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**ACQUISITION OF 1064 LOCOMOTIVES FOR TRANSNET'S GENERAL
FREIGHT BUSINESS ("TRANSACTION"): INQUIRY**

REPORT

VOLUME VIII

155 - 5th Street Sandton 2196
Johannesburg South Africa
Private Bag 10015 Sandton 2146

Docex 111 Sandton
Tel +27 11 535 8000
Fax +27 11 535 8600

enquiries@werksmans.com
www.werksmans.com

MINUTES OF THE SPECIAL BOARD OF DIRECTORS OF TRANSNET SOC LTD MEETING NO. 14/1 HELD ON 24 JANUARY 2014 AT 16:10 IN BOARDROOM 4901, 49TH FLOOR, CARLTON CENTRE, 150 COMMISSIONER STREET, JOHANNESBURG

Resolution No/

4 MATTERS FOR APPROVAL

4.1 Acquisition of additional 100 Class 19E equivalent Dual Voltage Electric Locomotives and 60 Class 43 Diesel Locomotives

4.1.1 Management took the Board through the submission as' contained in the pack. The submission was taken as read. The purpose of the submission was to request the Board to:

- Note the risk to TFR MDS volumes through insufficient traction power resulting from the delay in the procurement of the 1054 Locomotives.
- Approve the investment in and procurement of 100 Electric Locomotives required for the Coal Export Line estimated at R3.8bn (excluding borrowing costs).
- Approve the confinement and award of the procurement for the 100 Electric Locomotives ("the 100 Electrics").
- Approve the investment and amendments in the Fleet Plan to procure 60 Class 43 Diesel Locomotives ("the 60 Diesels") for General Freight estimated at R1.8bn (excluding borrowing costs).

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Approved for Release: 12-15-2014/RS/jal

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- Approve an extension of the current Class 43 Diesel Locomotives contract for 60 additional locomotives.
- Delegate authority to the GCE to sign and conclude all relevant documents to give effect to the above resolutions, including the award and process approval.

4.1.2

Mr Sharma stated that the matter was dealt with at the Board Acquisitions and Disposals Committee ("Committee"). The request for a confinement had been on the Committee's agenda for 3 months, and the matter was extensively deliberated by the Committee. The Company currently has a contract with *General Electric South Africa Technologies* in terms of the Class 43 diesels. The proposal was to confine the 100 Electrics to *China South Rail*. There were adverse media reports on the previous *Mitsui* confinement process. To manage reputational matters, the Company seeks to advance to a new supplier. Management indicated that the TFR Locomotive Fleet Plan was first approved by the Board in April 2011, and updated with the 1064 GFB Locomotives submission. The proposed locomotives acquisitions are in line with the Fleet Plan and were budgeted for in the MDS. The delay in the 1064 acquisition has placed GFB volumes at risk. The risk will be mitigated by the urgent acquisition of the locomotives. The heavy haul 100 Electrics will be deployed in the Coal Export line and will release 125 locomotives that will be used on GFB pending delivery from the 1064 programme. The 100 Electrics form part of the already approved Fleet Plan. The 60 Diesels also fill the gap pending delivery from the 1064 programme. The 60 Diesels were not part of the approved Fleet Plan and the submission requested an amendment to the Fleet Plan to include the 60 Diesels.

4.1.3

Management informed the Board that the 1064 Locomotives were delayed due to the withdrawal of the PPPFA exemption. The submission proposed an accelerated procurement to mitigate General Freight MDS volumes at risk by confining 100 Electrics to *China South Rail* and extending the current Class 43 Contract with *General Electric South Africa Technologies* by 80 locomotives. The accelerated acquisition will mitigate the MDS shortfall by at least a year with its full effect realised commencing 2014/15FY. The volumes mitigated increases from 6.2mt for the 2014/15FY to 15.1mt for the 2016/17FY and the cumulative income protected will be R9.1bn for the 2013/14FY to 2016/17FY. The confinement to *China South Rail* and extension to *General Electric South Africa Technologies* contract was motivated on the basis of urgency. The accelerated acquisition does not put the MDS cash flow at risk and the 1064 acquisition remains unaffected. The acquisitions are funded from the current MDS. The delay in the 1064 locomotives will extend its funding to beyond the MDS period. The Diesels were in addition to the approved Locomotive Fleet Plan but accord with the fleet strategy. With a year's delay in the 1064 procurement, the 60 Diesels will fill the gap of the first year.

4.1.4

Management stated that the 100 Electrics business case articulated the benefits of the earlier than previously planned delivery of the locomotives to the Coal Export line. TFR was in the process of acquiring 143 Class 43 Diesel Locomotives from *General Electric South Africa Technologies* (which have been delivered over the past 2 years and have proven to be a capable locomotive). Given the MDS volume shortfall, it was proposed that 60 Diesels be acquired to further mitigate the volume risk as the 1064 programme is likely to come on stream in 2015. The procurement process was carefully considered, with the aspects considered articulated as follows:

- **Type:** The 100 Electrics are 26 ton per axle locomotives for heavy haul use to be deployed on the Coal Line. The 599 Electrics in the 1064 are 22 ton per axle locomotives for GFB use.
- **Delivery:** The 60 Diesels were similar to the 465 of the 1064, but the motivation for extension as contained in the submission was urgency due to the overall delay in the 1064 programme. Including the 60 Diesels in the 1064 will not address the delay or urgency.

4.1.5

Management indicated that due to the urgency of the matter, the confined/extended contract option was the recommended option. The proposed procurement process will solicit locomotives in the shortest possible time and thus mitigate the potential shortfall in

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MDS volumes. The reasons of urgency were set out and the complementary benefits of the recommended option were highlighted. The arguments for an extension to the *General Electric South Africa Technologies* contract were similar to those advanced for confinement and are motivated on the basis of urgency, complemented by standardisation and goods largely identical to those previously executed.

1.7

Mr Gazendam sought clarity if the recommendation from the Committee was unanimous. He stated that the 60 and 100 locomotives were being awarded to the same entities recommended for the 1064 transaction, and requested Management to ensure that the matter is dealt with sensitively in the media. Mr Skosana stated that the Committee extensively deliberated on the matter and requested the Committee to share critical matters that were an impediment on the transaction. Mr Sharma informed the Board that the Committee was of the view that the initial business case was not properly articulated. Further, the Committee had considered the reputational risks linked to confinement processes. However, the Committee was subsequently convinced by the revised business case and comforted by the fact that the 160 locomotives were awarded to the same entities that were being recommended for the 1064 transaction. Management informed the Board that the Committee had also requested the Company to explore alternative methods for acquisition e.g. leasing options of the locomotives. To this effect, the Company will procure 23 second hand locomotives from Australia.

RESOLVED that the Board:

- Noted the risk to TFR MDS volumes through insufficient traction power resulting from the delay in the procurement of the 1064 Locomotives.
- Approved the investment in and procurement of 100 Electric Locomotives required for the Coal Export Line estimated at R3.8bn (excluding borrowing costs).
- Approved the confinement and award of the procurement for the 100 Electric Locomotives to CSR.
- Approved the investment and amendments to the Fleet Plan to procure 60 Class 43 Diesel Locomotives for General Freight estimated at R1.8bn (excluding borrowing costs).
- Approved an extension of the current Class 43 Diesel Locomotives contract for 60 additional locomotives to *General Electric South Africa Technologies (Pty) Ltd.*
- Delegated authority to the GCE to sign and conclude all relevant documents to give effect to the resolution, including the award and process approval.

14/1/1



**MINISTER
PUBLIC ENTERPRISES
REPUBLIC OF SOUTH AFRICA**

Private Bag X15, Hatfield, 0028 Tel: 012 431 1118 Fax: 012 431 1038
Private Bag X9078, Cape Town, 8000 Tel: 021 461 6378/7 Fax: 021 465 2381/461 1741

Mr. Mafika Mkwanazi
Chairman
Transnet SOC limited
P.O. Box 72501
Parkview
Johannesburg
2122

Tel: 011 308 2309
Fax: 011 308 2312

Dear Mr. Mkwanazi

Application to the Shareholder Minister in terms of the Public Finance Management Act (PFMA) for the acquisition of 100 dual voltage electric locomotives for the export coal line

Your application dated 10 April 2014 refers.

Whilst understanding that the Market Demand Strategy targets must be achieved by Transnet as committed, matters of concern remain existent in the latest application received in aim of mitigating the delay of the 1064 locomotives delivery.

I appreciate that this acquisition will assist in realizing a portion of the Market Demand Strategy volumes and also avoid revenue losses, thereby contributing to the road to rail migration. While volume growth and retention is the basis of the business case to acquire these additional locomotives, the

trend from previous years depicts that Transnet has consistently moved significantly lower than forecasted volumes. This therefore fuels the concern of the Department as to how realistic the assumptions are, which underpin the forecasted volume growth and therefore the capital investment programme needed to meet the assumed volume targets. While Transnet is encouraged to continue to stimulate the economy through capital investment, it remains a key focus of the Department to ensure that the capital programme is optimized and investments are made in the right areas.

In an effort to understand Transnet's rationale in the investment allocation, Transnet is requested to indicate the current capacity of the corridors in which the cascaded locomotives are expected to be deployed, as well as the reasons as to why those corridors were selected. In addition, Transnet is further requested to provide the incremental volumes expected to be derived for each of those corridors as a result of the deployment. This will assist and enable the Department to track the volume benefits of this acquisition.

Despite the benefit of increased traction capacity from additional locomotives, this project would be expected to also yield efficiency benefits. However, these benefits have not been quantified in the business case. In the absence of scientifically quantified benefits linked to the investment programme, it is almost impossible to hold Transnet accountable to deliver on efficiency improvements that are expected to be derived from the capital investment. Transnet is therefore requested to provide quantified and reliably measurable efficiency gains that should be extracted from this acquisition. This information should be provided by specific corridors or by business units as per the deployment of these locomotives.

I am also aware that post the submission of this application; there were engagement between officials of the Department and those of Transnet. As per those engagements, the following information was requested from Transnet and is still outstanding:

- Transnet was requested to supply the determined impact/total value add of the project to GDP.
- Since Transnet has already concluded the contract for this acquisition, subject to PFMA approval, I therefore request that Transnet furnish me with a copy of the agreement concluded with China South Railway (CSR) as this will provide an in depth understanding of the transaction that Transnet is entering into and enable the Department to properly assess the risks pertaining to the proposed transactions.

- Considering that the 100 locomotives was not indicated by Transnet as part of the original mitigation action for the risk of delays in the 1,064 locomotives delivery, Transnet needs provide reasons for the deviation from the initial risk mitigation plan.
- In relation to the confined procurement plan for this application; from a risk perspective the concern is the possible litigation challenges that can come from other possible suppliers, thus impacting on the project execution and delivery timelines. More information on Transnet's mitigation plan in this regard is therefore required.
- Transnet to provide further information about the types of jobs/skills to be created through this transaction. The SOC is further requested to specify how many jobs are expected to be created and retained in downstream enterprises.
- Considering that this is a R4.84 billion transaction, the closed tender process could have been looked into rather than the confinement option as this would reduce Transnet's risk exposure to litigation challenges. Transnet is therefore requested to provide a full explanation as to why a closed tender process was not considered for this transaction.
- The business case has not provided a proper risk assessment of the project and the mitigations thereof. This would further assist in the Department's assessment of this business case.
- From a Procurement and Supplier Development (SD) perspective, since the tender was confined to one supplier, the Department would like review the SD commitments, the enforceability of these commitments and the current performance of this supplier against set targets on contracts that are currently in place. Transnet is therefore requested to provide all contracts with China South Rail (CSR) as well as a report on how CSR is performing against current SD commitments.
- Indication of whether other alternatives were considered is not evident in the business case. Whilst the 100 locomotives acquisition is one mitigation factor that is expected to partially mitigate the delays in 1064 locomotives delivery, what other alternatives were considered to mitigate the impact of the delay of the 1064 locomotive delivery.

- Moreover, the amount indicated in the certified excerpt from the minutes of the special Board of Directors meeting held on 24 January 2014 differs from the amount indicated in the Transnet's section 54 application. I therefore request a resolution of the board of directors approving the transaction at the current transaction amount of R4.84 billion as the one indicated in the section 54 application relates to the initial approved amount of R3.9 billion.

Lastly, it is of grave concern to me that Transnet has failed to notify me timeously of a transaction which is of such significance in your business, even if the projected quantitative value was initially estimated below the monetary threshold for approval.

The significance and materiality framework agreed to in the 2013/14 Shareholder Compact, clearly stipulates that Transnet should provide me with notification on all acquisition and disposal of assets above R2 billion. It would therefore have been my expectation that after the Board had approved this acquisition, prior to entering into negotiations with the supplier, Transnet would have provided a notification. This failure to provide a notification timeously, has denied the Department an opportunity to review and engage on pertinent issues regarding this acquisition earlier in the process. Going forward, Transnet should involve the Department far earlier in its project planning phase so as to allow for alignment between the Department and Transnet.

In spite of the concerns raised above, I do acknowledge the business need for the acquisition of these additional 100 locomotives for the coal line in order to avail more locomotives to be cascaded to the General Freight Business. I therefore, grant Transnet the approval to acquire the 100 locomotives subject to Transnet addressing the concerns raised above and providing the Department with the outstanding information as outlined above.

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The Department therefore requests Transnet to fully submit the requested information on or before 19 June 2014. As per normal, continual interaction is imperative so as to ensure that there is no misalignment/confusion on the expectation.

I trust that you will find the above in order.

Yours sincerely



MR. MALUSI GIGABA, MP
MINISTER OF PUBLIC ENTERPRISES
DATE: 2014/05/23

Linda Mabaso, Chairperson

TRANSNET



Our Ref No: LM/18192

Mr Nhlanhla Nene, MP
Minister of Finance
Private Bag X115
PRETORIA
0001

Fax: 012 315 5126

Dear Minister Nene

Ref M4/1/20 (921/14): TRANSNET'S ACQUISITION OF 100 DUAL VOLTAGE LOCOMOTIVES FOR THE EXPORT COAL LINE

Your letter with the above reference dated 29 September 2014 was received by Transnet and Transnet welcomes your correspondence in relation to the above transaction.

This letter seeks to respond to the queries raised in your letter and provide some level of assurance that the thinking applied before entering into the transaction to acquire the locomotives is in accordance with the highest level of governance. It should be noted that the acquisition is fully aligned to the strategic direction of the Company as the investment is included in the Market Demand Strategy arising from a business need.

'1. Comprehensive analysis of five procurement options considered...'

Delays were experienced in the tender process for the acquisition of the 1064 locomotives due to the following:

- Aggressive timelines built into the tender, resulted in requests for extensions and clarifications.
- Process to obtain PPPFA exemption was lengthy and complicated
- Evaluation basis could only be made available to bidders after exemption from PPPFA was obtained
- Evaluation of bids could only commence after PPPFA exemption was obtained
- The extensions and clarifications requested above had to be adequately addressed with timeline extensions granted as a challenge to the award would impact award of the contract
- Transnet's appetite for a legal risk and challenge of the award is minimal given the tractive capacity requirements, we believe that the extended tender process mitigates the legal and challenge of award risk.

The business need was first established which basically looked at the situation with the tender process for the acquisition of 1064 locomotives for Freight Rail's General Freight Business (GFB). GFB volumes were at risk and the main reason for this was a shortfall in tractive capacity. The fastest way to bring tractive capacity into the system given the constraints in GFB is to accelerate the acquisition of locomotives planned for the Coal Line.

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 2538

Directors: ME Mkwandisi (Chairperson) B Molefe* (Group Chief Executive) MA Panucchi Y Forbes HD Gazendam NP Mkhosi ana N Moolo IM Sharma JB Skosana
E Tshabalala DLJ Tshope A Singh* (Group Chief Financial Officer)
*Executive

www.transnet.net

Group Company Secretary: ANC Ceba

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This would free up existing locomotives on the Coal Line to service the GFB sector as an interim measure until the 1064 contracts commence delivery. The cascaded locomotives from the Coal Line will then be retired as the locomotives from the contracts of the 1064 are brought into service. The 100 locomotives for the Coal Line are part of the fleet plan and 7 year capital investment plan and were being accelerated, it is not an addition to the fleet plan but an acceleration of the investment.

The critical issue in this instance was one of timing, basically fast tracking the introduction of tractive capacity to mitigate against MDS volume risk in the short to medium term.

The 1064 locomotive tender process was conducted at the same time, indicating that Transnet had the benefit of recent submissions from suppliers for purposes of comparison and improving our negotiating position:

There have been no objections or challenges raised to date thus no risk pertaining to commencement of production of the locomotives as all suppliers have accepted the decision.

With timing being of crucial importance, the options considered were carefully explored, however once a particular option was explored and proven to be unviable to address the above crucial need, it was discarded without any further analytics being performed.

- Do nothing: This would clearly not address the business needs as volume risk would still exist.
- Go out on open tender: This approach would take considerable time to execute just the tender process. The objective of bringing tractive power on as soon as possible to mitigate short to medium term MDS volume risk would not be met. This option was thus discarded due to the timeline constraint.
- Extend current 20E contract for the 95 locomotive acquisition: The major reason for not extending the 95 contract is that the locomotives for the Coal Line are of a different specification. Locomotive specification is a key component of any locomotive manufacturing contract. Changing specifications on an existing contract will create significant complications and potentially a contract on which the terms and conditions are not enforceable. The process followed for this acquisition was an open tender process and extending the current contract would result in a material amendment such that we may need to go out on tender again as losing bidders could challenge that their bids would have been different had they known about the final quantum of locomotives and possibly resulted in them winning the tender.
- Leasing: The option to lease locomotives was explored. The locomotives to be leased are small in quantity and 30 years old and would not address business need. The impact of leasing the locomotives will be minimal.
- Confinement to China South Rail (CSR) which is the chosen option was embarked upon due to the following:
 - Urgency of the process to acquire locomotives to satisfy tractive power requirements
 - Locomotives are known as CSR are currently manufacturing the 95 locomotive contract which is progressing well from a quality and reliability perspective.
 - CSR have produced the fastest prototype and delivery of the first locomotive within 6 months of completing the design freeze.
 - CSR has production facilities in China that can produce 2000 locomotives per



annum and can produce locomotives with immediate effect. With the 95 locomotives currently being built by CSR, they have the learning curve benefits in terms of the production process.

- o CSR is a known supplier of locomotives and they have performed well on the last two tenders for electric locomotives (95 and 599/1064) in terms of:
 - Technical capability
 - Capacity to deliver the required product
 - Supplier development
 - Commercial and
 - Transformation
- o Confinement to CSR meets the criteria for confinement as set out by the Board of Directors.

'2. Detailed evidence on how the confinement method was selected as the preferred option'

There are basically two approval hurdles for confining a procurement event:

1. In terms of the Delegations of Authority, confinement of Tenders to a value exceeding R1 billion may only be approved by the Transnet Board of Directors
2. In terms of the PPM, confinement of tenders may only be approved under the following circumstances:
 - a. Where a genuine unforeseeable urgency has arisen. Such urgency should not be attributable to a lack of planning, however where an urgency has arisen due to a lack of planning, urgency can be relied upon as grounds for confinement. In such cases action must be taken against individual(s) responsible for the bad planning.
 - b. The goods/services are obtainable from one or limited suppliers for instance patented/proprietary goods or OEM spares and components. Operating Divisions are however required to provide evidence that there are no new entrants to the market who could also be approached.
 - c. For reasons of compatibility and standardisation of existing goods and services. A case must be made that deviation from existing standardised goods and services will cause major disruption. If not, confinements based on standardisation will not be considered.
 - d. When goods or services being procured are highly specialized and largely identical to those previously executed by that supplier and it is not in the interest of the public or the organisation to solicit other offers, as it would result in wasted money and/or time for Transnet. When this particular ground is intended to be used as a ground for confinement, it is important to note that all pre-requisites must be satisfied:
 - i. The goods or services must be highly specialized
 - ii. Almost identical to previous work done and
 - iii. Approaching the market again would result in wasted money and time

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With the above framework in place the conditions applicable for the transaction to meet the criteria for confinement is detailed as follows:

Paragraph (a) is applicable in this instance as a genuine unforeseeable urgency has arisen. The timelines for the tender process for the acquisition of 1064 locomotives were not realistic. Certain delays were encountered which resulted in timelines moving out. These delays include:

- Development of the business case to obtain first time approval from all approval gates (Transnet Exco, Board Acquisitions and Disposals Committee, Board of Directors and Shareholder Minister).
- The tender for the locomotives is large and complicated and with aggressive timelines built into the tender there were requests for extensions and clarifications.
- The process to obtain PPPFA exemption was lengthy and complicated and:
 - Bids could only be evaluated after obtaining PPPFA exemption
 - The evaluation basis could only be made available to bidders after PPPFA exemption was obtained.
- The extensions and clarifications mentioned above would have to be adequately addressed with timeline extensions granted as a challenge to the award would impact the award of the contract.

As evidenced above the delay experienced on the 1064 tender process is not attributable to poor planning by an individual or group of individuals.

Complementing "ground (a) – urgency" for confining a tender are grounds (b) – limited number of suppliers, (c) - standardisation and (d) goods are largely identical to those previously executed.

- (b) Locomotives are highly specialized with only a few suppliers worldwide.
- (c) There are currently 21 different locomotive models in the fleet. This places unnecessary operational complexities and cost burdens in terms of driver deployment and utilisation, spares holding, strategic spares holding and maintenance facilities and practices. The locomotives are largely the same as currently being procured on the acquisition of 95 locomotives contract, a significant level of standardisation can be achieved through confinement.
- (d) Locomotives by their nature are highly specialized and the 100 Coal Line locomotives are essentially similar to those already being acquired (95 locomotives). In addition, Transnet would incur wasted time and money in approaching the market due to the following:
 - CSR has been identified as the best bidder during the open tender process to appoint a contractor for manufacture of the 95 locomotives
 - Both these tenders (95 and 100) include Board approved procurement methodology for maximizing supplier development, whilst ensuring the highest quality standards and commercial offering.
 - Transnet has recently invested a large amount of time, human capital and money in evaluating the tenders and going through another tender process would not be efficient given the urgency required from a traction capacity perspective.
 - The Mitsui contract which has been recently completed was embarked on

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- when criteria such as supplier development were not a key focus area. As a result Mitsui did not fare well in the most recent tenders issued by Transnet.
- o Confining the contract to Mitsui would result in them having a monopoly for the supply of locomotives to the Coal Line. Transnet found this concentration risk unacceptable as the downstream impact in terms of cost of spares, strategic spares and tooling would place Transnet in a vulnerable position.

The decision to confine has been justified through paragraph (a) of the grounds for confinement contained in the PPM, however the table below provides a high-level summary of the other grounds that further enhance the decision to confine:

Ground	(a)	(b)	(c)	(d)	✓
				(i)	✓
	✓	✓	✓	(ii)	✓
				(iii)	✓

'3. Details of Transnet's current contract with CSR with emphasis on compliance with legislative requirements'

The PPPFA was followed and the 90/10 rule applied.

Supplier development commitments contained in the contract currently in production (95 electric locomotives for GFB) are as follows:

Category	Amount
Total	R1787m (65% contract value)
Actual to March 2014	R441m
Broken down as follows:	
Localisation	R163,4m
Skills Development	R46,9m
Investment Plan	R92,0m
Industrialisation	R136,2m
Small Business	R0,1m
Rural Development	R2,6m

'4. Risk Management plan to mitigate against all possible risks that may derail the project'

The acquisition of 100 locomotives is in itself a risk mitigation plan against the interim volume shortfall of the MDS over the next two years due to delayed delivery on the 1064 locomotive acquisition. A risk mitigation plan has been developed for the acquisition of 1064 locomotives for GFB. This plan was developed with the entire locomotive acquisition programme in mind which includes:

- 95 GFB electric locomotives,
- 1064 GFB locomotives,



- 100 Coal Line electric locomotives and
- 60 GE diesel locomotives.

The risk mitigation plan developed for the 1064 locomotives is thus applicable to the 100 Coal Line locomotives and is the worst case scenario eg. All risks have been rated as Level 1 (highest priority, red, considered by Board and Exco and action plans are to be developed and effected within 6 months of the risk being identified), however rail infrastructure risk on the Coal Line is not high as the GFB network. The risk plan at a high level covers the following risks:

1. Delivery delay
2. Rail Infrastructure
3. Energy supply
4. Market
5. Customer
6. Operational readiness
7. Financial
8. Production
9. Infrastructure
10. Logistical
11. Human capital
12. Technology
13. Material
14. Security
15. Compliance
16. Project management
17. Safety, health and environment
18. Quality management

As is evident from the above list, a comprehensive plan was developed and is attached as Annexure A.

Engagement workshops were held with the DPE together with National Treasury on the PFMA application to acquire 100 Locomotives for the Coal Line. A summary of the notes is provided (Annexure B) for your ease of reference. The notes were circulated in response to queries raised by the Minister in the letter of approval of the investment. It was unfortunately not copied to the National Treasury.

"Informed decision to be reached regarding the acquisition of the locomotives"

The request to acquire the locomotives was approved by the Minister of Public Enterprises on 23 May 2014. Approval letter from the Minister of Public Enterprises attached as Annexure C.

Kindly note that in November 2011 a request in terms of the PFMA was mistakenly made to both the DPE and National Treasury, Transnet were duly informed that approval of the

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Investment is not part of the National Treasury's responsibility (letter from the Minister of Finance attached as Annexure D) but that of the Shareholder Minister. This is a correct interpretation of the PFMA and National Treasury is required to be informed of the transaction. This has been Transnet's approach since (request approval from the DPE and notify National Treasury).

In the interests of information sharing and integration, both the DPE and National Treasury representatives are invited to all engagements relating to section 54 PFMA applications and quarterly reporting on progress of the Infrastructure rollout plan. These joint engagements have been working well with good cooperation between the various Departments and Transnet.

The acquisition of the 100 locomotives for the Coal Line has been accelerated. Delivery of the 100 Coal Line locomotives has commenced with 14 locomotives having been delivered by mid- February 2015. These locomotives are in various phases of testing at the OEM's and TFR's premises.

I trust that the response provided together with annexures gives you an acceptable level of assurance that the transaction entered into subscribes to the highest standards of governance and complies with all legislative requirements.

Please do not hesitate to contact my office should you require further clarity on any matter relating to the acquisition of 100 locomotives for the Coal Line.

Kind regards

Linda Mabaso

Chairperson

Date: 31/03/2015

CC: Ms L Brown, MP
Minister of Public Enterprises

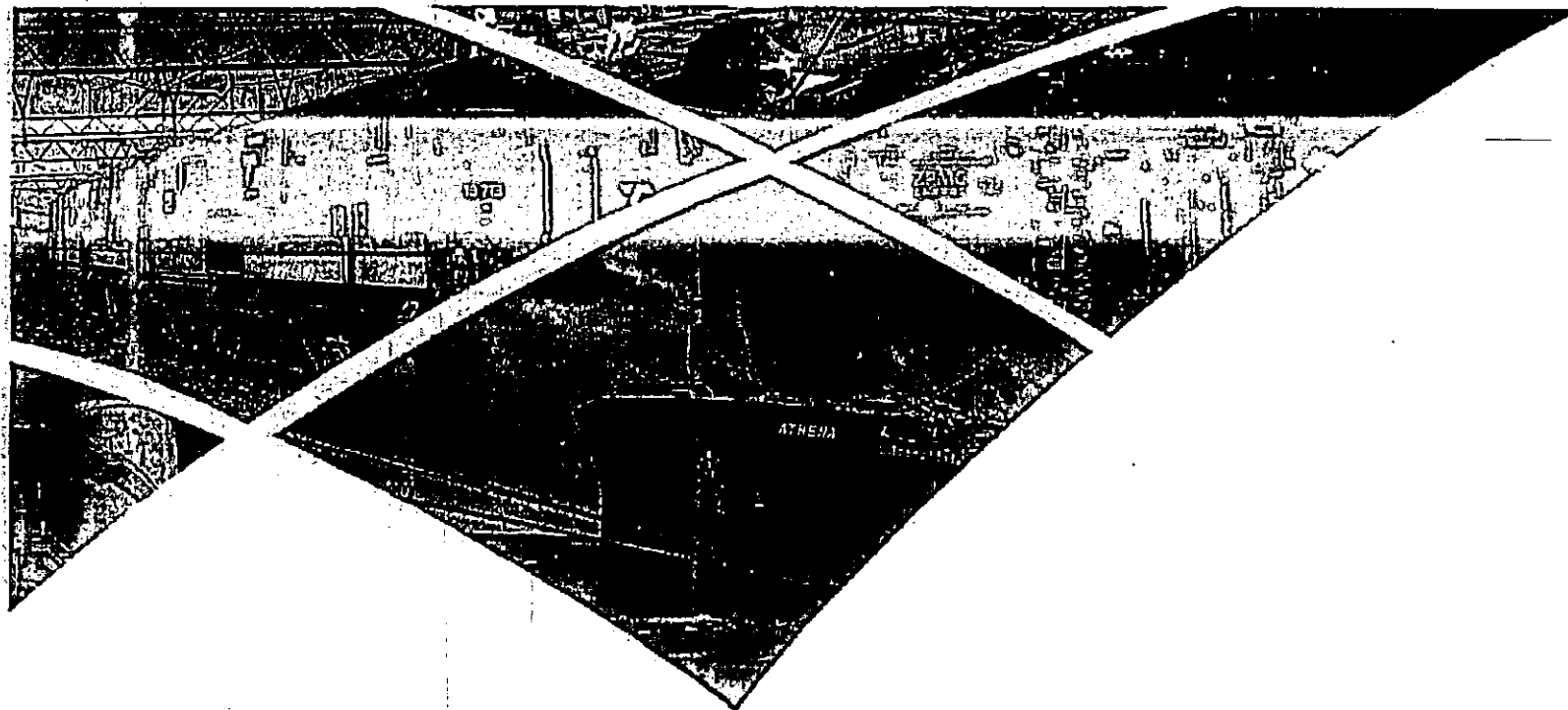
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Annexure A

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Acquisition of 1064 locomotives for TFR's General Freight Business: Risk Management Plan

19 September 2014



Background – Accelerated Loco Delivery and Associated Business Impacts

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Risk Assessment Context

During the workshops the following principles were considered:

- The assessment was limited to the identification of the locomotive delivery risks and mitigation strategies.
- The relationship between rail infrastructure and rolling stock was considered in the risk assessments.
- Issues relating to Opex/Capex affordability were considered.
- TE is part responsible (as sub-contractor) for the building of the locomotives and contracting with the OEM (as lead). The contractual relationship for the delivery of the locomotives is therefore between TFR and the OEM.
- TE, in the capacity as landlord, is providing the production facilities to the various OEMs.
- Customers are not investing at the same rate as anticipated, which could lead to delayed benefit realisation.
- Order of magnitude of delivering the 1064 locomotives and the organisational change needed should not be underestimated.

Risk Excluded from the Assessment

Post-productions risks such as maintenance, redundant equipment and production facilities, were not included in the assessment.

Risk Rating

It was an unanimous decision that all risks should be treated as Level 1 risks and be treated as stipulated in the Transnet ERM Methodology.



