 billion (translation of R10,70)	Yes - Locomotives will be provided as security	Amortising over 15 years	Gearing ratio not to exceed 80% Cash interest cover not below 1.5 times	118 bps	0,80 bps	3m Libor + 257bps (3m Jibar +337bps) = 9,45%

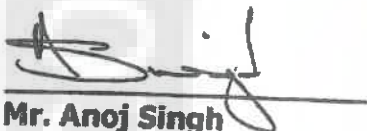
BUDGET IMPLICATIONS:

- 4 The proposed external funding required to be raised has been budgeted for in the 2014/15 Finance Cost Budget and will be further budgeted for in the 2015/16-2018/19 Finance Cost Budgets respectively.

RECOMMENDATION:

- 5 It is recommended that the Group Chief Executive approve the response to the Group Treasurer for issues raised on the USD 2,5 billion loan facility from China Development Bank (CDB).

Compiled by:



Mr. Anoj Singh
Group Chief Financial Officer
Date: 21/08/14

Approved by:



Mr. Brian Molefe
Group Chief Executive
Date: 27.8.14

Job	3463
Sender	Pierre
Title	CDB Term Facility Agreement pg48-96. pdf
Interface	Parallel
Language	PDF
Date	13:17:05 7 MAY 2019



- (e) The Borrower has instituted and maintains policies and procedures designated to prevent violation of any Sanctions Laws or Anti-Money Laundering Laws.

20.21 Name-Plate

The Borrower shall procure that a nameplate setting out the below-mentioned be affixed to each locomotive subject to Transaction Security:

"This [locomotive no.] is owned by [Transnet SOC LTD], and is subject to a first priority mortgage in favour of [the Lender] as lender".

20.22 Commercial Contract

- (a) The Borrower shall notify the Lender of (i) any amendments to any Commercial Contract (including any amendment to the contract price or any variation to the payment schedule); (ii) disputes related to any Commercial Contract; (iii) any breach of an obligation under any Commercial Contract, including any breach which might reasonably be expected to lead to a suspension or termination of the Commercial Contract (and the steps, if any, being taken to remedy it) promptly upon becoming aware of its occurrence.
- (b) Subject to the terms of this Agreement, if the Contract Price required to be paid under all of the Commercial Contracts exceeds the Aggregate Contract Price, the Borrower shall procure such additional funds to pay for the excess amount.

20.23 Conditions Subsequent

The Borrower shall ensure that all locomotives delivered pursuant to any Commercial Contract shall be subject to the Transaction Security and shall prior to the payment of the Acceptance Instalment of each locomotive delivered under any Commercial Contract (or, if earlier, the date falling 30 days after the issuance of the Acceptance Certificate for such locomotive), provide the Lender with:

- (a) a Locomotive Mortgage Power of Attorney;
- (b) a description of the locomotive;
- (c) the serial number of the locomotive; and
- (d) a photograph of the locomotive,

in order for a Locomotive Mortgage to be registered over such locomotive.

20.24 Hedging Accounts

The Borrower shall ensure that:

- (a) the Hedging Accounts have been established with the Account Bank prior to the Financial Closing Date; and
- (b) thereafter, the Hedging Accounts are maintained at all times with the Account Bank except as otherwise provided in any of the Finance Documents.

20.25 Hedging Transaction

- (a) The Borrower shall not enter into any hedging transaction in respect of the Facility other than a Hedging Transaction entered into in compliance with the terms of this Agreement.
- (b) The Borrower shall provide to the Lender promptly upon its execution a copy of any agreement (including without limitation an ISDA Master Agreement, any accompanying schedules and each subsequent confirmation between the Borrower and the Hedge Counterparty) entered into between the Borrower and the Hedge Counterparty in respect of hedging the interest rate and/or foreign exchange rate risks under the Facility (such hedging transactions being "**Hedging Transactions**") and such other document or information related thereto as may be requested by the Lender. The Hedging Transactions shall not be for speculative purpose.
- (c) The Borrower shall ensure that (i) all payments in US Dollars payable to the Borrower under the Hedging Transactions will be paid into the Hedging Account (USD) and (ii) all payments in ZAR payable to the Borrower under the Hedging Transactions will be paid into the Hedging Account (ZAR).
- (d) The Borrower shall ensure that:
 - (i) the proceeds of the Hedging Transactions for the purpose of hedging the foreign currency exposure of the Borrower as a result of utilising the Facility to pay the contract price of the Commercial Contracts in ZAR are utilised for payments in relation to the relevant invoices under the Commercial Contracts as stipulated in each such Utilisation Request delivered pursuant to Clause 5 (*Utilisation - Loans*);
 - (ii) the proceeds of the Hedging Transactions for the purpose of hedging the foreign currency exposure of the Borrower in respect of any amount payable under this Agreement are utilised to pay the sums payable under this Agreement; and
 - (iii) the proceeds of the Hedging Transactions for purpose of hedging the Interest rate exposure of the Borrower under this Agreement are utilised to pay the interest due under this Agreement.

21. EVENTS OF DEFAULT

Each of the events or circumstances set out in this Clause 21 is an Event of Default (save for Clause 21.13 (*Acceleration*)).

21.1 Non-payment

The Borrower does not pay on the due date any amount payable pursuant to a Finance Document at the place and in the currency in which it is expressed to be payable unless:

- (a) its failure to pay is caused by:
 - (i) administrative or technical error; or
 - (ii) a Disruption Event; and

- (b) payment is made within 3 Business Days of its due date.

21.2 Financial covenants

Any requirement of Clause 19 (*Financial covenants*) and Clause 20.23 (*Conditions Subsequent*) is not satisfied.

21.3 Other obligations

- (a) The Borrower does not comply with any provision of the Finance Documents (other than those referred to in Clause 21.1 (*Non-payment*), Clause 19 (*Financial covenants*) and Clause 20.23 (*Conditions Subsequent*)).
- (b) No Event of Default under paragraph (a) above will occur if the failure to comply is capable of remedy and is remedied within ten (10) Business Days of the earlier of (A) the Lender giving notice to the Borrower and (B) the Borrower becoming aware of the failure to comply.
- (c) Any "Event of Default" as defined in and used under the Standby Facility Agreement occurs provided that the Standby Facility Agreement has been executed by the parties thereto.

21.4 Misrepresentation

Any representation or statement made or deemed to be made by the Borrower in the Finance Documents or any other document delivered by or on behalf of the Borrower under or in connection with any Finance Document is or proves to have been incorrect or misleading in any material respect when made or deemed to be made unless the underlying circumstances (if capable of remedy) are remedied within 10 Business Days of the earlier of (a) the Lender giving notice to the Borrower and (b) the Borrower becoming aware of the misrepresentation.

21.5 Cross default

- (a) Any Financial Indebtedness of the Borrower or any Material Subsidiary is not paid when due nor within any originally applicable grace period.
- (b) Any Financial Indebtedness of the Borrower or any Material Subsidiary is declared to be or otherwise becomes due and payable prior to its specified maturity as a result of an event of default (however described).
- (c) Any commitment for any Financial Indebtedness of the Borrower or any Material Subsidiary is cancelled or suspended by a creditor of the Borrower or that Material Subsidiary as a result of an event of default (however described).
- (d) Any creditor of the Borrower or any Material Subsidiary becomes entitled to declare any Financial Indebtedness of the Borrower or that Material Subsidiary due and payable prior to its specified maturity as a result of an event of default (however described).
- (e) No Event of Default will occur under this Clause 21.5 (*Cross default*) if the aggregate amount of Financial Indebtedness or commitment for Financial Indebtedness falling within paragraphs (a) to (d) above is less than 0.5 per cent. of the Consolidated Total Assets of the Borrower (or its equivalent in any other currency or currencies).

21.6 Insolvency

- (a) The Borrower or a Material Subsidiary is, or is deemed for the purposes of any applicable law or is declared by any competent court or relevant authority to be, unable or admits inability to pay its debts as they fall due, suspends making payments on any of its debts, repudiates its repayment obligations under the Finance Documents or, by reason of actual or anticipated financial difficulties, commences negotiations with one or more of its creditors with a view to rescheduling any of its indebtedness.
- (b) The value of the assets of the Borrower or a Material Subsidiary is less than its liabilities (taking into account contingent and prospective liabilities).
- (c) The Borrower or a Material Subsidiary is "financially distressed" as contemplated by Chapter 6 of the Companies Act.
- (d) A moratorium is declared in respect of any indebtedness of the Borrower or a Material Subsidiary.

21.7 Insolvency proceedings

Any corporate action, legal proceedings or other procedure or step is taken in relation to:

- (a) the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration, business rescue or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of the Borrower or a Material Subsidiary;
- (b) a composition, compromise, assignment or arrangement with any creditor of the Borrower or a Material Subsidiary;
- (c) a meeting of the Borrower's or a Material Subsidiary's shareholders, directors or other officers is proposed or convened for the purposes of considering any resolution for, to petition for or to file documents with a court or any registrar for, its winding-up, administration, dissolution, or commencement of business rescue proceedings or placement under supervision pursuant to the Companies Act or any such resolution is passed or any analogous procedure or step is taken in any jurisdiction;
- (d) any person presents a petition, or files documents with a court or any registrar for, the Borrower's or a Material Subsidiary's winding-up, administration, dissolution, reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) or commencement of business rescue proceedings or placement under supervision pursuant to the Companies Act;
- (e) an order for the Borrower's or a Material Subsidiary's winding-up, administration, dissolution, or commencement of business rescue proceedings or placement under supervision pursuant to the Companies Act is made;
- (f) the appointment of a liquidator, a trustee in bankruptcy, custodian, receiver, administrative receiver, administrator, compulsory manager, business rescue practitioner or other similar officer in respect of the Borrower or a Material Subsidiary or any of their assets;
- (g) its shareholders, directors or other officers request the appointment of, or give notice of their intention to appoint, a liquidator, trustee in bankruptcy, custodian,

receiver, administrative receiver, administrator, compulsory manager, business rescue practitioner or other similar officer;

- (h) enforcement of any Security over any assets of the Borrower or a Material Subsidiary, and/or
- (i) any act of Insolvency referred to in the Insolvency Act, 1936 in terms of the laws of the Republic of South Africa;

or any analogous procedure or step is taken in any jurisdiction.