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Business Risks: Level 1

Risk	Risk Description	Mitigating actions
Loco Delivery Delay Risk	<ul style="list-style-type: none"> ▪ OEM's / Sub-contractors unable to meet contract delivery commitment ▪ Capacity and capability constraints 	<ul style="list-style-type: none"> ▪ OEMs and subcontractors to finalise the subcontractors agreement ▪ Locomotive governance steering committee to provide oversight on the adherence to delivery milestones ▪ Continuous engagement between OEMs and TFR regarding delivery progress ▪ Suppliers/ subcontractors to escalate issues relating to late delivery immediately to TFR ▪ Vigorous contract management ▪ Should locomotive delivery be delayed, subsequent run-out of the old fleet will also be delayed (increased maintenance costs and possible locomotive failures) ▪ Structured quality inspection programme to be undertaken by TFR
Rail Infrastructure Risk	<ul style="list-style-type: none"> ▪ New locomotives will be traversing fatigued rail infrastructure ▪ Infrastructure failure remain/deteriorates which will lead to operational disruptions ▪ Affordability of Capex, Copex and Opex ▪ RSR technical standards threatens TFR licencing conditions and penalties 	<ul style="list-style-type: none"> ▪ Continuation and improvement of rail network Copex, Opex and sustaining Capex programmes ▪ Achieve of "A" standard network to match locomotive requirements (as dictated by the RSR) ▪ Submission of business case to Capic (Nov 2014) to ensure "A" standard rail infrastructure ▪ Selective investment based on high yield commodity corridors ▪ Developing scenarios to consider various affordability options
Energy Supply Risk	<ul style="list-style-type: none"> ▪ Inherent risk of Eskom power interruptions impacting tonnage delivery 	<ul style="list-style-type: none"> ▪ Explore alternative power generation initiatives (medium to long term option)



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Business Risks: Level 1

Risk	Risk Description	Mitigating actions
Market Risk	<ul style="list-style-type: none"> ▪ Customer readiness for rail ▪ Low economic growth/ contraction ▪ Volatile / uncertain demand from Eskom ▪ Fluctuating mining commodities' pricing impacting demand – also from Botswana 	<ul style="list-style-type: none"> ▪ Aggressive marketing of TFR's product offerings ▪ Annual volume validation with customers ▪ Written commitment and confirmation from customers ▪ Implementation of take or pay contracts for Mega Rail customers ▪ Explore contractual alternatives to limit the risk exposure of investments made for customers who do not meet volume commitments ▪ Implementation of aggressive New Road to Rail strategy and opportunities identification
Customer Risk	<ul style="list-style-type: none"> ▪ Total logistics chain, address customers' ability to deal with increased freight – siding and loading equipment / facilities 	<ul style="list-style-type: none"> ▪ Identification of key customer constraints ▪ Customer engagement to explore solutions to effectively address loading and offloading facilities availability and reliability
Operational readiness risk	<ul style="list-style-type: none"> ▪ TCP, TE, TPT and Rail Network capacity to execute projects supporting the locomotive deployment. ▪ Acceptance testing readiness ▪ Driver training and readiness ▪ Infrastructure material supply & transport – transporting long rails ▪ Material availability – e.g. supply of rail, ballast, sleepers etc. 	<ul style="list-style-type: none"> ▪ Integrated capital project planning between TCP, TE, TPT and Rail Network to ensure alignment across the value chain ▪ Operational readiness plans have been effected in preparation for the locomotive deployment (e.g. training of train drivers and maintenance staff; acquisition of upfront spares, tools and facilities) ▪ Orders for the procurement of railway material done a year in advance. ▪ Locomotive execution strategy - four tier governance structure (Executive Sponsor, Steering committee, Locomotive Owners team, Programme Director) ▪ Establishment of a Programme Management Office

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Business Risks: Level 1

Risk	Risk Description	Mitigating actions
Financial Risks	<ul style="list-style-type: none"> Non-payment or delays in payment to TE by the appointed OEMs Termination of the contract by OEM's Increase in the Project Input Cost (energy, electricity, security, steel and etc.) Corruption, fraud and other forms of criminality 	<ul style="list-style-type: none"> Existing Finance procedures and processes Project Steering Committee Regular project meetings Daily production meetings In-line/hold point inspections for detecting defects earlier Energy saving initiatives Ongoing review of security measures Fraud risk strategy Systems controls – Procurement and Finance
Production Risk	<ul style="list-style-type: none"> Inability to ensure a timeous manufacturing of the required Locomotives as scheduled 	<ul style="list-style-type: none"> Project plan Daily production meetings aimed at tracking progress Adequate Human Resource Allocation Financial Commitment
Infrastructure Risks	<ul style="list-style-type: none"> Energy supply - load shedding Inadequate machinery and equipment capacity to ensure successful completion of the project Delay in the establishment/purchase of the required Facilities/Equipment for the project 	<ul style="list-style-type: none"> Electricity backup systems (e.g. generators) Maintenance plans across TE operations Prioritisation of Capex list In-house modifications Capex approval processes
Logistical Risks	<ul style="list-style-type: none"> Logistical and warehousing constraints Shipment and transportation logistics constrain Non conforming material for components and reverse logistics 	<ul style="list-style-type: none"> Logistics Management Strategy for 1064 Dedicated logistics human resources Dedicated warehouse for 1064 scope Inspection of material on arrival Project Steering Committee

Information provided by TE



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Business Risks: Level 1

Risk	Risk Description	Mitigating actions
Human Capital Risks	<ul style="list-style-type: none"> Insufficient human capacity to meet the production and maintenance demand (competing national rail projects) Limited technical human capacity from OEM Industrial action Incompatible working practices between TE and OEM's 	<ul style="list-style-type: none"> Feeder channel of apprenticeships Usage of experienced planners Making use of fixed term contractors Training agreements with OEMs Strike management committee Change Management Strategy (e.g. communication strategy)
Technology Risks	<ul style="list-style-type: none"> Technological challenges - none or ineffective involvement of TE in the technology discussions and conclusions between the appointed OEMs and TFR Lack of TE's knowledge on the proposed system and the infrastructure requirements Systems incompatibility (Oracle vs SAP) MRP and OEMP integration 	<ul style="list-style-type: none"> Drawing and design freeze More controls to be developed to manage the risk Existing ICT Processes and Procedures
Materials Risk	<ul style="list-style-type: none"> Ineffective Bill Of Material (BOM) Change Control Delays in finalisation of the design freeze Material delay and unavailability (due to non-availability and accuracy of BOM) Ineffective management of the existing suppliers Third Party Performance Risks - dependency on the performance of a third party 	<ul style="list-style-type: none"> Timeous placement of Purchase Orders Weekly localisation meetings Usage of developed suppliers Institute penalties for non-delivery Change control (TE and OEMs) Contracts with service level agreements Non-conformance procedures (for third party service providers) Daily tracking of progress within TE

Information provided by TE



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Business Risks: Level 1

Risk	Risk Description	Mitigating actions
Security Risks	<ul style="list-style-type: none"> Ineffective Security Management Theft of the OEMs' IPs 	<ul style="list-style-type: none"> Existing Security Plan and Procedures in place SHE Induction Usage of different Bays and Centres for each OEM Existing ICT security measures in place
Compliance Risks	<ul style="list-style-type: none"> Not meeting Supply Development and Localisation targets Ineffective document management 	<ul style="list-style-type: none"> Regular Project Meeting Contract between TE and OEMs Supply Development Strategy Supply Development Summit
Project Management Risk	<ul style="list-style-type: none"> Ineffective Project Management of the 1064 scope of work 	<ul style="list-style-type: none"> Daily Project Meetings Regular Project Meeting Project Steering Committee Appointed Project Coordinator at the GM's Level
SHE Risks	<ul style="list-style-type: none"> Increase in injuries/fatalities and disabilities Non compliance to contractor SHE requirements by the OEMs Utilisation of unknown hazardous chemical substances (such as asbestos) Business Interruption 	<ul style="list-style-type: none"> SHE policies, processes and procedures in place SHE Induction Plan Job Observations TE SHE contractor specifications OEM SHE requirements presentation at the Scoping Sessions Approval of hazardous chemical substances Training and Awareness on the Material Safety Data Sheet (MSDS) Medical surveillance programme Business Continuity Plans

Information provided by TE



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Business Risks: Level 1

Risk	Risk Description	Mitigating actions
Quality Management Risk	<ul style="list-style-type: none"> ▪ Delivery of inferior products (i.e. defects, poor quality) 	<ul style="list-style-type: none"> ▪ Change Control Board in place ▪ Regular Production Meetings ▪ In-line inspections and internal audits to ensure compliance to SOP ▪ Supplier audits and incoming material inspections ▪ Audits, quality control plan, Quality Management Framework ▪ Inspections conducted as per customer request

Information provided by TE



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Action Plans – Accelerated Loco delivery and associated business impacts

Issue	Action Owners
1	Group and OD Legal, Group, TE & TFR Risk
2	Chief Risk Officer
3	TFR & Group Finance
4	Group Communications, TE & TFR Risk
5	Group Finance
6	TFR Capital Program Office
7	Group Insurance
8	TFR COO
9	TFR/TE COO
10	TFR/TE COO



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Engagement with DPE and National Treasury on 23 May 2014

No.	Item	Response
1	What do Transnet mean when we say contract in execution?	The contract is in progress and can be reversed if approval is not obtained.
2	What are the types of freight and the routes on which they will be transported?	This is well documented in the 2014/15 corporate Plan. Primarily the freight targeted is: <ul style="list-style-type: none"> • Manganese • Domestic Coal • Mining minerals • Intermodal (containers and automobiles) • Road to rail shift
3	What is the deployment plan and the impact of the deployment on volumes	This will only be available as the locomotives are deployed onto the network and the associated impact on volumes will be recorded once the locomotives are in operation. In order to measure full impact the locomotives would need to be operational for a full year as all volume commitments are quoted in annual quantities. Monthly extrapolations can be determined.
4	Why did Transnet not confine the acquisition to two suppliers	Tractive effort is the key constraint impacting volumes. TFR needs to grow faster than the commitment to volumes in plan. The shortfall in tractive capacity needs to be augmented. In executing the 1064 tender process around December 2013, Transnet had the benefit of observing the progress in terms of: <ul style="list-style-type: none"> • Which tenderers were providing the most value • The various competitors bidding • CSDP offerings of the various tenderers Transnet did not want to place ourselves in a position where Mitsui became a monopoly for the supply of locomotives to the Coal Line, Mitsui would be supplying 210 locomotives to the Coal Line if awarded the tender. Initial capital outlay constitutes about a third of the total cost of ownership. Allowing Mitsui to be the monopoly supplier will impact the long term cost on the Coal line. Transnet would be in a 'sitting duck' position if this was allowed.
5	Delivery on SD against existing contracts. Provide a report on the performance.	GE have produced an SD report as it relates to the acquisition of 143 locomotives that have recently been built and supplied to TFR. A portion of the report (Annexure B1) is attached for your ease of reference.
6	Provide specifics as it relates to the 70% localisation mentioned in the submission	The specifics are part of the negotiations currently underway and will be provided once agreed to and finalised.
7	Was the PPPFA followed when determining the tender specifications for this contract?	Yes, Transnet applied the 90/10 rule
8	What are the SD obligations on the 95 CSR locomotives	Overall SD obligation is R1787m (65% of contract value). Actual SD to March 2014: R441m <ul style="list-style-type: none"> • Localisation (R163,4m)

No.	Item	Response
		<ul style="list-style-type: none"> • Skills development (R46,91m) • Investment Plan (R92,03m) • Industrialisation (R136,21m) • Small business (R0,14m) • Rural development (R2,58m)
9	What measures have Transnet put in place to ensure delivery against local content?	<p>There are various measures in place which include:</p> <ul style="list-style-type: none"> • Plans need to be submitted between 90-120 days after contract sign off by the awarded tenderers • Non-submission of the requisite plans is grounds for termination • Inclusion of SD penalty clauses are included in the contracts • Obtaining an SD bond to cover default risk • Appointment of Socio-Economic monitors to provide assurance around the performance against planned SD commitments. • Transnet Engineering is the appointed local assembler
10	Apart from concentration risk by utilising one supplier what are the other risks/issues relating to the appointment of one supplier?	<p>Standardisation. The fleet currently consists of 21 different locomotive models which negatively impacts costs in terms of:</p> <ul style="list-style-type: none"> • Spares holding and specialist tools for each locomotive model • Infrastructure • Operational issues • Driver certification. Driver certification of competency for each model • Training regimes • Maintenance in terms of engineering skills requirements and fault diagnosis for each locomotive model <p>CSDP benefits are considerably greater than if the 1064 contract was awarded to a single contractor</p> <p>The 1064 contract as mitigated as it relates to:</p> <ul style="list-style-type: none"> • Delivery • CSDP • Business could not wait for the schedule as per the 2013/14 Corporate Plan as that would severely impact volume throughput • The cost of the 1064 acquisition would be between R60 and R65 billion if the original delivery schedule was adopted as we would be hedging over a 2-3 year longer period. • GE and CSR are not considered risky as their track record has been established and their products are working well in our operations. CNR and BT although not considered risky are untested in our operations

No.	Item	Response
		<p>and will be appropriately mitigated</p> <p>2 suppliers are considered ideal for each of the diesel and electric components of the 1064 acquisition. High enough to mitigate concentration risk and low enough to obtain maximum CSDP benefits. 3 suppliers each for electric and diesel locomotives would dilute CSDP benefits and render Transnet unable to take advantage of economies of scale. This will also drive up the locomotive cost per unit.</p>
11	What do the Socio Economic monitors do?	<p>After the Gautrain was completed, Transnet engagement with their management to assist Transnet in addressing the matter of monitoring the socio economic initiatives on the project and determining if objectives were met. Arising out of that discussion was the appointment of SEMs who provide an assurance role through assessing the achievements against initiatives provided in the plan. This will enable Transnet to report on socio economic activities of the project.</p>
12	The suppliers are aware of Transnet's acute need for tractive capacity and would not be fearful of a termination clause as it was unlikely to be enacted	<p>On the contrary, Transnet will not hesitate to terminate a contract where it is warranted. Termination is a last resort after all avenues to ensure performance have been exhausted.</p> <p>Locomotive suppliers are in the business of manufacturing locomotives and it's not in their interest for their contracts to be terminated as this affects reputation in a massive way. The OEMs see this contract as their gateway into Africa. This contract is therefore given their utmost efforts as it is an opportunity for them to make a first impression.</p> <p>OEMs have thus far been enjoying a free partnership with TE which enabled them to enjoy super profits while TE earned a small margin. Transnet is exploring the option of co-operation agreements and a profit sharing model.</p> <p>In conjunction with the PWC work conducted between the DPE and Transnet it has been established the OEMs are protective over their Intellectual Property. In line with the Minister's vision, TE wants to move into the OEM space from a strategic perspective and Transnet is confident that with the combined scope of the various localisation initiatives with each of the contractors, we are in a position to complete the basket of becoming an OEM.</p> <p>OEMs sub-contracting to TE have established a concrete relationship and launch pad for their expansion into Africa.</p> <p>Suppliers like EMD need to re-examine their strategic positioning in Africa as they are currently not getting much work outside of the USA.</p>
13	Provide clarity on the delays relating to	<p>Transnet's initial approach as it relates to timelines for the tender process was not realistic. The 1064 tender is large and</p>

No.	Item	Response
		ability to generate cash. Funders will advance funds to Transnet based on its cash generating ability.
23	There seems to be problems with the MDS, should DPE be concerned?	<p>If the 100 and 1064 locomotives are not delivered timeously then Transnet will be in trouble. The next 24 months will define Transnet's history and success.</p> <p>There are delivery risks as it relates to the awarding of the tender.</p> <p>No concern as the plan is realistic and do-able. The most significant factor is however tractive effort. We have re-baselined volumes and have instituted active plans in terms of cash realisation.</p>
		<p>OEMs are very much committed to delivery. The diesel locomotives are not very different to those already produced. The 100 locomotives for the Coal Line is not very different to the 95 CSR Dual Voltage Electrics currently in production.</p> <p>Transnet has a plan in place to manage China North Railway and Bombardier Transport to ensure that delivery is as contracted.</p>
24	Diesel versus Electric. How is the split determined?	The configuration of the infrastructure is a key determinant. Non-electrified lines may only operate diesel type locomotives. Demand on this section of the network will determine the quantity of locomotives. A slide of the network is provided in addition.
25	Coal expansion to 81mt, how were the mine plans determined and timing of Transnet capacity?	<p>The 81mt expansion is already secured by 'take or pay' contracts. Expansion to 97mt is dependent on mine plans and will be firmed up through a commercial validation process. As indicated earlier, water and electricity are the potential constraints to the Waterberg expansion.</p> <p>A planning process is being undertaken to determine when capital is being deployed. Capital will not be removed from the plan but deferred.</p>
26	If urgency was not an issue who would be the preferred bidder?	An open tender process would have been followed and the outcome of that process would determine the preferred bidder.
27	DPE need to find a sense of comfort. Is TE in a position to take up given the urgency?	<p>The 1064 process gives effect to the Minister's vision incorporated in the study. The 100 locomotive contract consists of basic work and similar to the type of work done in the past.</p> <p>A high level scope of the TE work will be submitted to Transnet's Board Acquisition and Disposals Committee in June 2014. CSDP plans will be shared as well.</p>

Registration
Number
90/000900/30

100 Commissioner
Str. Johannesburg
2001

SAFARIVIEW
South Africa, 2122
T +27 11 308 2251
F +27 11 308 1269

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www.transnet.net

MEMORANDUM

To: Transnet Board Acquisitions and Disposals Committee

From: Mr. Brian Molefe, Group Chief Executive

Date: 15th May 2014

SUBJECT: UPDATE OF THE TENDER TRANSACTIONS APPROVED BY THE BADC AND THE GCE TO THE BOARD ACQUISITIONS AND DISPOSALS COMMITTEE (BADC).

PURPOSE:

1. The purpose of the memorandum is to provide a status update to the BADC of the transactions approved by the BOD, BADC and the GCE for noting.

BACKGROUND:

2. The BADC requested that a status update be given on all the tender transactions that the BOD, BADC and the GCE have approved to date.

DISCUSSION:

3. The following BADC approved transactions, have been completed through to the contract signoff and are awaiting completion of delivery:

OD	Commodity	Approval	Value	Approval Date	Current Status
TCP	NMPP: Motivation for the implementation of compensation events in excess of 10% of the contract value. For the construction of the trunkline, inline valves, valve chambers, end of line facilities and other compensation events for the NMPP project on Splecepag Group Five JV.	Compensation event	R4.7 bn	15-Sep-10	Contract execution is completed and is in warranty / defects period.

Transactions Approved

OD	Commodity	Approval	Value	Approval Date	Current Status
TCP	Main Automation contract: Request to increase DCF value to R1.2 billion, to align with the budget.	Contract value Increase	R1.2 bn	09-Mar-11	Contract is in execution.
TCP	Hatch SA provision of project, engineering Management and safety support services – condonement.	Condonement	R10.2 mn	31-Mar-11	Actions not condoned. Irregular expenditure reported and the contract has been approved.
TCP	Engineering, Procurement and Construction management contract: request to increase DCF value to R3.5 billion, to align with the budget.	Contract value Increase	R3.5 bn	31-Mar-11	Contract execution is completed and is in warranty / defects period.
TFR	43 Diesel loc. motives	Confined tender to General Electric for the acquisition of 43 diesel locomotives. GCE delegated to conclude the above.	R989 mn	03-Aug-11	Confinement has been approved. Tender and contract concluded with General Electric. Delivery completed in July 2013.
TFR	95 Electric locomotives	Sourcing strategy for open tender approved. GCE delegated to conclude the above.	R3.29 bn	03-Aug-11	Contract has been concluded and signed with China South Railways. In September 2013 BADC approved an increase in the ETC. Delivery dates: First ten units have been delivered.

Transactions Approved

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OD	Commodity	Approval	Value	Approval Date	Current Status
TPT	Port handling equipment for the Port of Ngqura including STS cranes, RTG's, Haulers and Trailers	Capital Investment and the sourcing strategy approved. GCE delegated to finalize.	R81.1 mn	04-Oct-11	Supplier contracts have been concluded and signed. Delivery Dates: 18 x RTG's – Batches of 6, has been completed. Slight delay due to weather conditions at the port of departure and arrival including union strikes in Ireland. 4 x STS Cranes – have been received however currently being assembled and commissioned, expected handover date is end July 48 x Haulers – 48 Delivered. 48 x Trailers delivered by TE.
TCP	Motivation for the revised DCV for the remaining duration of the contract: Supply, fabrication and Civil, Building, Structural steel, Piping, mechanical, electrical and instrumentation work for the terminal work.	Contract amendment	R1.1 bn	11-Feb-13	Contract is in execution. Completion scheduled for March 2015.
TCP	NMPP: Request for the approval for revised DCV to allow for the implementation of additional CE's: Supply fabrication and erection of civil, building, structural steel, piping, mechanical, electrical and instrumentation work for Terminal 2 – inland terminal including Tie-In works at the Jameson Park and Alrode switching station. Contract is in execution.	Contract amendment	R1.2 bn	01-Mar-13	Contract is in execution. Completion is scheduled for September 2014.

Transactions Approved

OD	Commodity	Approval	Value	Approval Date	Current Status
TFR	Locomotives	1064 locomotives	R50 bn	24-Jan-14	Contract has been awarded and signed on the 17 th March 2014.
TFR	Locomotives	Contract extension for the supply of 60 Diesel locomotives for GFB.	R1.75 bn	24-Jan-14	Contract extension has been approved and signed on 17 th March 2014.
TFR	Locomotives	Confinement for the supply of 100 Electric locomotives for the coal export line.	R4.4 bn	24-Jan-14	Contract awarded and signed on the 17 th March 2014.
Group	Fuel	Sourcing strategy including five year contract approved. GCE delegated to approve RFI and RFP.	R15.5 bn	Mar-14	Fuel Contract valued at R15.5 billion for 5 years approved by BADC in October 2013. The award to 9 suppliers of which 8 out of the 9 being 100% black owned. The CFST completed the MSA and has been signed by GCE. Contract is in execution.

4. Status update of the BADC approved transactions to date – 15th May 2014:

OD	Commodity	Approval	BADC Approved	BADC Approval Date	BOD Approved	Value	Current Status
TFR	Rails, Turnouts and other components	Approval given to issue the RFP to meet Transnet's short term steel product requirements. Recommended to the BOD for Information purposes.	Yes	03-Aug-11	Yes	R3.9 bn	Award approved and contract in execution.

Transactions Approved

OD	Commodity	Approval	BADC Approved	BADC Approval Date	BOD Approved	Value	Current Status
TFR	Sale of scrap	Sourcing strategy approved to Issue RFI and RFP for a 3 year contract.	Yes	26-Jan-12	N/A	Expected value R900 mn For a 3 year period	The RFP's (5 different RFP's) have closed, the CFST has been appointed and the RFP evaluations have been completed. Final negotiations are in progress with the bidders and MSA's are currently being finalised.
TNPA	Tug Boats	Capital investment and sourcing strategy approved. GCE delegated to approve RFP. Non-award approved. Tender re-issued and delegated to the GCE to finalize.	Yes	15-Feb-12	Yes	R1.2 bn	Award was made to Southern African Shipyards (SAS). The MSA has been concluded and signed by Transnet and SAS. APG challenge has been resolved, Hollard Insurance Group have met Transnet's requirements. Letter from Growth Fund expected 23 rd May 2014.
TE	34" Wheels	Revised sourcing strategy approved. GCE delegated to approve Award	Yes	27-Mar-13	Yes	R4.6 bn	The RFP's have been issued to the market and closed on 27 th August 2013. Negotiations to be completed in May 2014.

Transactions Approved

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OD	Commodity	Approval	BADC Approved	BADC Approval Date	BOD Approved	Value	Current Status
TE	Bogle Castings	Revised sourcing strategy approved. GCE delegated to approve Award	Yes	27-Mar-13	Yes	R1.9 bn	The RFP's have been issued to the market and closed on 27 th August 2013. Negotiations to be completed May 2014.
up	Vehicle fleet	The Principles of the sourcing strategy has been approved by BOD. GCE delegated to issue RFP and award business.	Yes	27-May-13	Yes	R7.2 bn	BADC approved the Strategy on the 27 th May 2013. BOD approved the Strategy on the 29 th May 2013. Senior Council opinion received, advising against the use of Pre-Qualification (Sub-Contracting) criteria. BOD approved the revised strategy 29 th August 2013. RFP was approved by the GCE in the month of October 2013. Final negotiations underway and award imminent.

Transactions Approved

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OD	Commodity	Approval	BADC Approved	BADC Approval Date	BOD Approved	Value	Current Status
TE	Coupling Systems	Sourcing strategy approved. GCE to be delegated to approve Award	Yes	28-Jun-13	Yes	R3.3 bn	RFP has been approved and issued on the 26 th November 2013. RFP closed on 04 th February 2014 and evaluations commenced in February 2014. Evaluations have been completed. Negotiations to commence shortly.
Group	Networks	Sourcing strategy approved by BADC. Recommendation to Award approved, subject to negotiations.	Yes	28-Jun-13	Yes	R1.7 bn	GCE has approved the recommendation to award. Letter of Intent was issued to preferred bidder (T-systems) after the evaluation process in November 2013, subject to the negotiations which is in progress.
TE	Axles	Sourcing strategy approved. GCE to be delegated to approve Award	Yes	28-Jun-13	Yes	R3.5 bn	RFP has been approved and issued on the 26 th November 2013. Evaluations have been completed. Negotiations to commence shortly.

Transactions Approved

OD	Commodity	Approval	BADC Approved	BADC Approval Date	BOD Approved	Value	Current Status
TE	Bearings	Sourcing strategy approved.	Yes	29-July-13	Yes	R2.7 bn	BOD delegated DOA to BADC. BADC approved the Sourcing strategy 29 th July 2013. RFP issued on the 26 th November 2013. RFP closed on 04 th February 2014 and evaluation commenced 10 th February 2014. Negotiations to commence shortly.
Group	Fuel	On-road Sourcing strategy.	Noted by BADC	14-Nov-13	N/A	R980 mn	On-road Sourcing strategy and RFP was approved by the GCE and noted by the BADC. RFP has closed and evaluations are underway, completion is planned by the end of June 2014.
Group	IT Infrastructure and desktop support	Approval of 2 years extension of the T-Systems contract for the provision of IT services	Yes	13-Feb-14	Yes	R1.5 bn	BOD approved the extension of the T-Systems contract for a period of 2 years for the provision of IT Infrastructure and desktop support services from 1 st January 2015 to December 2016.

Transactions Approved



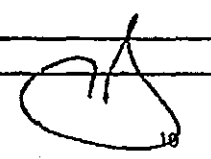
5. The following GCE approved transactions have been completed through to the contract signoff and are awaiting completion of delivery:

OD	Commodity	Approval	Approval Date	Value	Current Status
TCP	NMPP: Request to conduct confined negotiations with Hatch-SA.	Confined negotiations	19-Mar-10	R48.3 mn	Contract in execution.
TCP	NMPP: Purchase contract for the supply, delivery and installation of medium voltage generators for 5 sites.	Purchase contract	23-Mar-10	R167.7 mn	Generators delivered to the various sites, commissioning of TM1 and TM2 in progress.
TCP	Approval for a mandate to confine and negotiate a contract with Turner and Townsend to provide client commercial management and assurance services for the NMPP project.	Confined negotiations	21-Apr-10	R170.5 mn	Contract is in execution.
TCP	Confined tender approval; Request for a mandate to confine to sole source and enter into negotiations and conclude a contract with Group Five Energy Pty Ltd for the supply and delivery of OHTE Electrical cables required for the 50kv AC single phase feeder line.	Confined tender	25-May-10	R10.4 mn	Contract completed and closed out.

Transactions Approved

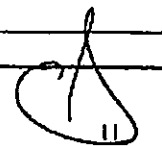
OD	Commodity	Approval	Approval Date	Value	Current Status
TCP	Confined tender approval: Request for a mandate to negotiate sole source and concluding a contract with Subtech for the completion of maintenance dredging for the Port of Saldanha.	Confined tender	07-Jun-10	R10.7 mn	Contract completed and closed out.
TCP	Plug Valves	Confined tender	04-Aug-10	R13.4 mn	Request for confined tender approval with MCB Marketing Enterprises cc for the supply, manufacturing and delivery of expanding plug valves at Terminal 1 and Terminal 2. Valves delivered, TM1 and TM2 commissioning in progress.
TCP	Request for a confined tender approval with Davron Equipment Pumps and GE Oil and Gas for the design, supply and delivery of 5 pump sets to the NMPP facilities.	Confined tender	15-Sep-10	R30 mn	Pumps delivered. TM1 and TM2 commissioning in progress.

Transactions Approved


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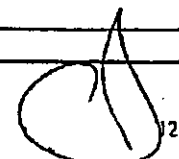
OD	Commodity	Approval	Approval Date	Value	Current Status
TCP	Request for a confined tender approval with Siemens Ltd for the supply and delivery of 89 Relays, ARC Protection System, Scada System UPS and commissioning.	Confined tender	15-Sep-10	R17 mn	Contract is in execution.
TCP	Request for the mandate to enter into a confined tender and conclude a contract with preferred tenderers for the engineering supply and installation of a new rail bridge required for the replacement of the collapsed rail bridge due to a derailment at Brakspruit on the Hoedspruit – Phalaborwa rail line.	Emergency procedure procurement event	15-Dec-10	R18 mn	Contract completed on the 11 th December 2011.
TCP	Turner and Townsend provision of commercial services: Request for a DCF of R171 million and to extend the contract until Dec 2013.	Contract extension	30-Mar-11	R171 mn	Contract is in execution.

Transactions Approved



OD	Commodity	Approval	Approval Date	Value	Current Status
TPL	Confinement and appointment of electronic Trading Projects cc(ETP) to provide specialist consulting and decision support (modelling) services to the liquid fuel industry.	Confinement and appointment	01-Apr-11	R4 mn	Confinement approved by GCE. Contract closed out.
TCP	Confinement to A Hak for nitrogen pumping services on PL1.	Confinement	25-May-11	R21 mn	Contract has been closed out.
TCP	Pipeline Construction contract: Pump Station CE.	Contract	02-Jun-11	R946 mn	Contract closed out. Final account to be finalized.
TCP	Supply and delivery of 32 rubber tyred gantry (RTG) as well as 35 Interchangeable single lift telescopic spreaders: Cape Town container terminal. R540, 451,443.	Supply and Delivery contract.	05-Jul-11	R540 mn	Contract closed out.
TCP	Condonement of confinement and retrospective authority to award contract to T&T in the value of R1, 704, 400.	Condonement of confinement	06-Jul-11	R1.7 mn.	This was not condoned, spend was declared as irregular.

Transactions Approved



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OD	Commodity	Approval	Approval Date	Value	Current Status
TCP	National Consulting Engineering and project Services, Framework agreements for the provision of mechanical engineering, electrical engineering, structural engineering, civil engineering, architectural services, railway engineering, Marine and Coastal.	Framework agreements	09-Jul-11	N/A	Framework agreements approved and being implemented, linked to a period and approved budget as and when required. Tasks orders approved and issued where required as per DOA.
Group HR	Actuarial service provider	Confinement	08-Jul-11	R2.95 mn	Confinement approved by the GCE for an actuarial service provider to assist with financial modeling and actuarial advice in respect of the new reward model and incentive scheme for bargaining unit employees.
TPL	Condonation of the confinement of one contract as well as the authority to confine a new contract relating to the purchase of Gas for the TPL intermixture refractorator plant.	Condonation and Confinement	05-Nov-11	R85 mn	Condonation and confinement was approved by the GCE. Contract closed out.

Transactions Approved

OD	Commodity	Approval	Approval Date	Value	Current Status
TPL	Material Amendment to the existing electrical consulting contract (PYP 983) with Netgroup South Africa (Pty) Ltd for Transnet Pipelines Installation of electricity Check metering and Quality of Supply Metering at 30 TPL sites.	Material Amendment	02-Dec-11	R2.2 mn	Material amendment approved by GCE per DOA. Contract closed out.
TPL	Extension of time and increase in cost of the contract for the leak detection project on all TPL's pipelines – Kanopus Consultoria Technical Traducua LTDA.	Material Amendment	24-Nov-11	\$ 250 k	Material amendment approved by GCE per DOA. Contract closed out.
TFR	Locomotives	Confinement for repairs to locomotives.	23-Feb-12	R80 mn	Contract awarded to Mitsui and signed by GCE.
TCP	Reconstruction and Deepening of Maydon Wharf Berths	Sourcing strategy approved. GCE delegated to approve Award.	22-Oct-11	R760 mn	RFP amended in line with the PPPFA regulations. RFP approved by GCE and issued, closed 31 st October 2013. Evaluations have been concluded and the recommendation for shortlisting and award was approved. Award finalized and contract in execution.

Transactions Approved

OD	Commodity	Approval	Approval Date	Value	Current Status
Group	SWAT team award	Confinement and award	22-Nov-12	R154 mn	GCE approved the confinement and contract award submission for the appointment of the SWAT teams.
TCC	Swaziland Rail link	GCE approved the submission but requested Group to issue a new tender for the scope of work.	16-Jan-13	R25 mn	RFP has been awarded and is in execution.
Group	SAP project consulting services	Confinement	22-Feb-13	R30 mn	GCE approved the confinement request for SAP project consulting services. Contract has been awarded and signed.
TCC	Locomotive advisory	Confinement	June-12	R140 mn	Contract closed out
TCC	RMO – advisory services related to the setup and operation of the MDS Executive Support Office	Confinement	22-Nov-12	R67.7 mn	Contract is in execution
TCC	Master data	Confinement approval	04-Mar-13	R8.3 mn	Confinement approval for the development and implementation of the MDQM 8 Staging Area and Master Data Management Module.
Group	SAP add-on module	Confine and award	18-Apr-13	R7.1 mn	GCE approved SAP add-on and module confinement and contract award to Minabiz.
TCP	EPCM Services Rail Phase 1	Confinement and award	19-Aug-13	R220 mn	GCE approved the confinement and award
TFR	Security	Confinement of specialized security	10-Feb-14	R203 mn	Confinement request has been approved and contract has been signed.
TFR	Consulting	Confinement-BU implementation change management.	Jul-13	R22 mn	Confinement request has been approved and the contract has been signed.

Transactions Approved



OD	Commodity	Approval	Approval Date	Value	Current Status
TFR	Operational Specialists	Confinement – GFB Turnaround project Phase2.	Aug-13	R46 mn	Confinement request has been approved and contract has been signed.
TE	Confinement and award for maintenance of the Class 19E Locomotive fleet on the coal line for a period of three years to Toshiba.	Confinement and award	14-Oct-13	R27.2 mn	GCE approved confinement, contract awarded.
Group	GCE approved the procurement of SAP software licenses and maintenance for a period of 5 years.	Approval of confinement and award for SAP licenses and maintenance.	18-Dec-13	R465 mn	GCE approved confinement, contract awarded.
Group	GCE approved the procurement of SAP Core services pertaining to SAP products road maps and implementation over a period of 3 years.	Approval of confinement for the provision of SAP Core	23-Feb-14	R75 mn	GCE approved confinement, contract awarded.
Group	GCE approved the procurement of Microsoft licenses and support for a period of 3 years.	Approval of confinement and award for Microsoft licenses and maintenance to Microsoft Ireland	25-Mar-14	R232 mn	GCE approved confinement, contract awarded.
TNPA	Trailing Suction Hopper Dredger	Award of Business	13-Mar-14	R889 mn	Contract has been awarded and signed.

Transactions Approved

OD	Commodity	Approval	Approval Date	Value	Current Status
TCC	Thyssen Krupp Industrial Solutions	Confinement and award approved by GCE	01-Oct-13	R 10.4 mn	Contract has been awarded and signed.
TCC	Infrastructure Options	Confinement and award approved by GCE	01-Oct-13	R 13 mn	Contract has been awarded and signed.
TCC	World Class Business Solutions	Confinement and award approved by GCE	01-Oct-13	R 13.58 mn	Contract has been awarded and signed.
TCC	Arup SA	Confinement and award approved by GCE	01-Oct-13	R 24 mn	Contract has been awarded and signed.

6. Status update of the GCE approved transactions to date – 15th May 2014:

OD	Commodity	Approval	Approval Date	Value	Current Status
TCP	Condonement for an amendment to the existing Bellville Square Depot contract: R5,549,602.	Condonement of amendment	05-Jul-11	R5.5 mn	Disciplinary action was taken and condonement was approved.
TPL	Material amendment to the existing technical consulting contract with (PYP814) Siemens (PTY) Ltd for Transnet Pipelines (TPL) Secunda Tele-Mechanical upgrade project.	Material Amendment	24-Nov-11	R4.3 mn	Material amendment not approved.
TFR	Locomotives	Confinement	10-Feb-14	R11.1 mn	Confinement approved, contracting stage underway for the lease of 5 locomotives from RRL Grindrod.

Transactions Approved

OD	Commodity	Approval	Approval Date	Value	Current Status
TFR	Locomotives	Confinement for the purchase of 23 locomotives from Aurlzon.	10-Feb-14	R150 mn	Confinement request has been approved, finalizing purchase contract.
TE	Locomotives	Confinement for the purchase of 30 locomotives and spares from Aurlzon.	10-Feb-14	R150 mn	Confinement request has been approved, finalizing purchase contract.
TE	EMD	EMD LTPA Critical and Core spares	26-Mar-14	R1.32 bn	RFP for Core (004) spares approved by GCE. Based on Sourcing strategy approval from BADC and delegation to GCE. RFP Issued to market on 4 th April 2014.
TCC	The Design, Development and facilitation of the Transnet customised senior leadership development programs	Confinement approval	15-Dec-13	R8 mn	Confinement approved by the GCE. Contract being finalized.
	The Design, Development and facilitation of the Transnet customised Middle leadership development programs.	Confinement approval	15-Dec-13	R72 mn	Confinement approved by the GCE. Contract being finalized.
TCC	The Design, Development and facilitation of the Transnet customised first line leadership development programs	Confinement approval	15-Dec-13	R45 mn	Confinement approved by the GCE. Contract being finalized.

Transactions Approved

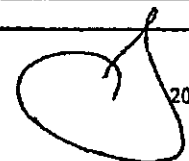
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OD	Commodity	Approval	Approval Date	Value	Current Status
TCC	The Design, Development and facilitation of the Transnet customised women leadership development programs.	Confinement approval	15-Dec-13	R 3 mn	Confinement approved by the GCE. Contract being finalized.
TCC	To Appoint and Monitor Deloitte as the Service Provider to Enhance the Marketing Strategy Implementation Plans, Refine Analytics and Pilot the Application for Key Account Management.	Confinement approval	08-Dec-13	R 3.5 mn	Confinement approved by the GCE. Contract being finalized.
TCC	Annual Integrated Customer Satisfaction Survey.	Confinement approval	13-Oct-13	R 3 mn	Confinement approved by the GCE. Contract being finalized.
TCC	For the Provision of project consulting services for the Implementation of the SAP Project.	Confinement approval	6-Dec-13	R 30 mn	Confinement approved by the GCE. Contract being finalized.

Transactions Approved

OD	Commodity	Approval	Approval Date	Value	Current Status
TCC	Increasing the Coal Line with a Breakthrough of 2MT (R20m fixed fee & R110m contingent fee subject to negotiations) Mitigation of EBITDA at risk for 2014/15.	Confinement approval	9-Apr-14	Potentially R130 mn	Confine and Award approved by GCE. Contract being finalized.
TCC	Renegotiating the Kumba Iron Ore Contract (R20m fixed fee & R193m contingent fee subject to negotiations) Mitigation of EBITDA at risk for 2014/15	Confinement approval	9-Apr-14	Potentially R213 mn	Confine and Award approved by GCE. Contract being finalized.
TCC	Manganese Execution Support (R100m phase 1 & R50m phase 2) Mitigation of EBITDA at risk for 2014/15	Confinement approval	9-Apr-14	Potentially R150 mn	Confine and Award approved by GCE. Contract being finalized.
TCC	NMPP De-Risking and Acceleration (R10m phase 1 & R90m phase 2) Mitigation of EBITDA at risk for 2014/15	Confinement approval	9-Apr-14	Potentially R100 mn	Confine and Award approved by GCE. Contract being finalized.
TCC	ISCM SWAT Support	Confinement approval	3-Apr-14	R 25 mn	Confine and Award approved by GCE. Contract being finalized.
TCC	Basis Resource for the Fixed asset stabilisation	Confinement approval	22-Apr-14	R 56 mn	Confine and Award approved by GCE. Contract being finalized.

Transactions Approved



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OD	Commodity	Approval	Approval Date	Value	Current Status
TCC	Provision of a solution for a systems analytical tool and capability to provide key Procurement metrics and analysis	Confinement approval	17-Apr-14	R50 mn	Confine and Award approved by GCE. Contract being finalized.
TCC	Provision of Capital Optimisation and Implementation support services (R72m fixed fee & R173m contingent fee subject to negotiations) Mitigation of EBITDA at risk for 2014/15	Confinement approval	17-Apr-14	Potentially R245 mn	Confine and Award approved by GCE. Contract being finalized.

Transactions Approved

FINANCIAL IMPLICATIONS:

7. None

BUDGET IMPLICATIONS:

8. None

APPROVALS AND DELEGATIONS:

9. None

RECOMMENDATION:

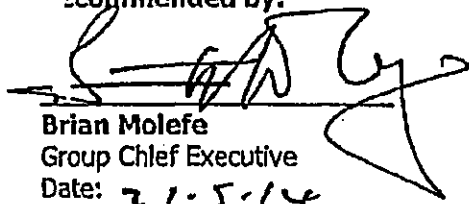
10. It is recommended that the BADC notes the status update of the tender transactions approved by the BOD, BADC and the GCE.

Compiled by:



noj Singh
Group Chief Financial Officer
Date: 20/5/14

Recommended by:



Brian Molefe
Group Chief Executive
Date: 21.5.14

Transactions Approved

Transnet
Regulation
1990/000509/JV

Section: General
150 General
Mr. Johannes
2001

S.A. No. 72249
Section: General
150 General
Mr. Johannes
2001

TRANSNET



www.transnet.co.za

MEMORANDUM

TO: Brian Moko
Group Chief Executive
FROM: Anil Singh
Chief Financial Officer

✓ Subject: APPOINTMENT FOR TRANSACTION ADVISOR ON THE 1064 LOCOMOTIVE TENDER

PURPOSE

✓ 1. The purpose of this memorandum is to request approval of the Group Chief Executive for the appointment of the McKinsey consortium for the complete advisory services and Webber Wentzel for the legal advisory work as Transaction advisors on the 1064 locomotive tender.

1.1. For the Group Chief Executive to note that McKinsey will be advised to partner with another firm with equal or better credentials than Letsame, for the procurement elements, due to the potential conflict with Barloworld and Letsame.

BACKGROUND

2. The GCE previously approved a confinement for transaction advisors, dated 10th May 2012, to KPMG, PWC, Aurecon, Letsame, McKinsey, Webber Wentzel, David Potter, Ledwaba Mazwai and MAC Consulting for the advisory services.

3. The objectives of this work is to assist Transnet in successfully awarding contracts for the manufacture and supply of diesel and electric locomotives while maximising value for Transnet and securing localization and industrialization benefits for South Africa.

DISCUSSION

4. The scope of the engagement for the transaction advisors include:
4.1. Developing and augmenting the business case for the approval of the locomotives by the Transnet Board of Directors and Department of Public Enterprises;
4.2. End to end requirements of the overall General Freight programme (locomotives, wagons, infrastructure etc based on validated volume expectations);
4.3. Identifying value optimisation potential and technical optimisation options;
4.4. Setting up the tender process in line with all requirements applicable to State-owned companies (SOCs);
4.5. Developing a shortlist of potential suppliers;
4.6. Developing the contracts for the tender; and
4.7. Developing finance and funding options.

5. Key project deliverables include:
5.1. Updated and improved business case and relevant documentation for submission to the Transnet Board of Directors and Department of Public Enterprises;
5.2. The business case should include the end to end requirements of the overall General Freight programme (locomotives, wagons, infrastructure etc based on validated volume expectations);
5.3. List of technical value optimisation levers and estimated value;

Locomotive transaction advisor

Page 2 of 4

Approved

Annexure A.

- 5.4. Design of an optimization approach for joint value optimisation between Transnet and the selected supplier(s);
5.5. Overall tendering process design for the locomotives;
5.6. Request for proposal documentation;
5.7. Short list of potential suppliers;
5.8. Template contract for awarding of the tender; and
5.9. Documentation for the final selection of preferred supplier(s).

EVALUATION

6. Four proposals were received:
6.1. KPMG consortium - KPMG, Munkit Inc, Norton Rose, Arcus Obb
6.2. PWC consortium - PWC, Syne DB Engineers, Chris Decker Holmeyer Inc
6.3. McKinsey consortium - McKinsey, Letsame, Usha, Kolkensong, Redbank, ERS and ART (David Potter), and
6.4. Webber Wentzel

7. The evaluation criteria was categorized into:
7.1. Business Case
7.2. Technical Optimisation;
7.3. Deal structuring and Finance for large capital investment projects;
7.4. Procurement; and
7.5. Legal.

8. The results of the Stage three evaluations are as follows:

Stage Three Evaluation - Technical Results (per category)	KPMG JV	PWC JV	McKinsey & Company / Letsame JV	Webber Wentzel
1. Business Case				
5. Experience	59.88%	75.60%	89.42%	N/A
2. Technical Optimisation				
5. Experience	63.59%	61.58%	90.74%	N/A
3. Deal Structuring and Financing				
5. Experience	61.32%	87.32%	77.44%	N/A
4. Procurement and Legal				
5. Experience	88.84%	70.69%	81.43%	70.34%

9. From the above, KPMG did not meet the technical threshold of 70% and is thus eliminated.

10. The results of Stage Four evaluations are as follows:

Stage Four Evaluation - Price and BEEE scorecard (per category)	PWC JV	McKinsey & Company / Letsame JV	Webber Wentzel
1. Business Case	68.20%	86.21%	Not evaluated
5. Experience			
2. Technical Optimisation	Not evaluated - threshold not met	86.21%	Not evaluated
5. Experience			
3. Deal Structuring and Financing	61.31%	86.24%	Not evaluated
5. Experience			
4. Procurement and Legal	28.60%*	86.24%	29.60%*
5. Experience			

* Scores on the price and BEEE scorecard are based on the price and BEEE for all categories.
** PWC and Webber Wentzel did not meet the price and BEEE threshold and are thus eliminated.

Locomotive transaction advisor

Page 3 of 4

Appendix / 4

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11. Group Finance and TFR Finance identified a key risk with regard to the legal services. On previous locomotive tenders, Webber Wentzel, assisted and drafted Transnet's negotiation strategy.

12. As Webber Wentzel is the recognized leader with regards to locomotive procurement and if not engaged by Transnet they would be engaged by one of the bidders. This would put all of Transnet's previous knowledge regarding previous negotiation strategies potentially at risk.

13. The only reason Webber Wentzel scored low in the Stage Four evaluation was due to price but was rated highest in terms of technical ability.

14. The Tender evaluation process was concluded whereby the McKinsey consortium consisting of McKinsey, Letsame, Utho, Kibikwana, Kibikwana-EKS and AET (David Putter) were the preferred bidder for four categories (1) to (4), into which the evaluation criteria were categorized. Webber Wentzel was evaluated the highest amongst all bidders/consortia from a technical perspective and was the preferred bidder for the legal advisory work.

15. The Tender Acquisition Council (TAC) awarded the McKinsey consortium the complete advisory services and split the award regarding legal advisory to Webber Wentzel. Refer to attached TAC resolution.

16. As the Locomotive RFP's have been advertised and will be issued in tranches and it is imperative that the RFP's be reviewed from all aspects by the transaction advisors before the supplementary RFP's are issued.

FINANCIAL IMPLICATIONS

17. The estimated value for locomotive advisory services required is R50 million. The split of work is anticipated to be as follows:

- 17.1. McKinsey - 25%
- 17.2. Procurement partner - (Letsame replaced due to conflict with Barloworld) - 20 %
- 17.3. Utho and Medbank - 10%
- 17.4. Webber Wentzel - 20%
- 17.5. Advanced Rail technologies - 15%

BUDGET IMPLICATIONS

18. Although these costs were not explicitly budgeted for, sufficient budget exists in the Corporate Centre budget.

RECOMMENDATIONS

19. It is recommended that the Group Chief Executive approve the appointment of the McKinsey consortium for the complete advisory services and Webber Wentzel for the legal advisory work as Transaction advisors on the 1064 locomotive tender.

19.1. It is recommended that the Group Chief Executive note that McKinsey will be advised to partner with another firm with equal or better credentials than Letsame, for the procurement elements, due to the potential conflict with Barloworld and Letsame.

COMPILED BY:

[Signature]
Yusuf Mahmood
Group Finance
Date: 15/1/12

RECOMMENDED / NOT RECOMMENDED:

[Signature]
Garry Fita
GM: Integrated Supply Chain Management
Date: 15/1/12

RECOMMENDED / NOT RECOMMENDED:

[Signature]
Anoj Singh
Chief Financial Officer
Date: 24/01/12

APPROVED BY:

[Signature]
Ediso Molefe
Group Chief Executive
Date: 22.1.12

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 Service 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.

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

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.

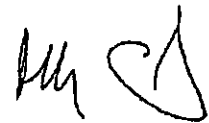
The objective is to award the loco tender by the end of the third quarter of the calendar year 2013 on the back of

- 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;**

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

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

- o Wagons
- o Locomotives
- o Infrastructure
- o Optimisation
- o Profitability of each sector- link into efficiencies and capacity
- o 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:**

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

- **Technical/Operations:**

- o Reduce loco lifecycle costs through technical (specifications) and commercial lever optimisation with short-listed suppliers
- o Technical evaluation levers and estimated value
- o Optimisation approach for joint value optimisation between Transnet and the selected suppliers
- o 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);

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

- **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 JNB, South Africa on this 04 day of

December 2012 on behalf of:

Transnet SOC Ltd

WITNESSES

1

2


NAME: Anoj Singh

Designation: Group Chief Financial Officer

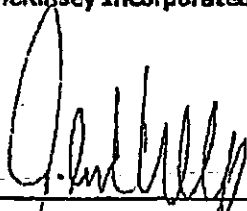
LOI Reference No: GSM 12/05/0447



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

Thus duly signed at Johannesburg, South Africa on this 06 day of
December 2012, on behalf of:

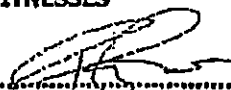

McKinsey Incorporated



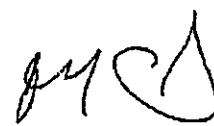
NAME: Michael Kloss

Designation: Director

WITNESSES

1 
2 

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

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	NO/John Regincho/Burlington	R1.4m
Business case validation	McK	R6.1m
Technical evaluation and execution	McK + ART	R13.5m
PMO, integration and stakeholder management	Regincho/Burlington + McK	R7.6m
Total Loco		R35.2m

LOI Reference No: GSM 12/05/0447

A handwritten signature in black ink, appearing to be "C. M." or similar.

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

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 SOC's</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

1464

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

Business case integration and re-write	Led by McK Re-write of the business case, approved by Board and DPE <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.	Rewritten business case that is approved of by the Transnet Board and DPE
PMO	Led by Regiments/Burlington with McK leadership oversight <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 steerco's• Prepare external stakeholder communications	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

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 1054 Locomotives Tender

ANNEXURE C: PREREQUISITES

People required from Transnet



- 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 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



- 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



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

LOT Reference No: GSM 12/05/0447

A handwritten signature in black ink, appearing to be 'C M' or similar, located in the bottom right corner of the page.

TRANSNET



Execution Version

AGREEMENT

Entered into by and between

TRANSNET SOC LTD (Reg. Nr. 1990/0009000/30)

And

McKINSEY INCORPORATED (Reg. Nr. 1995/002398/10)**FOR THE PROVISION OF SERVICES RELATED TO THE ACQUISITION OF
1064 LOCOMOTIVES TENDER**

Agreement Number	GSM 12/05/0447
Commencement Date	15 JANUARY 2013
Expiry Date	31 MARCH 2014

Agreement between Transnet and McKinsey Incorporated
For the provision of Advisory Services Related to the Acquisition of the 1064 Locomotives Tender

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SCHEDULE 1 – WORK ORDER(s)

Agreement between Transnet and McKinsey Incorporated
For the provision of Advisory Services Related to the Acquisition of the 1064 Loconolives Tender

1 INTRODUCTION

This Agreement is entered into by and between:

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

And

McKinsey Incorporated [Registration Number 1995/002398/10] whose principal place of business is at
Sandown Mews East, 88 Stella Street, Sandton, 2196, Gauteng, South Africa [the Service Provider].

NOW THEREFORE, IT IS AGREED:

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

2 DEFINITIONS

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

- 2.1 **AFSA** means the Arbitration Foundation of South Africa;
- 2.2 **Agreement** means this Agreement and its associated schedules and/or annexures and/or appendices, including the Work Order(s), specifications for the Services and such special conditions as shall apply to this Agreement, together with the General Tender Conditions and any additional provisions in the associated bid documents tendered by the Service Provider [as agreed in writing between the Parties], which collectively and exclusively govern the provision of Services by the Service Provider to Transnet;
- 2.3 **Background Intellectual Property** means all Intellectual Property introduced and required by Transnet to give effect to its obligations under this Agreement owned in whole or in part by or licensed to Transnet or its affiliates prior to the Commencement Date or developed after the Commencement Date otherwise pursuant to this Agreement;
- 2.4 **Business Day(s)** means Mondays to Fridays between 07:30 and 16:00, excluding public holidays as proclaimed in South Africa;
- 2.5 **Commencement Date** means 5 January 2013, notwithstanding the signature date of this Agreement;
- 2.6 **Confidential Information** means any information or other data, whether in written, oral, graphic or in any other form such as in documents, papers, memoranda, correspondence, notebooks, reports, drawings, diagrams, discs, articles, samples, test results, prototypes, designs,

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For the provision of Advisory Services Related to the Acquisition of the 1064 Locomotives Tender

plans, formulae, patents, or inventor's certificates, which a Party discloses to the other Party [intentionally or unintentionally, or as a result of one Party permitting the representative of the other Party to visit any of its premises], or which otherwise becomes known to a Party, and which is not in the public domain and includes, without limiting the generality of the term:

- a) Information relating to methods of operation, data and plans of the disclosing Party;
- b) The contents of this Agreement;
- c) Private and personal details of employees or clients of the disclosing Party or any other person where an onus rests on the disclosing Party to maintain the confidentiality of such information;
- d) Any information disclosed by either Party and which is clearly marked as being confidential or secret;
- e) Information relating to the strategic objectives and planning of the disclosing Party relating to its existing and planned future business activities;
- f) Information relating to the past, present and future research and development of the disclosing Party;
- g) Information relating to the business activities, business relationships, products, services, customers, clients and Subcontractors of the disclosing Party where an onus rests on the disclosing Party to maintain the confidentiality of such information;
- h) Information contained in the software and associated material and documentation belonging to the disclosing Party;
- i) Technical and scientific information, Know-How and trade secrets of a disclosing Party including inventions, applications and processes;
- j) Copyright works;
- k) Commercial, financial and marketing information;
- l) Data concerning architecture, demonstrations, tools and techniques, processes, machinery and equipment of the disclosing Party;
- m) Plans, designs, concepts, drawings, functional and technical requirements and specifications of the disclosing Party;
- n) Information concerning faults or defects in goods, equipment, hardware or software or the incidence of such faults or defects; and
- o) Information concerning the charges, Fees and / or costs of the disclosing Party or its authorised Subcontractors, or their methods, practices or service performance levels actually achieved;

2.7 Copyright means the right in expressions, procedures, methods of operations or mathematical concepts, computer program codes, compilations of data or other material, literary works, musical works, artistic works, sound recordings, broadcasts, program carrying signals, published editions, photographic works, or cinematographic works of the copyright owner to do or to authorise the doing of certain acts specified in respect of the different categories of works;

2.8 Default means any breach of the obligations of either Party [including but not limited to fundamental breach or breach of a fundamental term] or any Default, act, omission, negligence or

Agreement between Transnet and McKinsey Incorporated
For the provision of Advisory Services Related to the Acquisition of the 1064 Locomotives Tender

- statement of either Party, its employees, agents or Subcontractors in connection with or in relation to the subject of this Agreement and in respect of which such Party is liable to the other;
- 2.9 **Deliverable(s)** means any and all reports, analyses or other such materials furnished by the Service Provider to Transnet in relation to the Services;
- 2.10 **Designs** mean registered Designs and/or Design applications and will include the monopoly right granted for the protection of an independently created industrial design including designs dictated essentially by technical or functional considerations as well as topographies of integrated circuits and integrated circuits;
- 2.11 **Fee(s)** shall mean the agreed Fees for the Services to be purchased from the Service Provider by Transnet, as detailed in the Work Order(s), issued in accordance with this Agreement;
- 2.12 **Foreground Intellectual Property** means all Intellectual Property developed by either Party pursuant to this Agreement;
- 2.13 **Intellectual Property** means Patents, Designs, Know-How, Copyright and Trade Marks and all rights having equivalent or similar effect which may exist anywhere in the world and includes all future additions and improvements to the Intellectual Property;
- 2.14 **Know-How** means all Confidential Information of whatever nature relating to the Intellectual Property and its exploitation as well as all other Confidential Information generally relating to Transnet's field of technology, including technical information, processing or manufacturing techniques, Designs, specifications, formulae, systems, processes, information concerning materials and marketing and business information in general;
- 2.15 **Materials** means the Deliverables, the Service Provider Materials;
- 2.16 **Parties** mean the Parties to this Agreement together with their subsidiaries, divisions, business units, successors-in-title and their assigns;
- 2.17 **Party** means either one of the Parties;
- 2.18 **Patents** mean registered Patents and Patent applications, once the latter have proceeded to grant, and includes a right granted for any inventions, products or processes in all fields of technology;
- 2.19 **Permitted Purpose** means any activity or process to be undertaken or supervised by Personnel or employees of one Party during the term of this Agreement, for which purpose authorised disclosure of the other Party's Confidential Information or Intellectual Property is a prerequisite in order to enable such activity or process to be accomplished;
- 2.20 **Personnel** means any partner, employee, agent, consultant, independent associate or supplier, Subcontractor and the staff of such Subcontractor, or other authorised representative of either Party;
- 2.21 **Purchase Order(s)** means official orders issued by an operating division of Transnet to the Service Provider for the provision of Services;
- 2.22 **Service(s)** means the setup and operation of the MDS Execution support office, the Service(s) provided to Transnet by the Service Provider, pursuant to Schedule 1 "Work Order"(s) in terms of this Agreement;

Agreement between Transnet and McKinsey Incorporated
For the provision of Advisory Services Related to the Acquisition of the 1064 Locomotives Tender

- 2.23 **Subcontract** means any contract or agreement or proposed contract or agreement between the Service Provider and any third party whereby that third party agrees to provide to the Service Provider the Services or any part thereof;
- 2.24 **Subcontractor** means the third party with whom the Service Provider enters into a Subcontract;
- 2.25 **Service Provider Materials** means including, but not limited to, data, diagrams, charts, reports, specifications, studies, inventions, software, software development tools, methodologies, ideas, methods, processes, concepts and techniques analyses, know-how, tools, frameworks, models and industry perspectives used and/or developed by the Service Provider in connection with the Services;
- 2.26 **Tax Invoice** means the document as required by Section 20 of the Value-Added Tax Act, 89 of 1991, as may be amended from time to time;
- 2.27 **Third Party Material** means software, software development tools, methodologies, ideas, methods, processes, concepts and techniques owned by, or licensed to a third party and used by the Service Provider in the performance of the Services;
- 2.28 **Trade Marks** mean registered Trade Marks and trade mark applications and includes any sign or logo, or combination of signs and/or logos capable of distinguishing the goods or services of one undertaking from those of another undertaking;
- 2.29 **VAT** means Value-Added Tax chargeable in terms of the Value-Added Tax Act, 89 of 1991, as may be amended from time to time; and
- 2.30 **Work Order(s)** means a detailed scope of work for a Service required by Transnet, including timeframes, Deliverable, Fees and costs for the supply of the Service to Transnet, which shall be appended to this Agreement.

3 INTERPRETATION

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

4 NATURE AND SCOPE

- 4.1 This Agreement is an agreement under the terms and conditions of which the Service Provider will arrange for the provision to Transnet of the Services which meet the requirements of Transnet, the delivery of which Services is controlled by means of Purchase Orders to be issued by Transnet and executed by the Service Provider, in accordance with this Agreement.

Agreement between Transnet and McKinsey Incorporated
For the provision of Advisory Services Related to the Acquisition of the 1064 Locomotives Tender

- 4.2 Such Purchase Orders shall be agreed between the Parties from time to time, subject to the terms of the relevant Work Order(s).
- 4.3 Each properly executed Purchase Order forms an inseparable part of this Agreement as if it were fully incorporated into the body of this Agreement.
- 4.4 During the period of this Agreement, both Parties can make written suggestions for amendments to the Work Order(s), in accordance with procedures set out in clause 29 *[Amendment and Change Control]* below. A Party will advise the other Party within 14 [fourteen] Business Days, or such other period as mutually agreed, whether the amendment is acceptable.
- 4.5 Insofar as any term, provision or condition in the Work Order(s) conflicts with a like term, provision or condition in this Agreement and/or a Purchase Order, or where this Agreement is silent on the matter, the term, provision or condition in this Agreement shall prevail, unless such term or provision or condition in this Agreement has been specifically revoked or amended by mutual written agreement between the Parties.
- 4.6 The Service Provider will perform its obligations under this Agreement in accordance with the timeframe(s) [if any] set out in the relevant schedule, save that the Service Provider will not be liable under this clause if it is unable to meet such obligation within the time required as a direct result of any act or omission by Transnet and it has used its best endeavours to advise Transnet of such act or omission. In the event of such delay, any time deadlines detailed in the relevant schedule shall be extended by a period equal to the period of that delay.

5 AUTHORITY OF PARTIES

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

6 WARRANTIES

- 6.1 The Service Provider warrants to Transnet that:
 - a) It has full capacity and authority to enter into and to perform this Agreement and that this Agreement is executed by a duly authorised representatives of the Service Provider;
 - b) It will discharge its obligations under this Agreement and any annexure, appendix or schedule hereto with all due skill, care and diligence;
 - c) It will be solely responsible for the payment of remuneration and associated benefits, if any, of its Personnel and for withholding and remitting income tax for its Personnel in conformance with any applicable laws and regulations; and
 - d) The use or possession by Transnet of any Materials will not subject Transnet to any claim for infringement of any Intellectual Property Rights of any third party.

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For the provision of Advisory Services Related to the Acquisition of the 1064 Locomotives Tender

- 6.2 The Service Provider warrants that it will perform its obligations under this Agreement in accordance with the Service Levels as defined in the relevant schedule. Transnet may at its reasonable discretion audit compliance with the Service Levels, provided that any such audit is carried out with reasonable prior notice and in a reasonable way so as not to have an adverse effect on the performance of the Services or the manner in which the Service Provider ordinarily conducts business. Without prejudice to clause 6.3 below, in the event that the Service Provider fails to meet the Service Levels, Transnet may claim appropriate service credits or invoke retention of Fees as detailed in the relevant schedule and/or Work Order.
- 6.3 The Service Provider shall, in accordance with the Service Provider's document retention policies, establish and maintain a secure file containing a copy of any presentation, progress review, report or other document furnished to Transnet by the Service Provider in connection with the Services, together with any working papers necessary to support its conclusions or analyses (collectively, the "Working Papers File"). Transnet may, at its own cost, inspect the Working Papers File at any time, during the five (5) year period from the end of the calendar year in which the relevant Services are completed or terminated, solely for the purpose of determining whether the Service Provider performed the Services in accordance with the Work Order. Any information furnished in connection with this provision shall be kept confidential in accordance with this Agreement.
- 6.4 The Service Provider warrants that it will, within a period of 90 [ninety] days from Acceptance of the Deliverables they will, if previously used, conform in all material respects with the requirements set out in the relevant schedule. The Service Provider will at its expense remedy any such non-conformity as soon as possible but in any event within 30 [thirty] days of notification by Transnet.
- 6.5 The Service Provider will remedy any defect within 30 [thirty] days of being notified of that defect by Transnet in writing.
- 6.6 The Service Provider will not be liable to remedy any problem arising from or caused by Transnet's use of the Deliverables in any way not intended by the Work Order or any modification made by Transnet to the Deliverables, or any part thereof, without the prior approval of the Service Provider.
- 6.7 The Service Provider shall advise Transnet of the effects of any steps proposed by Transnet pursuant to clause 6.6 above, including but not limited to any cost implications or any disruption or delay in the performance of the Services. The Parties agree that any changes to the Services, including the charges for the Services or any timetables for delivery of the Services, will be agreed in accordance with the change control procedure, as set out in clause 29 (*Amendment and Change Control*).
- 6.8 The Service Provider warrants that:
- a) It has, using the most up-to-date software practicably and reasonably available to it, tested for [and deleted] all viruses identified by the Service Provider in the Materials at the date of the relevant Work Order; and
 - b) At the time of delivery to Transnet, the Materials do not contain any trojan horse, worm, logic bomb, time bomb, back door, trap door, keys or other harmful components.
- The Service Provider agrees that, in the event that a virus is found, it will use its reasonable endeavours to assist Transnet in reducing the effect of the virus and, particularly in the event that

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For the provision of Advisory Services Related to the Acquisition of the 1064 Locomotives Tender

a virus causes loss of operational efficiency or loss of data, to assist Transnet to the same extent to mitigate such losses and to restore Transnet to its original operating efficiency.