This Clause 21.7 (*Insolvency proceedings*) shall not apply to any winding-up petition if

- (j) the Borrower has within 20 Business Days after the petition is lodged demonstrated in good faith and in a manner to the satisfaction of the Lender (in its sole discretion) that such petition is frivolous or vexatious and there is no reasonable prospect of such petition succeeding; and
- (k) the petition is contested in good faith, with due process and diligence, and is discharged or dismissed within 30 Business Days after the petition is lodged.

21.8 Creditors' process

Any expropriation, attachment, sequestration, distress or execution affects any asset or assets of a member of the Group.

21.9 Unlawfulness

It is or becomes unlawful for the Borrower to perform any of its obligations under the Finance Documents or any Transaction Security created or expressed to be created or evidenced by the Security Documents ceases to be effective.

21.10 Repudiation

The Borrower repudiates a Finance Document or any of the Transaction Security or evidences an intention to repudiate a Finance Document or any of the Transaction Security.

21.11 Material adverse change

Any event or circumstance occurs which the Lender reasonably believes might have a Material Adverse Effect.

21.12 Transaction Security

- (a) The Borrower fails to perform or comply with any of the obligations assumed by it in the Security Documents.
- (b) At any time any of the Transaction Security and/or any Security Document is or becomes unlawful or is not, or ceases to be legal, valid, binding or enforceable or otherwise ceases to be effective.
- (c) At any time, any of the Transaction Security fails to have first ranking priority or is subject to any prior ranking or pari passu ranking Security.
- (d) Each Locomotive Mortgage required to be registered is not registered in the relevant Deeds Registry (established in terms of the Deeds Registries Act 47 of 1937, as amended, under the relevant South African government department

responsible for the registration, management and maintenance of the property registry in Republic of South Africa) within 30 (thirty) days after the date of lodgement with such Deeds Registry.

- (e) The Borrower furnishes to the Lender incorrect details of any serial numbers of any locomotives in respect of which the Locomotive Mortgages are registered with the result that there is no special notarial bond registered over such locomotives.

21.13 Acceleration

On and at any time after the occurrence of an Event of Default the Lender may, by notice to the Borrower:

- (a) cancel the Facility, whereupon it shall immediately be cancelled;
- (b) declare that all or part of the Loans, together with accrued interest, and all other amounts accrued or outstanding under the Finance Documents be immediately due and payable, whereupon they shall become immediately due and payable;
- (c) declare that all or part of the Loans be payable on demand, whereupon they shall immediately become payable on demand by the Lender; and/or
- (d) exercise, or direct the Lender to exercise, any or all of its rights, remedies and powers under any of the Finance Documents.

SECTION 8

CHANGES TO PARTIES

22. CHANGES TO THE LENDER

22.1 Assignments and transfers by the Lender

Subject to this Clause 22, the Lender may:

- (a) assign any of its rights; or
- (b) transfer by novation any of its rights and obligations,

to another bank or financial institution or to a trust, fund or other entity which is regularly engaged in or established for the purpose of making, purchasing or investing in loans, securities or other financial assets (each a "**New Lender**"), provided that a New Lender shall not be an entity which is in direct competition with the Borrower in its core business of rail transportation in South Africa or affiliated to a direct competitor of the Borrower in such core business and it being agreed that any New Lender established under the laws of the PRC shall not be construed as an entity in direct competition with the Borrower in its core business or affiliated to a direct competitor of the Borrower in its core business.

22.2 Conditions of assignment

The consent of the Borrower is not required for an assignment by the Lender.

22.3 Security over the Lender's rights

In addition to the other rights provided to the Lender under this Clause 22 (*Changes to the Lender*), the Lender may without consulting with or obtaining consent from the Borrower at any time charge, assign or otherwise create Security in or over (whether by way of collateral or otherwise) all or any of its rights under any Finance Document to secure obligations of the Lender including, without limitation:

- (a) any charge, assignment or other Security to secure obligations to a federal reserve or central bank; and
- (b) If the Lender is a fund, any charge, assignment or other Security granted to any holders (or trustee or representatives of holders) of obligations owed, or securities issued, by the Lender as security for those obligations or securities,

except that no such charge, assignment or Security shall:

- (c) release the Lender from any of its obligations under the Finance Documents or substitute the beneficiary of the relevant charge, assignment or Security for the Lender as a party to any of the Finance Documents; or
- (d) require any payments to be made by the Borrower or grant to any person any more extensive rights than, those required to be made or granted to the Lender under the Finance Documents.

23. CHANGES TO THE BORROWER

The Borrower may not assign any of its rights or transfer any of its rights or obligations under the Finance Documents.

SECTION 9**ADMINISTRATION****24. PAYMENT MECHANICS****24.1 Payments to the Lender**

- (a) On each date on which the Borrower is required to make a payment under a Finance Document, the Borrower shall make the same available to the Lender (unless a contrary indication appears in a Finance Document) for value on the due date at the time and in such funds specified by the Lender as being customary at the time for settlement of transactions in the relevant currency in the place of payment **provided that** the Borrower shall provide the Lender with a SWIFT confirmation (or other equivalent evidence of payment) in respect of such payment by no later than 1600 hours Beijing time on the due date.
- (b) Payment shall be made to such account in the principal financial centre of the country of that currency and with such bank as the Lender, in each case, specifies.

24.2 Distributions to the Borrower

The Lender may (with the consent of the Borrower or in accordance with Clause 25 (Set-off)) apply any amount received by it for the Borrower in or towards payment (on the date and in the currency and funds of receipt) of any amount due from the Borrower under the Finance Documents or in or towards purchase of any amount of any currency to be so applied.

24.3 Partial payments

- (a) If the Lender receives a payment that is insufficient to discharge all the amounts then due and payable by the Borrower under the Transaction Finance Documents, the Lender shall (to the extent permitted by applicable law) apply that payment towards the obligations of the Borrower under the Finance Documents in any order selected by the Lender.
- (b) Paragraph (a) above will override any appropriation made by the Borrower.

24.4 No set-off by the Borrower

All payments to be made by the Borrower under the Finance Documents shall be calculated and be made without (and free and clear of any deduction for) set-off or counterclaim.

24.5 Business Days

- (a) Any payment under the Finance Documents which is due to be made on a day that is not a Business Day shall be made on the next Business Day in the same calendar month (if there is one) or the preceding Business Day (if there is not).
- (b) During any extension of the due date for payment of any principal or Unpaid Sum under this Agreement interest is payable on the principal or Unpaid Sum at the rate payable on the original due date.

24.6 Currency of account

- (a) Subject to paragraphs (b) and (c) below, Dollars is the currency of account and payment for any sum due from the Borrower under any Finance Document.

- (b) Each payment in respect of costs, expenses or Taxes shall be made in the currency in which the costs, expenses or Taxes are incurred.
- (c) Any amount expressed to be payable in a currency other than Dollars shall be paid in that other currency.

24.7 Change of currency

- (a) Unless otherwise prohibited by law, if more than one currency or currency unit are at the same time recognised by the central bank of any country as the lawful currency of that country, then:
 - (i) any reference in the Finance Documents to, and any obligations arising under the Finance Documents in, the currency of that country shall be translated into, or paid in, the currency or currency unit of that country designated by the Lender (after consultation with the Borrower); and
 - (ii) any translation from one currency or currency unit to another shall be at the official rate of exchange recognised by the central bank for the conversion of that currency or currency unit into the other, rounded up or down by the Lender (acting reasonably).
- (b) If a change in any currency of a country occurs, this Agreement will, to the extent the Lender (acting reasonably and after consultation with the Borrower) specifies to be necessary, be amended to comply with any generally accepted conventions and market practice in the Relevant Interbank Market and otherwise to reflect the change in currency.

24.8 Disruption to payment systems etc.

If either the Lender determines (in its discretion) that a Disruption Event has occurred or the Lender is notified by the Borrower that a Disruption Event has occurred:

- (a) the Lender may, and shall if requested to do so by the Borrower, consult with the Borrower with a view to agreeing with the Borrower such changes to the operation or administration of the Facility as the Lender may deem necessary in the circumstances;
- (b) the Lender shall not be obliged to consult with the Borrower in relation to any changes mentioned in paragraph (a) if, in its opinion, it is not practicable to do so in the circumstances and, in any event, shall have no obligation to agree to such changes;
- (c) any such changes agreed upon by the Lender and the Borrower shall (whether or not it is finally determined that a Disruption Event has occurred) be binding upon the Parties as an amendment to (or, as the case may be, waiver of) the terms of the Finance Documents notwithstanding the provisions of Clause 31 (*Amendments and Waivers*); and
- (d) the Lender shall not be liable for any damages, costs or losses to any person, any diminution in value or any liability whatsoever (including, without limitation for negligence, gross negligence or any other category of liability whatsoever but not including any claim based on the fraud of the Lender) arising as a result of its taking, or failing to take, any actions pursuant to or in connection with this Clause 24.8.

25. SET-OFF

The Lender may set off any matured obligation due from the Borrower under the Finance Documents (to the extent beneficially owned by the Lender) against any matured obligation owed by the Lender to the Borrower, regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, the Lender may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.

26. APPLICATION OF PROCEEDS

26.1 Order of Application

All amounts from time to time received or recovered by the Lender in connection with the realisation or enforcement of all or any part of the Transaction Security shall be held by the Lender on trust to apply them at such times as the Lender sees fit, to the extent permitted by applicable law, in the following order of priority:

- (a) in payment to the Lender, for application towards the discharge of all sums due and payable by the Borrower under any of the Transaction Finance Documents in accordance with Clause 24.3 (*Partial Payments*);
- (b) if the Borrower is not under any further actual or contingent liability under any Transaction Finance Document, in payment to any person to whom the Lender is obliged to pay in priority to the Borrower; and
- (c) the balance, if any, in payment to the Borrower.

26.2 Investment of Proceeds

Prior to the application of the proceeds of the Transaction Security in accordance with Clause 26.1 (*Order of Application*) the Lender may, at its discretion, hold all or part of those proceeds in an interest bearing suspense or impersonal account(s) in the name of the Lender with any financial institution (including itself) and for so long as the Lender thinks fit (the interest being credited to the relevant account) pending the application from time to time of those monies at the Lender's discretion in accordance with the provisions of this Clause 26.

26.3 Currency Conversion

- (a) For the purpose of or pending the discharge of any of the Secured Obligations the Lender may convert any moneys received or recovered by the Lender from one currency to another, at the spot rate at which the Lender is able to purchase the currency in which the Secured Obligations are due with the amount received.
- (b) The obligations of the Borrower to pay in the due currency shall only be satisfied to the extent of the amount of the due currency purchased after deducting the costs of conversion.

26.4 Permitted Deductions

The Lender shall be entitled (a) to set aside by way of reserve amounts required to meet and (b) to make and pay, any deductions and withholdings (on account of Tax or otherwise) which it is or may be required by any applicable law to make from any distribution or payment made by it under this Agreement, and to pay all Tax which may be assessed against it in respect of any of the Charged Property, or as a consequence of performing its duties, or by virtue of its capacity as the Lender under any of the Finance Documents or

otherwise (except in connection with its remuneration for performing its duties under this Agreement).

26.5 Sums received by the Borrower

If the Borrower receives any sum which, pursuant to any of the Finance Documents, should have been paid to the Lender, that sum shall promptly be paid to the Lender for application in accordance with this Clause.

27. NOTICES

27.1 Communications in writing

Any communication to be made under or in connection with the Finance Documents shall be made in writing and, unless otherwise stated, may be made by fax or letter.

27.2 Addresses

The address and fax number (and the department or officer, if any, for whose attention the communication is to be made) of each Party for any communication or document to be made or delivered under or in connection with the Finance Documents is:

- (a) in the case of the Borrower, that identified with its name below in the signature page;
- (b) in the case of the Lender, that identified with its name below in the signature page,

or any substitute address or fax number or department or officer as the Party may notify to the Lender (or the Lender may notify to the other Parties, if a change is made by the Lender) by not less than five Business Days' notice.

27.3 Delivery

- (a) Any communication or document made or delivered by one person to another under or in connection with the Finance Documents will only be effective:
 - (i) if by way of fax, when received in legible form; or
 - (ii) if by way of letter, when it has been left at the relevant address or fifteen Business Days after being deposited in the post postage prepaid in an envelope addressed to it at that address,

and, if a particular department or officer is specified as part of its address details provided under Clause 27.2 (*Addresses*), if addressed to that department or officer.

- (b) Any communication or document to be made or delivered to the Lender will be effective only when actually received by the Lender and then only if it is expressly marked for the attention of the department or officer identified with the Lender's signature below (or any substitute department or officer as the Lender shall specify for this purpose).
- (c) Any communication or document which becomes effective, in accordance with paragraphs (a) to (b) above, after 5.00 p.m. in the place of receipt shall be deemed only to become effective on the following day.

27.4 Notification of address and fax number

Promptly upon changing its address or fax number, the Lender shall notify the Borrower.

27.5 Electronic communication

- (a) Any communication to be made between any two Parties under or in connection with the Finance Documents may be made by electronic mail or other electronic means to the extent that those two Parties agree that, unless and until notified to the contrary, this is to be an accepted form of communication and if those two Parties:
 - (i) notify each other in writing of their electronic mail address and/or any other information required to enable the sending and receipt of information by that means; and
 - (ii) notify each other of any change to their address or any other such information supplied by them by not less than five Business Days' notice.
- (b) Any electronic communication made between those two Parties will be effective only when actually received in readable form and in the case of any electronic communication made by a Party to the Lender only if it is addressed in such a manner as the Lender shall specify for this purpose.
- (c) Any electronic communication which becomes effective, in accordance with paragraph (b) above, after 5.00 p.m. in the place of receipt shall be deemed only to become effective on the following day.

27.6 English language

- (a) Any notice given under or in connection with any Finance Document must be in English.
- (b) All other documents provided under or in connection with any Finance Document must be:
 - (i) in English; or
 - (ii) if not in English, and if so required by the Lender, accompanied by a certified English translation and, in this case, the English translation will prevail unless the document is a constitutional, statutory or other official document.

28. CALCULATIONS AND CERTIFICATES**28.1 Accounts**

In any litigation or arbitration proceedings arising out of or in connection with a Finance Document, the entries made in the accounts maintained by the Lender are *prima facie* evidence of the matters to which they relate.

28.2 Certificates and determinations

Any certification or determination by the Lender of a rate or amount under any Finance Document is, in the absence of manifest error, conclusive evidence of the matters to which it relates.

28.3 **Day count convention**

Any interest, commission or fee accruing under a Finance Document will accrue from day to day and is calculated on the basis of the actual number of days elapsed and a year of 360 days or, in any case where the practice in the Relevant Interbank Market differs, in accordance with that market practice.

29. **PARTIAL INVALIDITY**

If, at any time, any provision of a Finance Document is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired.

30. **REMEDIES AND WAIVERS**

No failure to exercise, nor any delay in exercising, on the part of the Lender, any right or remedy under a Finance Document shall operate as a waiver of any such right or remedy or constitute an election to affirm any of the Finance Documents. No election to affirm any Finance Document on the part of the Lender shall be effective unless it is in writing. No single or partial exercise of any right or remedy shall prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in each Finance Document are cumulative and not exclusive of any rights or remedies provided by law.

31. **AMENDMENTS AND WAIVERS**

Any term of the Finance Documents may be amended or waived only with the consent of the Lender and the Borrower and any such amendment or waiver will be binding on all Parties.

32. **CONFIDENTIALITY**

32.1 **Confidential Information**

The Lender agrees to keep all Confidential Information confidential and not to disclose it to anyone, save to the extent permitted by Clause 32.2 (*Disclosure of Confidential Information*) and Clause 32.3 (*Disclosure to numbering service providers*), and to ensure that all Confidential Information is protected with security measures and a degree of care that would apply to its own confidential information.

32.2 **Disclosure of Confidential Information**

The Lender may disclose:

- (a) to any of its Affiliates and Related Funds and any of its or their officers, directors, employees, professional advisers, auditors, partners and Representatives such Confidential Information as the Lender shall consider appropriate if any person to whom the Confidential Information is to be given pursuant to this paragraph (a) is informed in writing of its confidential nature and that some or all of such Confidential Information may be price-sensitive information except that there shall be no such requirement to so inform if the recipient is subject to professional obligations to maintain the confidentiality of the Information or is otherwise bound by requirements of confidentiality in relation to the Confidential Information;

(b) to any person:

- (i) to (or through) whom it assigns (or may potentially assign) all or any of its rights and/or obligations under one or more Finance Documents and, in each case to any of that person's Affiliates, Related Funds, Representatives and professional advisers;
- (ii) with (or through) whom it enters into (or may potentially enter into), whether directly or indirectly, any sub-participation in relation to, or any other transaction under which payments are to be made or may be made by reference to, one or more Finance Documents and/or the Borrower and to any of that person's Affiliates, Related Funds, Representatives and professional advisers;
- (iii) appointed by the Lender or by a person to whom sub paragraph (b)(i) or (ii) above applies to receive communications, notices, information or documents delivered pursuant to the Finance Documents on its behalf;
- (iv) who invests in or otherwise finances (or may potentially invest in or otherwise finance), directly or indirectly, any transaction referred to in paragraph (b)(i) or (ii) above;
- (v) to whom information is required or requested to be disclosed by any court of competent jurisdiction or any governmental, banking, taxation or other regulatory authority or similar body, the rules of any relevant stock exchange or pursuant to any applicable law or regulation;
- (vi) to whom Information is required to be disclosed in connection with, and for the purposes of, any litigation, arbitration, administrative or other investigations, proceedings or disputes;
- (vii) to whom or for whose benefit the Lender charges, assigns or otherwise creates Security (or may do so) pursuant to Clause 22.3 (*Security over Lender's rights*);
- (viii) who is a Party; or
- (ix) with the consent of the Borrower;

In each case, such Confidential Information as the Lender shall consider appropriate if:

- (A) In relation to paragraphs (b)(i), (b)(ii) and (b)(iii) above, the person to whom the Confidential Information is to be given has entered into a Confidentiality Undertaking except that there shall be no requirement for a Confidentiality Undertaking if the recipient is a professional adviser and is subject to professional obligations to maintain the confidentiality of the Confidential Information;
- (B) In relation to paragraph (b)(iv) above, the person to whom the Confidential Information is to be given has entered into a Confidentiality Undertaking or is otherwise bound by requirements of confidentiality in relation to the Confidential Information they receive and is informed that some or all of such Confidential Information may be price-sensitive information; and
- (C) In relation to paragraphs (b)(v), (b)(vi) and (b)(vii) above, the person to whom the Confidential Information is to be given is

informed of its confidential nature and that some or all of such Confidential Information may be price-sensitive information except that there shall be no requirement to so inform if, in the opinion of the Lender, it is not practicable so to do in the circumstances;

- (c) to any person appointed by the Lender or by a person to whom paragraph (b)(i) or (b)(ii) above applies to provide administration or settlement services in respect of one or more of the Finance Documents including without limitation, in relation to the trading of participations in respect of the Finance Documents, such Confidential Information as may be required to be disclosed to enable such service provider to provide any of the services referred to in this paragraph (c) if the service provider to whom the Confidential Information is to be given has entered into a confidentiality agreement substantially in the form of the LMA Master Confidentiality Undertaking for Use With Administration/Settlement Service Providers or such other form of confidentiality undertaking agreed between the Borrower and the Lender;
- (d) to insurers, insurance brokers or direct or indirect providers of credit protection;
- (e) to the Account Bank to the extent contemplated under the Account Agreement; and
- (f) to any rating agency (including its professional advisers) such Confidential Information as may be required to be disclosed to enable such rating agency to carry out its normal rating activities in relation to the Finance Documents and/or the Borrower if the rating agency to whom the Confidential Information is to be given is informed of its confidential nature and that some or all of such Confidential Information may be price-sensitive information.

32.3 Disclosure to numbering service providers

- (a) The Lender may disclose to any national or international numbering service provider appointed by the Lender to provide identification numbering services in respect of this Agreement, the Facility and/or the Borrower the following information:
 - (i) name of Borrower;
 - (ii) country of domicile of the Borrower;
 - (iii) place of incorporation of the Borrower;
 - (iv) date of this Agreement;
 - (v) Clause 34 (*Governing law*);
 - (vi) date of each amendment and restatement of this Agreement;
 - (vii) amounts of, and names of, the Facility (and any tranches);
 - (viii) currency of the Facility;
 - (ix) type of the Facility;
 - (x) ranking of the Facility;
 - (xi) Termination Date for the Facility;

(xii) changes to any of the information previously supplied pursuant to paragraphs (i) to (xi) above; and

(xiii) such other information agreed between the Lender and the Borrower,

to enable such numbering service provider to provide its usual syndicated loan numbering identification services.