- 6.9 The Service Provider undertakes to comply with South Africa's general privacy protection in terms of Section 14 of the Bill of Rights in connection with this Agreement and shall procure that its Personnel shall observe the provisions of Section 14 [as applicable] or any amendments and re-enactments thereof and any regulations made pursuant thereto.
- 6.10 The Service Provider warrants that it has taken all reasonable precautions to ensure that, in the event of a disaster, the impact of such disaster on the ability of the Service Provider to comply with its obligations under this Agreement will be reduced to the greatest extent possible, and that the Service Provider shall ensure that it has appropriate, tested and documented recovery arrangements in place.
- 6.11 In compliance with the National Railway Safety Regulator Act, 16 of 2002, the Service Provider shall ensure that the Services, to be supplied to Transnet under the terms and conditions of this Agreement, comply fully with the specifications as set forth in Schedule 1 hereto, and shall thereby adhere [as applicable] to railway safety requirements and/or regulations. Permission for the engagement of a Subcontractor by the Service Provider [as applicable] shall be subject to a review of the capability of the proposed Subcontractor to comply with the specified railway safety requirements and/or regulations. The Service Provider and/or its Subcontractor shall make senior Personnel available to Transnet, during the term of this Agreement, to review any safety-related activities, including the coordination of such activities across all parts of its organisation.

7 TRANSNET'S OBLIGATIONS

- 7.1 Transnet undertakes to promptly comply with any reasonable request by the Service Provider for information, including information concerning Transnet's operations and activities, that relates to the Services as may be necessary for the Service Provider to perform the Services, but for no other purpose. However, Transnet's compliance with any request for information is subject to any internal security rules and requirements and subject to the observance by the Service Provider of its confidentiality obligations under this Agreement.
- 7.2 The Service Provider shall give Transnet reasonable notice of any information it requires in accordance with clause 7.1 above.
- 7.3 Subject to clause 14 [Service Provider's Personnel], Transnet agrees to :
- a) provide the Service Provider or its Personnel such access to and use of its facilities as is necessary to allow the Service Provider to perform its obligations under this Agreement; and
 - b) perform any tasks or responsibilities assigned to Transnet and notify the Service Provider of any issues or concerns Transnet may have relating to the Services..

8 GENERAL OBLIGATIONS OF THE SERVICE PROVIDER

- 8.1 The Service Provider shall:
- a) Respond promptly to all complaints and reasonable enquiries from Transnet;
 - b) Inform Transnet immediately of any dispute or complaint arising in relation to the provision of the Services;

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For the provision of Advisory Services Related to the Acquisition of the 1064 Locomotives Tender

- c) Conduct its business in a professional manner that will reflect positively upon the Service Provider and the Service Provider's Services;
 - d) Keep full records clearly indicating all transactions concluded by the Service Provider relating to the performance of the Services and keep such records for at least 5 [five] years from the date of each such transaction;
 - e) Obtain, and at all times maintain in full force and effect, any and all licences, permits and the like required under applicable laws for the provision of the Services and the conduct of the business and activities of the Service Provider;
 - f) Observe and ensure compliance with all requirements and obligations as set out in the labour and related legislation of South Africa, including the Occupational Health and Safety Act, 85 of 1993;
 - g) Comply with all applicable environmental legislation and regulations, and demonstrate sound environmental policies, management and performance that are applicable to the Service Provider and performance of the Services; and
 - h) Ensure the validity of all renewable certifications, including but not limited to its Tax Clearance Certificate and B-BBEE Verification Certificate, for the duration of this Agreement. Should the Service Provider fail to present Transnet with such renewals as they become due, Transnet shall be entitled, in addition to any other rights and remedies that it may have in terms of the Agreement, to terminate this Agreement forthwith without any liability and without prejudice to any claims which Transnet may have for damages against the Service Provider.
- 8.2 The Service Provider acknowledges and agrees that it shall at all times:
- a) Render the Services and perform all its duties with honesty and integrity;
 - b) Communicate openly and honestly with Transnet and demonstrate a commitment to performing the Services timeously, efficiently and to the required standards;
 - c) Endeavour to provide the highest possible standards of service and professionalism, with a reasonable degree of care and diligence;
 - d) Use its reasonable endeavours and make every diligent effort to meet agreed deadlines;
 - e) Treat its own Personnel, as well as all Transnet's officers, employees, agents and consultants, with fairness and courtesy and respect for their human rights;
 - f) Practice and promote its own internal policies aimed at prohibiting and preventing unfair discrimination (as further referred to in clause 23 – *Equality and Diversity*);
 - g) Treat all enquiries from Transnet in connection with the Services with courtesy and respond to all enquiries promptly and efficiently. Where the Service Provider is unable to comply with the provisions of this clause, the Service Provider will advise Transnet of the delay and the reasons therefor and will keep Transnet informed of progress made regarding the enquiry;
 - h) When requested by Transnet, provide clear and accurate information regarding the Service Provider's own policies and procedures, excluding Know-How and other Confidential

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For the provision of Advisory Services Related to the Acquisition of the 1064 Locomotives Tender

Information, except where a non-disclosure undertaking has been entered into between the Parties;

- i) Not accept or offer, nor allow, induce or promote the acceptance or offering of any gratuity, enticement, incentive or gift that could reasonably be regarded as bribery or an attempt to otherwise exert undue influence over the recipient;
- j) Not mislead Transnet or its officers, employees and stakeholders, whether by act or omission;
- k) Not otherwise act in an unethical manner or do anything which could reasonably be expected to damage or tarnish Transnet's reputation or business image; and
- l) Immediately report to Transnet any unethical, fraudulent or otherwise unlawful conduct of which it becomes aware in connection with Transnet or the provision of Services.

9 SERVING COMPETITORS

It is the Service Provider's long-standing policy to serve competing clients and clients with potentially conflicting interests as well as counter-parties in merger, acquisition and alliance opportunities, and to do so without compromising its professional responsibility to maintain the confidentiality of client information. Consistent with such practice and the Service Provider's confidentiality obligations to its other clients, the Service Provider is not able to advise or consult with Transnet about the Service Provider serving Transnet's competitors or other parties. To avoid situations of potential conflict, the Service Provider will not assign consultants, who are providing the Services and who receive confidential information, to a competitively sensitive project for what the Service Provider considers a significant period of time following an assignment for Transnet.

10 FEES AND EXPENSES

- 10.1 In consideration of the provision of the Services, Transnet will pay to the Service Provider the Fees detailed in the relevant schedule or Work Order.
- 10.2 Transnet will not be invoiced for materials used in the provision of the Services save for those materials [if any] set out in the Work Order and accepted by Transnet or in any relevant Work Order [which will be invoiced to Transnet at cost].
- 10.3 The Parties have agreed that the value of the Service Provider's expenses in connection with the provision of the Services shall be fixed at 10% of the total Fees which amount shall be paid by Transnet to the Service Provider.
- 10.4 All Tax Invoices relating to Fees, and expenses and, where appropriate, shall include VAT as a separate item.

11 INVOICING AND PAYMENT

- 11.1 Transnet shall pay the Service Provider the amounts stipulated in the relevant schedule or Work Order, subject to the terms and conditions of this Agreement.
- 11.2 Transnet shall pay such amounts to the Service Provider, upon receipt of a valid and undisputed Tax Invoice as specified in the Work Order appended hereto, once the undisputed Tax Invoices,

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or such portion of the Tax Invoices which are undisputed become due and payable to the Service Provider for the provision of the Services, in terms of clause 11.4 below.

11.3 All Fees and other sums payable under this Agreement are exclusive of VAT, which will be payable at the applicable rate.

11.4 Unless otherwise provided for in the Work Order(s) appended to this Agreement, Tax Invoices shall be submitted together with a month-end statement. Payment against such month-end statement shall be made by Transnet within 30 [thirty] days after date of receipt by Transnet of the statement together with all undisputed Tax Invoices and supporting documentation.

11.5 Where the payment of any Tax Invoice, or any part thereof which is not in dispute, is not made in accordance with this clause 11, the Service Provider shall be entitled to charge interest on the outstanding amount, at The Standard Bank of South Africa's prime rate of interest in force, for the period from the due date of payment until the outstanding amount is paid.

12 FEE ADJUSTMENTS

12.1 Subject to Clause 10.1, the Fee is fixed for the duration of the Agreement.

13 INTELLECTUAL PROPERTY RIGHTS

13.1 Title to Confidential Information and Intellectual Property

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

b) The Service Provider shall grant Transnet access to the Service Provider's Background Intellectual Property on terms which shall be negotiated between the Parties for the purpose of commercially exploiting the Foreground Intellectual Property, to the extent that such access is required.

c) To the extent Materials includes any Service Provider Materials, the Service Provider shall grant to Transnet an irrevocable, royalty free, non-exclusive, non-transferable, non-sublicenseable, worldwide licence to use and copy the Service Provider Materials solely as part of the Deliverables and subject to the limitations on the use of the Service Provider name and Deliverables. Subject to the foregoing and payment in full of the Fees, Transnet will own all Materials furnished by the Service Provider to it in connection with the Services.

13.2 Unauthorised Use of Confidential Information

The Service Provider shall not authorise any party to act on or use in any way any Confidential Information belonging to Transnet whether or not such party is aware of such Confidential

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Information, and shall promptly notify Transnet of the Information if it becomes aware of any party so acting, and shall provide Transnet the Information with such assistance as Transnet reasonably requires, at Transnet's cost and expense, to prevent such third party from so acting. The Service Provider's work for Transnet is confidential and intended for Transnet's internal use only. The Service Provider does not make public client names, client materials or reports prepared for clients without their prior written permission. Similarly, Transnet agrees that it will not use the Service Provider's name, refer to the Service Provider's work, or make the Deliverables or proposals (including the Service Provider's fees, expenses and other commercial terms) or the existence or terms of this agreement available outside its organization without the Service Provider's prior written permission.

13.3 Unauthorised Use of Intellectual Property

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

14 SERVICE PROVIDER'S PERSONNEL

- 14.1 The Service Provider's Personnel shall be regarded at all times as employees, agents or subcontractors of the Service Provider and no relationship of employer and employee shall arise between Transnet and any Service Provider Personnel under any circumstances regardless of the degree of supervision that may be exercised over the Personnel by Transnet.

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- 14.2 The Service Provider warrants that all its Personnel will be entitled to work in South Africa or any other country in which the Services are to be performed.
- 14.3 The Service Provider will ensure that its Personnel comply with all reasonable requirements made known to the Service Provider by Transnet concerning conduct at any Transnet premises or any other premises upon which the Services are to be performed [including but not limited to security regulations, policy standards and codes of practice and health and safety requirements]. The Service Provider will ensure that such Personnel at all times act in a lawful and proper manner in accordance with these requirements.
- 14.4 Transnet reserves the right to refuse to admit or to remove from any premises occupied by or on behalf of it, any Service Provider Personnel whose admission or presence would, in the reasonable opinion of Transnet, be undesirable or who represents a threat to confidentiality or security or whose presence would be in breach of any rules and regulations governing Transnet's Personnel, provided that Transnet notifies the Service Provider of any such refusal [with reasons why]. The reasonable exclusion of any such individual from such premises shall not relieve the Service Provider from the performance of its obligations under this Agreement.
- 14.5 The Service Provider agrees to use all reasonable endeavours to ensure the continuity of its Personnel assigned to perform the Services. If any re-assignment by the Service Provider of those Personnel is necessary, or if Transnet advises that any such Personnel assigned are in any respect unsatisfactory, including where any such Personnel are, or are expected to be or have been absent for any period, then the Service Provider will promptly supply a suitable replacement.

15 LIMITATION OF LIABILITY

- 15.1 Neither Party excludes or limits liability to the other Party for:
- a) Death or personal injury due to negligence; or
 - b) Fraud
- 15.2 Each of the Parties shall indemnify and keep the other Party (the "Indemnified Party") indemnified from and against liability for damage to any of the Indemnified Party's property [whether tangible or intangible] or any other loss, costs or damage suffered by the Indemnified Party to the extent that it results from any act of or omission by such Party or its Personnel in connection with this Agreement. Each of the Party's liability arising out of this clause 15.2 shall be limited to a maximum amount payable in respect of any one occurrence or a series of related occurrences in a single calendar year, such amount to be agreed in writing by the Parties.
- 15.3 Subject always to clauses 15.1 and 15.2 above, the liability of either the Service Provider or Transnet under or in connection with this Agreement, whether for negligence, misrepresentation, breach of contract or otherwise, for direct loss or damage arising out of each Default or series of

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related Defaults shall not exceed 100% [one hundred per cent] of the Fees paid under the schedule or Work Order to which the Default(s) relates.

15.4 Subject to clause 15.1 above, and except as provided in clauses 15.2 and 15.2 above, in no event shall either Party be liable to the other for Indirect or consequential loss or damage or including indirect or consequential loss of profits, business, revenue, goodwill or anticipated savings of an indirect nature or loss or damage incurred by the other Party as a result of third party claims.

15.5 Nothing in this clause 15 shall be taken as limiting the liability of the Service Provider in respect of clause 13 [Intellectual Property Rights] or clause 17 [Confidentiality].

16 INSURANCES

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

16.2 The Service Provider shall arrange insurance with reputable insurers and will produce to Transnet evidence of the existence of the policies after written request therefore by Transnet within 30 [thirty] days after date of policy renewals.

16.3 Subject to clause 16.4 below, if the Service Provider fails to affect adequate insurance under this clause 16, it shall notify Transnet in writing as soon as it becomes aware of the reduction or inadequate cover and Transnet may arrange or purchase such insurance. The Service Provider shall promptly reimburse Transnet for any premiums paid provided such insurance protects the Service Provider's liability. Transnet assumes no responsibility for such insurance being adequate to protect all of the Service Provider's liability.

16.4 In the event that the Service Provider receives written notice from its insurers advising of the termination of its insurance cover referred to in clause 16.1 above or if the insurance ceases to be available upon commercially reasonable terms, the Service Provider shall immediately notify Transnet in writing of such termination and/or unavailability, where after either the Service Provider or Transnet may terminate this Agreement on giving the other Party not less than 30 [thirty] days prior written notice to that effect.

17 CONFIDENTIALITY

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

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- a) Not to divulge or disclose to any person whomsoever in any form or manner whatsoever, either directly or indirectly, any Confidential Information of the other, without the prior written consent of such other Party, other than when called upon to do so in accordance with a statute, or by a court having jurisdiction, or by any other duly authorised and empowered authority or official, in which event the Party concerned shall do what is reasonably possible to inform the other of such a demand and each shall assist the other in seeking appropriate relief or the instituting of a defensive action to protect the Confidential Information concerned;
- b) Not to use, exploit, permit the use of, directly or indirectly, or in any other manner whatsoever apply the Confidential Information, disclosed to it as a result of this Agreement, for any purpose whatsoever other than for the purpose for which it is disclosed or otherwise than in strict compliance with the provisions in this Agreement;
- c) Not to make any notes, sketches, drawings, photographs or copies of any kind of any part of the disclosed Confidential Information, without the prior written consent of such other Party, except when reasonably necessary for the purpose of this Agreement, in which case such copies shall be regarded as Confidential Information;
- d) Not to de-compile, disassemble or reverse engineer any composition, compilation, concept application, item, component de-compilation, including software or hardware disclosed and shall not analyse any sample provided by Transnet, or otherwise determine the composition or structure or cause to permit these tasks to be carried out except in the performance of its obligations pursuant to this Agreement;
- e) Not to exercise less care to safeguard Transnet Confidential Information than the Party exercises in safeguarding its own competitive, sensitive or Confidential Information;
- f) Confidential Information disclosed by either Party to the other or by either Party to any other party used by such Party in the performance of this Agreement, shall be dealt with as "restricted" or shall be dealt with according to any other appropriate level of confidentiality relevant to the nature of the information concerned, agreed between the Parties concerned and stipulated in writing for such information in such cases;
- g) The Parties shall not make or permit to be made by any other person subject to their control, any public statements or issue press releases or disclose Confidential Information with regard to any matter related to this Agreement, unless written authorisation to do so has first been obtained from the Party first disclosing such information;

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- h) Each Party shall be entitled to disclose such aspects of Confidential Information as may be relevant to one or more technically qualified employees or internal consultants of the Party who are required in the course of their duties to receive the Confidential Information for the Permitted Purpose provided that the employee or internal consultant concerned has a legitimate interest therein, and then only to the extent necessary for the Permitted Purpose, and is informed by the Party of the confidential nature of the Confidential Information and the obligations of the confidentiality to which such disclosure is subject and the Party shall ensure such employees or internal consultants honour such obligations;
- i) Each Party shall notify the other Party of the name of each person or entity to whom any Confidential Information has been disclosed as soon as practicable after such disclosure;
- j) Each Party shall ensure that any person or entity to which it discloses Confidential Information shall observe and perform all of the covenants the Party has accepted in this Agreement as if such person or entity has signed this agreement. The Party disclosing the Confidential Information shall be responsible for any breach of the provisions of this Agreement by the person or entity; and
- k) each Party may by written notice to the other Party specify which of the Party's employees, officers or agents are required to sign a non-disclosure undertaking.

17.2 The duties and obligations with regard to Confidential Information in this clause 17 shall not apply where:

- a) A Party can demonstrate that such information is already in the public domain or becomes available to the public through no breach of this Agreement by that Party, or its Personnel; or
- b) Was rightfully in a Party's possession prior to receipt from the other Party, as proven by the first-mentioned Party's written records, without a infringement of an obligation or duty of confidentiality; or
- c) Can be proved to have been rightfully received by a Party from a third party without a breach of a duty or obligation of confidentiality; or
- d) Is independently developed by a Party as proven by its written records.

17.3 The Service Provider's work for Transnet is confidential and intended for Transnet's internal use only. The Service Provider does not make public client names, client materials or reports prepared for clients without their prior written permission. Similarly, Transnet agrees that it will not use

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Service Provider's name, refer to Service Provider's work, or make the Deliverables or the existence or terms of this Agreement available outside its organization without the Service Provider's prior written permission.

17.4 This clause 17 shall survive termination for any reason of this Agreement and shall remain in force and effect from the Commencement Date of this Agreement and 5 [five] years after the termination of this Agreement. Upon termination of this Agreement, all documentation furnished to the Service Provider by Transnet pursuant to this Agreement shall be returned to Transnet including, without limitation all corporate identity equipment including dyes, blocks, labels, advertising matter, printing matter and the like.

18 TOTAL OR PARTIAL FAILURE TO PERFORM THE SCOPE OF SERVICES

Should the Service Provider fail or neglect to execute the work or to deliver any portion of the Service, as required by the terms of this Agreement or Work Order, Transnet may cancel this Agreement or Work Order in so far as it relates to the unexecuted work or rejected portion of the Service, and, in such event, the provision of any remaining commitment shall remain subject in all respects to these conditions.

19 TERM AND TERMINATION

19.1 Notwithstanding the date of signature hereof, the Commencement Date of this Agreement is 05 January 2013 and the expiry thereof shall occur on 31 March 2015, unless:

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

19.2 Either Party may terminate this Agreement forthwith by notice in writing to the other Party where the other Party has committed a material Default and, where such Default is capable of remedy, has failed to remedy such Default within 30 [thirty] days of receiving notice specifying the Default and requiring its remedy.

19.3 Either Party may terminate this Agreement forthwith by notice in writing to the other Party when the other Party is unable to pay its debts as they fall due or commits any act or omission which would be an act of insolvency in terms of the Insolvency Act, 24 of 1936 (as may be amended from time to time), or if any action, application or proceeding is made with regard to it for:

- a) A voluntary arrangement or composition or reconstruction of its debts;
- b) Its winding-up or dissolution;

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- c) The appointment of a liquidator, trustee, receiver, administrative receiver or similar officer;
or
- d) Any similar action, application or proceeding in any jurisdiction to which it is subject.

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

19.5 Transnet may cancel any schedule or Work Order hereto at any time on giving the Service Provider 30 [thirty] days' written notice.

19.6 Notwithstanding this clause 19, either Party may cancel this Agreement without cause by giving 30 [thirty] days prior written notice thereof to the other Party.

20 CONSEQUENCE OF TERMINATION

20.1 Termination in accordance with clause 19 [Term and Termination] shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to either Party and all provisions which are to survive this Agreement or impliedly do so shall remain in force and in effect.

20.2 On termination of this Agreement or a Work Order, the Service Provider will immediately deliver up, and procure that its Personnel will immediately deliver up to Transnet, all final Deliverables and property belonging to Transnet [or, in the event of termination of a Work Order, such as is relevant to that Work Order] which may be in the possession of, or under the control of the Service Provider, and certify to Transnet in writing that this has been done.

20.3 To the extent that any of the Deliverables and property referred to in clause 20.2 above is in electronic form and contained on non-detachable storage devices, the Service Provider will provide Transnet with encrypted copies of the same on magnetic media and will irretrievably destroy and delete copies so held. Notwithstanding the foregoing, Service Provider shall be permitted to retain, subject to the terms of this Agreement and for professional archival purposes only, a copy of any Deliverables furnished to Transnet by Service Provider in connection with the Services, together with any working papers necessary to support its conclusions or recommendations.

20.4 In the event that this Agreement is terminated by the Service Provider under clause 19.2 [Term and Termination], or in the event that a Work Order is terminated by Transnet under clause 19.5 [Term and Termination], Transnet will pay to the Service Provider all outstanding Fees [apportioned on a pro rata basis] relating to the work undertaken by the Service Provider up until the date of such termination. Transnet will also pay the costs of any goods and materials ordered by the Service Provider in relation to such work for which the Service Provider has paid or is legally obliged to pay, in which case, on delivery of such goods or materials, the Service Provider will promptly deliver such goods and materials to Transnet or as it may direct.

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20.5 The provisions of clauses 2 [Definitions], 6 [Warranties], 13 [Intellectual Property Rights], 15 [Limitation of Liability], 17 [Confidentiality], 20 [Consequence of Termination], 26 [Dispute Resolution] and 30 [Governing Law] shall survive termination or expiry of this Agreement.

20.6 If either Party [the Defaulting Party] commits a material breach of this Agreement and fails to remedy such breach within 30 [thirty] Business Days of written notice thereof, the other Party [hereinafter the Aggrieved Party], shall be entitled, in addition to any other rights and remedies that it may have in terms of this Agreement, to terminate this Agreement forthwith without any liability and without prejudice to any claims which the Aggrieved Party may have for damages against the Defaulting Party.

20.7 Should:

- a) The Service Provider effect or attempt to effect a compromise or composition with its creditors; or
- b) Either Party be provisionally or finally liquidated or placed under judicial management, whether provisionally or finally; or
- c) Either Party cease or threaten to cease to carry on its normal line of business or default or threaten to default in the payment of its liabilities generally, or commit any act or omission which would be an act of insolvency in terms of the Insolvency Act, 24 of 1936 [as may be amended from time to time];

Then the other Party shall be entitled, but not obliged, to terminate this Agreement on written notice, in which event such termination shall be without any liability and without prejudice to any claims which either Party may have for damages against the other.

21 ASSIGNMENT

Neither Party may assign the benefit of this Agreement or any interest hereunder except with the prior written consent of the other.

22 FORCE MAJEURE

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

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

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23 EQUALITY AND DIVERSITY

- 23.1 The Service Provider will not victimise, harass or discriminate against any employee of either Party to this Agreement or any applicant for employment with either Party to this Agreement due to their gender, race, disability, age, religious belief, sexual orientation or part-time status. This provision applies, but is not limited to employment, upgrading, work environment, demotion, transfer, recruitment, recruitment advertising, termination of employment, rates of pay or other forms of compensation and selection for training.
- 23.2 Both Parties to this Agreement undertake that they will not, and shall procure that its employees, agents and Subcontractors will not breach any applicable discrimination legislation and any amendments and re-enactments thereof.

24 NON-WAIVER

- 24.1 Failure or neglect by either Party, at any time, to enforce any of the provisions of this Agreement, shall not, in any manner, be construed to be a waiver of any of that Party's rights in that regard and in terms of this Agreement.
- 24.2 Such failure or neglect shall not, in any manner, affect the continued, unaltered validity of this Agreement, or prejudice the right of that Party to institute subsequent action.

25 PARTIAL INVALIDITY

If any provision of this Agreement shall be held to be invalid, illegal or unenforceable, or shall be required to be modified, the validity, legality and enforceability of the remaining provisions shall not be affected thereby.

26 DISPUTE RESOLUTION

- 26.1 Should any dispute of whatsoever nature arise between the Parties concerning this Agreement, the Parties shall try to resolve the dispute by negotiation within 10 [ten] Business Days of such dispute arising.
- 26.2 If the dispute has not been resolved by such negotiation, either of the Parties may refer the dispute to AFSA and notify the other Party accordingly, which proceedings shall be held in Johannesburg.
- 26.3 Such dispute shall be finally resolved in accordance with the rules of AFSA by an arbitrator or arbitrators appointed by AFSA.
- 26.4 This clause constitutes an irrevocable consent by the Parties to any proceedings in terms hereof, and neither of the Parties shall be entitled to withdraw from the provisions of this clause or claim at any such proceedings that it is not bound by this clause 26.
- 26.5 This clause 26 is severable from the rest of this Agreement and shall remain in effect even if this Agreement is terminated for any reason.
- 26.6 This clause 26 shall not preclude either Party from seeking urgent relief in a court of appropriate jurisdiction, where grounds for urgency exist.

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27 ADDRESSES FOR NOTICES

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

a) **Transnet**

(i) For legal notices: Transnet SOC Ltd
47TH Floor
Carlton Centre
150 Commissioner Street
Johannesburg 2001
Fax No. 011 308 2348
Attention: Group Legal Counsel

(ii) For commercial matters: Transnet SOC Ltd
47TH Floor
Carlton Centre
150 Commissioner Street
Johannesburg 2001
Fax No. 011 308 2348
Attention: Executive Manager: Group Finance

b) **The Service Provider**

(i) For legal notices: McKinsey Incorporated
Sandown Mews East
88 Stella Street
Sandown
Sandton
2196
Fax No. 011 506 9000
Attention: Christina Planert – Partner

(ii) For commercial matters: McKinsey Incorporated
Sandown Mews East
88 Stella Street
Sandown
Sandton

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2196

Fax No. 011 506 9000

Attention: Christina Planert - Partner

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

27.3 Any notice shall be deemed to have been given:

- a) If hand delivered, on the day of delivery; or
- b) If posted by prepaid registered post, 10 [ten] days after the date of posting thereof; or
- c) If faxed, on the date and time of sending of such fax, as evidenced by a fax confirmation printout, provided that such notice shall be confirmed by prepaid registered post on the date of dispatch of such fax, or, should no postal facilities be available on that date, on the next Business Day.

28 WHOLE AND ONLY AGREEMENT

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

28.2 The Parties hereby confirm that this Agreement replaces all other agreements which exist or may have existed in any form whatever between them, with regard to the subject matter dealt with in this Agreement, including any annexures, appendices, schedules or Work Order(s) appended hereto.

29 AMENDMENT AND CHANGE CONTROL

29.1 Any requirement for an amendment or change to this Agreement or to a Work Order shall only be valid if it is in writing, signed by both Parties and added to this Agreement as an addendum hereto.

29.2 In the event the Parties cannot agree upon changes, the Parties shall in good faith seek to agree any proposed changes using the dispute resolution procedures in clause 26 [Dispute Resolution].

30 GOVERNING LAW

This Agreement is exclusively governed by and construed in accordance with the laws of the Republic of South Africa and is subject to the jurisdiction of the courts of the Republic of South Africa.

30.1 Change of Law

In this Agreement, unless the context otherwise requires, references to a statutory provision include references to that statutory provision as from time to time amended, extended or re-enacted and any regulations made under it, provided that in the event that the amendment, extension or re-enactment of any statutory provision or introduction of any new statutory provision has a material impact on the obligations of either Party, the Parties will negotiate in good faith to agree such amendments to this Agreement as may be appropriate in the circumstances. If, within a reasonable period of time, the Service Provider and Transnet cannot reach agreement on the nature of the changes required or on modification of Fees, Deliverables,

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warranties, or other terms and conditions, either Party may seek to have the matter determined in accordance with clause 26 [Dispute Resolution] above.

31 COUNTERPARTS

This Agreement may be signed in any number of counterparts, all of which taken together shall constitute one and the same instrument. Either Party may enter into this Agreement by signing any such counterpart.

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

For and on behalf of TRANSNET SOC LTD duly authorised hereto	For and on behalf of MCKINSEY INCORPORATED duly authorised hereto
Name:	Name: David Lane
Position:	Position: Director
Signature:	Signature:
Date: 11/05/14	Date: 21/02/14
Place:	Place: Soweto

AS WITNESS:	AS WITNESS:
Name:	Name: Benedict Mee
Signature:	Signature:

AS WITNESS:	AS WITNESS:
Name:	Name: FABIO PERAZZI
Signature:	Signature:

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SCHEDULE 1 – Work Order No:
For the Provision of Advisory Services Related to the Acquisition of the 1064
Locomotives Tender over a period of 9 months

With reference to the Master Agreement, Reference Number **GSM/12/05/0447** [the Agreement] between Transnet SOC Ltd [Transnet] and McKinsey, Incorporated (Pty) Ltd [the Service Provider] pursuant to which the Service Provider has agreed to perform certain services to Transnet subject to such Agreement, the defined terms in the Agreement will, unless otherwise indicated, have the same meaning in this Work Order.

In consideration of the mutual covenant and agreements contained in the Agreement and in this Work Order, it is agreed as follows:

1 DESCRIPTION OF THE SERVICES

In support of Transnet's Market Demand Strategy (MDS), Transnet has embarked on a Project to upgrade and replace its current Locomotive Fleet in order to increase handling capabilities in support of the MDS directives. In relation to the Investment expenditure programme, Advisory Services related to the 1064 Locomotives Tender over a period of 14 [fourteen] Months is thus required. Due to the specialist nature of the Project, Advisory services on the process, application and acquisition guidelines required with the award of the Tender are of critical importance and thus are required.

The Service Provider has agreed to the provision of such services in regards to the deliverables of such said service in its entirety and as outlined in this document with reference to this work order.