(b) The Parties acknowledge and agree that each identification number assigned to this Agreement, the Facility and/or the Borrower by a numbering service provider and the information associated with each such number may be disclosed to users of its services in accordance with the standard terms and conditions of that numbering service provider.

(c) The Borrower represents that none of the information set out in paragraphs (i) to (xiii) of paragraph (a) above is, nor will at any time be, unpublished price-sensitive information.

(d) The Lender shall notify the Borrower of:

(i) the name of any numbering service provider appointed by the Lender in respect of this Agreement, the Facility and/or the Borrower; and

(ii) the number or, as the case may be, numbers assigned to this Agreement, the Facility and/or the Borrower by such numbering service provider.

32.4 Entire agreement

This Clause 32 (*Confidentiality*) constitutes the entire agreement between the Parties in relation to the obligations of the Lender under the Finance Documents regarding Confidential Information and supersedes any previous agreement, whether express or implied, regarding Confidential Information.

32.5 Inside information

The Lender acknowledges that some or all of the Confidential Information is or may be price-sensitive information and that the use of such information may be regulated or prohibited by applicable legislation including securities law relating to insider dealing and market abuse and the Lender undertakes not to use any Confidential Information for any unlawful purpose.

32.6 Notification of disclosure

The Lender agrees (to the extent permitted by law and regulation) to inform the Borrower:

(a) of the circumstances of any disclosure of Confidential Information made pursuant to paragraph (b)(v) of Clause 32.2 (*Disclosure of Confidential Information*) except where such disclosure is made to any of the persons referred to in that paragraph during the ordinary course of its supervisory or regulatory function; and

(b) upon becoming aware that Confidential Information has been disclosed in breach of this Clause 32.

32.7 Continuing obligations

The obligations in this Clause 32 are continuing and, in particular, shall survive and remain binding on the Lender for a period of twelve months from the earlier of:

- (a) the date on which all amounts payable by the Borrower under or in connection with this Agreement have been paid in full and the Facility have been cancelled or otherwise cease to be available; and
- (b) the date on which the Lender otherwise ceases to be a lender.

33. COUNTERPARTS

Each Finance Document may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of the Finance Document.

SECTION 10

GOVERNING LAW AND ENFORCEMENT

34. GOVERNING LAW

This Agreement (including Clause 35 (*Arbitration*)) and any non-contractual obligations arising out of or in connection with it are governed by English law.

35. ARBITRATION

35.1 Any dispute, controversy or claim arising in any way out of or in connection with this Agreement (including, without limitation: (a) any contractual, pre-contractual or non-contractual rights, obligations or liabilities; and (b) any issue as to the existence, validity or termination of this Agreement), shall be finally settled by binding arbitration administered by the London Court of International Arbitration ("**LCIA**") under the arbitration rules of the LCIA in force as at the date of this Agreement (the "**Rules**"), which Rules are deemed to be incorporated by reference into this clause and as may be amended by the rest of this clause.

35.2 The arbitration tribunal ("**Tribunal**") shall consist of three arbitrators. The claimant(s) shall jointly nominate one arbitrator. The respondent(s) shall jointly nominate one arbitrator. The two arbitrators thus appointed shall nominate the third arbitrator who shall be the chairman of the Tribunal. If within fourteen days of a request from the other party to do so a party fails to nominate an arbitrator, or if the two arbitrators fail to nominate the third arbitrator within fourteen days after the appointment of the second arbitrator, the appointment shall be made, upon request of a party, by the LCIA Court of Arbitration in accordance with the Rules.

35.3 The seat of the arbitration shall be London. This arbitration agreement shall be governed by English law.

35.4 The language of the arbitration proceedings shall be English.

35.5 Any award of the Tribunal shall be made in writing and shall be final and binding on the Parties from the day it is made. The Parties undertake to carry out the award without delay.

35.6 The Parties waive any right to apply to any court of law and/or other judicial authority to determine any preliminary point of law and/or review any question of law and/or the merits, insofar as such waiver may validly be made. The Parties shall not be deemed, however, to have waived any right to challenge any award on the ground that the tribunal lacked substantive jurisdiction and/or on the ground of serious irregularity affecting the Tribunal, the proceedings or the award to the extent allowed by the law of the seat of arbitration. Nothing in this clause 35 shall be construed as preventing any Party from seeking conservatory or interim relief from any court of competent jurisdiction.

36. WAIVER OF IMMUNITY

The Borrower waives generally all immunity it or its assets or revenues may otherwise have in any jurisdiction, including immunity in respect of:

- (a) the giving of any relief by way of injunction or order for specific performance or for the recovery of assets or revenues; and

- (b) the issue of any process against its assets or revenues for the enforcement of a judgment or, in an action *in rem*, for the arrest, detention or sale of any of its assets and revenues.

This Agreement has been entered into on the date stated at the beginning of this Agreement.



**SCHEDULE 1
THE ORIGINAL PARTIES**

**PART I
THE BORROWER**

Name of Borrower

**Registration number (or equivalent,
if any)**

Transnet SOC LTD

1990/000900/30



SCHEDULE 2
CONDITIONS PRECEDENT

1. The Borrower

- (a) A copy of each of the constitutional documents of the Borrower.
- (b) A copy of a resolution of the board of directors of the Borrower approving:
 - (i) the transactions contemplated by the Finance Documents to which the Borrower is a party;
 - (ii) a delegation framework of the Borrower delegating the authority of the board of directors of the Borrower with respect to borrowing by the Borrower to certain directors of the Borrower and authorizing any such director or officer (as the case may be):
 - (A) to approve the transactions contemplated by the Finance Documents to which the Borrower is a party;
 - (B) to execute the Finance Documents on its behalf; and
 - (C) on its behalf, to authorise a specified person or persons, to sign and/or despatch all documents and notices (including, if relevant, any Utilisation Request) to be signed and/or despatched by it under or in connection with the Finance Documents to which it is a party.
- (c) A copy of a resolution of the board of directors of the Borrower approving the terms of, and the transactions contemplated by, the Commercial Contracts and resolving that it execute the Commercial Contracts.
- (d) A copy of the Corporate Plan for the 2015/2016 financial year together with a copy of the letter from the National Treasury dated 30 March 2015 in terms of which the National Treasury acknowledged the receipt of the Borrower's budget and corporate plan for the financial year ended 31 March 2015 in terms of section 52 of the PFMA.
- (e) A copy of the certified extract from the Delegation of Authority Framework approved with effect from 1 September 2014.
- (f) A copy of the certified extract from the Delegation of Authority Framework approved with effect from 1 June 2013.
- (g) A specimen of the signature of each person authorised to bind the Borrower in respect of the transactions contemplated by the Finance Documents and the Commercial Contracts.
- (h) A certificate of the Borrower (signed by an authorised signatory of the Borrower) confirming that borrowing the Facility would not cause any borrowing or similar limit binding on the Borrower (including but not limited to the limit on the Borrower's indebtedness as set out in the shareholder's compact between the shareholder and the board of directors of the Borrower) to be exceeded or breached and that all the provisions of PFMA applicable to the Borrower in respect of the Finance Documents and the Commercial Contracts have been complied with.
- (i) A certificate of an authorised signatory of the Borrower certifying that each copy document relating to it specified in this Schedule 2 (*Conditions Precedent*) is

correct, complete and in full force and effect as at a date no earlier than the date of this Agreement.

2. Legal opinions

- (a) A legal opinion of legal advisers to the Lender in England, in form and substance satisfactory to the Lender.
- (b) A legal opinion of the legal advisers to the Lender in the Republic of South Africa, in form and substance satisfactory to the Lender.

3. Other documents and evidence

- (a) A copy of any other Authorisation or other document, opinion or assurance which the Lender considers to be necessary or desirable (if it has notified the Borrower accordingly) in connection with the entry into and performance of the transactions contemplated by any Finance Document or for the validity and enforceability of any Finance Document, including but not limited to, in terms of sections 54 (2), 66(3), 66(7) and any other sections of the Public Finance Management Act, 1999 of the Republic of South Africa.
- (b) The Original Financial Statements.
- (c) Evidence that the fees, costs and expenses then due from the Borrower pursuant to Clause 11 (*Fees*) and Clause 16 (*Costs and expenses*) have been paid on or prior to the first Utilisation Date.
- (d) A copy of each of the following Finance Documents:
 - (i) this Agreement; and
 - (ii) the Account Agreement.
- (e) A copy of the approval of the Financial Surveillance Department of the South African Reserve Bank in relation to foreign payments and the transactions contemplated under the Finance Documents (including in respect of the Locomotive Mortgages) together with the relevant application and all correspondence between the Borrower and South African Reserve Bank in relation thereto.
- (f) Copies of the Commercial Contracts.
- (g) Evidence of the establishment of the Hedging Accounts.
- (h) Any other document or evidence required by the Lender.

**SCHEDULE 3
UTILISATION REQUEST**

From: Transnet SOC LTD

To: [Lender]

Dated:

Dear Sirs

**Transnet SOC LTD – [] Facility Agreement
dated [] (the "Agreement")**

1. We refer to the Agreement. This is a Utilisation Request. Terms defined in the Agreement have the same meaning in this Utilisation Request unless given a different meaning in this Utilisation Request.
2. We wish to borrow a Loan on the following terms:


Proposed Utilisation Date:	[] (or, if that is not a Business Day, the next Business Day)
Currency of Loan:	USD
Amount:	[] or, if less, the Available Facility[, of which USD [•] is to be applied in accordance with paragraph (b) of clause 3.1 (Purpose)]
Interest Period:	3 Months
USD/ZAR Exchange Rate:	[] pursuant [spot rate provided by the South African Reserve Bank/Hedging Transaction entered into with []]
3. We confirm that each condition specified in Clause 4.2 (*Further conditions precedent*) is satisfied on the date of this Utilisation Request.

 The proceeds of this Loan should be credited to [*Insert the account details of the Hedging Account (USD)*].
4. This Utilisation Request is irrevocable.
5. We attach to this Utilisation Request certified true copies of the following:
 - (a) the tax invoice of the relevant Commercial Vendor;
 - (b) the accompanying statement to the tax invoice of the relevant Commercial Vendor;
 - (c) (in respect of the invoices relating to the Acceptance Instalment), the Acceptance Certificates
 - (d) evidence of the payment of a sum no less than the relevant Equity Contribution (including copies of the relevant invoices and the payment instructions) unless already provided by the Borrower to the Lender; and
 - (e) in respect of any Utilisation requested to be applied in accordance with paragraph (b) of clause 3.1 (*Purpose*), documents evidencing the payment by the Borrower of

the corresponding amount to the Commercial Vendor(s) under the Commercial Contract(s) (including, if applicable, a copy of the wire transfer instruction to the relevant bank by the Borrower in relation to such payment) and other documents as may be required by the Lender.]