2 PROJECT DELIVERABLES

The Deliverables, over a period of 14 [fourteen] months and governed by this Work Order, include:

- 2.1 Advisory Services related to the Acquisition of the 1064 Locomotives Tender
- 2.2 The objective is to award the Locomotive tender by the end of the third quarter of the calendar year on the back of:
 - A robust and de-risked business case that is fully supported and approved by the board and share holder
 - A fully capacitated and flawless transaction process
 - A commercial negotiation that maximises the value delivered to Transnet and South Africa
- 2.3 Developing and augmenting the business case for the approval of the locomotives by the Transnet Board of Directors and the Department of Public Enterprises;
- 2.4 Transnet Freight Rail Goods Freight business 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

Agreement between Transnet and McKinsey Incorporated
For the provision of Advisory Services Related to the Acquisition of the 1064 Locomotives Tender

Procurement and Legal – Supplier Development and Localisation Strategy:

- Design and setting up tendering process in line with requirements
- Request for proposal documentation
- Supplier evaluation criteria
- Request for Information / quotation documentation
- Short listed selection of bidders based on the criteria
- Template contract for awarding of the tender
- Negotiation fact packs and capability building
- Claims procedure and OEM management approach post award
- Creation of Locomotive Industry in South Africa
- Integrate this into the transaction and commercial process
- Execution of transaction process (RFP, Process orchestration, adjudication capacity)
- Developing contracting strategy for programmatic approach

TECHNICAL/OPERATIONS

- Reduce loco lifecycle costs through technical and commercial lever optimisation with short listed suppliers.
- Technical Evaluation levers and estimated value
- Reduce loco lifecycle costs through technical 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 for procurement strategy (e.g. highest local content at best value for money)

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

Agreement between Transnet and McKinsey Incorporated
For the provision of Advisory Services Related to the Acquisition of the 1064 Locomotives Tender

3 PROJECT MANAGERS

Transnet Project Manager	MOHAMED MAHOMEDY
Designation	GM
Operating Division	Group Finance Capital Integration
Address	Room 4550
Cell Phone	083 357 2493
Telephone	011 584 0733
Fax	
Email	Mohammed.Mahomedy@transnet.net

Service Provider's Project Manager	CHRISTINA PLANERT
Designation	Partner
Address	
Cell Phone	
Telephone	
Fax	011 506 9000
Email	

4 ACCEPTANCE CRITERIA FOR DELIVERABLES

Transnet's Project Manager or his/her nominated delegate will sign off the authorised approval for the Deliverables as detailed in project deliverables above.

5 PROGRESS REPORTS AND REVIEW MEETINGS

Project management and review meetings will be held on a monthly basis at Carlton Centre, Johannesburg, or as otherwise directed by Transnet's Project Manager.

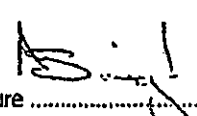
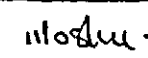
6 FEES AND DISBURSEMENTS

6.1 Any authorised expenses / disbursements will be reimbursed, subject to the provisions of clause 10 [Fees and Expenses] of the Agreement hereto.

6.2 Payment terms are subject to clause 11 [Invoicing and Payment] of the Agreement hereto.

Agreement between Transnet and McKinsey Incorporated
For the provision of Advisory Services Related to the Acquisition of the 1064 Locomotives Tender

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

7 SIGNED for and on behalf of:	9 SIGNED for and on behalf of:
8 McKinsey, Incorporated	10 Transnet SOC Ltd
11 Signature	12 Signature 
13 Name:	14 Name: 
15 Position:	16 Position:
17 Date:	18 Date:
19 Place:	20 Place:

Agreement between Transnet and McKinsey Incorporated
For the provision of Advisory Services Related to the Acquisition of the 1064 Locomotives Tender

ANNEXURE A – Project Fees

Deliverables must be executed for a fee of R35 200 000 [Thirty five million and two hundred thousand Rands]. 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.

<u>McKINSEY</u>	<u>DESCRIPTION</u>	<u>INDIVIDUALS</u>	<u>BLENDED RATE</u>
	Engagement Director and Principals	4	R2,350.00
	Associate Principals	1	R2,350.00
	Engagement managers	2	R2,350.00
	Associates	8	R2,350.00
	Research Analysts	2	R2,350.00
	Specialists and Experts	1	R2,350.00
	Production Specialists	2	R2,350.00
<u>LETSEMA</u> <u>(SUBCONTRACTOR)</u>	Engagement Director	1	R1,273.00 P/H
	Associate Partner	1	R1,273.00 P/H
	Engagement Manager	5	R1,273.00 P/H
	Senior Consultants	8	R1,273.00 P/H
	Consultants	7	R1,273.00 P/H

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

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

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

Business case integration and re-write	<p>Led by McK</p> <p>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. 	Rewritten business case that is approved of by the Transnet Board and DPE
PMO	<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 steering • Prepare external stakeholder communications 	<p>Detailed project plan with milestones</p> <p>Clear governance structure that creates an integrated view of the entire process across all advisors</p> <p>Effective steering committee meetings- clear agenda with decisions to be made, all information required for decisions circulated beforehand, issues logged and resolved</p> <p>Aligned external stakeholders</p>

LOI Reference No: GSM 12/05/0447

Agreement between Transnet and McKinsey Incorporated
For the provision of Advisory Services Related to the Acquisition of the 1064 Locomotives Tender

Attachment: Original letter of intent

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Transnet Agreement No GSM 12/05/0447

Agreement between Transnet and McKinsey Incorporated
For the provision of Advisory Services Related to the Acquisition of the 1064 Locomotives Tender

Agreement between Transnet and McKinsey Incorporated
For the provision of Advisory Services Related to the Acquisition of the 1064 Locomotives Tender

SUPPLIER DEVELOPMENT VALUE SUMMARY

This section must be fully completed in terms of this procurement even if Vendor/RFP (OVER THE CONTRACT PERIOD)						
SD Category	No.	SD Measurement	SD Value Indicators			Comments
			Number (N)	Percentage (%)	Rand Value R	
1. Technology and IP/T transfer	1.1	Certification of partner(s) qualified to provide specialised services. Indicate number of such proposed service providers and estimated Rand Value of this business over the contract period, subject to Award of contract.				
	1.2	Development, support and use of partners to provide other ancillary services. Indicate number of such proposed service providers and estimated Rand Value of this business over the Contract Period, subject to award of contract.				
2. New skills development	2.1	Number and Rand value of Black Graduates to be trained over the contract period	0.493		R 41,287.45	
	2.2	Number and Rand value of Black apprentices to be trained over the Contract Period	0.825		R 233,782.12	
	2.3	Is the level of the training offered above in compliance with the National Qualification Framework guidelines (NQF)? - Yes/No (Please Indicate)	NO			
3. Job creation and/or job preservation	3.1	Number and Rand value of new skilled jobs to be created due to Award of Contract (where "skilled" refers to jobs for people in a specialised field of work requiring a defined training path and/or a requisite level of experience in order for them to perform that role. These people could be in possession of a certificate, diploma or degree from a higher education institution)	1.925		R 1,122,517.85	
	3.2	Number and Rand value of new unskilled jobs to be created by Award of Contract (where "unskilled" refers to jobs for people where the field of work does not require extensive formal training or from whom no minimum level of education is required)	0.603		R 42,350.00	
	3.3	Number of jobs which would be preserved through Award of Contract	13.89			
	3.4	Number of jobs to be created for Black youth (where "youth" means individuals between the ages of 16 - 35 years), Black women and Blacks with disabilities through Award of Contract			We will not put an entry here, because our primary hires are all between the ages of 16-35, and therefore this would be double counting	
4. Small business promotion	4.1	% of your projected procurement spend from businesses with an annual turnover of less than R35 million (QSEs, EMEs and start-up companies)			R 1,228,000.00	
	4.2	% of the estimated contract value which would be subcontracted to EMEs, QSEs or start-up companies				
5. Rural integration and regional integration	5.1	Number of Black people employed from within the town/city of operation				
	5.2	Rand value spent on Black businesses within the town/city of operation				
	5.3	Number and Rand value of Black rural businesses that the Service Provider plans to develop as a result of the contract				
ESTIMATED RAND VALUE TOTAL OF SD COMMITMENT, EXCLUDING VAT (ZAR)			Total Value:		2,669,537.62	
SD COMMITMENT EXPRESSED AS PERCENTAGE OF ESTIMATED CONTRACT VALUE:			Total Percentage Value:		7.5%	

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 2526
F +27 11 308 2312

TRANSNET



MEMORANDUM

www.transnet.net

TO : Brian Molefe
Group Chief Executive

FROM : Anoj Singh
Group Chief Financial Officer

SUBJECT: 1064 LOCOMOTIVE TRANSACTION – ADVISORY SERVICES

PURPOSE OF SUBMISSION

1. The purpose of this memorandum is to request that the Group Chief Executive to:
 - 1.1 Note the deliverables executed by the transaction adviser on the locomotive transaction compared to the original scope per the Letter of Intent (LOI);
 - 1.2 Ratify the amendment in the allocation of scope of work from Mckinsey to Regiments Capital;
 - 1.3 Ratify the amendment in the make-up in the transaction adviser consortium from Nedbank Capital with Regiments Capital;
 - 1.4 Approve a change in the remuneration model of the transaction adviser compared to the original remuneration model;
 - 1.5 Delegate power to the GCFO to give effect to the above approvals.

BACKGROUND

2. The GCE approved the appointment of the McKinsey led Consortium (Annexure A) to provide complete advisory services on the 1064 locomotive tender, and a Letter of Intent was signed by the Group CFO on 04 December 2012 for R35,2 million excluding VAT and disbursements (Annexure B).
3. A separate Letter of Intent was signed for Webber Wentzels for R10 million for the support on the contracting and legal strategies.
4. In May 2013 a potential conflict of interest was raised with Mckinsey concerning Nedbank Capital, to which a response from Mckinsey confirmed the conflict and an alternative as Regiments Capital was proposed.
5. On 19 November 2013 the Group CFO confirmed Transnet's agreement to replace Nedbank Capital with Regiments Capital (Annexure C).
6. The entire scope of the engagement was allocated to Regiments with Mckinsey only responsible for the business case and limited technical optimisation aspects.
7. On 4 February 2014 the LOI scope for Regiments Capital was extended to reflect the above and ensure better implementation and management of risks (Annexure D).
8. The budgeted fees were also increased to R41,2 million excluding VAT and disbursements and R51,2 million including Webber Wentzels.

1064 LOCOMOTIVE TRANSACTION – ADVISORY SERVICES

DISCUSSION

9. The high level scope, allocation as well as fees of the engagement for the transaction advisors is as follows:

Scope category	Description	Responsible	Comments	Budgeted Fees excluding VAT and disbursements	Actual excluding VAT
Transaction advisory and procurement execution	<p>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; <p>Overall integration of all stakeholder inputs and communication on process progress</p>	<p>McKinsey</p> <p>Regiments</p> <p>Webber Wenzel (WW) Ningiza Horner (NH) (sub-contracted by WW)</p>	<p>McKinsey involvement de-scoped due to the extensive involvement of the Transnet Executive team.</p> <p>WW and NH assisted under tight timelines with no prior notice at all. Teams were requested to avail themselves for this entire project 24/7 over a 60 day period – due to curtailed timelines.</p>	<p>WW – R6,5 million</p> <p>NH – R3,5 million</p> <p>Regiments–R6,1 million</p>	<p>WW–R6,7 million</p> <p>NH – R3,5 million</p> <p>Regiments–R6,1 million</p>
Funding	Recommended deal structuring, financing and funding options to minimise risk for Transnet.	Regiments	<p>Scope was extended to include:</p> <ul style="list-style-type: none"> Determining the development and sustainability impact of the acquisition Conducting a collateral 	Regiments–R15 million	Regiments–R15 million

			<p>assessment to the component level to determine the potential for securing concessionary funding through export credit agencies, investment promoting funds/agencies and in the form of vendor finance.</p> <ul style="list-style-type: none"> • Investigate how asset/component can be secured in order to optimise balance sheet and cost of financing within the context of Transnet policy with respect to asset ownership and control • Developing and implementing a best practice risk management to the transaction • Developing an optimal risk management solution by examining solution that are embedded in the acquisition agreement, funding agreement and separate risk overlays • Evaluating all potential funding sources and mechanisms to select the most appropriate avenues to pursue and execute 		
Technical evaluation	Lifecycle cost savings from technical improvement levers, and price	McKinsey and ART	McKinsey involvement de-scoped.	McKinsey – R13,4 million	McKinsey – R3,3 million

and optimisation	reduction of locomotives <ul style="list-style-type: none"> • Technical evaluation levers and direct impact on loco lifecycle costs • 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 				
Business case integration	Re-write of the business case, approved by Board and DPE <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 	Mckinsey	Completed and DPE approved the business case. The Integrated end-to-end GFP business case was done at a high level and carried over to the Project Factory as part of the SWAT engagement.	McKinsey – R 6,7 million	McKinsey – R6,7 million

	<p>outcomes</p> <ul style="list-style-type: none">• Adequately address DPE queries.				
PMO	<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 Steercos• Prepare external stakeholder communications	<p>Regiments</p> <p>McKinsey oversight</p>	<p>McKinsey and Regiments involvement de-scoped as this was fully executed internally.</p>	-	-

2

Value created by Transaction advisor

10. Regiments assisted Transnet in computing the effects of hedging and escalation based on the original delivery schedule compared to an accelerated/revised delivery schedule as well as optimising the foreign exchange hedge and guarantee bond pricing.
11. This enabled Transnet to accelerate the delivery schedule resulting in savings in future inflation related escalation costs and savings in foreign exchange hedging costs.
12. The Transnet Board Acquisition and Disposal Council (BADC) approved an allocation of locomotives between the preferred bidders for the diesel locomotives on a 50/50 split basis i.e. 233 locomotives to GE and 232 locomotives to CNR and a 60/40 split basis for the electric locomotives i.e. 359 locomotives for CSR and 240 locomotives for BT.
13. This allocation resulted in an increase in the cost per locomotive due to bidders having to allocate more of the overhead costs to a smaller batch (break costs).
14. The net saving as a result of this decision as calculated by Regiments is reflected below.
15. Furthermore, the accelerated delivery of locomotives will result in the ability to deliver incremental volumes earning additional revenue.

Figure 1

Summary of Impact of reducing Batch Size	GE	CNR
	Per Loco	Per Loco
Escalation if a batch of 465 was ordered based on original delivery schedule	7 416 495	3 140 096
Hedging cost if a batch of 465 was ordered based on original delivery schedule	3 451 690	5 793 762
Escalation if a batch of 233/232 is ordered based on revised delivery schedule	5 140 840	2 770 643
Hedging cost if a batch of 233/232 was ordered based on revised delivery schedule	2 393 702	5 073 921
Saving on escalation	2 275 655	369 453
Saving on hedging	1 057 988	719 841
Total Saving	3 333 643	1 089 294
Additional cost as submitted by Bidder to reduce batch size	3 133 715	269 975
Net saving	199 928	819 319

Notes:

The forecasts were based on using historical trends of appropriate indices as calculated by Regiments Capital.

The calculations above are based on information available at a point in time to Regiments.

The above calculations were prepared to demonstrate the impact of reducing the batch size and will not tie up to the final negotiated position.

Summary of Impact of reducing Batch Size	Bombardier	CSR
	Per Loco	Per Loco
Escalation if a batch of 599 was ordered based on original delivery schedule	13 648 715	11 578 427
Hedging cost if a batch of 599 was ordered based on original delivery schedule	7 509 396	7 012 405
Escalation if a batch of 240/359 is ordered based on revised delivery schedule	6 487 680	6 248 487
Hedging cost if a batch of 240/359 was ordered based on revised delivery schedule	3 424 108	3 607 263
Saving on escalation	7 161 035	5 329 940
Saving on hedging	4 085 288	3 405 142
Total Saving	11 246 323	8 735 082
Additional cost as submitted by Bidder to reduce batch size	5 859 171	1 618 500
Net saving	5 387 152	7 116 582

Notes:

The forecasts were based on using historical trends of appropriate indices as calculated by Regiments Capital.

The calculations above are based on information available at a point in time to Regiments.

The above calculations were prepared to demonstrate the impact of reducing the batch size and will not tie up to the final negotiated position.

16. As a result of the work done by Regiments the delivery schedule was accelerated thereby ensuring that the locomotives arrive earlier, resulting in savings in future inflation related escalation costs and savings in foreign exchange hedging costs of approximately R20 billion (before break costs). The overall cost of the transaction reduced from ~R68 billion to R50 billion.
17. In addition, Transnet through Regiments efforts achieved a total savings of approximately R2,8 billion for the performance based foreign exchange and guarantee bond.
18. Regiments also achieved direct benefit to Transnet of R219 million and indirect savings of over R500 million.

Impact on Transnet

19. If the savings were not achieved the following would have been at risk:
 - 19.1. 10:4 locomotive acquisition transaction would be unaffordable at an amount in excess of R50 billion.
 - 19.2. As a consequence all MDS aspirations of a 350mt volume achievement on rail would not be met.
 - 19.3. A new strategic direction for Transnet would have needed to be developed.
 - 19.4. Potential Impact on investor confidence and appetite.
 - 19.5. Significant socio-economic benefits would have been eroded as a result of the reduced capital expansion programme.
 - 19.6. An amount of R38 billion was included in the 2014/15 Corporate Plan and the financial ratios based on this spend accordingly.
 - 19.7. The increase in costs to R68 billion would have placed significant pressure on Transnet resulting in a potential ratings downgrade.

Change in remuneration model for the transaction advisor

20. Regiments implemented extensive intellectual property and complex techniques and methodologies to achieve the above benefits to Transnet, thereby mitigating the risks identified above.

21. The Regiments operating model for such engagements is usually based a risk sharing model or success fee (25% of value created /saved).
22. In this case, Regiments was transferred a mandate and remuneration model already accepted by McKinsey.
23. Regiments initial indications were that they would have preferred to be engaged on a model consistent with para.21 above.
24. This initial request was rejected. However based on the significant value created/saved as well as risks mitigated as noted above, a request to amend the remuneration model was submitted.
25. Consequently an additional fee of R78,4 million excluding VAT is recommended to Regiments, representing 0,042 % of the total savings.
26. Once approval is obtained for the revised remuneration model a contract amendment will be made.

PPPM - GENERAL AMENDMENT PRINCIPLES

27. Amendments in excess of 40% of the original contract value or contract period will be dealt with as follows:
 - 27.1. In such cases PRIOR review and recommendation must be obtained from the appropriate AC first, as well as the original signatory. Thereafter the matter must be submitted for approval to the person with delegations one level higher than the original contract signatory (provided the cumulative value is still within their delegations of authority). This rule applies regardless of whether the amendment is still within the original signatory's delegation of authority. On approval, the amended contract will be signed off by the person with the delegation of authority to sign off the contract value concerned.
 - 27.2. However, this rule does not apply to amendments falling within the GCE, Board Acquisitions and Disposals Committee (BADC) or the Board's delegation of authority. For such contract amendments, the matter will be submitted to the GCE, BADC or the Board regardless of the value of the contract amendment (provided the cumulative value is still within their delegations of authority).
 - 27.3. The rules relating to contract amendment stated above apply to contracts awarded via open tender as well as those awarded via confinement and the appointment of consultants.
28. In terms of para.27.2 the content of this request falls within the delegation of the GCE.



FINANCIAL IMPLICATIONS

29. The breakdown per consortium partner including the additional fee from the revised remuneration model is as follows:

Partner	Budgeted Fees - R million excluding VAT and disbursements	Actual R million excluding VAT
Webber Wenzel	6.5	6.7
Regiments	21.1	99.5
Ningiza Horner	3.5	3.5
McKinsey	20.1	10.0
Total	51.2	119.7

BUDGET IMPLICATIONS

30. Although the additional amount was not explicitly budgeted for, sufficient budget exists in the 2014/15 Capital budget.

31. The additional fee of R78,4 million has not been included in the Capital budget however significant savings were achieved.

RECOMMENDATIONS

32. It is recommended that the Group Chief Executive:

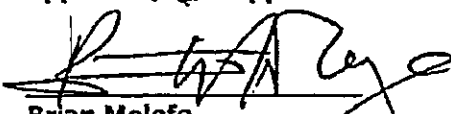
- 32.1. Note the deliverables executed by the transaction adviser on the locomotive transaction compared to the original scope per the Letter of Intent (LOI);
- 32.2. Ratify the amendment in the allocation of scope of work from McKinsey to Regiments Capital;
- 32.3. Ratify the amendment in the make-up in the transaction adviser consortium from Nedbank Capital with Regiments Capital;
- 32.4. Approve a change in the remuneration model of the transaction adviser compared to the original remuneration model;
- 32.5. Delegate power to the GCFO to give effect to the above approvals.

Compiled by



Anoj Singh
Group Chief Financial Officer
Date: 16/04/14

Approved/ ~~Not Approved~~



Brian Molefe
Group Chief Executive
Date: 17.4.14

HERE
SIGN

Transnet FIC Ltd
Registration
number:
1990/900900/20

Carlson Centre
150 Commissioner
Str. Johannesburg
2001

P.O. Box 71501
7470 View
South Africa, 2122
T +27 11 308 2253
F +27 11 308 1269

TRANSNET



www.transnet.co.za
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MEMORANDUM

To: Brian Molefe
Group Chief Executive

From: Anoj Singh
Chief Financial Officer

Subject: APPOINTMENT FOR TRANSACTION ADVISOR ON THE 1064 LOCOMOTIVE TENDER

PURPOSE

1. The purpose of this memorandum is to request approval of the Group Chief Executive for the appointment of the McKinsey consortium for the complete advisory services and Webber Wentzel for the legal advisory work as Transaction advisors on the 1064 locomotive tender.

1.1. For the Group Chief Executive to note that McKinsey will be advised to partner with another firm with equal or better credentials than Letsema, for the procurement elements, due to the potential conflict with Barloworld and Letsema.

BACKGROUND

2. The GCE previously approved a confinement for transaction advisors, dated 10th May 2012, to KPMG, PWC, Aurecon, Letsema, McKinsey, Webber Wentzel, David Potter, Ledwaba Mazwai and MAC Consulting for the advisory services.

3. The objectives of this work is to assist Transnet in successfully awarding contracts for the manufacture and supply of diesel and electric locomotives while maximising value for Transnet and securing localization and industrialization benefits for South Africa.

DISCUSSION

4. The scope of the engagement for the transaction advisors include:
- 4.1. Developing and augmenting the business case for the approval of the locomotives by the Transnet Board of Directors and Department of Public Enterprises;
 - 4.2. End to end requirements of the overall General Freight programme (locomotives, wagons, infrastructure etc based on validated volume expectations);
 - 4.3. Identifying value optimisation potential and technical optimisation options;
 - 4.4. Setting up the tender process in line with all requirements applicable to State-owned companies (SOCs);
 - 4.5. Developing a shortlist of potential suppliers;
 - 4.6. Developing the contracts for the tender; and
 - 4.7. Developing finance and funding options.

5. Key project deliverables include:
- 5.1. Updated and improved business case and relevant documentation for submission to the Transnet Board of Directors and Department of Public Enterprises;
 - 5.2. The business case should include the end to end requirements of the overall General Freight programme (locomotives, wagons, infrastructure etc based on validated volume expectations);
 - 5.3. List of technical value optimisation levers and estimated value;

Locomotive transaction advisor

Page 2 of 4

- 5.4. Design of an optimisation approach for joint value optimisation between Transnet and the selected supplier(s);
- 5.5. Overall tendering process design for the locomotives;
- 5.6. Request for proposal documentation;
- 5.7. Short list of potential suppliers;
- 5.8. Template contract for awarding of the tender; and
- 5.9. Documentation for the final selection of preferred supplier(s).

EVALUATION

6. Four proposals were received:
- 6.1. KPMG consortium – KPMG, Nkonki Inc, Norton Rose, Arcus Gibb
 - 6.2. PWC consortium – PWC, Syzya DB Engineers, Cliffe Dekker Hofmeyr Inc
 - 6.3. McKinsey consortium – McKinsey, Letsema, Utho, Kolkanyang, Nedbank, ENS and ART (David Potter), and
 - 6.4. Webber Wentzel
7. The evaluation criteria was categorized into:
- 7.1. Business Case;
 - 7.2. Technical Optimisation;
 - 7.3. Deal structuring and Finance for large capital investment projects;
 - 7.4. Procurement; and
 - 7.5. Legal.
8. The results of the Stage three evaluations are as follows:

Stage Three Evaluation – Technical Results (per category)	KPMG JV	PwC JV	McKinsey & Company / Letsema JV	Webber Wentzel
1. Business Case				
5. Experience	59.88%	75.60%	89.42%	N/A
2. Technical Optimisation	63.96%	61.58%	90.74%	N/A
3. Deal Structuring and Financing				
5. Experience	61.32%	82.32%	77.44%	N/A
4. Procurement and Legal				
5. Experience	58.54%	70.09%	81.43%	70.34%

9. From the above, KPMG did not meet the technical threshold of 70% and is thus eliminated.

10. The results of Stage Four evaluations are as follows

Stage Four Evaluation – Price and BBEE scorecard (per category)	PwC JV	McKinsey & Company / Letsema JV	Webber Wentzel
1. Business Case	68.20%	86.24%	Not evaluated
5. Experience			
2. Technical Optimisation	Not evaluated – threshold not met	86.24%	Not evaluated
5. Experience			
3. Deal Structuring and Financing	65.51%	86.24%	Not evaluated
5. Experience			
4. Procurement and Legal	28.50%*	86.24%	29.60%*
5. Experience			

* = Scores are the same as McKinsey scored the same for price and BBEE for all categories
* = PwC and Webber scored 0 (as per PPP) for pricing as they are double the price compared to McKinsey. Scores shown are only for BBEE

Locomotive transaction advisor

Page 2 of 4

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11. Group Finance and TFR Finance identified a key risk with regard to the legal services. On previous locomotive tenders, Webber Wentzel, assisted and drafted Transnet's negotiation strategy.
12. As Webber Wentzel is the recognised leader with regards to locomotive procurement and if not engaged by Transnet they would be engaged by one of the tenderers. This would put all of Transnet's previous knowledge regarding previous negotiation strategies potentially at risk.
13. The only reason Webber Wentzel scored low in the Stage Four evaluation was due to price but was rated highest in terms of technical ability.
14. The Tender evaluation process was concluded whereby the McKinsey consortium consisting of McKinsey, Letsame, Utho, Kofanyang, Nedbank, ENS and ART (David Potter) were the preferred bidder for four categories (1) to (4), into which the evaluation criteria was categorized. Webber Wentzel was evaluated the highest amongst all bidders/consortia from a technical perspective and was the preferred bidder for the legal advisory work.
15. The Transnet Acquisition Council (TAC) awarded the McKinsey consortium the complete advisory services and split the award regarding legal advisory to Webber Wentzel. Refer to attached TAC resolution.
16. As the Locomotive RFP's have been advertised and will be issued in branches and it is imperative that the RFP's be reviewed from all aspects by the transaction advisors before the supplementary RFP's are issued.

FINANCIAL IMPLICATIONS

17. The estimated value for locomotive advisory services required is R50 million. The %split of work is anticipated to be as follows:
 - 17.1. McKinsey – 35%
 - 17.2. Procurement partner – (Letsame replaced due to conflict with Barloworld) – 20 %
 - 17.3. Utho and Nedbank – 10%
 - 17.4. Webber Wentzel – 20%
 - 17.5. Advanced Rail technologies – 15%

BUDGET IMPLICATIONS

18. Although these costs were not explicitly budgeted for, sufficient budget exists in the Corporate Centre budget.

RECOMMENDATIONS


19. It is recommended that the Group Chief Executive approve the appointment of the McKinsey consortium for the complete advisory services and Webber Wentzel for the legal advisory work as Transaction advisors on the 1064 locomotive tender.

19.1. It is recommended that the Group Chief Executive note that McKinsey will be advised to partner with another firm with equal or better credentials than Letsame, for the procurement elements, due to the potential conflict with Barloworld and Letsame.

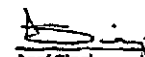
COMPILED BY:


 Yusuf Mahomed
 Group Finance
 Date: 14/1/12

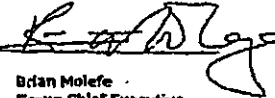
RECOMMENDED/NOT RECOMMENDED:


 Garry Pita
 GM: Integrated Supply Chain Management
 Date: 15/1/12

RECOMMENDED/NOT RECOMMENDED:


 Anoj Singh
 Chief Financial Officer
 Date: 22/1/12

APPROVED BY:


 Brian Molefe
 Group Chief Executive
 Date: 22.1.12

TRANSNET



TRANSNET ACQUISITION COUNCIL

Meeting: 26/07/2012

Agenda Item 9

RFP GSM/12/05/0447:
APPOINTMENT OF ADVISORY SERVICES RELATED
TO THE ACQUISITION OF THE 1064 LOCOMOTIVES
INFORMED ICT DECISIONS FOR THE GROUP
AWARD OF BUSINESS (CONSIDERATION)

R50.00M

RESOLUTION/MINUTE 184/2012TAC

THE TAC APPROVED THE AWARD OF BUSINESS FOR CATEGORY
4&5 AS RECOMMENDED

Remarks:

Mr. Esterhuizen declared his non-personal interest in being a part of the evaluation team and recused himself.

The TAC, after discussion, agreed to revise its previous recommendation based on the new information provided. This information plus the previous submission i.e. the full comprehensive submission enabled the TAC to therefore approve the split award of the procurement component of category 4 to the McKinsey Consortium and the legal services within category 4 to Webber Wentzel, as recommended.

However, the TAC noted the following concerns:

- Cost for the project does not qualify for capital sanction in terms of IFRS.
- Group Finance must indicate whether there's budget available for this spend.

ps

TRANSNET



The TAC requires to be informed at the next TAC meeting how this amount can be included into CAPEX, when it is an operating expense.

[Signature]
SECRETARY

Date: 27 July 2012

[Signature]
CHAIRPERSON

Date: 27 July 2012

1512

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

TRANSNET

10003/6



McKinsey Incorporated
88 Stella Street
Sandown Mews East
Sandton
2196

Annexure B

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

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;

LOI Reference No: GSM 12/05/0147



Letter of Intent Between Transnet and McKinsey Incorporated for the provision of Advisory Services related to the Acquisition of 1069 Locomotives Tender

• Financial:

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

• Project Management Office:

- o Proactive stakeholder engagement throughout process to ensure all are granted on time (e.g. PFMA)
- o Manage overall process to ensure all parts come together
- o 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 315, 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

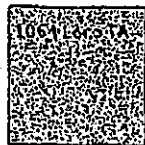
LOI Reference No: GSM 17/05/0417



Letter of Intent between Transnet and McKinsey Incorporated for the provision of Advisory Services related to the Acquisition of 1054 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:



Contract Strategy
Business case validation
Technical evaluation and selection
TAC, Integration and stakeholder management
Total Loco

IN/AR/AR
Regulatory/Monitoring
M&S
M&S + M&S
Regulatory/Budgeting + M&S

R1.4m
R2.4m
R13.5m
R2.6m
R35.2m - 2.7m

LOI Reference No: GSM 12/05/0147

Handwritten signature

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

Business case integration and re-write	<p>Led by McK</p> <p>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>
PMO	<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 steering • Prepare external stakeholder communications 	<p>Detailed project plan with milestones</p> <p>Clear governance structure that creates an integrated view of the entire process across all advisors</p> <p>Effective steering committee meetings- clear agenda with decisions to be made, all information required for decisions circulated beforehand, issues logged and resolved</p> <p>Aligned external stakeholders</p>

LOI Reference No: GSM 12/05/0447

Annexure (



McKinsey Incorporated
80 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 view of 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 15/11/2015.

Transnet SOC Ltd
Registration No. 1990/300760/E

**Carlton Centre
150 Commissioner
Street
Johannesburg
2001**

P.O. Box 72501
Parkview, Johannesburg
South Africa, 2122
T +27 11 308 3031
F +27 11 308 2630

Directors: HE H. Jansz (Chairman) G. Helefer* (Group Chief Executive) NK Cronley* MA Fenucheli Y Feibes MD Catechin N Mooka IRTF mgd LA Shama
is Shama S Tshabala OU Tshepo A Singh* (Chief Financial Officer)
**Executive Director*

www.invalnet.net

Group Company S. Jitany NTC Co., Ltd.