6. We confirm that we have not utilised any other loan facility to pay (i) the amount invoiced under the tax invoice referred in paragraph 5(a) above to the extent such amount is to be paid from the proceeds of the Utilisation requested pursuant to this Utilisation Request or (ii) the Equity Contribution as evidenced in paragraph 5(d) above.

Yours faithfully


authorised signatory for and on behalf of
Transnet SOC LTD



**SCHEDULE 4
FORM OF COMPLIANCE CERTIFICATE**

To: [] as Lender

From: Borrower

Dated:

Dear Sirs

**Transnet SOC LTD – [] Facility Agreement
dated [] (the "Agreement")**

1. We refer to the Agreement. This is a Compliance Certificate. Terms defined in the Agreement have the same meaning when used in this Compliance Certificate unless given a different meaning in this Compliance Certificate.
2. We confirm that:
[Insert details of financial covenants and whether the Borrower is in compliance with those covenants]
3. [We confirm that no Default is continuing.]*

Signed:

Chief Financial Officer
of
Transnet SOC LTD

We certify that the extraction of figures and the calculations performed in paragraph 2 above are correct and in compliance with the relevant definitions as used in the Agreement.

Certification as per above, is based on an engagement conducted by the external auditors of the Borrower in accordance with the International Standard on Related Services Engagements (4400) applicable to agreed-upon procedure engagements.

The factual findings in respect of applicable agreed-upon procedure engagement referred to in this certification are in the report of external auditors attached as Annexure [•].

The procedures performed did not constitute an audit or a review performed in accordance with International Standards on auditing or International Standards on Review Engagements and consequently no assurance was expressed.

Signed:

For and on behalf of

[name of Borrower's auditors]**

** If this statement cannot be made, the certificate should identify any Default that is continuing and the steps, if any, being taken to remedy it.*

***applicable in respect of the Compliance Certificate delivered together with the annual audited consolidated financial statements*



**SCHEDULE 5
EXISTING SECURITY**

Name of Borrower and Security Provider	Security	Total Principal Amount of Indebtedness Secured (ZAR)
Transnet SOC LTD	110 Coal Line locomotives	ZAR2.604 billion
Transnet SOC LTD	100 GE Class C30-ACi locomotives	ZAR1.539 billion



**SCHEDULE 6
LMA FORM OF CONFIDENTIALITY UNDERTAKING**

[Letterhead of Seller]

Date: [•]

To:

[insert name of Potential Purchaser]

Re: **The Agreement**

Company:	(the "Company")
Date:	
Amount:	
Lender:	

Dear Sirs

We understand that you are considering acquiring an interest in the Agreement which, subject to the Agreement, may be by way of novation, assignment, the entering into, whether directly or indirectly, of a sub-participation or any other transaction under which payments are to be made or may be made by reference to one or more Finance Documents and/or one or more Obligors or by way of investing in or otherwise financing, directly or indirectly, any such novation, assignment, sub-participation or other transaction (the "**Acquisition**"). In consideration of us agreeing to make available to you certain information, by your signature of a copy of this letter you agree as follows:

1. CONFIDENTIALITY UNDERTAKING

You undertake (a) to keep all Confidential Information confidential and not to disclose it to anyone, save to the extent permitted by paragraph 2 below and to ensure that all Confidential Information is protected with security measures and a degree of care that would apply to your own confidential information, and (b) until the Acquisition is completed to use the Confidential Information only for the Permitted Purpose.

2. PERMITTED DISCLOSURE

We agree that you may disclose:

- 2.1 to any of your Affiliates and any of your or their officers, directors, employees, professional advisers and auditors such Confidential Information as you shall consider appropriate if any person to whom the Confidential Information is to be given pursuant to this paragraph 2.1 is informed in writing of its confidential nature and that some or all of such Confidential

Information may be price-sensitive information, except that there shall be no such requirement to so inform if the recipient is subject to professional obligations to maintain the confidentiality of the information or is otherwise bound by requirements of confidentiality in relation to the Confidential Information;

2.2 subject to the requirements of the Agreement, to any person:

- (a) to (or through) whom you assign or transfer (or may potentially assign or transfer) all or any of your rights and/or obligations which you may acquire under the Agreement such Confidential Information as you shall consider appropriate if the person to whom the Confidential Information is to be given pursuant to this sub-paragraph (a) of paragraph 2.2 has delivered a letter to you in equivalent form to this letter;
- (b) with (or through) whom you enter into (or may potentially enter into) any sub-participation in relation to, or any other transaction under which payments are to be made or may be made by reference to the Agreement or any Obligor such Confidential Information as you shall consider appropriate if the person to whom the Confidential Information is to be given pursuant to this sub-paragraph (b) of paragraph 2.2 has delivered a letter to you in equivalent form to this letter;
- (c) to whom information is required or requested to be disclosed by any governmental, banking, taxation or other regulatory authority or similar body, the rules of any relevant stock exchange or pursuant to any applicable law or regulation such Confidential Information as you shall consider appropriate; and

2.3 notwithstanding paragraphs 2.1 and 2.2 above, Confidential Information to such persons to whom, and on the same terms as, the Lender is permitted to disclose Confidential Information under the Agreement, as if such permissions were set out in full in this letter and as if references in those permissions to Lender were references to you.

3. NOTIFICATION OF DISCLOSURE

You agree (to the extent permitted by law and regulation) to inform us:

- 3.1 of the circumstances of any disclosure of Confidential Information made pursuant to sub-paragraph (c) of paragraph 2.2 above except where such disclosure is made to any of the persons referred to in that paragraph during the ordinary course of its supervisory or regulatory function; and
- 3.2 upon becoming aware that Confidential Information has been disclosed in breach of this letter.

4. RETURN OF COPIES

If you do not enter into the Acquisition and we so request in writing, you shall return or destroy all Confidential Information supplied to you by us and destroy or permanently erase (to the extent technically practicable) all copies of Confidential Information made by you and use your reasonable endeavours to ensure that anyone to whom you have supplied any Confidential Information destroys or permanently erases (to the extent technically practicable) such Confidential Information and any copies made by them, in each case save to the extent that you or the recipients are required to retain any such Confidential Information by any applicable law, rule or regulation or by any competent judicial, governmental, supervisory or regulatory body or in accordance with internal policy, or where the Confidential Information has been disclosed under sub-paragraph (c) of paragraph 2.2 above.

5. CONTINUING OBLIGATIONS

The obligations in this letter are continuing and, in particular, shall survive and remain binding on you until (a) if you become a party to the Agreement as the Lender of record, the date on which you become such a party to the Agreement; (b) if you enter into the Acquisition but it does not result in you becoming a party to the Agreement as the Lender of record, the date falling 24 months after the date on which all of your rights and obligations contained in the documentation entered into to implement that Acquisition have terminated; or (c) in any other case the date falling 24 months after the date of your final receipt (in whatever manner) of any Confidential Information.

6. NO REPRESENTATION; CONSEQUENCES OF BREACH, ETC

You acknowledge and agree that:

- 6.1 neither we, nor any member of the Group nor any of our or their respective officers, employees or advisers (each a "Relevant Person") (i) make any representation or warranty, express or implied, as to, or assume any responsibility for, the accuracy, reliability or completeness of any of the Confidential Information or any other information supplied by us or the assumptions on which it is based or (ii) shall be under any obligation to update or correct any inaccuracy in the Confidential Information or any other information supplied by us or be otherwise liable to you or any other person in respect of the Confidential Information or any such information; and
- 6.2 we or members of the Group may be irreparably harmed by the breach of the terms of this letter and damages may not be an adequate remedy; each Relevant Person may be granted an injunction or specific performance for any threatened or actual breach of the provisions of this letter by you.

7. ENTIRE AGREEMENT; NO WAIVER; AMENDMENTS, ETC

- 7.1 This letter constitutes the entire agreement between us in relation to your obligations regarding Confidential Information and supersedes any previous agreement, whether express or implied, regarding Confidential Information.
- 7.2 No failure to exercise, nor any delay in exercising, any right or remedy under this letter will operate as a waiver of any such right or remedy or constitute an election to affirm this letter. No election to affirm this letter will be effective unless it is in writing. No single or partial exercise of any right or remedy will prevent any further or other exercise or the exercise of any other right or remedy under this letter.
- 7.3 The terms of this letter and your obligations under this letter may only be amended or modified by written agreement between us.

8. INSIDE INFORMATION

You acknowledge that some or all of the Confidential Information is or may be price-sensitive information and that the use of such information may be regulated or prohibited by applicable legislation including securities law relating to insider dealing and market abuse and you undertake not to use any Confidential Information for any unlawful purpose.

9. NATURE OF UNDERTAKINGS

The undertakings given by you under this letter are given to us and are also given for the benefit of the Company and each other member of the Group.

10. **THIRD PARTY RIGHTS**

- 10.1 Subject to this paragraph 10 and to paragraphs 6 and 9, a person who is not a party to this letter has no right under the Contracts (Rights of Third Parties) Act 1999 (the "**Third Parties Act**") to enforce or to enjoy the benefit of any term of this letter.
- 10.2 The Relevant Persons may enjoy the benefit of the terms of paragraphs 6 and 9 subject to and in accordance with this paragraph 10 and the provisions of the Third Parties Act.
- 10.3 Notwithstanding any provisions of this letter, the parties to this letter do not require the consent of any Relevant Person to rescind or vary this letter at any time.

11. **GOVERNING LAW AND JURISDICTION**

- 11.1 This letter (including the agreement constituted by your acknowledgement of its terms) (the "**Letter**") and any non-contractual obligations arising out of or in connection with it (including any non-contractual obligations arising out of the negotiation of the transaction contemplated by this Letter) are governed by English law.
- 11.2 The courts of England have non-exclusive jurisdiction to settle any dispute arising out of or in connection with this Letter (including a dispute relating to any non-contractual obligation arising out of or in connection with either this Letter or the negotiation of the transaction contemplated by this Letter).

12. **DEFINITIONS**

In this letter (including the acknowledgement set out below) terms defined in the Agreement shall, unless the context otherwise requires, have the same meaning and:

"Confidential Information" means all information relating to the Company, any Obligor, the Group, the Finance Documents, [the/a] Facility and/or the Acquisition which is provided to you in relation to the Finance Documents or [the/a] Facility by us or any of our Affiliates or advisers, in whatever form, and includes information given orally and any document, electronic file or any other way of representing or recording information which contains or is derived or copied from such information but excludes information that:

- (a) is or becomes public information other than as a direct or indirect result of any breach by you of this letter; or
- (b) is identified in writing at the time of delivery as non-confidential by us or our advisers; or
- (c) is known by you before the date the information is disclosed to you by us or any of our Affiliates or advisers or is lawfully obtained by you after that date, from a source which is, as far as you are aware, unconnected with the Group and which, in either case, as far as you are aware, has not been obtained in breach of, and is not otherwise subject to, any obligation of confidentiality.

"Group" means the Company and its subsidiaries for the time being (as such term is defined in the Companies Act 2006).

"Permitted Purpose" means considering and evaluating whether to enter into the Acquisition.

Please acknowledge your agreement to the above by signing and returning the enclosed copy.

Yours faithfully

.....
For and on behalf of
[Seller]

To: [Seller]

The Company and each other member of the Group

We acknowledge and agree to the above:

.....
For and on behalf of
[Potential Purchaser]



**SCHEDULE 7
TIMETABLES**

Loans in USD

Delivery of a duly completed Utilisation Request (Clause 5.1 (*Delivery of a Utilisation Request*))

U-10
9:30 a.m.

LIBOR is fixed

Quotation Day as of
11:00 a.m.

"U" = date of utilisation or, if applicable, in the case of a Loan that has already been borrowed, the first day of the relevant Interest Period for that Loan

"U - X" = Business Days prior to date of Utilisation

**SCHEDULE 8
LOCOMOTIVE MORTGAGE AGREEMENT**

Protocol No: _____

SPECIAL NOTARIAL BOND

BE IT HEREBY MADE KNOWN

THAT on this the ____ day of _____ TWO THOUSAND AND FIFTEEN (2015) before me _____, Notary Public, by lawful authority duly admitted and sworn, practising at Sandton in the Province of Gauteng, Republic of South Africa, and in the presence of the undersigned witnesses, personally came and appeared

in his/her capacity as the agent of :

TRANSNET SOC LTD

(Registration Number 1990/000900/30)

(a limited liability company duly registered and incorporated in accordance with the laws of the
Republic of South Africa)

(hereinafter referred to as the "Mortgagor")

having its registered office situated at -

4th Floor, Carlton Centre, 150 Commissioner Street, Johannesburg, 2122, Gauteng

and carrying on business at -

Carlton Centre, 150 Commissioner Street, Johannesburg,

he/she being duly authorised hereto by virtue of a power of attorney granted to him by the Mortgagor at _____ on _____ 2015, (the "Power of Attorney") therein represented by _____ for and on behalf of the Mortgagor, he/she being duly authorised thereto by virtue of a resolution of the Board of Directors of the Mortgagor dated _____, which said Power of Attorney together with a certified copy thereof has been exhibited to me, the Notary at the passing of these presents and now remain filed in my Protocol.

AND the said Appearer acknowledged and declared that:

- A. WHEREAS the Mortgagor has entered into a US\$1,500,000,000.00 (One Billion Five Hundred Million United States Dollars) Term Facility Agreement dated _____ and the Mortgagor has the option of entering into a Term Facility Agreement in respect of a term facility in an amount of up to US\$1,000,000,000.00 (One Billion United States Dollars) (together, the "Facility Agreements") with

CHINA DEVELOPMENT BANK CORPORATION

(Registration Number 100000000016686)

(as the "**Mortgagee**")

and other ancillary security and finance agreements,

(collectively defined in the Facility Agreements as the "**Transaction Finance Documents**");

- B. AND WHEREAS in terms of the Transaction Finance Documents the Mortgagee has or will advance money to the Mortgagor;
- C. AND WHEREAS the Mortgagee has requested that the Mortgagor provides certain securities for its obligations to the Mortgagee under the Transaction Finance Documents and any liability in respect of any further advance made under the Transaction Finance Documents, whether present or future, actual or contingent and whether incurred by the Mortgagor alone or jointly, and whether as principal or surety or in some other capacity (the "**Secured Obligations**"), to which the Mortgagor has agreed on certain terms and conditions; and
- D. AND WHEREAS it has been agreed that the Mortgagor shall pass this bond in favour of the Mortgagee as security for the Mortgagor's obligations under the Transaction Finance Documents and for certain additional obligations set forth in this bond ("**Bond**").

NOW THEREFORE THE APPEARER acknowledged and declared the Mortgagor to be truly and lawfully indebted to the Mortgagee and held firmly bound to and in favour of the Mortgagee, in the amount of –

US\$2,500,000,000.00 (Two Billion Five Hundred Million United States Dollars) (the "**Capital Amount**") arising from the considerations set out in the recital, together with a further amount of US\$500,000,000 (Five Hundred Million United States Dollars) (the "**Additional Amount**") in respect of:

- i. all costs incurred by the Mortgagee of preserving, protecting and realising the undermentioned Mortgaged Assets hypothecated under this Bond;

- ii. all other costs incurred in connection with this Bond, such as, but not restricted to, insurance premiums, service fees, licence fees, taxes, interest, costs of legal proceedings in suing for the recovery of any amount due under this Bond (on the scale as between attorney and own client) and in general all expenses, costs and disbursements incurred to protect the undermentioned Mortgaged Assets; and
- iii. all costs which the Mortgagee may incur and all amounts which the Mortgagee may disburse on the Mortgagor's behalf, and which costs and disbursements are recoverable from the Mortgagor in terms of this Bond or otherwise;

and upon the further conditions hereinafter set forth.

AND AS SECURITY for the due and proper payment of the Secured Obligations up to but not exceeding the sum of the Capital Amount and the Additional Amount, and for the due fulfilment by the Mortgagor of all its obligations under this Bond, the Appearer on behalf of the Mortgagor hereby declared to bind to and in favour of the Mortgagee and to pledge and hypothecate in terms of the Security by Means of Movable Property Act, 1993 (Act No. 57 of 1993), the movable property of the Mortgagor referred to in Annexure A which are rail locomotives,

(hereinafter referred to as the "**Mortgaged Assets**").

AND the Appearer, on behalf of the Mortgagor, declared to renounce the benefits arising from the legal exceptions *non numeratae pecuniae, non causa debiti, errore calculi, revision of accounts, no value received, excussion and division, de duobusvel pluribus reis debendi* and all other exceptions which might or could be taken to the payment of any amounts secured hereby, with the full force, meaning and effect whereof the Appearer declared the Mortgagor to be fully acquainted.

AND the Appearer, on behalf of the Mortgagor, declared that this Bond shall be subject to the following conditions and stipulations -

1. All payments required to be made by the Mortgagor shall be made by the Mortgagor in accordance with the provisions of the Transaction Finance Documents and the Mortgagor undertakes that it shall comply with all of its obligations under the Transaction Finance Documents to which it is a party on or before the due date thereof.
2. The Mortgagor shall, for so long as this Bond is in force, be subject to the provisions of the Facility Agreements, -
 - 2.1. keep all the Mortgaged Assets in good order and condition, fair wear and tear alone excepted;

- 2.2. insure (or procure the insurance of) in the name of the Mortgagor, with an insurance company approved by the Mortgagee, the Mortgaged Assets for the full value thereof from time to time in accordance with the provisions of the Facility Agreements;
 - 2.3. have the Mortgagee noted as the co-insured and loss payee in the insurance policies in respect of the Mortgaged Assets in an endorsement to the satisfaction of the Mortgagee;
 - 2.4. not be entitled to materially amend any of the insurances referred to in clause 2.2 above without the prior written consent of the Mortgagee;
 - 2.5. promptly and on due date, renew the policies referred to in clause 2.2 according to the conditions of such policies and continuously keep the Mortgaged Assets referred to in clause 2.2 insured as stipulated in the Facility Agreements;
 - 2.6. in the event of the Mortgagor failing to insure and keep insured the Mortgaged Assets in terms of clauses 2.2 and 2.5 or to produce proof of having done so, the Mortgagee is hereby irrevocably authorised (but not obligated) to effect such insurances and to pay all the costs of effecting the same and all premia and renewal premia and forthwith to recover the same from the Mortgagor; and
 - 2.7. comply in all material respects with and not breach any term or condition of the aforesaid policies.
3. The Mortgagor will not for so long as this Bond remains in force, without the prior written consent of the Mortgagee or save as expressly contemplated in the Transaction Finance Documents -
- 3.1. sell, cede, assign or in any manner deal with, alienate or dispose of any of the Mortgaged Assets;
 - 3.2. pass any further or other general bond or deed of hypothecation, nor sign any power of attorney to pass such bond or deed over the Mortgaged Assets;
 - 3.3. pledge or in any way further encumber any of the Mortgaged Assets; and
 - 3.4. do or willingly suffer to be done any act whatsoever whereby the Mortgaged Assets, or any of them may be taken into execution or in any way charged or encumbered.
4. If this Bond becomes enforceable under clause 6, the Mortgagee shall be entitled (but not obliged) to the extent permitted by law -

- 4.1. to claim and recover from the Mortgagor forthwith all and any sums for the time being secured by this Bond, whether then due for payment or not; and/or
 - 4.2. for the purpose of perfecting its security hereunder to enter upon the premises of the Mortgagor or any other place where Mortgaged Assets are situated and to take possession of such assets; and/or
 - 4.3. to sign or subscribe on behalf of the Mortgagor to all applications or agreements for transfer of licences, quotas, permits, registration certificates and the like which relate to the Mortgaged Assets; and/or
 - 4.4. to do all such other acts as may be necessary or desirable to record the sale, disposal and/or transfer, as the case may be, of the Mortgaged Assets or any of them; and/or
 - 4.5. to hold the Mortgaged Assets as security for the indebtedness of the Mortgagor to the Mortgagee arising under the Transaction Finance Documents and to retain such possession for so long as the Mortgagee may deem fit; and/or
 - 4.6. to dispose of the Mortgaged Assets or any of them by public auction or by private treaty in the Mortgagee's sole discretion and on such terms and conditions as the Mortgagee in its sole discretion may deem fit and to convey good value and free title to the purchaser or transferee thereof; and/or
 - 4.7. to have the Mortgaged Assets attached by legal process; and/or
 - 4.8. to execute upon all or any of the Mortgaged Assets; and/or
 - 4.9. to employ such other remedies and to take such other steps against the Mortgagor as are in law allowed; and/or
 - 4.10. at the Mortgagor's cost and expense appoint any advisors to assist the Mortgagee in exercise or protection of the Mortgagee's rights set out herein.
5. The Mortgagee shall apply the net proceeds of any recovery in reduction or discharge, as the case may be, of the Mortgagor's obligations to the Mortgagee arising under or in terms of the Transaction Finance Documents without prejudice to the Mortgagee's rights to recover from the Mortgagor any balance which may remain owing to the Mortgagee after the exercise of such rights. Should the total amount collected or recovered by the Mortgagee exceed the full amount of the Mortgagor's obligations to the Mortgagee, subject to the provisions of the Facility Agreements, the Mortgagee shall be obliged to refund such excess (after deducting any costs or expenses incurred by the Mortgagee) to the Mortgagor within 30 (thirty) days of the total amount having been collected by the Mortgagee, provided that the Secured Obligations have been fully, finally and irrevocably discharged.