TRANSNET



Agreement 01

THIRD ADDENDUM FOR GSM/12/05/0447 - FOR ADVISORY SERVICES RELATED TO THE ACQUISITION
OF THE 1064 LOCOMOTIVES TENDER

BETWEEN

McKINSEY INCORPORATED
(1995/002398/10)
("The Service Provider")

AND

TRANSNET SOC LTD
(1990/000900/30)
("Transnet")

1. PREAMBLE AND INTRODUCTION

- 1.1 McKinsey Incorporated, and Transnet signed a LOI on the 6th December 2012 in terms of which Transnet acquired the services to assist Transnet with advisory services related to the acquisition of 1064 Locomotives tender ("The agreement").
- 1.2 McKinsey further appointed Regiments Capital (Pty) Ltd as a partner in executing the financing aspect of the above mentioned tender agreement, with McKinsey Incorporated being the principal lead.
- 1.3 The parties now wish to further vary the LOI and vary the scope of work regarding the financing aspect of the transaction.
- 1.4 The LOI shall be regarded as amended by the provision of the third addendum.

2. SOLE AGREEMENT

- 2.1 The LOI and addendum constitutes the sole agreement between the parties relating to the subject matter referred to in paragraph 1 of this third addendum and no variation shall be of any force and effect unless reduced to in writing and signed by or on behalf of both parties.

3. VARIATION OF SCOPE OF WORK

- 3.1 The deliverables for the revised scope of work will be as per clause 2 derived and agreed upon by Regiments Capital Pty (Ltd) for executing the funding portion of tender agreement GSM/12/05/0447. The objective of this work specific project is to conduct all the necessary studies and preparatory work to enhance Transnet's ability to raise the required funding at a competitive interest rate and to achieve an optimal funding structure with minimal pressure on Transnet's future liquidity. The deliverables include:
 1. Determining the development and sustainability impact of the acquisition by:
 - a. Conducting socio-economic impact studies.
 - b. Determine the acquisition's impact on the environment.
 - c. Examining the projects contribution to regional integration.

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2. Conducting a collateral assessment to the component level to determine the potential for securing concessionary funding through export credit agencies, investment promoting funds/agencies and in the form of vendor finance.
3. Present a detailed analysis with specific recommendation to be pursued and executed.
4. Investigate how asset/component can be secured in order to optimise balance sheet and cost of financing within the context of Transnet policy with respect to asset ownership and control.
5. Developing and implementing a best practice risk management to the transaction:
 - a. A financial risk assessment framework (including risk identification, risk assessment, risk response, risk monitoring, performance measurement, risk control, risk reporting and compliance) will be developed and implemented.
 - b. Cost escalation risk management.
 - c. Legal and regulatory risks.
 - d. Balance sheet impact – The balance sheet post acquisition and post financing will be evaluated and any necessary responses will be detailed and executed.
6. Developing an optimal risk management solution by examining solution that is embedded in the acquisition agreement, funding agreement and separate risk overlays.
7. Evaluating all potential funding sources and mechanisms to select the most appropriate avenues to pursue and execute. The full spectrum of funding opportunities that will be evaluated include:
 - a. Local and International Banks.
 - b. Local and International development finance institutions.
 - c. Export credit agencies.
 - d. Vendor financing.
8. Provide execution support programme management and support in respect to funding:
 - a. Assist in the preparation and management of capital raising related tenders/RFPs and RFIs.
 - b. Participate in roadshows and assisting with the preparation of information memorandums.
 - c. Participate in the fulfilment of conditions precedent required by the funders.
 - d. Participate in due diligence exercise and responding to all credit queries raised by the funders.

4. VARIATION OF CONTRACT PRICE

- 4.1 As a result of the additional scope of work required on the financial phase of this contract, the initial price of R35 200 000.00 (Thirty Five million and two hundred thousand rand only) will therefore increase by R6 000 000 (Six Million Rand only). This increase will bring the total Contract value to the fixed amount of R41 200 000.00 (Forty One Million and Two Hundred Thousand Rand only).
- 4.2 The work performed for this deliverable will be a fixed price of R15 000 000 (fifteen million rand only), utilising the contract value allocated to other deliverables that are no longer required, once R9 000 000 (nine million rand only) has been reached Transnet must approve the continuation of the work past R9 000 000 (nine million rand only) to R15 000 000 (fifteen million rand only).
- 4.3 Expenses for this piece of work will be capped at 10% of the value, based on actual costs incurred and in terms of Transnet Policies and Procedures.

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5. AUTHORITY OF SIGNATURE

5.1 This addendum is effective and confirms the variations herein by acceptance of the signed authority's below:

Signed at _____ this _____ of _____ 2014

Name:

ERIC WOOD

Title:

Executive Director

McKinsey Incorporated

Authorised signatory who warrants that he/she is duly authorised to sign this Third Addendum

AS WITNESSES:

1. Name:

Signature:

Signed at 21st this 24 of Feb 2014

Name: Anil Singh

Title : Group Chief Financial Officer

TRANSNET SOC Ltd

Authorised signatory for and on behalf of Transnet who warrants that he is duly authorised to sign this Third Addendum

AS WITNESSES:

1. Name:

Signature:

TRANSACTION ADVISER

TCC 100	TR04	Transnet Group	5200430723	20140220 TRX1064FRM01	#N/A	#N/A	ADVISORY SERVICE 1064 LC
TCC 100	TR04	Transnet Group	5200433192	20140228 TRX1064FRM02	#N/A	#N/A	ADVISORY SERVICES(ACQU
TCC 100	TR04	Transnet Group	5200443193	20140409 TRX1064FRM03	#N/A	#N/A	ADVISORY SERVICES-1081
TCC 100	TR04	Transnet Group	5200448837	20140430 TRX1064RISK01	#N/A	#N/A	RISK SHARE - 1064 LOCOMC
TCC 100	TR04	Transnet Group	5200443195	20140409 TRX1064TA01	#N/A	#N/A	ADVISORY SERVICES
TCC 100	TR04	Transnet Group	5200430721	20140220 TRX1064TC001	#N/A	#N/A	ADVISORY SERVICE 1064 LC
TCC 100	TR04	Transnet Group	5200433194	20140228 TRX1064TC002	#N/A	#N/A	ADVISORY SERVICES(ACQU
TCC 100	TR04	Transnet Group	5200443194	20140409 TRX1064TC003	#N/A	#N/A	ADVISORY SERVICES-1081
TCC 100	TR04	Transnet Group	5200433193	20140228 TRX1064TE01	#N/A	#N/A	ADVISORY SERVICES(ACQU
TCC 100	TR04	Transnet Group	1900136475	20150812 TRXPR00001	#N/A	#N/A	CROSS CURRENCY SWAP

1 Prof fees Adv serv, FRM work done 1064	6 450 000,00✓
1 Trans adv serv - 1064 locos FRM work don	6 450 000,00✓
1 Prof fees GSM12/05/0447 1064 locos FRM w	3 225 000,00✓
1 Risk Share 1064 Locomotives	69 500 000,00✓
1 Prof fees GSM12/05/0447 Trans adv serv	6 375 000,00✓
1 Prof fees adv serv, TCO work done 1064 I	4 300 000,00✓
1 Trans adv serv 1064 locos TCO work done	3 225 000,00✓
1 Prof fees GSM12/05/0447 1064 locos TCO wa	1 075 000,00✓
1 Trans adv serv 1064 locos TE work done	2 150 000,00✓
	166 000 000,00✓

257 750 000,00

Subtotal	Express disbursement	Total
Subtotal	30,0	
	69,5	
	99,5	
Subtotal	166,0	
Total (Express)	265,5	

Other invoice pd	
Weber Waitool	61,7
Ningjan Hauer	31,5
McKinsey	10

Appendix 78

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Tax Invoice

Invoice: TRXFR00001
VAT #: 4620216665
Date: 03 June 2015

Debt origination: \$1.5 billion – China Development Bank

Arrangement of cross currency Swap and credit default Swap with JP Morgan

- Success contingency fee	R 166,000,000.00
VAT (14%)	R 23,240,000.00
Total	R 189,240,000.00

Banking Details:

Bank: Standard Bank
Account Name: Regiments Capital (Pty) Ltd
Account Number: 200477757
Branch: Parktown
Branch Code: 000 355

Please quote Invoice number on transfer and remittance.

Invoice is payable upon receipt.

15 JAN 1964

14-136475



REGIMENTS CAPITAL

51 Central Street Houghton 2198
Postnet Suite 25 Private Bag 11 Birmam Park 2015
Tel + 27 11 715 0300 Fax + 27 11 715 0335
www.regiments.co.za

PR: 10374762.

10: 45-232329

Tax Invoice

Invoice: TRX1064TC001
VAT #: 4620216665
Date: 13 Feb 2014

Transnet Soc Ltd
35th Floor, Carlton Centre
150 Commissioner Street
Johannesburg
VAT Number: 4720103177

Your Reference: GSM 12/05/0447

Professional fees: Transaction Advisory Services (acquisition of the 1064 locomotives) – TCO work done to date.

R 4 000 000.00

Out of pocket expenses (7.5%)

R 300 000.00

VAT (14%)

R 602 000.00

Total

R 4 902 000.00

Banking Details:

Bank: Standard Bank
Account Name: Regiments Capital (Pty) Ltd
Account Number: 20047757
Branch: Parktown
Branch Code: 000 355

Please quote Invoice number on transfer and remittance.

Invoice is payable upon receipt

TRANSNET
PAID

TRANSNET
PAID
18-02-2014

Handwritten signature and initials.

Handwritten number: 52-430721

Regiments Capital (Pty) Ltd Reg No 2004/023761/07
Cm Nyhonyha, NM Pillay, EA Wood FSP16831

1009909

2014-02-20

G O O D S R E C E I T S L I P

5000475442/0001

Goods receipt date : 20.02.2014

Current date : 20.02.2014

Plant : 4000

Description : Group Services

Vendor : 0001009909

Delivery note: TRX1064TC001

Name : REGIMENTS CAPITAL

PO : 4500232329/00010

Buyer Name : Duran Balbathur

Telephone : 011 308 1087

Material :

MPN :

Description : Prof fees adv serv, TCO work done 1064 1

Quantity : 1 EA

C O N S U M P T I O N / U S A G E I N F O R M A T I O N

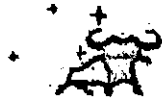
Recipient : Anoj Singh

Unloadg. point: R4529, Carlton Centre

Post center : 0001003002

Issued by : 0000031 S I G N A T U R E

TRANSNET
PAID



REGIMENTS CAPITAL

311 Central Street, Johannesburg 2008
 Business Hours: 09h00 to 17h00 Monday to Friday
 Tel: +27 11 234 0100 Fax: +27 11 234 0101
 www.regimentcapital.co.za

Tax Invoice

Invoice: TRX1064FRM02

VAT #: 4620216665

Date: 24 Feb 2014

Transnet Soc Ltd
 35th Floor, Carlton Centre
 150 Commissioner Street
 Johannesburg
 VAT Number: 4720103177

PK: 1037 0690

PO: 45-233265

Your Reference: GSM 12/05/0447

Professional fees: Transaction Advisory Services (acquisition of the 1064 locomotives) – FRM work done to date.

R 6,000,000.00

Out of pocket expenses (7.5%)

R 450,000.00

R 6 450 000.00

VAT (14%)

R 903,000.00

Total

R 7,353,000.00

Banking Details:

Bank: Standard Bank
 Account Name: Regiments Capital (Pty) Ltd
 Account Number: 200472757
 Branch: Parktown
 Branch Code: 000 355

Please quote Invoice number on transfer and remittance.

Invoice is payable upon receipt.

Handwritten signature: P. G. G. G.
 26/02/14

Large handwritten number: 52-433/92

Regiments Capital (Pty) Ltd (Reg No: 200472757)
 Bank of South Africa (BSA) 200472757

2014-02-27

Large handwritten number: 1009909

1527

G O O D S R E C E I T S L I P

5000477709/0001

Goods receipt date : 27.02.2014
Current date : 27.02.2014

Plant : 4000
Description : Group Services

Vendor : 0001009909 Delivery note: TRX1064FRM02
Name : REGIMENTS CAPITAL
PO : 4500233265/00030
Buyer Name : Duran Balbathur Telephone : 011 308 1087

Material :
MPN :
Description : Trans adv serv - 1064 locos FIM work don

Quantity : 1 EA

C O N S U M P T I O N / U S A G E I N F O R M A T I O N

Recipient : Anoj Singh
Unloadg. point: R4529, Carlton Centre
Post center : 0001003002

Issued by : 0000031 S I G N A T U R E

1528



REGIMENTS CAPITAL

91 Central Street Houghton 2158
Postnet Suite 25 Private Bag x11 Birmam Park 2015
Tel + 27 11 715 0300 Fax + 27 11 715 0535
www.regiments.co.za

Pr: 10385269
PP: 45-238554

Tax Invoice

Invoice: TRX1064FRM03

VAT #: 4620216665

Date: 31 March 2014

Transnet Soc Ltd
35th Floor, Carlton Centre
150 Commissioner Street
Johannesburg
VAT Number: 4720103177

Your Reference: GSM 12/05/0447

Professional fees: Transaction Advisory Services (acquisition of the 1064 locomotives) – FRM work done to date.

R 3 000 000.00

Out of pocket expenses (7.5%)

Sub Total: R 225,000.00
R 3 225 000.00

VAT (14%)

R 451,500.00

Total

R 3,676,500.00

TRANSNET
PAID

Banking Details:

Bank: Standard Bank
Account Name: Regiments Capital (Pty) Ltd
Account Number: 200477757
Branch: Parktown
Branch Code: 000 355

Please quote invoice number on transfer and remittance.

Invoice is payable upon receipt.

02/04/14

07-04-2014

52.443193

Regiments Capital (Pty) Ltd
Directors LM Nyhonyha, NM Pillay, EA Wood. FSP 15931

03

009909

1529

G O O D S R E C E I T S L I P

5000489118/0001

Goods receipt date : 09.04.2014
Current date : 09.04.2014

Plant : 4000
Description : Group Services

Vendor : 0001009909
Name : REGIMENTS CAPITAL
PO : 4500238554/00060
Buyer Name : Tshegofatso Shaku

Delivery note: TRX1064FRM03

Telephone : 011 308 1087

Material :
MPN :
Description : Prof fees GSM12/05/0447 1064 locos FRM w

Quantity : 1 EA

C O N S U M P T I O N / U S A G E I N F O R M A T I O N

Recipient : Anoj Singh
Unloadg. point: R4529, Carlton Centre
Post center : 0001003002

Issued by : 0000031 S I G N A T U R E

1530

G O O D S R E C E I T S L I P

5000489118/0002

Goods receipt date : 09.04.2014
Current date : 09.04.2014

Plant : 4000
Description : Group Services.

Vendor : 0001009909
Name : REGIMENTS CAPITAL
PO : 4500238554/00070
Buyer Name : Tshegofatso Shaku

Delivery note: TRX1064FRM03

Telephone : 011 308 1087

Material :
MPN :
Description : disbursements

Quantity : 1 EA

C O N S U M P T I O N / U S A G E I N F O R M A T I O N

Recipient : Anoj Singh
Unloadg. point: R4529, Carlton Centre
Post center : 0001003002

Issued by : 0000031 S I G N A T U R E

1531



REGIMENTS CAPITAL

Central Street Houghton 2198
Postnet Suite 25 Private Bag x11 Eldon Park 2015
Tel +27 175 0300 Fax +27 1715 0535
www.regiments.co.za

PR: 0010389965
PO: 4500240755

Tax Invoice

Invoice: TRX1064RISK01
VAT #: 460216665
Date: 27 Mar 2014

Transnet Soc Ltd
35th Floor, Carlton Centre
150 Commissioner Street
Johannesburg
VAT Number: 472010317

RUP

- R. Fee to TIE

- Capitalize to

100% loc.

Risk Share - 1064 Leasing Motives
Foreign exchange and warranty. 's

R 69 500,000.00

VAT (14%)

30.04.14.

R 9, 30,000.00

Total

R 79 230,000.00

Banking Details:

Bank: Standard Bank
Account Name: Regiments Capital (Pty) Ltd
Account Number: 200477757
Branch: Parktown
Branch Code: 000 355

Please quote Invoice number on transfer and remittance.

Invoice is payable upon receipt.

TRANSNET
PAID

[Signature]

[Signature]

30.04.14
approved for
payment for
Acc. no. 200477757

30.04.14
paid

Regiments Capital (Pty) Ltd
200477757
SALES, SEP 16 2014

52-448837

009909

1532



REGIMENTS CAPITAL

91 Central Street Houghton 2198
 Postnet: Suite 25 Private Bag x11 Birmam Park 2015
 Tel +27 11 715 0300 Fax +27 11 715 0535
 www.regiments.co.za

PR: 10385269
 PO: 45-238554

Tax Invoice

Invoice: TRX1064TA01
 VAT #: 4620216665
 Date: 31 March 2014

Transnet Soc Ltd
 35th Floor, Carlton Centre
 150 Commissioner Street
 Johannesburg
 VAT Number: 4720103177

Your Reference: GSM 12/05/0447

Professional fees: Transaction Advisory Services (Financial modelling, escalation calculation, pricing and contract negotiation support) R 5,000,000.00

Out of pocket expenses (7.5%)

VAT (14%)

Total

Sub-Total:

R 375,000.00
 R 375,000.00
 R 752,500.00

R 6,127,500.00

Banking Details:

Bank: Standard Bank
 Account Name: Regiments Capital (Pty) Ltd
 Account Number: 200477757
 Branch: Parktown
 Branch Code: 000 355

Please quote Invoice number on transfer and remittance.

Invoice is payable upon receipt.

Handwritten signatures and notes:
 21/04/14 Approved for
 21/04/14 Paid Payee

S2-413191

Regiments Capital (Reg No 2004/02374/07)
 Directors LM Nyhonyha NM Pillay, EA Wood, FSP 15831
 2014-02-29

1009909

1533

G O O D S R E C E I P T S L I P

5000489117/0001

Goods receipt date : 09.04.2014
Current date : 09.04.2014

Plant : 4000
Description : Group Services

Vendor : 0001009909 Delivery note: TRX1064TA01
Name : REGIMENTS CAPITAL
PO : 4500238554/00040
Buyer Name : Tshegofatso Shaku Telephone : 011 308 1087

Material :
MPN :
Description : Prof fees GSM12/05/0447 Trans adv serv

Quantity : 1 EA

C O N S U M P T I O N / U S A G E I N F O R M A T I O N

Recipient : Anoj Singh
Unloadg. point: R4529, Carlton Centre
Cost center : 0001003002

Issued by : 0000031 S I G N A T U R E

1534

G O O D S R E C E I T S L I P

5000489117/0002

Goods receipt date : 09.04.2014

Current date : 09.04.2014

Plant : 4000

Description : Group Services

Vendor : 0001009909

Delivery note: TPX1064TA01

Name : REGIMENTS CAPITAL

PO : 4500238554/00050

Buyer Name : Tshegofatso Shaku

Telephone : 011 308 1087

Material :

MPN :

Description : Disbursements

Quantity : 1 EA

C O N S U M P T I O N / U S A G E I N F O R M A T I O N

Recipient : Anoj Singh

Unloadg. point: R4529, Carlton Centre

Post center : 0001003002

Issued by : 0000031 S I G N A T U R E

TRANSNET

1535



REGIMENTS CAPITAL

2014/01/01 - 2014/01/31
 Balance Sheet: 15,000,000.00
 2014/01/01 - 2014/01/31
 15,000,000.00

(GRV not printed)

Tax Invoice

Invoice: TRX1064TC002

VAT #: 4620216665

Date: 24 Feb 2014

Transnet Soc Ltd
 35th Floor, Carlton Centre
 150 Commissioner Street
 Johannesburg
 VAT Number: 4720103177

PR: 1037 6690

PO: 45-233265

Your Reference: GSM 12/05/0447

Professional fees: Transaction Advisory Services (acquisition of the 1064 locomotives) – TCO work done to date.

R 3,000,000.00

Out of pocket expenses (7.5%)

R 225,000.00

R 3,225,000.00

VAT (14%)

R 451,500.00

Total

R 3,676,500.00

TRANSNET
PAID

Banking Details:

Bank: Standard Bank
 Account Name: Regiments Capital (Pty) Ltd
 Account Number: 200477757
 Branch: Parktown
 Branch Code: 000 355

Please quote Invoice number on transfer and remittance.

Invoice is payable upon receipt.

26-02-2014
 260214

52-433194
 26-02-2014

1009909

1536



REGIMENTS CAPITAL

51 Central Street Houghton 2198
Postnet Suite 25 Private Bag x 11 Birmam Park 2015
Tel +27 11 715 0300 Fax +27 11 715 0535
www.regiments.co.za

PK: 10385269
PO: 45-238554

Tax Invoice

Invoice: TRX1064TC003

VAT #: 4620216665

Date: 31 March 2014

Transnet Soc Ltd
35th Floor, Carlton Centre
150 Commissioner Street
Johannesburg
VAT Number: 4720103177

Your Reference: GSM 12/05/0447

Professional fees: Transaction Advisory Services (acquisition of the 1064 locomotives) - TCO work done to date.

R 1,000,000.00

Out of pocket expenses (7.5%)

Subtotal: R 75 000.00
R 1 075 000.00

VAT (14%)

R 150,500.00

Total

R 1,225,500.00

Banking Details:

Bank: Standard Bank
Account Name: Regiments Capital (Pty) Ltd
Account Number: 200477757
Branch: Parktown
Branch Code: 000 355

Please quote Invoice number on transfer and remittance.

Invoice is payable upon receipt.

Valid 07-04-2014

02104114

52.463196

Regiments Capital" (Reg No 2004/023761/07)
Directors LM Nyhonyha, NM Pillay, EA Wood FSP 16831

2014 04 08

10099009

1537

G O O D S R E C E I T S L I P

5000489120/0001

Goods receipt date : 09.04.2014
Current date : 09.04.2014

Plant : 4000
Description : Group Services

Vendor : 0001009909 Delivery note: TRX1064TC003
Name : REGIMENTS CAPITAL
PO : 4500238554/00080
Buyer Name : Tshegofatso Shaku Telephone : 011 308 1087

Material :
MPN :
Description : Prof fees GSM12/05/0447 1064 loco TC0 wo

Quantity : 1 EA

C O N S U M P T I O N / U S A G E I N F O R M A T I O N

Recipient : Anoj Singh
Inloadg. point: R4529, Carlton Centre
Post center : 0001003002

Issued by : 0000031 S I G N A T U R E

1538

GOODS RECEIPT SLIP

5000489120/0002

Goods receipt date : 09.04.2014
Current date : 09.04.2014

Plant : 4000
Description : Group Services

Vendor : 0001009909
Name : REGIMENTS CAPITAL
PO : 4500238554/00090
Buyer Name : Tshegofatso Shaku
Delivery note: TRX1064TC003
Telephone : 011 308 1087

Material :
MPN :
Description : Disbursements

Quantity : 1 EA

CONSUMPTION / USAGE INFORMATION

Recipient : Anoj Singh
Unloadg. point: R4529, Carlton Centre
Cost center : 0001003002

Issued by : 0000031 SIGNATURE

1539



REGIMENTS CAPITAL™

91 Central Street Houghton 2198
 Postnet Suite 25 Private Bag x 11 Birmam Park 2015
 Tel + 27 11 715 0300 Fax + 27 11 715 0535
 www.regiments.co.za

Tax Invoice

(GRV not printed)

Invoice: TRX1064TE01

VAT #: 4620216665

Date: 24 Feb 2014

Transnet Soc Ltd

35th Floor, Carlton Centre

150 Commissioner Street

Johannesburg

VAT Number: 4720103177

PR: 10376690

PO: 45-233265

Your Reference: GSM 12/05/0447

Professional fees: Transaction Advisory Services (acquisition of the 1064 locomotives) – TE work done to date (escalation modelling, insurance and warrantee)

R 2,000,000.00

Out of pocket expenses (7.5%)

R 150 000.00
 R 2 150 000.00

VAT (14%)

R 301,000.00

Total

R 2,451,000.00

TRANSNET
 PAID

Banking Details:

Bank: Standard Bank

Account Name: Regiments Capital (Pty) Ltd

Account Number: 200477757

Branch: Parktown

Branch Code: 000 355

Please quote Invoice number on transfer and remittance.

Invoice is payable upon receipt.

P. Pender

M. M. M. 26-02-2014

260216

S2-633193

Regiments Capital (Reg No 2004/025761/07)

Directors LM Nyhonyha, NM Pillay, EA Wood FSP 16831

274-87-23

1009909

1540

Payee:

Regiments Capital

91 Central Street

Houghton

2198

PAYMENT ADVICE

Date 11 JUNE 2015

Description	invoice no.	Date	R	C
Debt Origination \$1.5 Billion - China Development Bank	TRXFR00001	03 June 2015	166,000,000	00
Sub total			166,000,000.00	
VAT			23,240,000.00	
Total			189,240,000.00	

By Hand	Tel. No : 308-2022	Ref.:
Compiled by: Norman Mbazozzi		Approved by: <i>[Signature]</i>

COCE	GL	R C
1 0 0 3 0 1 3	6 7 6 1 0 0	189,240,000 00

FOR OFFICE USE

Verified: *[Signature]* Approved: *[Signature]*

Vendor No: 1009909 Date: / / Document no:

1009909

1900136475

2015-06-11

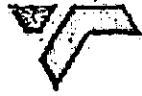
Regiments invoices

o Contract: GSM /12/05/0447 – 1064 Loco's

Regiments: Contractor

Note: Invoices are only paid once the services are delivered and the benefits received were approved in line with the scope of the contract.

1542



Payee:

Regiments Capital

91 Central Street

Houghton

2198

PAYMENT ADVICE

Date 11 JUNE 2015

Description	Invoice no.	Date	R	C
Debt Origination \$1.5 Billion - China Development Bank	TRXFR00001	03 June 2015	166,000,000	00
<div style="transform: rotate(180deg); font-weight: bold; font-size: 2em;">PAID</div> <div style="transform: rotate(180deg); font-weight: bold; font-size: 2em;">TRANSNET</div>			Sub total	166,000,000.00
			VAT	23,240,000.00
			Total	189,240,000.00

By Hand	Tel. No : 308-2022	Ref.:
Compiled by: Norman Mbazozi		Approved by: <i>[Signature]</i>

COCE	GL	R	C
1 0 0 3 0 1 3	6 7 6 1 0 0	189,240,000	00

FOR OFFICE USE

Verified: *[Signature]* Approved: *[Signature]*

Vendor No: 1009909 Date: / / Document no:

1009909

1900136475

2015-06-11

1543



REGIMENTS CAPITAL

91 Central Street Houghton 2158
 Postnet Suits 25 Private Bag 11 Blimham Park 2015
 Tel + 27 11 715 0300 Fax + 27 11 715 0535
 www.regiments.co.za

Tax Invoice

Invoice: TRXFR00001
 VAT #: 4620216665
 Date: 03 June 2015

Transnet Soc Ltd
 35th Floor, Carlton Centre
 150 Commissioner Street
 Johannesburg
 VAT Number: 4720103177

Debt origination \$1.5 billion – China Development Bank

Arrangement of cross currency Swap and credit default
 Swap with JP Morgan

- Success contingency fee	R166,000,000.00
VAT (14%)	R 23,240,000.00
Total	R189,240,000.00

Banking Details:

Bank: Standard Bank
 Account Name: Regiments Capital (Pty) Ltd
 Account Number: 200477757
 Branch: Parktown
 Branch Code: 000 355

PAID
 TRANSNET

Please quote Invoice number on transfer and remittance.

Invoice is payable upon receipt.

19-136675

Regiments Capital (Reg No: 2004/02761/07)
 Directors: L M K. Mnyha, M Pillay, EA Wood, FSP (s21)

1544



REGIMENTS CAPITAL

91 Central Street Houghton 2198
 Postnet Suite 25 Private Bag x 11 Birmam Park 2015
 Tel + 27 11 715 0300 Fax + 27 11 715 0535
 www.regiments.co.za

Tax Invoice

Invoice: TRX1064FRM03

VAT #: 4620216665

Date: 31 March 2014

Transnet Soc Ltd
 35th Floor, Carlton Centre
 150 Commissioner Street
 Johannesburg
 VAT Number: 4720103177

Your Reference: GSM 12/05/0447

Professional fees: Transaction Advisory Services (acquisition of the 1064 locomotives) – FRM work done to date.

R 3 000 000.00

Out of pocket expenses (7.5%)

Sub Total: R 225,000.00
 R 3 225,000.00

VAT (14%)

R 451,500.00

Total

R 3,676,500.00

TRANSNET
 PAID

Banking Details:

Bank: Standard Bank
 Account Name: Regiments Capital (Pty) Ltd
 Account Number: 200477757
 Branch: Parktown
 Branch Code: 000 355

Please quote Invoice number on transfer and remittance.

Invoice is payable upon receipt.

02104114

07-04-2014

1M9909

52.443193

Regiments Capital (Pty) Ltd 04/04/2014
 Directors LM Nyhonyha, NM Pillay, EA Wood. SP 16831

1545

G O O D S R E C E I T S L I P

5000489118/0001

Goods receipt date : 09.04.2014
Current date : 09.04.2014

Plant : 4000
Description : Group Services

Vendor : 0001009909
Name : REGIMENTS CAPITAL
PO : 4500238554/00060
Buyer Name : Tshegofatso Shaku

Delivery note: TRX1064FRM03

Telephone : 011 308 1087

Material :
MPN :
Description : Prof fees GSM12/05/0447 1064 locos FRM w

Quantity : 1 EA

C O N S U M P T I O N / U S A G E I N F O R M A T I O N

Recipient : Anoj Singh
Inloadg. point: R4529, Carlton Centre
Post center : 0001003002

Issued by : 0000031 S I G N A T U R E

1546

GOODS RECEIPT SLIP

5000489118/0002

Goods receipt date : 09.04.2014
Current date : 09.04.2014

Plant : 4000
Description : Group Services

Vendor : 0001009909
Name : REGIMENTS CAPITAL
PO : 4500238554/00070

Delivery note: TRX1064FRM03

Buyer Name : Tshegofatso Shaku

Telephone : 011 308 1087

Material :
MPN :
Description : disbursements

Quantity : 1 EA

CONSUMPTION / USAGE INFORMATION

Recipient : Anoj Singh
Inloadg. point: R4529, Carlton Centre
Post center : 0001003002

Issued by : 0000031 SIGNATURE

1547



REGIMENTS CAPITAL

51 Central Street Houghton 2198
Postnet Suite 25 Private Bag x 11 Birnam Park 2015
Tel + 27 11 715 0300 Fax + 27 11 715 0535
www.regiments.co.za

PA: 10385269
PO: 45-238554

Tax Invoice

Invoice: TRX1064TC003

VAT #: 4620216665

Date: 31 March 2014

Transnet Soc Ltd
35th Floor, Carlton Centre
150 Commissioner Street
Johannesburg
VAT Number: 4720103177

Your Reference: GSM 12/05/0447

Professional fees: Transaction Advisory Services (acquisition of the 1064 locomotives) – TCO work done to date.

R 1,000,000.00

Out of pocket expenses (7.5%)

R 75 000.00

Subtotal:

R 1 075 000.00

VAT (14%)

R 150,500.00

Total

R 1,225,500.00

Banking Details:

Bank: Standard Bank
Account Name: Regiments Capital (Pty) Ltd
Account Number: 200477757
Branch: Parktown
Branch Code: 000 355

Please quote Invoice number on transfer and remittance.

Invoice is payable upon receipt.