6. Notwithstanding anything to the contrary herein contained, this Bond will become executable against the Mortgagor upon the occurrence of any Event of Default (as such term is defined in the Facility Agreements) under any of the Facility Agreements or any breach of whatsoever nature and howsoever arising by the Mortgagor of any of its obligations under this Bond.
7. A certificate signed by the Mortgagee or its duly authorised agent (whose authority and appointment need not be proved) reflecting the amount of the indebtedness of the Mortgagor under this Bond or under the Transaction Finance Documents, the fact that same is due and payable, the rate of interest payable thereon and the date from which interest is reckoned -
 - 7.1. will be *prima facie* proof of the amount of the indebtedness and the facts stated therein; and
 - 7.2. will constitute sufficient particularity for the purposes of pleading and trial in any action; and
 - 7.3. will, in the absence of evidence to the contrary, be sufficient proof for the purposes of obtaining provisional sentence, summary judgment or any other judgment or order in a competent court having jurisdiction.
8. No relaxation or indulgence, and no extension of time which may be granted by the Mortgagee, no failure by the Mortgagee to enforce compliance with the provisions of this Bond and (without derogating from the generality of the foregoing) no acceptance of payments after due date, whether on one or more occasions, shall be deemed to be a waiver in respect of any past or future breach of any of the terms and conditions of this Bond or estop or preclude the Mortgagee from insisting on and enforcing, without notice, its full rights hereunder.
9. No negligent acts or omissions (save in respect of gross negligence or wilful breach) by or on behalf of the Mortgagee in implementing its rights hereunder shall found a cause of action against the Mortgagee.
10. The Mortgagor hereby chooses *domicilium citandi et executandi* for all purposes under this Bond, whether in respect of court process, notices or other documents or communications of whatsoever nature, at the address set out in the Facility Agreements and all provisions relating to notices to the Mortgagor and the *domicilium citandi et executandi* of the Mortgagor as set out in the Facility Agreements are incorporated by reference in, and shall apply *mutatis mutandis* to, this Bond.
11. Notwithstanding anything to the contrary herein contained, the Mortgagee shall be entitled to allocate any moneys paid by the Mortgagor to the Mortgagee in accordance with the provisions of the Facility Agreements, as the Mortgagee may in its sole discretion determine.

12. This Bond shall not novate, cancel or affect any other securities at present held or which may from time to time be held by the Mortgagee and the Mortgagee shall be entitled to take action against the Mortgagor on this Bond and/or on any other securities in the event referred to in clause 6 of this Bond.
13. Without in any way limiting or affecting any of the other provisions of this Bond, all amounts due and owing from time to time and not paid by the Mortgagor to the Mortgagee under this Bond and/or the Transaction Finance Documents shall bear interest at the highest interest rate that the Mortgagee may charge in accordance with section 8.3 (*Default Interest*) of any of the Facility Agreements.
14. The Mortgagor shall pay all agreed legal expenses, costs and charges in drawing and completing the Power of Attorney and this Bond and procuring the registration of this Bond, and the costs of cancellation of this Bond, including any power of attorney and other documents necessary for that purpose, and in general all invoiced costs actually incurred, including costs between attorney and own client and collection commission, which may arise out of or in connection with the realisation of the Mortgaged Assets under this Bond.
15. All properly evidenced costs and expenses that may be incurred by the Mortgagee in order to preserve or enforce the Mortgagee's rights hereunder or in suing for the recovery of any sum that may become due which is secured hereunder, including but without limiting the generality of the foregoing, the costs on the basis of attorney and own client scale of all legal proceedings, the costs of execution, the costs and expenses of all notices that may be given in terms of this Bond, all premia of insurance that may be paid by the Mortgagee in terms hereof, any other payments or disbursements that may be made by the Mortgagee on behalf of the Mortgagor and the due performance by the Mortgagor of all its obligations hereunder shall be borne and paid by the Mortgagor promptly on first written demand.
16. All the costs referred to in clauses 14 and 15 shall be secured hereunder over and above the Capital Amount and up to but not exceeding the extent of the Additional Amount.
17. This Bond shall be and continue to be in full force and effect and be binding on the Mortgagor until the date upon which the Mortgagee notifies the Mortgagor that all Secured Obligations have been fully, finally and irrevocably discharged ("Release Date").
18. The provisions of this Bond shall be and continue to be of full force and effect and binding on the Mortgagor until the Release Date, notwithstanding -
 - 18.1. any latitude, indulgence, relaxation or extension of time which may be given or shown by the Mortgagee to the Mortgagor and/or any surety, indemnitor, intercessionary for the Mortgagor or any failure or delay by the Mortgagee in enforcing compliance with

the provisions of this Bond and (without derogating from the generality of the foregoing) any acceptance of payments after due date, whether on one or more occasions or any failure or delay by the Mortgagee in exercising any right, remedy, power or privilege hereunder or under the Transaction Finance Documents or any single or partial exercise of any right, remedy, power or privilege hereunder or thereunder; and/or

- 18.2. receipt by the Mortgagee of any dividend or other benefit in any liquidation of, or business rescue (as such term is defined and used in the Companies Act No. 71 of 2008) proceedings of, the Mortgagor or any compromise whether in terms of any statute or the common law; and/or
 - 18.3. the Mortgagee's release in whole or in part of any other security and/or any surety for the obligations of the Mortgagor; and/or
 - 18.4. any intermediate discharge or settlement of or fluctuation in any indebtedness or obligation of the Mortgagor to the Mortgagee in terms of the Transaction Finance Documents; and/or
 - 18.5. any legal disability affecting the Mortgagor.
19. Should the Mortgagor at any time fail to comply with any of its obligations under this Bond, the Mortgagee shall be entitled to take any reasonably necessary remedial measures as it may, in its reasonable discretion, determine at the cost of the Mortgagor. The exercise of such measures shall be without prejudice and in addition to the Mortgagee's rights in terms hereof arising from the Mortgagor's breach in question.
20. In this Bond, including the preamble, words importing any one gender shall include the other two genders and words signifying the singular shall include the plural and *vice versa* and any reference to "person" includes a natural person, a company, and an association or body of persons whether natural or not and whether incorporated or unincorporated. Capitalised terms used herein which are not defined in this Bond shall bear the meanings ascribed thereto in the Facility Agreements.
21. If any of the provisions of this Bond are found to be unlawful, unenforceable or invalid such provision shall be deemed to be severable from the remaining provisions of this Bond and shall, to the extent that the same is unlawful, unenforceable or invalid, be deemed to be *pro non scripto*.
22. The Mortgagor hereby covenants and undertakes that until the Release Date has occurred (such period is hereinafter referred to as the "Security Period") (but subject to and without prejudice to the provisions of the Transaction Finance Documents):

- 22.1.1. to take all steps reasonably required by the Mortgagee to preserve or protect the Mortgagor's interests and the interests of the Mortgagee in the Mortgaged Assets;
 - 22.1.2. to co-operate with the Mortgagee in connection with the registration of the security interest constituted hereby and to do all acts and things which it may be necessary for the Mortgagor to do in order to obtain and maintain such registration;
 - 22.1.3. to furnish to the Mortgagee from time to time such information and reports regarding the Mortgaged Assets as the Mortgagee may reasonably request; and
 - 22.1.4. to do or permit to be done each and every lawful act or thing which the Mortgagee may from time to time require to be done for the purpose of enforcing the Mortgagee's rights granted pursuant to this Bond in relation to any of the Mortgaged Assets and this Bond, and to allow its name to be used as and when reasonably required by the Mortgagee for that purpose.
23. The Mortgagor irrevocably, for value and by way of security to secure the interest of the Mortgagee in the Mortgaged Assets and the performance of the obligations owed to the Mortgagee, hereby appoints the Mortgagee and any person nominated for such purpose by the Mortgagee in writing under hand by an officer of the Mortgagee, severally as attorney and agent of the Mortgagor and in its name and on its behalf and as its agent to act and to execute and otherwise perfect and do any charge, mortgage, deed, assurance, agreement, conveyance, instrument, act or thing which the Mortgagor has failed to execute and do under the covenants, undertakings and provisions contained herein or in the Transaction Finance Documents or which may be required or deemed proper in the lawful exercise of any rights or powers hereunder or otherwise for any of the purposes of the security created hereby, and the Mortgagor hereby covenants with the Mortgagee to ratify and confirm all lawful acts or things made, done or executed by the Mortgagee in its capacity as attorney and agent as aforesaid.
24. The Mortgagee shall be entitled at any time and as often as it may deem expedient to delegate all or any of the powers and discretions vested in it by or in connection with this Bond in such manner, upon such terms and to such persons as the Mortgagee in its absolute discretion may think fit.
25. This Bond and the security hereby created shall be a continuing security and in particular (without limitation) shall not be, nor be considered as, satisfied by any intermediate discharge or payment on account of any liabilities or any settlement of accounts between the Mortgagor (or any other person) and the Mortgagee or any other act, event or matter whatsoever and shall only be cancelled as contemplated in clause 17, and this Bond shall, save as herein provided, extend to cover any sum or sums of money or other liability and obligations under the Transaction Finance

Documents which shall for the time being constitute the balance of the obligations secured hereby until all of the obligations have been paid and discharged in full.

26. This Bond and the security hereby created shall be in addition to and not in substitution for or derogation of any other security (whether given by the Mortgagor or otherwise) now or from time to time hereafter held by the Mortgagee in respect of or in connection with any or all of the obligations.
27. Save as expressly required by the terms of the Transaction Finance Documents, the Mortgagee shall not be obliged, before exercising any of the rights, powers or remedies conferred upon it by this Bond or by law, to:
 - 27.1. issue or initiate any proceedings or take action or obtain judgment against the Mortgagor or any other person in any court or tribunal;
 - 27.2. make or file any claim or proof in a winding-up or liquidation of the Mortgagor or of any other person; or
 - 27.3. enforce or seek to enforce the recovery of the moneys and liabilities hereby secured or any other security.
28. Without in any way limiting or derogating from any other provisions hereof, the security created by this Bond shall continue in full force and effect and shall not be discharged, impaired or otherwise affected by:
 - 28.1. any failure by the Mortgagee to take or enforce any other security or guarantee taken or agreed to be taken for all or any of the obligations under or pursuant to the Transaction Finance Documents or otherwise;
 - 28.2. any amendment, modification, variation, or supplement of all or any part of the obligations under the Transaction Finance Documents;
 - 28.3. any release or exchange of any security or guarantee now or hereafter held by the Mortgagee for all or any part of the obligations under the Transaction Finance Documents; or
 - 28.4. any other act, omission, matter, circumstance or event (including, without limitation, the invalidity, unenforceability or illegality of any of the obligations of the Mortgagor under the Transaction Finance Documents to which the Mortgagor is a party, or the bankruptcy, liquidation, winding-up, insolvency, dissolution, administration, reorganisation, placing under supervision for business rescue or amalgamation of, or

other analogous event of or with respect to, the Mortgagor or any other person) which, but for this provision, might operate to impair, discharge or adversely affect the rights of the Mortgagee hereunder or to impair, discharge or adversely affect the security hereby created.

29. Any settlement or discharge between the Mortgagee and the Mortgagor and/or any other person shall be conditional upon no security or payment to the Mortgagee by the Mortgagor or any other person being avoided or set aside or ordered to be refunded or reduced by virtue of any provision or enactment relating to bankruptcy, liquidation, winding-up, insolvency, dissolution, reorganisation, administration, amalgamation, business rescue or other analogous event or proceedings for the time being in force.
30. The Mortgagor shall, at its own cost and expense and at the request of the Mortgagee, promptly sign, seal, execute, deliver, acknowledge, file, register and perfect all such assurances, documents, instruments, agreements, certificates and consents and do any and all such acts and things as may be reasonably necessary or desirable or as the Mortgagee may reasonably request from time to time in order to perfect the security interest intended to be created by this Bond or to establish, maintain, protect or preserve such security interest or the rights of the Mortgagee under this Bond or to exercise and enforce its rights and remedies under this Bond in respect of the Mortgaged Assets.
31. The Mortgagee and/or the Mortgagee's duly authorised agent has the right at all reasonable times and on reasonable prior notice to the Mortgagor (save in the event of an Event of Default, in which case no notice will be required) to inspect the Mortgaged Assets and any premises in which the Mortgagor at any time holds and repairs the Mortgaged Assets (such premises being "Relevant Premises").
32. The Mortgagor is bound and obliged to pay promptly on due date –
 - 32.1.1. all rentals payable in respect of all offices, factories, warehouses and any other premises of whatsoever nature leased by the Mortgagor and in which the Mortgagor at any time carries on business or in which the Mortgagor at any time stores or repairs the Mortgaged Assets;
 - 32.1.2. all charges in respect of sanitation, water and electricity and any other dues, charges or levies of whatsoever nature payable by the Mortgagor to any landlord or local or other competent authority, in respect of any Relevant Premises, and on demand to produce receipts for such payments to the Mortgagee.
33. The Mortgagor shall give written notice of this Bond to the landlords of all premises leased by the Mortgagor, in which the Mortgagor stores or repairs the Mortgaged Assets, and shall obtain from

such landlords waivers to the reasonable satisfaction of the Mortgagee in respect of any hypothec or right of retention which any such landlord or landlords may have in respect of the Mortgaged Assets in such premises.

34. A copy of every notice so given is to be delivered to the Mortgagee, together with the waivers so signed by such landlords.
35. Notwithstanding the provisions of clause 33, the Mortgagee is entitled to give any notice as is contemplated in this clause and has furthermore the right to obtain any such waivers as the Mortgagee may deem fit.
36. The Mortgagor shall at all times comply with all relevant laws, by-laws and other regulations of whatsoever nature applicable to the Mortgagor, to the premises in which the Mortgagor carries on business or in which the Mortgagor at any time stores or repairs the Mortgaged Assets.
37. The rights of the Mortgagee under this Bond are cumulative, may be exercised as often as it considers reasonably appropriate and are in addition to its rights under general law. The rights of the Mortgagee (whether arising under this Bond or general law) shall not be capable of being waived or varied otherwise than by an express waiver or variation in writing by the Mortgagee; and in particular any failure to exercise or any delay in exercising any of such rights shall not operate as a waiver or variation of that or any other such right; any defective or partial exercise of any of such rights shall not preclude any other or further exercise of that or any other such right; no failure on the part of the Mortgagee to exercise and no delay on its part in exercising any right or remedy hereunder shall operate as a waiver; and no act or course of conduct or negotiation on the part of the Mortgagee or on its behalf shall in any way preclude it from exercising any such right or constitute a suspension or any variation of any such right.
38. Any waiver and any consent by the Mortgagee under this Bond must be in writing and may be given subject to any conditions thought fit by the Mortgagee. Any waiver or consent shall be effective only in the instance and for the purposes for which it is given.
39. The provisions of this Bond shall not be varied otherwise than by an instrument in writing executed by or on behalf of the Mortgagor and the Mortgagee.
40. This Bond shall be binding upon the Mortgagor and its lawful successors and permitted assigns.
41. The Mortgagor shall not be entitled to assign or transfer any of its rights, benefits or obligations hereunder to any person whomsoever without the prior written consent of the Mortgagee.
42. The Mortgagee may, upon notice to, but without the consent of the Mortgagor, assign or transfer all or any part of its rights, benefits or obligations under this Bond to any party to whom it cedes or delegates its rights and/or obligations under the Facility Agreements. Where the Mortgagee

assigns or transfers its obligations or any part thereof as aforesaid, the Mortgagor shall execute such documents as the Mortgagee may reasonably require to release the Mortgagee to the extent of the transfer or with a view to perfecting such assignment or transfer, or where reasonably necessary, shall at the cost of the Mortgagee, execute further security documentation in favour of the assignee or transferee in like form to this Bond. To the extent that any such cession, assignment, transfer or other disposal results in a splitting of claims, the Mortgagor irrevocably consents thereto.

43. Any amounts payable by the Mortgagor to the Mortgagee in terms of this Bond which do not have a stipulated date for payment thereof shall be paid by the Mortgagor within 30 (thirty) days to the Mortgagee on written demand.

THUS DONE AND SIGNED AT _____ on the day, month and year first
aforewritten in the presence of the undersigned witnesses.

AS WITNESSES:

1. _____

2. _____

qq: Mortgagor

QUOD ATTESTOR,

NOTARY PUBLIC

ANNEXURE A

RAIL LOCOMOTIVES

DESCRIPTION	SERIAL NUMBER	ENGINE NUMBER

SCHEDULE 9
OPERATIONS DISCLOSURE SCHEDULE

Transnet SOC LTD ("**Transnet**") has small operations outside of South Africa in Swaziland, Botswana, Namibia, Mozambique and Zimbabwe. Transnet has direct operations in Zimbabwe Freight Logistics, particularly rail operations. Offices are maintained in Zimbabwe solely for the administrative purposes.

The following are the cash flow generated from operations between Transnet and Zimbabwe (all figures relate to the actual cash flows for the year up to 31 March 2015):

1. Wagon hire – paid to Zimbabwe ZAR4,738 000
2. Wagon Hire – revenue received ZAR24,556,000
3. Haulage collected – ZAR676,000
4. Shunting services – ZAR900,000
5. Office hire – ZAR153,000
6. Revenue from export services – ZAR140,986,000
7. Revenue for imports services – ZARR24,405

Wagons move in and out of the country regularly. They are not held in Zimbabwe but are constantly roaming.

**SCHEDULE 10
LOCOMOTIVE MORTGAGE POWER OF ATTORNEY**

SPECIAL POWER OF ATTORNEY

I/We, the undersigned

[]

duly authorised hereto by a resolution of the Directors of

TRANSNET SOC LTD

Registration No. 1990/000900/30

(a limited liability company duly registered and incorporated in
accordance with the laws of the Republic of South Africa)

do hereby nominate, constitute and appoint -

AN EMPLOYEE OF EDWARD NATHAN SONNENBERGS INC.

with power of substitution to be my/our true and lawful agent in my/our name, place and stead to appear before a Notary Public and then and there as my/our agent to execute a Special Notarial Bond in the form of and subject to the terms of the draft Special Notarial Bond hereunto annexed and initialled by me/us for identification purposes, and generally for effecting the purposes aforesaid, to do or cause to be done whatsoever shall be requisite, as fully and effectually for all intents and purposes as I/we might or could do if personally present and acting therein, hereby ratifying, allowing and confirming all and whatsoever my/our said agent shall lawfully do or cause to be done in the premises by virtue of these presents.

Signed at _____ on _____ in the presence of the
undersigned witnesses.

WITNESSES:

1. _____
for and on behalf of
TRANSNET SOC LTD

2. _____

SIGNATURES**THE BORROWER**

For and on behalf of TRANSNET SOC LTD

By: Siyabonga Gama

Title: Acting Chief Executive Officer

Anoj Singh

Chief Financial Officer

Address: 43rd Floor Carlton Centre, 150 Commissioner Street, Johannesburg, 2001, Republic of South Africa

Telephone: +2711 308 2250


Fax: +2786 6864961

Email: Anoj.singh@transnet.net

Attention: Anoj Singh

THE LENDER

For and on behalf of CHINA DEVELOPMENT BANK CORPORATION



By: LI Gang

Title: Vice President of China Development Bank Corporation Henan Branch

Address: No. 266, Jinshui Road, Zhengzhou, Henan Province, P.R. China, China Development Bank Henan Branch

Telephone: +86-371-66000707

Fax: +86-371-66000620

Email: suzhanping@cdb.cn

Attention: Su Zhanping