07-04-2014

02104114

52.443194

Regiments Capital (Reg No 2004/023761/07)
Directors LM Nyhonyha, NM Pillay, EA Wood. FSP 16831

10090009

1548

G O O D S R E C E I T S L I P

5000489120/0001

Goods receipt date : 09.04.2014

Current date : 09.04.2014

Plant : 4000

Description : Group Services

Vendor : 0001009909

Delivery note: TRX1064TC003

Name : REGIMENTS CAPITAL

PO : 4500238554/00080

Buyer Name : Tshegofatso Shaku

Telephone : 011 308 1087

Material :

MPN :

Description : Prof fees GSM12/05/0447 1064 loco TCO wo

Quantity : 1 EA

C O N S U M P T I O N / U S A G E I N F O R M A T I O N

Recipient : Anoj Singh

Inloadg. point: R4529, Carlton Centre

Post center : 0001003002

Issued by : 0000031 S I G N A T U R E

1549

G O O D S R E C E I T S L I P

5000489120/0002

Goods receipt date : 09.04.2014
Current date : 09.04.2014

Plant : 4000
Description : Group Services

Vendor : 0001009909 Delivery note: TRX1064TC003
Name : REGIMENTS CAPITAL
PO : 4500238554/00090
Buyer Name : Tshegofatso Shaku Telephone : 011 308 1087

Material :
MPN :
Description : Disbursements

Quantity : 1 EA

C O N S U M P T I O N / U S A G E I N F O R M A T I O N

Recipient : Anoj Singh
Unloadg. point: R4529, Carlton Centre
Post center : 0001003002

Issued by : 0000031 S I G N A T U R E

1550



REGIMENTS CAPITAL

91 Central Street Houghton 2198
Postnet Suite 25 Private Bag x 11 Blimham Park 2015
Tel + 27 11 715 0300 Fax + 27 11 715 0535
www.regiments.co.za

PR: 10385269
PO: 45-238554

Tax Invoice

Invoice: TRX1064TA01
VAT #: 4620216665
Date: 31 March 2014

Transnet Soc Ltd
35th Floor, Carlton Centre
150 Commissioner Street
Johannesburg
VAT Number: 4720103177

Your Reference: GSM 12/05/0447

Professional fees: Transaction Advisory Services (Financial modelling, escalation calculation, pricing and contract negotiation support) R 5,000,000.00

Out of pocket expenses (7.5%)

VAT (14%)

Sub-Total:

R 375,000.00

R 5 375 000.00

R 752,500.00

Total

R 6,127,500.00

Banking Details:

Bank: Standard Bank
Account Name: Regiments Capital (Pty) Ltd
Account Number: 200477757
Branch: Parktown
Branch Code: 000 355

Please quote Invoice number on transfer and remittance.

Invoice is payable upon receipt.

Handwritten signatures and notes:
21/04/14 Approved
21/04/14 Paid Payment

52-443195

Regiments Capital" (Reg No 200477757)
Directors: LM Nyhonyha, NM Pillay, EA Wood, FSP 16831
2014-06-09

1009909

1551

G O O D S R E C E I P T S L I P

5000489117/0001

Goods receipt date : 09.04.2014
Current date : 09.04.2014

Plant : 4000
Description : Group Services

Vendor : 0001009909
Name : REGIMENTS CAPITAL
PO : 4500238554/00040
Buyer Name : Tshegofatso Shaku

Delivery note: TRX1064TA01

Telephone : 011 308 1087

Material :
MPN :
Description : Prof fees GSM12/05/0447 Trans adv serv

Quantity : 1 EA

C O N S U M P T I O N / U S A G E I N F O R M A T I O N

Recipient : Anoj Singh
Unloadg. point: R4529, Carlton Centre
Post center : 0001003002

Issued by : 0000031 S I G N A T U R E

1552

G O O D S R E C E I T S L I P

5000489117/0002

Goods receipt date : 09.04.2014
Current date : 09.04.2014

Plant : 4000
Description : Group Services

Vendor : 0001009909 Delivery note: TRX1064TA01
Name : REGIMENTS CAPITAL
PO : 4500238554/00050
Buyer Name : Tshegofatso Shaku Telephone : 011 308 1087

Material :
MPN :
Description : Disbursements

Quantity : 1 EA

C O N S U M P T I O N / U S A G E I N F O R M A T I O N

Recipient : Anoj Singh
Unloadg. point: R4529, Carlton Centre
Post center : 0001003002

Issued by : 0000031 S I G N A T U R E

TRANSNET

1553



REGIMENTS CAPITAL

91 Central Street Houghton 2158
Postnet Suite 25 Private Bag x11 Birmam Park 2015
Tel + 27 11 715 0300 Fax + 27 11 715 0535
www.regiments.co.za

PR: 0010389965
PO: 4500240755

Tax Invoice

Invoice: TRX1064RISK01
VAT #: 4620216665
Date: 27 Mar 2014

Transnet Soc Ltd
35th Floor, Carlton Centre
150 Commissioner Street
Johannesburg
VAT Number: 4720103177

FLP

T. Fee to TFE

*Capitalise to
1064 locs.*

Risk Share - 1064 Locomotives
Foreign exchange and warranty bonds

R 69,500,000.00

VAT (14%)

30104114.

R 9,730,000.00

Total

R 79,230,000.00

Banking Details:

Bank: Standard Bank
Account Name: Regiments Capital (Pty) Ltd
Account Number: 200477757
Branch: Parktown
Branch Code: 000 355

**TRANSNET
PAID**

Please quote Invoice number on transfer and remittance.

Invoice is payable upon receipt.

*30104114
Approved for
payment for
Acc memo.*

[Handwritten signature]

*30104114
Paid*

Regiments Capital (Reg N...)
ctors L... na... CA... FSP10/31

52-448837

1001909

511 200th Street, Kensington, MD
 Phone: 301 278-4400, 1-800-368-2035
 Fax: 301 278-0535
 www.fishbase.org

Tax Invoice

Invoice: TRX1064FRM02

VAT #: 4620216665

Date: 24 Feb 2014

Transnet Soc Ltd
35th Floor, Carlton Centre
150 Commissioner Street
Johannesburg
VAT Number: 4720103177

PR : 1037 6690

PO: 45-233265

Your Reference: GSM 12/05/0447

Professional fees: Transaction Advisory Services (Acquisition of the 1064 locomotives) – FRM work done to date.

R 6,000,000.00

Out of pocket expenses (7.5%)

R 450,000.00

R 6 450 000,00

VAT (14%)

R 903,000.00

Total

R 7,353,000.00

Banking Details:

Bank: Standard Bank
Account Name: Regiments Capital (Pty) Ltd
Account Number: 2004 72257
Branch: Parktown
Branch Code: 000 355

Please quote invoice number on transfer and remittance.

Invoice is payable upon receipt.

Pavender
26/02/16

52-433192

Department of Defense (Reg No 2167/12) (61/67)
 Directorate of Military Operations (Reg No 2167/12) (61/67)

2014-02-27

10770

1555

G O O D S R E C E I T S L I P

5000477709/0001

Goods receipt date : 27.02.2014
Current date : 27.02.2014

Plant : 4000
Description : Group Services

Vendor : 0001009909 Delivery note: TRX1064FRM02
Name : REGIMENTS CAPITAL
PO : 4500233265/00030
Buyer Name : Duran Balbathur Telephone : 011 308 1087

Material :
MPN :
Description : Trans adv serv - 1064 locos FRM work don

Quantity : 1 EA

C O N S U M P T I O N / U S A G E I N F O R M A T I O N

Recipient : Anoj Singh
Unloadg. point: R4529, Carlton Centre
Post center : 0001003002

Issued by : 0000031 S I G N A T U R E

1556



REGIMENTS CAPITAL

91 Central Street Houghton 2198
Postnet Suite 25 Private Bag x 11 Birmam Park 2015
Tel + 27 11 715 0300 Fax + 27 11 715 0535
www.regiments.co.za

Tax Invoice

(GRV not printed)

Invoice: TRX1064TE01

VAT #: 4620216665

Date: 24 Feb 2014

Transnet Soc Ltd
35th Floor, Carlton Centre
150 Commissioner Street
Johannesburg
VAT Number: 4720103177

PA: 10376690

PO: 45-233265

Your Reference: GSM 12/05/0447

Professional fees: Transaction Advisory Services (acquisition of the 1064 locomotives) – TE work done to date (escalation modelling, insurance and warrantee)

R 2,000,000.00

Out of pocket expenses (7.5%)

R 150 000.00

~~R 2 150 000.00~~

VAT (14%)

R 301,000.00

Total

R 2,451,000.00

TRANSNET
PAID

Banking Details:

Bank: Standard Bank
Account Name: Regiments Capital (Pty) Ltd
Account Number: 200477757
Branch: Parktown
Branch Code: 000 355

Please quote invoice number on transfer and remittance.

Invoice is payable upon receipt.

P. Pender

M. Mubandwa 26-02-2014

S. S. S.

52-633193

Regiments Capital (Reg No 2004/023761/07)
Directors LM Nyhonyha, NM Pillay, EA Wood, FSP 16831

2014-02-27

1009909

1557



REGIMENTS CAPITAL

211 Central Street, Johannesburg 2116
 Postnet 1000 24 Private Bag 111, Bunting Park 2019
 Tel: 011 775 5300 Fax: 011 775 5301
 Email: info@regimentscapital.co.za

(GRV not printed.)

Tax Invoice

Invoice: TRX1064TC002

VAT #: 4620216665

Date: 24 Feb 2014

Transnet Soc Ltd
 35th Floor, Carlton Centre
 150 Commissioner Street
 Johannesburg
 VAT Number: 4720103177

PR: 1037 6690
 PO: 45- 233265

Your Reference: GSM 12/05/0447

Professional fees: Transaction Advisory Services (acquisition of the 1064 locomotives) – TCO work done to date.

R 3,000,000.00

Out of pocket expenses (7.5%)

R 225,000.00
 R 3,225,000.00

VAT (14%)

R 451,500.00

Total

R 3,676,500.00

TRANSNET
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Banking Details:

Bank: Standard Bank
 Account Name: Regiments Capital (Pty) Ltd
 Account Number: 200477757
 Branch: Parktown
 Branch Code: 000 355

Please quote invoice number on transfer and remittance.

Invoice is payable upon receipt.

Handwritten signature
 26-02-2014

Handwritten signature
 26/02/14
 52-4331914

1109909

2014-02-27

1558



REGIMENTS CAPITAL

91 Central Street Houghton 2198
Postnet Suite 25 Private Bag x 11 Birmam Park 2015
Tel +27 (11) 715 0300 Fax +27 (11) 715 0535
www.regiments.co.za

PR: 10374762.

10: 45-232329

Tax Invoice

Invoice: TRX1064TC001
VAT #: 4620216665
Date: 13 Feb 2014

Transnet Soc Ltd
35th Floor, Carlton Centre
150 Commissioner Street
Johannesburg
VAT Number: 4720103177

Your Reference: GSM 12/05/0447

Professional fees: Transaction Advisory Services (acquisition of the 1064 locomotives) – TCO work done to date.

R 4 000 000.00

Out of pocket expenses (7.5%)

R 300 000.00

VAT (14%)

R 602 000.00

Total

R 4 902 000.00

Banking Details:

Bank: Standard Bank
Account Name: Regiments Capital (Pty) Ltd
Account Number: 50122247
Branch: Parktown
Branch Code: 000 355

Please quote invoice number on transfer and remittance.

Invoice is payable upon receipt.

TRANSNET
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TRANSNET
PAID
18-02-2014

1009909

52-630721
Regiments Capital (Reg. No 2004/023761/07)
Director: M Nyhonyha, NM Pillay, EA Wood, FSP 16831

2014-02-20

1559

G O O D S R E C E I T S L I P

5000475442/0001

Goods receipt date : 20.02.2014
Current date : 20.02.2014

Plant : 4000
Description : Group Services

Vendor : 0001009909
Name : REGIMENTS CAPITAL
PO : 4500232329/00010
Buyer Name : Duran Balbathur

Delivery note: TRX1064TC001

Telephone : 011 308 1087

Material
MPN
Description : Prof fees adv serv, TCO work done 1064 1

Quantity : 1 EA

C O N S U M P T I O N / U S A G E I N F O R M A T I O N

Recipient : Anoj Singh
Unloadg. point: R4529, Carlton Centre
Post center : 0001003002

Issued by : 0000031 S I G N A T U R E

**TRANSNET
PAID**



91 Central Street Houghton 2198
Postnet Suite 25 Private Bag x 11 Birnam Park 2015
Tel + 27 11 715 0300 Fax + 27 11 715 0535
www.regiments.co.za

7014 -52- 2

1007909

1561

G O O D S R E C E I T S L I P

5000475443/0001

Goods receipt date : 20.02.2014
Current date : 20.02.2014

Plant : 4000
Description : Group Services

Vendor : 0001009909
Name : REGIMENTS CAPITAL
PO : 4500232329/00020
Buyer Name : Duran Balbathur

Delivery note: TRX1064FRM01

Telephone : 011 308 1087

Material :
MPN :
Description : Prof fees Adv serv, FRM work done 1064

Quantity : 1 EA

C O N S U M P T I O N / U S A G E I N F O R M A T I O N

Recipient : Anoj Singh
Unloadg. point: R4529, Carlton Centre
Post center : 0001003002

Issued by : 0000031 S I G N A T U R E

**TRANSNET
PAID**

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**BUSINESS
DEVELOPMENT
SERVICES
AGREEMENT**

CSR (HONG KONG) CO., LTD.
(Reg. No.: 39133264-000-04-14-4)

with

TEQUESTA GROUP LIMITED
(Reg. No.: 156268)

Or its NOMINEE

AGREEMENT NO.: CSRHK20150102359

AGREEMENT DATE: MAY. 18, 2015

This Agreement is entered into by and between the following parties:
本协议由以下双方签订

Tequesta Group Limited (hereinafter, referred to as "TEQUESTA"), a company duly incorporated and existing under the laws of Hong Kong, duly authorised and represented by the person signing this Agreement.

Tequesta集团有限公司（在下文中简称“TEQUESTA”）一家在香港现有法律下正式注册的公司，正式授权及代表为本协议的签署人。

And
与

CSR (Hong Kong) Co., Ltd. (hereinafter referred to as the "Company"), a company duly incorporated and existing under the laws of Hong Kong, and having its registered offices at Room 4112, 41/F, Office Tower, Convention Plaza, Wanchai, Hong Kong, duly authorised and represented by the person signing this Agreement.

南车（香港）有限公司（在下文中简称“公司”）一家在香港现有法律下正式注册的公司，其注册地位香港湾仔港湾道1号会展广场办公大楼41楼4112室，正式授权及代表为本协议的签署人。

(Hereinafter, TEQUESTA and the Company may be individually referred to as a "Party", and collectively as "the Parties".)

在下文中，TEQUESTA和公司单独被称为“一方”，共同被称为“双方”。

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WHEREAS:

鉴于:

- A. TEQUESTA, with its long subsisting relationships in the territory of South Africa (hereinafter "The Territory") has acquired a familiarity with regulatory, social, cultural and political framework whereby it is capable to closely co-ordinate with the designated authorities to comprehend the applicable Government policies, identify the opportunities of participation in various Government and Private projects, lend consultancy on participating in various tenders and bidding processes and thus facilitating trade of goods and services concerning such projects.

TEQUESTA 在南非境内（以下简称“领域”）有长期存续的关系，已经熟悉法规、社会、文化和政治框架，从而有能力与主管部门密切协调，并理解适用的政府政策，寻求参与各种政府及私人项目的机会，在公司参与各种招标和竞标过程中提供咨询，促成此类项目货物和服务的业务。

The COMPANY is a global company specializing in the manufacture of Electric Locomotives and Spare Parts for the same, with a focus on emerging markets. The COMPANY has approached TEQUESTA to provide advisory services in respect of the Project, for expanding their business in the Territory and help it in achieving their BEE (Black Economic Empowerment) objectives in the Territory on a long-term basis.

公司是一家全球性公司，专门从事电力机车及零配件的制造，重点放在新兴市场。该公司已经接近到的 TEQUESTA 就项目提供咨询服务，目的是为了拓展业务领域，并帮助它在长期的基础上实现自己的 BEE（黑人经济振兴法案）的目标。

- B. The Parties have, after mutual discussions, acknowledged and agreed that they have suitable and complementary resources to jointly harness the opportunities in the Territory through a Business Development Services Agreement, whereby TEQUESTA will play active role in providing advisory services in respect of the Project, Business development and BEE structuring and management in the Territory.

双方相互讨论后，承认并同意，他们有合适的资源互补，共同利用的机会。通过商业开发业务发展服务协议，TEQUESTA 将就项目，企业的发展以及 BEE 结构和管理扮演一个提供咨询服务的角色。

In view of the above-set background, the Parties have agreed to reduce in writing their mutual understanding and their respective fundamental interests, rights, duties, obligations and liabilities in relation to the agency, their respective roles in this regard, the terms and conditions on which the Parties would implement the agency relationship and certain other matters thereto.

鉴于上述背景，双方同意书面阐述共同的理解和它们各自的根本利益，权利，义务，有关代理的义务和责任，他们在这方面各自的角色，术语和条件。双方根据此协议执行代理关系以及其他事项。

定义及释义

定义

某些术语在说明条款及本协议的正文中定义。此外，下列词汇具有以下涵义：

"Person" includes any individual, company, corporation, firm, partnership, consortium, joint venture or association, whether a body corporate or an unincorporated association of persons.
包括任何个人、公司、企业、公司、合伙企业、财团、合资企业或协会，无论是法人团体或个人的非法人团体。

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"Product"	means the Company's related products and Services. 指本公司的相关产品和服务。
"Project 359"	refers to any portion of the Tender for the supply of 359 Electric Locomotives (22E) to Transnet SOC Limited, South Africa (hereinafter "the Client"). 是指供应给南非 Transnet 公司 359 台电力机车供应合同的投标的任何一部分。
"Territory"	means the Republic of South Africa. 指南非共和国。
"Third Party"	means a person who is not a Party to this Agreement and does not include Affiliates of any of the Parties. 指不属于本协议任何一方以及其关联机构的个人。
"Nominee"	means any juristic person or Company that may be nominated by TEQUESTA from time to time to continue with and fulfil the obligations of this Agreement and/or to provide the necessary invoices for executing the commercial aspects of this Agreement. 指 TEQUESTA 不定时提名的法人或企业，用以履行本协议的义务和/或提供必要的发展执行本协议的商务事宜。
"BEE"	means Black Economic Empowerment as set out in the BEE Charter of the Republic of South Africa. 指南非宪章中的班图人经济振兴法案。

1.2. Interpretation 解释说明

1.2.1. References to this Agreement or to any other instrument shall be a reference to this Agreement or that other instrument as amended, varied, novated, or substituted from time to time.

对本协议或其他指导文件的引用，应该指的是对不定时修改、变化、更替的本协议或其他指导文件的引用。

1.2.2. The headings in this Agreement are for ease of reference only and shall not affect the interpretation or construction of this Agreement.

本协议中的标题仅便于参考，不得影响本协议的解释或结构。

1.2.3. References to Recitals, Clauses and Schedules are references to recitals, clauses and sub clauses and schedules to this Agreement.

对陈述、条款、附录的引用，指的是对本协议的陈述、条款、子条款以及附录的引用。

1.2.4. Words importing the singular number shall include the plural and vice versa and words importing the masculine gender shall include the feminine and the neuter gender and vice versa.

单数的词语也适用于复数，反之亦然；阳性的词语也适用于阴性和中性，反之亦然。

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1.2.5. Each of the representations and warranties provided in this Agreement are independent of other representations and warranties and unless the contrary is expressly stated, no Clause in this Agreement limits the extent or application of another Clause.

除非另有明确的规定，本协议中的任何陈述和保证均是独立的，本协议中任何条款不应限制其他条款的范围和应用。

1.2.6. "In writing" includes any communication made by letter or fax or e-mail.

书面形式包括信函、传真或电子邮件等通信方式。

1.2.7. The words "include", "including" and "in particular" shall be construed as being by way of illustration or emphasis only and shall not be construed as, nor shall they take effect as limiting the generality of any preceding words.

词语“包括”，“包含”和“特别是”应被理解为说明或强调，不得被解释为，也不得生效为限制任何前述字句的一般性。

1.2.8. References to a person shall be construed so as to include:

引用一个人应解释为包括：

1.2.8.1. Individual, firm, partnership, trust, joint venture, company, corporation, body corporate, unincorporated body, association, organization, any government, or state or any agency of a government or state, or any local or municipal authority or other governmental body (whether or not in each case having separate legal personality);

个人，公司，合伙，信托，合资企业，公司，企业，法人团体，非法人团体，协会，组织，任何政府所属其代理机构，或任何地方或市政当局或其他政府机构（不论是否在任何一种情况下具有独立的法人资格）；

1.2.8.2. that person's successors in title and assigns or transferees permitted in accordance with the terms of this Agreement; and

按照本协议条款的允许，此人的合法继承人、受让人或受让人；和

1.2.9. References to a person's representatives shall be to its officers, employees, legal or other professional advisers, sub-contractors, agents, attorneys and other duly authorized representatives.

对一个人的代表应该指的是他的管理人员、员工、法律和其他专业顾问、分包方、代理商、律师和其他授权的代表。

1.2.10. References to statutory provisions shall be construed as references to those provisions as are respectively amended or re-enacted or as their application is modified by other provisions (whether before or after the date of this Agreement) from time to time and shall include any provisions of which they are re-enactments (whether with or without modification).

对法律规定的引用应该解释为，由于其他的规定，对不时地修订、重新颁布或修改了应用的规定的引用（无论本协议日期之前或之后），应当包括重新修订后的规定（无论有否修改）。

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1.2.11. All warranties, representations, indemnities, covenants, guarantees, stipulations, undertakings, agreements and obligations given or entered into by more than one person are given or entered into severally unless otherwise specified.

除非另有规定，所有由一个以上的人分别订立确认的保证，声明，赔偿，契约，担保，规定，承诺，协议和赋予或订立的义务应分别确认。

1.2.12. In the event that the date on which any act or obligation specified in this Agreement to be performed falls on a day which is not a Business Day, then the date on which the act or obligation is to be effected or performed shall take place on the next Business Day.

如果本协议规定的任何行为或义务发生在非营业日，则该行为或义务发生的日期应当在下一个营业日。

1.2.13. This Agreement is the result of negotiations between, and has been reviewed by, the Parties and their respective counsel. Accordingly, this Agreement shall be deemed to be the product of the Parties, and there shall be no presumption that an ambiguity should be construed in favour of or against any Party solely as a result of such Party's actual or alleged role in the drafting of this Agreement.

本协议是双方协商的结果，并已通过双方及其各自的律师审查。因此，本协议应被视为是双方的产品，而且不应该为任何一方在起草本协议时的实际或不合法角色，将歧义解释为偏袒或反对任何一方。

2. Scope and Purpose of the Agreement and key principles

协议的适用范围和目的及主要原则

2.1. The Parties have entered into this Agreement to record their mutual understanding as regards their relationship and the manner in which such relationship shall be effectuated and implemented through this Agreement.

双方已达成本协议记录他们对双方关系和行为方式的认同，并通过本协议完成和实施这种关系和行为。

2.2. The scope of this Agreement is the regulation of the rights and relationships of the Parties, both among themselves and with respect to Third Parties, with the aim of identifying, preparing and executing deals to supply the Company's Services in the Territory.

本协议的范围是双方或第三方的权利和关系的规定，目的是在南非领域向公司提供识别，准备和执行交易的服务。

2.3. In order to achieve their joint commercial objective, the Parties shall operate this Agreement as per the terms and conditions set out herein.

为了实现他们的共同商业目标，双方应按照本文所载条款及条件，执行本协议。

2.4. Each Party agrees to co-operate with the other Party on the best effort basis.

双方同意与另一方努力合作。

2.5. Each Party hereby agrees and undertakes towards the other Party to perform and observe all of the provisions of this Agreement.

双方同意并承诺履行并遵守本协议的所有规定。

2.6. The Parties acknowledge that the broad parameters for the conduct of this Agreement (subject always to the terms and conditions of this Agreement) are to enable increase of

the market share of Company's Services in the Territory and enhancement of the economic value of the Parties.

双方承认, 本协议(总是指以本协议条款及条件)的行为的主要参数是为了能增加公司服务在南非的市场份额以及增强双方的经济价值。

3. General Conditions of appointment 任命的通用条件

3.1. The Company hereby appoints TEQUESTA to provide advisory and consulting services in respect of the Project and to aid Business Development and to assist in achieving the Company's BEE objectives in the Territory.

本公司指定 TEQUESTA 提供有关该项目的顾问和咨询服务, 并协助商业开发, 协助公司在南非实现黑人经济振兴法案的目标。

3.2. The Parties hereby agree and acknowledge that they are independent contractors. No partnership, joint venture or employment is created or implied by this Agreement.

双方特此同意并承认自己是独立的承包商, 本协议没有建立或暗示合作, 合资或雇佣的意向。

3.3. The Company has advised TEQUESTA that a previous Agreement had been signed between CSR Zhuzhou Electric Locomotive Co., Ltd. and JJ Trading FZE (hereinafter referred to as the "JJT"). However, the Company advises TEQUESTA that in the event that JJT disputes or contests the cancellation or non payment in a court of law and if the Court decrees that the Agreement with JJT is valid or the mutual agreement is reached between TEQUESTA and JJT, then the financial compensation to JJT, (which will not exceed the retention amount, that is 15% of the total amount payable to TEQUESTA under this Agreement) will be deducted from the amount retained from TEQUESTA as per Clause 6.1.6 and the balance (if there is) will then be paid to TEQUESTA within thirty (30) days after the Company receipt of the last payment and/or return of all bank guarantees released by the Client, whichever occurs later. Under this circumstance, the invoices with retention to the Company shall be not claimable and returnable to TEQUESTA. TEQUESTA shall resolve dispute with the JJT through amicable consultation and ensure there is no further dispute with the Company from either side.

公司已经告诉 TEQUESTA, 南车株洲电力机车有限公司之前已经与 JJ Trading FZE (之后简称 "JJT") 签订了一个协议。然而, 公司建议 TEQUESTA, 如果 JJT 在法庭上争论或争辩取消或没有给他付款, 同时法庭判决与 JJT 的协议有效或者 TEQUESTA 和 JJT 达成共同协议, 那么对 JJT 的财务补偿 (该协议下支付给 TEQUESTA 总额的 15% 作为滞留金, 该财务补贴不得超过滞留金金额。) 将会从条款 6.1.5 里 TEQUESTA 的滞留金额中扣除, 随后剩余的金额将会在公司收到最后一笔付款和/或收到客户释放的所有银行保函后 30 个日内付给 TEQUESTA。在此情况之下, 提供给公司的带有滞留金的发票将不会被 TEQUESTA 索赔并返还给 TEQUESTA。TEQUESTA 应通过友好协商解决与 JJT 的争议, 从而确保将来任何一方都不会与公司产生纠纷。

3.4. During the period of the project, any penalty enforced by the Client to the Company shall be taken by TEQUESTA and deducted from the Advisory Fee as per Clause 6.1.1, except that caused by the fault of the Company, such as failure to deliver or product defect.

项目期间, 除了由于公司的错误 (比如没有交货或产品缺陷) 造成的罚款, 客户对公司的罚款应由 TEQUESTA 承担, 并从 6.1.1 条款的咨询费中扣除。

4. Duties and Responsibilities of TEQUESTA

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TEQUESTA 的职责和责任

4.1. TEQUESTA shall provide advisory services in respect of the Project and will assist the company to improve its market share in the Territory and continue good relations and achieve milestones with its clients.

TEQUESTA 应就本项目提供咨询服务, 协助公司提高南非市场份额, 维持良好关系并和其客户一起完成里程碑。

4.2. TEQUESTA shall not make any representation on behalf of the Company except in conformity with the written instructions issued by the Company.

TEQUESTA 不应代表公司做出表示, 除非符合公司出具的书面说明。

4.3. TEQUESTA will inform the Company timeously in writing if it wishes to appoint a nominee to carry on with the provisions of this Agreement in its place.

如果 TEQUESTA 希望指派一个代理执行本协议, 需及时以书面形式告知公司。

4.4. TEQUESTA shall provide advice and assistance to the Company on the process of the Contract and normal performance by the Company to ensure the smooth execution and the success of the project. And especially, undertakes support and assist the Company for the timely payments and/or return of bank guarantees released by the Client until the fulfillment of all rights and obligations of the finished contract.

TEQUESTA 应在公司签订合同以及正常执行的过程中提供建议和帮助, 从而确保项目的顺利执行和成功, 尤其是应承担支持并帮助公司及时回款或/和客户退回银行保函, 直到完成合同中需要实现的权利和义务。

5. Duties and Responsibilities of the Company
公司的职责和责任

5.1. The Company shall on its own make necessary submissions of proposals and documents as per the requirements of the bidding documents, wherever applicable, in the most competitive manner.

如适用, 公司应以最具有竞争力的方式, 按照招标文件要求, 自行制作必要的投标方案和文件。

5.2. The Company shall be responsible to study, understand and interpret the requirements of the bids or offers on its own or in conjunction with its Partners and TEQUESTA shall in no way be liable for any misconstruction of any clause mentioned therein.

公司应独自或和其合作伙伴一起负责研究、理解和翻译招标要求, TEQUESTA 不对其中任何语句的误解负责。

5.3. The Company shall alone be responsible for complying with all conditions and for all after sale support services to the clients and TEQUESTA shall not be obligated for any consequent liabilities arising out of the same, whatsoever.

无论什么, 公司应独自承担符合所有条件以及对客户的售后服务支持。TEQUESTA 没有义务承担任何由此产生的责任。

6. Remuneration, payment terms etc.
薪酬、付款条件等

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6.1.1. For the Project-related Advisory Services provided by TEQUESTA, as detailed in Annexure 'A', TEQUESTA shall be entitled to an Advisory Fee of 21% (Twenty percent) of the Contract value of Project 359 awarded to the Company, based on 2% (Two percent) of the Contract value as the success fee and 19% (Nineteen percent) of pro-rata to the milestone-based payments received by the Company from the Client. The Company has already paid 3.9% of the Contract value (R706,770,480.00) to JIT up to the Agreement date. The total payable amount to TEQUESTA under this Agreement is 17.1% of the Contract value (R3,098,916,720.00).

此外，按照附件 A 中定义的 TEQUESTA 提供的项目相关的咨询服务，TEQUESTA 应获得授予公司合同的总金额 21% 的咨询费。应根据 2% 的成功费和 19% 按照从客户收到的里程碑付款相应的比例付给 TEQUESTA。到签订协议之日，公司已经支付合同总金额的 3.9% (706,770,480.00 兰特) 给 JIT。按照本协议需要支付合同总金额的 17.1% 给 TEQUESTA，也即 3,098,916,720.00 兰特。

The amount indicated in Clause 6.1.1 above shall be payable as follows:

上述 6.1.1 中的金额应按照以下条款支付：

6.1.2. 19% of each payment to be made by the Client to the Company shall be due and payable to TEQUESTA when the Company receives the payment. Namely, each time the Company receives a payment from the Client as a percentage of the total Contract value, same proportion of the Advisory Fee shall be paid to TEQUESTA. 客户对公司支付的每笔款项的 19% 应在公司收款后到期并支付。即公司从客户那里收到合同金额一定比例的款项后，应向 TEQUESTA 支付相应比例的咨询费。

6.1.3. All Invoices to the Company shall be issued by TEQUESTA subject to the actual payment by the Client to the Company in compliance with the Contract. Should the Contract be suspended or terminated by the Client or by the Company prior to its completion, then the Advisory Fee to be paid to TEQUESTA shall be accordingly suspended or reduced in proportion to the reduction of payments under the Contract.

所有 TEQUESTA 对公司发票应按照客户根据合同的实际付款开具，如果客户或公司在合同完成前暂停或者终止合同，付给 TEQUESTA 的咨询费应根据合同付款的减少，按比例相应地暂停或减少。

6.1.4. All Invoices will be paid in the Contract payment currency. If TEQUESTA wishes for all payments to credit in USD in equivalent, TEQUESTA accepts the exchange rate at the time of the payment to be received by the Company from the Client or the payment to be released by the Company to TEQUESTA.

所有发票应按照合同付款货币支付。如果 TEQUESTA 希望所有付款转换为等价的美元，TEQUESTA 应接受客户给公司付款时或者公司给 TEQUESTA 付款时的汇率。

6.1.5. The Company shall retain an amount of 15% of each Invoice value and pay the balance to TEQUESTA within thirty (30) days of receipt of payment by the Company. 公司应保留每次发票金额的 15%，同时在公司收到付款后的 30 个工作日内将利余金额支付给 TEQUESTA。

6.1.6. With each payment, the Company shall submit a proof of payment as well as a Statement confirming the amount retained towards the 15% Retention amount, to

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TEQUESTA. Each Statement shall show the current retention as well as the cumulative amount retained as on the date of statement.

关于每笔付款,公司应当提交付款证明以及确认 15%保留金的声明给 TEQUESTA。自声明之日起,每个声明应显示本次的保留金额以及累积的保留金额。

6.1.7. When the final payment is received by the Company from the Client and/or return of all bank guarantees released by the Client for this project, whichever occurs later, the full and final payment shall become due to TEQUESTA within thirty (30) days. This would be the final payment of Advisory Fee as well as all the retained amounts so as to leave a zero balance owing to TEQUESTA on the statement.

当公司收到客户支付的最后一笔付款和/或客户返回该项目所有银行保函,以后到者为准,公司应在 30 个工作日内全额付款给 TEQUESTA。这将对最后的咨询费以及所有保留金额的支付,给 TEQUESTA 的声明上的剩余未支付余额将为零。

6.1.8. Each side shall be respectively borne its own income tax and other types of taxes (if any) may be levied by and banking charges related to the payment according to Hong Kong laws.

双方根据香港法律各自承担相应的与付款相关的所得税和其它类型的税(如有)、以及银行费用。

7. Term and Termination 期限和终止

7.1. This Agreement shall be effective from the Agreement Date and will remain valid for a term that is concurrent with and equal to the term of the Project.
该协议将从协议日期开始生效并在与项目执行期间一直有效。

7.2. Notwithstanding the aforementioned, if either Party hereto commits a breach of this Agreement or defaults in the performance of any obligation hereof, and if such default or breach is evidenced and not rectified within 14 (fourteen) business days after the same has been called to the attention of the defaulting Party by a written notice from the other Party; then the non-defaulting Party, at its option, may thereupon terminate this Agreement by submitting a written notice to the other Party.

尽管前面提到的,如果任何一方有违反本协议或违反任何协议所规定的义务,并且如果过错方在收到书面通知后的 14 个工作日之内无法及时纠正,非过错方有权通过发送书面通知终止本协议。

7.3. Any expiration or termination of this Agreement pursuant to Clause 7.2 shall be without prejudice to any other rights or remedies to which a Party may be entitled hereunder or at law and shall not affect any accrued rights or liabilities of either Party.

按照 7.2 语句,本协议的任何到期或终止不应该影响其他当事人根据本协议和法律享有的权利或补救措施。同时不得影响任何一方的任何权利和责任。

8. Liability provisions 责任规定

8.1. Each Party undertakes to cause its employees, agents, and Affiliates, as long as they are associated with terms of this Agreement, to respect and comply with this Agreement.

双方承诺,只要和本协议相关的其雇员、代理以及关联机构,都应遵守本协议。

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In any case, each Party undertakes to collaborate in good faith with each other to avoid or minimize any disadvantage or harm affecting the other Party.

任何情况下，双方承诺相互真诚的合作以避免或最小化对对方的不利影响。

8.2. The provisions of Clause 9 shall continue to apply following the expiration or termination of this Agreement and for a period of Five (5) years thereafter.

条款 9 应在该协议期满或终止后 5 年内持续有效。

9. Confidentiality

保密性

9.1. During the course of this Agreement, one Party (the "Discloser") may, on a case-by-case basis, disclose to the other Party (the "Recipient") certain Confidential Information all of which shall be regarded as confidential. "Confidential Information" means any information as the Discloser may from time to time provide (or have supplied or disclosed on its behalf) to the Recipient, including all financial or other information relating to its business affairs or the business affairs of the Affiliates, whether orally or in a written, physical or visual form, regarding the products, activities, including (without limitation) data, software systems, information technology, products, applications together with analyses, compilations, forecasts, studies or other documents prepared by the Discloser (including, but not limited to, lawyers, accountants, consultants and financial advisers) and/or its Representatives which in whole or otherwise reflect information about the Discloser and/or its Affiliates.

本协议的过程中，一方（“披露方”）可能会根据情况披露给另一方（“接收方”）的某些机密信息都应被视为保密。“机密信息”是指，关于产品、活动、包括（但不限于）数据、软件系统、信息技术、产品、应用和分析、编译、预测、研究或其他披露方和/或其代表（含有或反映与披露方和/或其关联机构相关的信息）的文件（包括，但不限于，律师、会计师、顾问和财务顾问），任何披露方可能不时地提供给接收方的信息（或为其提供或披露），包括所有金融或其他信息有关的业务事务或业务事务分支机构，无论是口头还是书面、物理或视觉形式。

9.2. The Recipient shall at all times during the term of this Agreement and for a period of five (5) years following its termination, hold all Confidential Information which it acquires from Discloser under the terms of this Agreement, or otherwise, in strict confidence and shall not disclose such information to any third party or duplicate, transfer, or use directly or indirectly, the Confidential Information other than in Recipient's performance of its obligations under this Agreement.

接收方在任何时候都应当在本协议期内以及协议终止后五年内，保存所有根据本协议的条款从披露方获得机密信息，另外，要严格保密，不得向任何第三方披露此类信息或复制、转让、或使用直接或间接接收方的机密信息，除非接受方用于执行其在本协议下的义务。

The foregoing restrictions shall not apply to any information which: (i) is or becomes generally available to the public other than as a result of a breach of obligation by Recipient; or (ii) is lawfully acquired from a third party who owes no obligation of confidence in respect of the information; or (iii) Recipient is required to disclose by law (provided that Recipient shall assert the confidential nature of the information and give immediate written notice to Discloser and assist Discloser in obtaining a protective order against such disclosure).

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上述限制不适用于一下任何信息：(1)成为除了接收方违反义务造成的，一般公众普遍可用的信息；或(2)依法从一个没有义务为这些信息保密的第三方获得的信息；或(3)接收被要求按法律要求披露的信息(如果接收方要维护信息的机密性，立即书面通知披露方并协助披露方获得保护令从而发生的披露)。

- 9.3. Upon request of Discloser, or upon the expiration or any earlier termination of this Agreement, Recipient shall promptly return all copies of the Confidential Information in whatever form or media, to Discloser or, at the direction of Discloser, destroy the same. Recipient shall certify in writing to Discloser such return or destruction within ten (10) days of the date of Discloser's request.

根据披露方的要求，或者在本协议期满或提前终止时，接收方应及时以任何方式或者媒介返回机密信息给披露方，或者按照披露方的指示销毁。在接收到披露方要求后，接收方应在十个工作日内书面通知披露方，确认所有机密信息已经返回或者销毁。

- 9.4. Subject to all other terms of this agreement, this Agreement and its Annexes are also Confidential Information and either party shall not disclose, advertise or publish the terms or conditions of this Agreement or the Annexes without the prior written consent of the other party.

本协议的其他条款以及附件均为保密信息，在没有获得其他一方的书面同意之前，任何一方不应披露、广告或者公布该协议的条款或条件。

10. Miscellaneous

其他

- 10.1. All notices required or permitted to be given under this Agreement shall be in writing, shall be given to the other Party and shall be deemed given to a Party when:
- 所有本协议下的要求和许可通知都应该以书面形式，应该发送给另一方并且视为发送给另一方，当以下情况发生时：

10.1.1. delivered to the appropriate address by hand or by overnight courier service (costs prepaid);

用手直接投递或者通过快递（费用预付）到正确的地址；

10.1.2. sent, if sent by facsimile (with confirmation by the transmitting equipment); or
发送，如果通过传真发送（要有传输设备的确认）

10.1.3. received by the addressee, if sent by certified mail, return receipt requested;
通过收件人接收，如果是挂号信，要求返回收条；

In each case to the following addresses and facsimile numbers and marked to the attention of the person (by name or title) designated below (or to such other address, facsimile number or person as a Party may designate by notice to the other Party):
任何一种情况到以下地址和传真号码，并标示提醒以下指定人的注意（或者一方书面通知另一方指定的地址，传真号码或人）：

TEQUESTA:

TEQUESTA Group Limited
For the attention of: Mr. Salim Essa

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The Company:
 CSR (HONG KONG) CO., LTD.
 For the attention of: Mr. Yao Xingzhong

All correspondence, exchange of information, documents between the Parties, with Customers / third parties shall take place in English language.
 所有的通信、信息交换、双方文件、与客户/第三方应在英语语言进行。

10.2. No Party may assign any interest, benefit, right or obligation under this Agreement to any Person without having obtained the prior written consent of the other Party. It shall be a condition of any assignment that the assigning Party gives prior written notice to the other Party and to the Third Party including any Authority (if required by Law or any contract) of its intention and that such Person, provides prior written confirmation that it does not object to such intended assignment, and with respect to an assignment to non-Affiliates that the other Party provides prior written confirmation that it does not object to such intended assignment. Furthermore, it shall be a condition of any assignment that the new participant shall have to ratify this Agreement in writing and accept to be bound by and adhere to the provisions of this Agreement, and in any event of assignment to an Affiliate as specified above, the assigning Party shall continue to guarantee the performance of the new participant under this Agreement and in any event of assignment, it shall also continue to be bound by the exclusivity and confidentiality provisions set forth herein.

在此协议下的任何一方在没有另一方事先书面同意的情况下不得分配利益、收益、权利或义务。任何发生转让的，转让方应书面通知给另一方和第三方包括任何当局(如果法律或任何合同的要求)。以及这各人以书面形式确认它不反对这样的目标转让，并对任务的承担。转让方应书面确认它不反对这样的转让。此外，发生任何转让的另一个条件是，一个新的参与者应当书面认可本协议并接受并遵守本协议的规定，在任何转让给一个上面所定义的机构的情况下，转让方应持续保证新参与者在此协议下的执行以及无论任何转让，它都应继续遵守排他性和保密规定。

10.3. If any provision of this Agreement is or becomes illegal, unenforceable or invalid under the law of any jurisdiction applicable to the Parties, neither the legality, validity or enforceability of the remaining provisions of this Agreement nor the legality, validity or enforceability of such provision under the law of any other jurisdiction shall be in any way affected or impaired thereby; provided, however, that if such severability materially changes the economic benefits of this Agreement to a Party, the Parties shall negotiate an equitable adjustment in the provisions of this Agreement in good faith.

如果本协议的任何规定在双方使用的法律管辖之下变得不合法、不具有强制力或者失效，在任何法律管辖下的本协议的合法性、有效性及强制性以及任何这种规定的合法性、有效性及强制性都不得影响或损害。如果这种课分割性实质性地改变了本协议一方的利益，双方应就本协议条款真诚地协商并达成公平的调整方案。

10.4. This Agreement (including any annexes thereof) sets forth the full and complete understanding of the Parties as of the date of execution of this Agreement and supersedes all other prior negotiations, agreements, and understandings of the Parties with respect thereto. No Party shall be bound by any other obligations, conditions or representations with respect to the subject matter of this Agreement.

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本协议(包括任何附件)自协议执行开始就阐述了双方的所有的完整的理解,并且取代以往所有其他的先期谈判,协议以及双方的理解。任何一方都不得被其他关于该协议主题的义务,条件或陈述所约束。

10.5.No waiver of any of the provisions of this Agreement shall be deemed to be or constitute a waiver of any other provision whether similar or not. No single waiver shall constitute a continuing waiver.

任何该协议任何条款的豁免不得被视为或者构成其他无论是否类似条款的豁免。任何单一的豁免不可以构成持续的豁免。

10.6.Neither this Agreement nor any of the terms hereof may be amended, supplemented, waived or discharged unless the Parties so agree in writing.

无论是协议还是协议的任何条款都不能被修改、补充、豁免或释放,除非双方有书面的同意。

10.7.Nothing in this Agreement, except to the extent explicitly provided, shall be construed to create an association, trust, partnership, joint venture, or other fiduciary relationship between the Parties or to impose a trust or partnership duty, obligation or liability between the Parties. No Party shall by virtue of this Agreement be deemed to be the representative of the other Party for any purpose whatsoever, and no Party shall have the power or authority as agent or in any other capacity to represent, act for, bind, or otherwise create or assume any obligation on behalf of any other Party for any purpose whatsoever, except specifically agreed in writing by the other Party.

本协议,除非明确地说明,不应当被解释为双方创建一个协会,信托,合作,合资企业,或其他信托关系,或强制实施信托或伙伴关系系统的责任,双方的义务或责任。任何一方不得凭借本协议为了任何目的被视作代表另一方,任何一方没有权力或权威作为代理或代表任何其他能力,行动,绑定,或创建或承担任何义务为了任何目的代表另一方,另一方明确书面同意的除外。

10.8.This Agreement may be executed in one or more duplicate counterparts and when executed by all of the Parties shall constitute a single binding agreement.

本协议可能会执行一个或多个复制同行,当所有当事人都在执行时,本协议应当构成一个唯一具有约束力的协议。

10.9.Neither Party hereto shall be liable for any failure to perform its obligations under this Agreement due to a Force Majeure event. In the event of Force Majeure the Parties shall evaluate the obligations affected by the Force Majeure event, and shall mutually agree in writing on the measures to be taken or on the effect of such Force Majeure event on the Parties' obligations hereunder. The Parties may agree that performance of a Party's obligations shall be suspended during the period of existence of such Force Majeure event as well as the period reasonably required thereafter to resume the performance of the obligation. The Parties shall use their best reasonable efforts to minimize the consequences of this Force Majeure. In the event of Force Majeure the Parties, shall discuss and mutually agree on the continued co-operation between the parties, including the necessity of termination of this Agreement.

双方都不承担由于不可抗力造成的任何协议规定下的各自义务的履行失败。在不可抗力事件中的当事人应当对受不可抗力事件影响的义务进行评估,并应当以书面形式相互同意对不可抗力事件等影响当事人的义务采取补救措施。当事人双方可以同意在这样的不可抗力时间期间中止履行双方的义务,以及要求合理的时期之后恢复执行义

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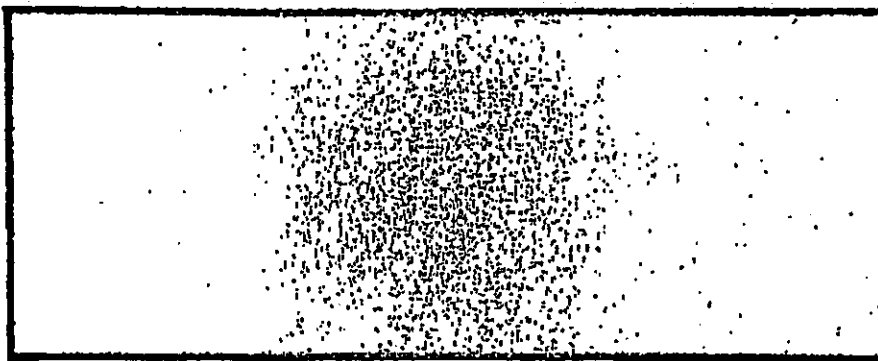
务。双方应尽最大的合理的努力使不可抗力造成的后果最小化。在不可抗力期间，双方要讨论并互相同意双方继续合作，包括终止协议必要性的探讨。

10.10. Nothing expressed or implied in this Agreement is intended or shall be construed to create or extend any rights or benefits to any third party, other than the Parties hereto.
除了本协议的双方，在这个协议中没有表示、暗示或被解释为创建或扩展任何权利或利益任何给第三方。

10.11. Except to the extent of indemnification obligations related to Third Party claims, neither Party hereunder shall be liable for special, incidental, exemplary, indirect, punitive or consequential damages arising out of a Party's performance or non-performance under this Agreement, whether based on or claimed under contract, tort (including such Party's own negligence) or any other theory at law or in equity.
除了达到第三方索赔赔偿义务的程度，任何一方不应被承担因为一方的执行或不履行本协议引起的特殊、附带、惩罚性的、间接的、惩罚性或间接损害，无论是否基于或是按照合同索赔，还是按照侵权行为(包括自己的过失)或任何其他法律或权益理论。

11. TEQUESTA Banking details

TEQUESTA 银行信息



Any changes to the above banking details of TEQUESTA will be advised by TEQUESTA to the Company in writing. In the event of the Company receiving what appears to be an instruction from TEQUESTA, amending the TEQUESTA banking details, the Company shall only be entitled to act upon such instruction if it was received in writing from, or confirmed in writing with, the signatory to this Agreement.

上述银行资料的任何更改，TEQUESTA 将以书面形式通知公司。如果公司接到 TEQUESTA 关于修改 TEQUESTA 银行信息的指令，只有确认收到该协议的签字人的书面说明或者书面确认说明，公司才有权执行这个指令。

12. Binding Effect

约束力

With effect from the Agreement Date, this Agreement shall become unconditional and a legal, valid and binding obligation of each of the Parties.

从协议生效日期起，本协议将成为双方无条件、合法、有效和有约束力的义务。

13. Signature in counterparts

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附件五

This Agreement is made in English and may be executed in counterparts, each of which shall be deemed to be an original and which together shall constitute one and the same agreement.

本协议以英文书就，可执行多份，每一份均被视为一个原件，且所有原件共同构成一份协议。

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IN WITNESS WHEREOF the Parties have executed this Agreement on the date and at the place mentioned below.

茲证明双方在如下的日期和地点签署本协议。

SIGNED AT Shenzhen ON THIS THE 18TH DAY OF MAY 2015
签订于

For and on behalf of TEQUESTA GROUP LIMITED:

代表 TEQUESTA 集团有限公司

Name: Mr. Salim Essa

姓名:

Designation: Director

名称: 董事

Signature: _____

签字

SIGNED AT Shenzhen ON THIS THE 18TH DAY OF MAY 2015
签订于

For and on behalf of CS (HONG KONG) CO. LTD.

代表南车(香港)有限公司

Name: Mr. Guo Bingqiang

姓名:

Designation: Authorized Signatory

名称: 授权人

Signature: _____

签字

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Annexure - A

Statement of Advisory Services to be provided by TEQUESTA to the Company in respect of the Project as defined in Clause 1.1 of this Agreement

TEQUESTA 向公司就本协议第 1.1 条定义的项目提供的咨询服务的声明

TEQUESTA, with its long subsisting relationships in the territory of South Africa has agreed to provide the Company with the following services as part of its Advisory and Consulting Services on the Project:

TEQUESTA, 在南非境内有着长期存续的关系, 已经同意向公司提供如下服务作为本项目顾问和咨询服务的一部分:

1. Advise the Company on the regulatory, social, cultural and political framework in South Africa with respect to the Project;
对于本项目, 向公司就南非法规、社会、文化和政治结构提供建议;
2. Identify the various opportunities of participation in various Government and Private projects, leading to the shortlisting and focus on the current Project as contemplated in this Agreement;
识别参与各种政府和私人项目的机会, 推动进入短名单并专注本协议中规定的目前项目;
3. Closely co-ordinate with the designated authorities to comprehend the applicable Government policies and advise the Company accordingly to ensure smooth execution of the Project;
与主管部门紧密协调, 了解适用的政府政策, 给公司提供建议以确保项目的顺利执行;
4. Provide consultancy on participating in the Tenders and bidding processes related to the Project on an ongoing basis;
就本项目, 在参与投标和竞标过程中提供持续的咨询;
5. Assist the Company in negotiating with the Client on pricing levels in relation to the Project;
在本项目上, 帮助公司与客户进行价格谈判。
6. Assist the Company in increasing their footprint in Government and Private Projects in South Africa.
帮助公司提高在南非政府和私人项目中的形象;

It is hereby noted and agreed between the parties that the above services are provided as a pre-Project service and will conclude on the Company signing the Contract for the Project with the Client. The Company will not require any proof of delivery of the above services since it is understood that the Project would not have materialized without the active efforts of TEQUESTA to provide the Services listed above.

特此双方同意, 以上服务仅作为项目前期服务并在公司 and 客户签订项目合同时才有定论。公司不应要求任何以上服务交付的证据, 因为双方清楚, 如果没有 TEQUESTA 积极努力提供以上列明的服务, 该项目将不会实现。

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IN WITNESS WHEREOF the Parties have executed this Agreement on the date and at the place mentioned below.

茲證明雙方在如下的日期和地點簽署本協議。

SIGNED AT Shenzhen ON THIS THE 18TH DAY OF MAY 2015
 簽訂于

For and on behalf of TEQUESTA GROUP LIMITED:
 代表 TEQUESTA 集團有限公司

Name: Mr. Salim Essa
 姓名:

Designation: Director
 名稱: 董事

Signature: _____
 簽字

SIGNED AT Shenzhen ON THIS THE 18TH DAY OF MAY 2015
 簽訂于

For and on behalf of CS (HONG KONG) CO., LTD.
 代表南車(香港)有限公司

Name: Mr. Guo Binglong
 姓名:

Designation: Authorized Signatory
 名稱: 授權人

Signature: _____
 簽字

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本合同一式 3 份，二份存买方，一份存卖方。合同的中英文本具有同等法律效力。两文如有冲突，以英文文本为准。

买方:

R E-Loop Supply (Pty)
 电力机车项目公司
 2007年11月11日

2014. 11. 20.

010

卖方:

20/4/2014

日期

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南车电力机车项目公司
CSR E-LOCO SUPPLY (PTY) LTD.

CRRC E-LoCo Supply (Pty) Limited contracts

STD application 5931 dated 2017-07-07 ref 2017-22097

Contract name	Contract number	Date	Party 1	Party 2	Type of Locomotives	Purpose	Contract Price	Pages (2017-22097)
Subcontract	HOAC-7801-A	08/01/2013	CSR E-LoCo Supply (Pty) Limited	CSR Zhuzhou Electric Locomotive Co. Limited	95 Class 20E	10 locomotive sets, 10 completely Locomotive kits, 70 sets of locomotive components	USD209 550 000.00	p2308 to 2311
Subcontract	TFRAC-HQ-8808-A	17/03/2014	CSR E-LoCo Supply (Pty) Limited	CSR Zhuzhou Electric Locomotive Co. Limited	359 Class 22E	Subcontractor	R10 000 000 000.00	p2368 to 2368
Locomotives Procurement Contract	CSRE-HK-2014-02	06/10/2014	CSR E-LoCo Supply (Pty) Limited	CSR Hong Kong Co. Limited	100 Class 21E	40 21E Locomotives	R1 480 000 000.00	p2312 to 2321
Locomotive Kits Procurement Contract	CSRE-HK-2014-03	20/11/2014	CSR E-LoCo Supply (Pty) Limited	CSR Hong Kong Co. Limited	100 21E Class	60 CKD kits 21E Class locomotives	R2 010 000 000.00	p2329 to 2337
Locomotive Kits Procurement Contract	CSRE-HK-2015-03	05/04/2015	CSR E-LoCo Supply (Pty) Limited	CSR Hong Kong Co. Limited	359 Class 22E	45 locomotive sets third stage components	R1 728 000 000.00	p2357 to 2365
Locomotive Kits Procurement Contract	CSRE-HK-2015-02	05/04/2015	CSR E-LoCo Supply (Pty) Limited	CSR Hong Kong Co. Limited	359 Class 22E	15 locomotive sets of Completely Knocked Down kits of 22E Locomotives	R675 000 000.00	p2348 to 2356
Interest Supplementary Agreement	CSRE-HK-2015-05	01/12/2015	CSR E-LoCo Supply (Pty) Limited	CSR Hong Kong Co. Limited	359 Class 22E	Interest	R225 000 000.00	p2378 to 2384
Supplementary Agreement	CSRE-HK-2015-04	01/12/2015	CSR E-LoCo Supply (Pty) Limited	CSR Hong Kong Co. Limited	Class 21E	Exchange rate loss	R220 000 000.00	p2322 to 2328
Traction Blower Procurement Contract	CSRE-HK-2016-01	05/03/2016	CSR E-LoCo Supply (Pty) Limited	CRRC (Hong Kong) Co. Limited	359 Class 22E	120 sets traction blowers	R12 231 960.00	p2394 to 2395
Locomotive Kits Procurement Contract	CRRCE-HK-2016-02	10/10/2016	CRRC E-LoCo Supply (Pty) Limited	CRRC Hong Kong Co. Limited	359 Class 22E	80 Locomotive sets third stage 22E components	R1 367 500 000.00	p2335 to 2347
Locomotive Kits for main components procurement contract	CTR-HK-2017-01	01/03/2017	CRRC Transnet Rail (Pty) Limited	CRRC Hong Kong Co. Limited	359 Class 22E	60 sets Electric Locomotive sub-assemblies for 8 main components	R1 632 000 000.00	p2369 to 2377

Siyabonga Gama, Group Chief Executive

TRANSNET



Our Ref no: SG/ 21670

Mr Wang Pan (Alton)

CSR/CRRC E-LoCo Supply (Pty) Ltd

1st Floor, China Construction Bank Building

95 Grayston Drive

Sandton

2196

Dear Mr. Wang

**LOCOMOTIVE SUPPLY AGREEMENTS BETWEEN TRANSNET SOC LTD ("TRANSNET")
AND CHINA SOUTH RAIL ("CSR") / CRRC**

Dear Sir

In accordance with our discussions conducted at Transnet on 6 and 7 June 2017, CSR undertook to provide us with written confirmation and clarification in relation to the following.

1. To the extent that you contend for the fact that the 95 electric locomotives, 100 electric locomotives and 359 electric locomotives (22E) ("the locomotive contracts"), are benchmarked against other third party contracts, we require full and extensive particulars thereon, including sight of the relevant documentation evidencing the third party agreements;
2. Confirmation that you have no association with or have not ceded the interest you hold in the locomotive contracts to CSR (Hong Kong) Co. Ltd ("CSR Hong Kong") / CRRC, or any of its subsidiaries/affiliates;
3. Confirmation that you have no knowledge of any agreements concluded between CSR Hong Kong / CRRC, its subsidiaries/affiliates and Tequesta Group Limited;
4. Confirmation that you have no knowledge of any agreements concluded between CSR Zhuzhou Electric Locomotive / CRRC or its subsidiaries/affiliates and CGT and/or JJ Trading FZE;

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 2638

Directors: LG Mabaso (Chairperson) SI Gama* (Group Chief Executive) Y Forbes GJ Mahalela PEB Mathakga ZA Nagdee VM Nkonyane SD Shane
BG Stagman GJ Pita* (Chief Financial Officer)
*Executive

Group Company Secretary: NE Khumalo

www.transnet.net

5. Reasonable proof on the existence of an Independent investigation and/or inquiry into /
CRRC /CSR / CSR Hong Kong business dealings by 30 June 2017, in so far as same may
have a bearing on our standing as a state owned entity.

You are required to provide us with the above written confirmation and clarification by no later
than Friday, 9 June 2017.

Kindly be guided accordingly.

Kind regards


Siyabonga Gama
Group Chief Executive

Date: 2017.06.08

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GO CHRG

It is requested that you advise the Bureau of the results of your investigation and the date of completion of the same.

Very truly yours,
 Special Agent in Charge

Enclosed for your information is a copy of a letterhead memorandum dated and captioned as above.

Very truly yours,

Special Agent in Charge
 Federal Bureau of Investigation

Appendix 82

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public enterprises

Department:
Public Enterprises
REPUBLIC OF SOUTH AFRICA

Suite 301, Infotech Building 1090 Acadia Street Hatfield, 0083 Private Bag X15 Hatfield 0028
Tel: (012) 431 1000 Fax: 086 501 2824 / 086 501 0629

Mr Brian Molefe
Group Chief Executive
Transnet
P O Box 72501
Parkview
2122

Tel: (011) 308 2309
Fax: (011) 308 2315

Dear Mr Molefe

Oversight of Implementation of the 1084 locomotive procurement project

Transnet's locomotive fleet procurement is one of the largest transactions taking place in South Africa currently. The first sets of locomotives are due to be rolled out within a year from now and we understand that there are a range of complexities involved in implementation of the project including multiple OEMs, various stakeholders and local build requirements.

The Department is aware that supplier development and localisation plans should have been signed between each OEM and Transnet in September 2014. I would like to receive details of what has been committed in this regard as well as the delivery milestones.

The Department has been approached by the local industry, which has indicated that OEMs are not meeting local content requirements on historical locomotive contracts with Transnet; and with specific reference to the 1084 locomotives, OEMs are planning to import technologies and components which would have been earmarked to be produced by local suppliers in South Africa. This is a very serious matter and the Department would like to engage Transnet thereon as a matter of urgency.

We are concerned about the delivery of the project. Our view is that this procurement must adopt a project management approach, with a project management office and a dedicated project team, if this is not already the case. We request to see a comprehensive project plan which must include a breakdown of work streams with milestones and progress tracking. There must be visibility at any given point in time. Attached to this, Transnet is requested to nominate a dedicated, full time Project Manager at an appropriately senior level who will be solely responsible for delivery of the 1084.

Richard V

Siga C. Mng.

- please prepare
a response asap.

17/02/15.

1309

Whilst the DPE acknowledges that there has been a fair exchange of information between the Department and Transnet in relation to the fleet procurement, there are a range of issues relating to implementation; monitoring of the project; and supplier development commitments which remain vague. In this regard, I think it is appropriate to schedule a one day workshop between the DPE (chaired by myself) and Transnet, including Transnet Engineering and Transnet Freight Rail, whereby a comprehensive presentation is made to the Department on the entire procurement. My office will be in contact with yours to set up this meeting in the coming weeks.

In preparing for this meeting, please find attached Annexure A which provides a list of areas that the Department would like Transnet to focus on in responding to some of our concerns.

I would like to request Transnet's full and urgent cooperation with the Department on this matter.

Yours sincerely


Ms Matsileli Mkhoho
Acting Director-General

Date: 21/11/2014

15:30

ANNEXURE A

1064 locomotives

- ✓ Specific details on:
 - each of the OEM's SD commitments;
 - SD delivery milestones;
 - applicable penalties for non-delivery of SD commitment; and
 - monitoring mechanism that Transnet has instituted to ensure SD delivery
- ✓ Current status of scoping between TE and the OEMs and the details of the design requirements per OEM that have been agreed.
- ✓ Are the necessary infrastructure requirements in place in TE to roll out the programme?
- ✓ Have large lead time items already been procured; are procurement requirements and RFPs being drafted as required and what is the status of the procurements?
- ✓ Have the OEMs provided the necessary design information as requested and in the right formats?
- ✓ How is IP transfer and skills transfer being managed?
- ✓ Are the required personnel in place in TE and TFR and what is the plan in this regard?
- ✓ What is the state of readiness in TE and TFR for overall implementation?
- ✓ TE's strategy to evolve to an OEM remains vague without clear milestones that the Department can track to ensure delivery. What are the specific details in this regard?
- ✓ What is the interface between TE, TFR and the OEMs and how regularly is there engagement between the parties and on what issues specifically?
- ✓ What measures have been put in place for industry engagement; and assessing its state of readiness to participate in order to meet local content obligations and drive competitiveness? The Departments of Trade and Industry and Science and Technology must be approached to play a critical role in this respect.
- ✓ We want to see regular steering meetings and reporting between stakeholders including the DPE and there must be transparency of project plans and progress at any point in time.

95 CSR and 100 dual voltage locomotives**✓ Specific details on:**

- each of the OEM's SD commitments;
 - SD delivery milestones;
 - applicable penalties for non-delivery of SD commitment; and
 - monitoring mechanism that Transnet has instituted to ensure SD delivery
-

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